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NOTE

From: Romanian delegation
To: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC

Following the request of NL Presidency during the Working Party on Frontiers on 8-9 March 2016, the Romanian delegation hereby submits its proposals on Articles 6, 7, 53 – 82 of the EBCG Regulation.

Our proposals on the respective Articles aim at the following:

- In Article 6, Romania supports the idea that the current name of the Agency - **Frontex** - should be kept, as such or as the short name;

- **Art. 7(1), point (r)** should highlight the fact that the cooperation between Member States and third countries should not be developed solely by the Member States themselves, but the Agency should have the main role in such a cooperation. Furthermore, at **point (n)** we propose that the reference to „*remotely piloted aircraft systems*” be deleted. No reference to specific technical equipment should be made; in this case a general provision is sufficient. In **paragraph (2)**, the phrase “*where such cooperation is compatible with the action of the Agency*” indicates a situation in which a Member State would have to permanently make compatibility tests of its actions/ cooperation with other Member States/third countries. We propose replacement, as indicated in the proposed text below.
- The **Art. 55 paragraph (5)** needs to be completed to indicate the consequence of the absence of concluding the headquarters agreement provided in Art. 56 and the possible solutions to be adopted in this case.
- **Art. 57, para (2)**, second thesis, should be harmonized with Art. 19(8) as regards the categories of personnel that may be seconded in the EBCG teams: *national experts and border guards* (wording used in **Art. 19(8)**) or *border guards seconded as national experts* (used in Art. 57(2)). We propose to keep the version in Art. 19(8).
- **Art. 61, para (1), point c** includes small additions in order to harmonize the provisions with those already agreed in previous articles. Furthermore, the text in **para (1)** should include the attribution of the MB to appoint the Deputy Executive Director, in accordance with Art. 68(4).
- RO does not support **Art. 61, para (6)** due to the fact that the attributions of the small sized Executive Board replace those of Management Board (*...to take certain provisional decisions on behalf of the MB*). In support of our position, we mention the fact that, in case the MB cannot be convened, the decisions may be adopted by silent procedure. We see no added value in creating an additional body. The preparation of the decisions, programmes and activities to be adopted by the MB may be draw up and drafted through micro-management (staff of the Agency) as currently provided by Art. 20(7), R 2007/2004. We propose elimination of **para (6)**.

- **Art. 67 para (3), point g)** requires modification to harmonize with the provisions agreed in Art. 12;
- We consider that the wording of the function mentioned in **Art. 67 para (3) point p)** is very general and disproportionate in relation to the tasks carried out by the Agency. Such power of the Executive Director must be exercised within the limit of the funds attributed to/ obtained by the Agency. Moreover, the phrase “*imposing effective, proportionate and dissuasive administrative and financial penalties*” is unclear and may lead to the idea that the Executive Director may impose penalties to the Member States, which, as aforementioned, is a disproportionate power.
- We propose the deletion of **Art. 69**, regarding the setting up of the Supervisory Board, as we do not see the practical added value of such a body. We consider that the Agency has sufficient entities and personnel, like the deputy Executive Director, the Management Board, counselors etc. that could advise the Executive Director on urgent and important matters. All the others articles mentioning the Supervisory Board should be updated;
- Taking into consideration that throughout the regulation, the expression “*border guards and other relevant staff*” is used, in **Art. 72 para (4)** we propose to use a general phrase, like “*the members of the teams*” in order to cover all profiles, including return teams;
- In **Art. 72 para (9)**, RO proposes that the languages in which the standardized form will be available on the website of the Agency, be clearly mentioned. One proposal could be that the form be made available in all the languages of the EU, as this could encourage and help the persons to easily exercise their rights and submit complaints to the Agency.

Please find below in **bold underlined** the text inserted by RO and in **~~bold strikethrough~~** the deletions on the amended articles 6, 7, 53-82.

SECTION 1

TASKS OF THE EUROPEAN BORDER AND COAST GUARD AGENCY

Article 6

European Border and Coast Guard Agency

1. To ensure a coherent European integrated border management at all external borders, the Agency shall facilitate and render more effective the application of existing and future Union measures relating to the management of external borders, in particular the Schengen Borders Code established by Regulation (EC) No 562/2006.
2. The European Border and Coast Guard Agency ('the Agency') shall be the new name for the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Council Regulation (EC) No 2007/2004. The activities shall henceforth be based on this Regulation.

Article 7

Tasks

1. In view of contributing to an efficient, high and uniform level of border control and return, the Agency shall perform the following tasks:
 - (a) establish a monitoring and risk analysis centre with the capacity to monitor migratory flows and to carry out risk analysis as regards all aspects of integrated border management;
 - (b) carry out a vulnerability assessment including the assessment of the capacity of Member States to face threats and pressures at the external borders;
 - (c) assist Member States in circumstances requiring increased technical and operational assistance at the external borders by coordinating and organising joint operations, taking into account that some situations may involve humanitarian emergencies and rescue at sea;
 - (d) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, by launching rapid border interventions at the external borders of those Member States facing specific and disproportionate pressures, taking into account that some situations may involve humanitarian emergencies and rescue at sea;
 - (e) set up and deploy European Border and Coast Guard Teams, including a rapid reserve pool, that are to be deployed during joint operations and rapid border interventions and in the framework of the migration management support teams;

- (f) set up a technical equipment pool to be deployed in joint operations, rapid border interventions and in the framework of migration management support teams, as well as in return operations and return interventions;
- (g) deploy European Border and Coast Guard Teams and technical equipment to provide assistance in screening, identification and fingerprinting in the framework of the migration management support teams at hotspot areas;
- (h) support the development of technical standards for equipment, especially for tactical level command, control and communication as well as technical surveillance to ensure interoperability at Union and national level;
- (i) deploy the necessary equipment and staff for the rapid reserve pool for the practical execution of the measures needed to be taken in a situation requiring urgent action at the external borders;
- (j) assist Member States in circumstances requiring increased technical assistance and operational assistance for implementing the obligation to return illegally staying third-country nationals, including through the coordination or organisation of return operations;
- (k) set up pools of forced return monitors, forced return escorts and return specialists;
- (l) set up and deploy European Return Intervention Teams during return interventions;
- (m) assist Member States on training of national border guards and experts on return, including the establishment of common training standards;
- (n) participate in the development and management of research and innovation activities relevant for the control and surveillance of external borders, including the use of advanced surveillance technology ~~such as remotely piloted aircraft systems~~ and develop pilot projects regarding matters covered by this Regulation;
- (o) develop and operate, in accordance with Regulation (EC) No 45/2001¹ and Framework Decision 2008/977/JHA, information systems that enable swift and reliable exchanges of information regarding emerging risks at the management of the external borders, irregular immigration and return, in close cooperation with the Commission, Union agencies, bodies and offices as well as the European Migration Network established by Council Decision 2008/381/EC;²

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

² Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (OJ L 131, 21.5.2008, p. 7).

(p) provide the necessary assistance for the development and operation of a European border surveillance system and, as appropriate, to the development of a common information-sharing environment, including interoperability of systems, in particular by developing, maintaining and coordinating the Eurosur framework in accordance with Regulation (EU) No 1052/2013;

(q) cooperate with the European Fisheries Control Agency and the European Maritime Safety Agency to support the national authorities carrying out coast guard functions by providing services, information, equipment and training, as well as by coordinating multipurpose operations;

(r) assist **and foster cooperation between** Member States and third countries in the context of operational cooperation between them in the fields of external border management and return.

2. Member States may continue cooperation at an operational level with other Member States and/or third countries at external borders, including military operations on a law enforcement mission and in the field of return, where such cooperation is **without prejudice to the actions compatible with the action** of the Agency. Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives.

Member States shall report to the Agency on that operational cooperation with other Member States and/or third countries at the external borders and in the field of return. The Executive Director of the Agency ('the Executive Director') shall inform the Management Board of the Agency ('the Management Board') on those matters on a regular basis and at least once a year.

3. The Agency may engage in communication activities on its own initiative in the fields within its mandate. Communication activities shall not be detrimental to the tasks referred to in paragraph 1 and shall be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board.

Article 53

Cooperation with third countries

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate and encourage operational cooperation between Member States and third countries, within the framework of the external relations policy of the Union, including with regard to the protection of fundamental rights. The Agency and the Member States shall comply with norms and standards at least equivalent to those set by Union legislation also when cooperation with third countries takes place on the territory of those countries. The establishment of cooperation with third countries shall serve to promote European border management and return standards.

2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation with the support of and in coordination with Union delegations, as well as within the framework of working arrangements concluded with those authorities in accordance with Union law and policy. Those working arrangements shall be related to the management of operational cooperation. Such arrangements shall have received the Commission's prior approval.
3. In circumstances requiring increased technical and operational assistance, the Agency may coordinate operational cooperation between Member States and third countries in the field of management of external borders, and it shall have the possibility of carrying out joint operations at the external borders involving one or more Member States and a third country neighbouring at least one of those Member States, subject to the agreement of that neighbouring third country, including on the territory of that third country. The Commission shall be informed of such activities.
4. The Agency shall cooperate with the competent authorities of third countries on return, including on the acquisition of travel documents.
5. The Agency may also, with the agreement of the Member States concerned invite observers from third countries to participate in its activities at the external borders referred to in Article 13, return operations referred to in Article 27, return interventions referred to in Article 32 and training referred to in Article 35, to the extent that their presence is in accordance with the objectives of those activities, may contribute to improving cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member States concerned regarding the activities referred to in Articles 13, 27 and 35 and only with the agreement of the host Member State regarding those referred to in Article 13 and 32. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive the appropriate training from the Agency prior to their participation.
6. The Agency shall participate in the implementation of international agreements concluded by the Union with third countries, within the framework of the external relations policy of the Union, and regarding matters covered by this Regulation.
7. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the external relations policy of the Union. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation.

8. When concluding bilateral agreements with third countries Member States may, in agreement with the Agency, include provisions concerning the role and competence of the Agency in accordance with this Regulation, in particular regarding the exercise of executive powers by members of the European Border and Coast Guard Teams deployed by the Agency during the joint operations, pilot projects, rapid border interventions, return operations or return interventions. The Member States shall notify the Commission of any such provisions.
9. The Agency shall inform the European Parliament of the activities referred to in paragraphs 2 and 3.

Article 54

Liaison officers in third countries

1. The Agency may deploy experts of its own staff as liaison officers, who should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of immigration liaison officers and security experts of the Union and of the Member States, including the network set up pursuant to Council Regulation (EC) No 377/2004.¹
2. Within the framework of the external relations policy of the Union, priority for deployment of liaison officers shall be given to those third countries which, on the basis of risk analysis, constitute a country of origin or transit regarding irregular immigration. On a reciprocal basis the Agency may receive liaison officers posted by those third countries. The Management Board shall adopt, on a proposal of the Executive Director the list of priorities on a yearly basis. The deployment of liaison officers shall be approved by the Management Board.
3. The tasks of the Agency's liaison officers shall include, in compliance with Union law and in accordance with fundamental rights, establishing and maintaining contacts with the competent authorities of the third country to which they are assigned with a view to contributing to the prevention of and fight against irregular immigration and the return of illegally staying third-country nationals. Those liaison officers shall coordinate closely with Union delegations.
4. The decision to deploy liaison officers to third countries shall be subject to receiving a prior opinion of the Commission, and the European Parliament shall be fully informed of those activities as soon as possible.

¹ Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64, 2.3.2004, p. 1).

SECTION 4

GENERAL FRAMEWORK AND ORGANISATION OF THE AGENCY

Article 55

Legal status and location

1. The Agency shall be a body of the Union. It shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.
3. The Agency shall be independent in relation to operational and technical matters.
4. It shall be represented by its Executive Director.
5. The seat of the Agency shall be Warsaw, Poland, subject to the implementation of Article 56.

Article 56

Headquarters Agreement

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State in which the Agency has its seat and the facilities to be made available by that Member State, as well as the specific rules applicable to the Executive Director, the Deputy Executive Director, the members of the Management Board, the staff of the Agency and members of their families, in that Member State shall be laid down in a Headquarters Agreement between the Agency and the Member State in which the Agency has its seat.
2. The Headquarters Agreement shall be concluded after obtaining the approval of the Management Board and no later than three months after entry into force of this Regulation.
3. The Member State in which the Agency has its seat shall provide the best possible conditions to ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

Article 57

Staff

1. The Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union and the rules adopted in agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants of the Union shall apply to the Agency's staff.
2. For the purpose of implementing Article 21 and 32(6) only a staff member of the Agency subject to the Staff Regulations of Officials of the European Union or to Title II of the Conditions of Employment of Other Servants of the European Union may be designated as a coordinating officer or a liaison officer. For the purpose of implementing Article 19(8), only national ~~experts or~~ border guards seconded **as national experts** by a Member State to the Agency may be designated for attachment to the European Border and Coast Guard Teams. The Agency shall designate those national experts who shall be attached to the European Border and Coast Guard Teams in accordance with that Article. *For the purpose of implementing Article 19(8), only national border guards seconded as national experts by a Member State to the Agency may be designated for attachment to the European Border and Coast Guard Teams*".
3. The Management Board shall adopt the necessary implementing measures in agreement with the Commission pursuant to Article 110 of the Staff Regulations of Officials of the European Union.
4. The Management Board may adopt provisions to allow national experts and border guards from Member States to be seconded to the Agency. Those provisions shall take into account the requirements of Article 19(8), in particular the fact that the seconded national experts or border guards are considered as members of the teams and have the tasks and powers provided for in Article 39. They shall include provisions on the conditions of deployment.

Article 58

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency and its staff.

Article 59

Liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.
4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.
5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants of the Union applicable to them.

Article 60

Administrative and management structure of the Agency

The administrative and management structure of the Agency shall comprise:

- (a) a Management Board;
- (b) an Executive Director;
- (c) a Supervisory Board;
- (d) a Consultative Forum; and
- (e) a Fundamental Rights Officer.

Article 61

Functions of the Management Board

1. The Management Board shall:
 - (a) appoint the Executive Director on a proposal from the Commission in accordance with Article 68;
 - (b) appoint the members of the Supervisory Board in accordance with Article 69(2);
 - (c) adopt decisions setting out ~~corrective~~ measures in accordance with Article 12 ~~(8)(6)~~, **in relation to the liaison officers, in accordance with Article 11 (2a) and to the common integrated risk analysis model, in accordance with Article 10(1)**;
 - (d) adopt a consolidated annual activity report of the Agency for the previous year and forward it by 1 July at the latest to the European Parliament, the Council, the Commission and the Court of Auditors; the consolidated annual activity report shall be made public;
 - (e) before 30 November each year, and after taking into account the opinion of the Commission, adopt, by a majority of two-thirds of the members entitled to vote, a single programming document containing the Agency's multiannual programming and its work programme for the following year and forward it to the European Parliament, the Council and the Commission;
 - (f) establish procedures for taking decisions related to the operational tasks of the Agency by the Executive Director;
 - (g) adopt, by a majority of two-thirds of the members entitled to vote, the annual budget of the Agency and exercise other functions in respect of the Agency's budget pursuant to Section 5 of this Chapter;
 - (h) exercise disciplinary authority over the Executive Director and over the Deputy Director, in agreement with the Executive Director;
 - (i) establish its Rules of Procedure;
 - (j) establish the organisational structure of the Agency and adopt the Agency's staff policy, in particular the multiannual staff policy plan. In accordance with the relevant provisions of the Commission Regulation (EC, Euratom) No 2343/2002 ¹ the multiannual staff policy plan shall be submitted to the Commission and the budgetary authority after receiving a favourable opinion of the Commission;

¹ Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p.72).

(k) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;

(l) adopt internal rules for the prevention and management of conflicts of interest in respect of its members;

(m) exercise, in accordance with paragraph 7, with respect to the staff of the Agency, the powers conferred by the Staff Regulations of Officials of the European Union on the Appointing Authority and by the Conditions of Employment of Other Servants of the Union on the Authority Empowered to Conclude a Contract of Employment ('the Appointing Authority powers');

(n) adopt appropriate implementing rules for giving effect to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union in accordance with Article 110 of the Staff Regulations;

(o) ensure adequate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-fraud Office (OLAF);

(p) adopt and regularly update the communication and dissemination plans referred to in Article 7(3) based on an analysis of needs;

(q) appoint an Accounting Officer, subject to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, who shall be totally independent in the performance of his or her duties.

r) appoint the Deputy Executive Director, on the proposal of the Commission, after having consulted the Executive Director, in accordance with Article 68(4).

2. Proposals for decisions on specific activities of the Agency to be carried out at, or in the immediate vicinity of, the external border of any particular Member State shall require a vote in favour of their adoption by the Member of the Management Board representing that Member State.
3. The Management Board may advise the Executive Director on any matter strictly related to the development of operational management of the external borders and return, including activities related to research.
4. Should Ireland and/or the United Kingdom request to participate in specific activities, the Management Board shall decide thereon.

The Management Board shall take its decision on a case-by-case basis by an absolute majority of its members with a right to vote. In its decision, the Management Board shall consider if the participation of Ireland and/or the United Kingdom contributes to the achievement of the activity in question. The decision shall set out the financial contribution of Ireland and/or the United Kingdom to the activity for which a request for participation has been made.

5. The Management Board shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures conducted by the Agency.
6. ~~The Management Board may establish a small-sized Executive Board composed of the Chairperson of the Management Board, one representative of the Commission and three members of the Management Board, to assist it and the Executive Director with regard to the preparation of the decisions, programmes and activities to be adopted by the Management Board and when necessary, because of urgency, to take certain provisional decisions on behalf of the Management Board.~~
7. The Management Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations of Officials of the European Union and on Article 6 of the Conditions of Employment of Other Servants of the Union, delegating relevant Appointing Authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may by way of a decision temporarily suspend the delegation of the Appointing Authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

Article 62

Composition of the Management Board

1. Without prejudice to paragraph 3, the Management Board shall be composed of one representative of each Member State and two representatives of the Commission, all with voting rights. To this effect, each Member State shall appoint a member of the Management Board as well as an alternate who will represent the member in his or her absence. The Commission shall appoint two members and their alternates. The duration of the terms of office shall be four years. The terms of office shall be extendable.
2. The Management Board members shall be appointed on the basis of their degree of high level relevant experience and expertise in the field of operational cooperation on border management and return, taking into account relevant managerial, administrative and budgetary skills. The parties represented in the Management Board shall make efforts to limit turnover of their representatives, in order to ensure continuity of the board's work. They shall aim to achieve a balanced representation between men and women on the Management Board.

3. Countries associated with the implementation, application and development of the Schengen *acquis* shall participate in the Agency. They shall have one representative and one alternate each in the Management Board. Under the relevant provisions of their association agreements, arrangements have been developed that specify the nature and extent of, and the detailed rules for, the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.

Article 63

Multiannual programming and annual work programmes

1. The Management Board shall, by 30 November each year, adopt a programming document containing the Agency's multiannual programming and annual programming for the following year, based on a draft put forward by the Executive Director, taking into account the opinion of the Commission and, as regards the multiannual programming, after having consulted the European Parliament. The Management Board shall forward that document to the European Parliament, the Council and the Commission.
2. The document referred to in paragraph 1 shall become definitive after the final adoption of the general budget and, where necessary, shall be adjusted accordingly.
3. The multiannual programming shall set out overall strategic programming in the medium and long term, including the objectives, expected results and performance indicators, as well as resource planning, including the multiannual budget and staff. The multiannual programming shall set the strategic areas of interventions and explain what needs to be done to achieve the objectives. It shall include a strategy for relations with third countries and international organisations, as well as the actions linked to that strategy.
4. The multiannual programming shall be implemented by means of annual work programmes and shall, where appropriate, be updated following the outcome of the evaluation referred to in Article 80. The conclusion of those evaluations shall also be reflected, where appropriate, in the annual work programme for the following year.
5. The annual work programme shall contain a description of the activities to be financed comprising detailed objectives and expected results including performance indicators. It shall also contain an indication of the financial and human resources allocated to each activity, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be consistent with the multiannual programming. It shall clearly indicate tasks that have been added, changed or deleted compared to the previous financial year.
6. The annual work programme shall be adopted according to the Union legislative programme in relevant areas of the management of external borders and returns.

7. Where, after adoption of an annual work programme, a new task is assigned to the Agency, the Management Board shall amend the annual work programme.
8. Any substantial amendment to the annual work programme shall be adopted by the same procedure as that applicable to adoption of the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

Article 64

Chairmanship of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members with voting rights. The Chairperson and the Deputy Chairperson shall be elected by a majority of two-thirds of the members of the Management Boards with voting rights. The Deputy Chairperson shall *ex officio* replace the Chairperson in the event of his or her being prevented from attending to his or her duties.
2. The term of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of the terms of office of the Chairperson or Deputy Chairperson shall be four years. These terms of office shall be extendable once.

Article 65

Meetings

1. Meetings of the Management Board shall be convened by its Chairperson.
2. The Executive Director of the Agency shall take part in the deliberations, without the right to vote.
3. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet at the initiative of the Chairperson, at the request of the Commission, or at the request of at least one third of its members.
4. Ireland and the United Kingdom shall be invited to attend the meetings of the Management Board.
5. The Management Board may invite a representative of the European External Action Service.
6. The Management Board may invite any other person whose opinion may be of interest to attend its meetings as an observer.

7. The members of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.
8. The secretariat for the Management Board shall be provided by the Agency.

Article 66

Voting

1. Without prejudice to Article 61(1)(e) and (g), Article 64(1) and Article 68(2) and (4), the Management Board shall take its decisions by an absolute majority of its members with a right to vote.
2. Each member shall have one vote. The Executive Director shall not vote. In the absence of a member, his or her alternate shall be entitled to exercise his or her right to vote.
3. The rules of procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member as well as any quorum requirements, where appropriate.
4. Countries associated with the implementation, application and development of the Schengen *acquis* have limited voting rights in accordance with the respective arrangements. In order to allow the associated countries to exercise their right to vote, the Agency shall detail the agenda identifying the points for which a limited voting right has been granted.

Article 67

Functions and powers of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his or her duties. Without prejudice to the respective competencies of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.
2. The European Parliament or the Council may invite the Executive Director to report on the carrying out of his or her tasks, in particular on the implementation and monitoring of the Fundamental Rights Strategy, the consolidated annual activity report of the Agency for the previous year, the work programme for the following year and the Agency's multiannual programming.

3. The Executive Director shall have the following functions and powers:
- (a) to prepare and implement the decisions and programmes and activities adopted by the Agency's Management Board within the limits specified by this Regulation, its implementing rules and any applicable law;
 - (b) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the day-to-day administration and functioning of the Agency in accordance with the provisions of this Regulation;
 - (c) to prepare each year the programming document and to submit it to the Management Board after consulting the Commission;
 - (d) to prepare each year the consolidated annual activity report on the Agency's activities and submit it to the Management Board;
 - (e) to draw up a draft statement of estimates of the revenues and expenditure of the Agency pursuant to Article 75, and implement the budget pursuant to Article 76;
 - (f) to delegate his or her powers to other members of the Agency's staff subject to rules to be adopted in accordance with the procedure referred to in Article 61(1)(i);
 - (g) to **make a recommendation** ~~adopt a decision~~ on **setting out the necessary corrective** measures in accordance with Article 12(**7**) (~~5~~), including to propose to Member States to initiate and carry out joint operations, rapid border interventions or other action referred to in Article 13(2);
 - (h) to evaluate, approve and coordinate proposals made by Member States for joint operations or rapid border interventions in accordance with Article 14(3);
 - (i) to ensure the implementation of the operational plans referred to in Articles 15, 16 and 32(4);
 - (j) to assess the request for assistance of a Member State for migration management support teams and the assessment of its needs, in coordination with relevant Union Agencies in accordance with Article 17(2);
 - (k) to ensure the implementation of the Commission decision referred to in Article 18;
 - (l) to withdraw financing of a joint operation or rapid border intervention or to suspend or terminate such operations in accordance with Article 24;
 - (m) to evaluate the results of joint operations and rapid border interventions in accordance with Article 25;

(n) to identify the minimum number of technical equipment in accordance with its needs, notably in order to be able to carry out joint operations and rapid border interventions, in accordance with Article 38(2);

(o) to prepare an action plan following-up on the conclusions of internal or external audit reports and evaluations, as well as investigations by the European Anti-fraud Office (OLAF) and reporting on progress twice a year to the Commission and regularly to the Management Board;

(p) to protect the financial interests of the Union by applying preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;

(q) to prepare an anti-fraud strategy for the Agency and present it to the Management Board for approval.

4. The Executive Director shall be accountable for his activities to the Management Board.
5. The Executive Director shall be the legal representative of the Agency.

Article 68

Appointment of the Executive Director and the Deputy Executive Director

1. The Commission shall propose candidates for the post of the Executive Director and the Deputy Executive Director based on a list following publication of the post in the Official Journal of the European Union and other press or internet sites as appropriate.
2. The Executive Director shall be appointed by the Management Board on the grounds of merit and documented high-level administrative and management skills, as well as senior professional experience in the field of management of the external borders and return. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

Power to dismiss the Executive Director shall lie with the Management Board, acting on a proposal from the Commission, according to the same procedure.

3. The Executive Director shall be assisted by a Deputy Executive Director. If the Executive Director is absent or indisposed, the Deputy Executive Director shall take his or her place.

4. The Deputy Executive Director shall be appointed by the Management Board on the grounds of merit and documented appropriate administrative and management skills, as well as relevant professional experience in the field of management of the external borders and return on the proposal of the Commission, after having consulted the Executive Director. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

Power to dismiss the Deputy Executive Director shall be with the Management Board, according to the same procedure.

5. The term of office of the Executive Director shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the Executive Director's performance and the Agency's future tasks and challenges.
6. The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 5, may extend the term of office of the Executive Director once, for no more than five years.
7. The term of the office of the Deputy Executive Director shall be five years. It may be extended by the Management Board once for another period of up to five years.

Article 69

Supervisory Board

- ~~1. The Supervisory Board shall advise the Executive Director:~~

~~(a) on the recommendations to be made by the Executive Director to a Member State concerned to initiate and carry out joint operations or rapid border interventions in accordance with Article 14(4);~~

~~(b) on the decisions to be taken by the Executive Director to Member States based on the outcome of the vulnerability assessment carried out by the Agency in accordance with Article 12;~~

~~(c) on the measures needed to be taken for the practical execution of the Commission decision related to a situation requiring urgent action at the external borders, including the technical equipment and staff needed to meet the objectives of that decision in accordance with Article 18(3).~~

- ~~2. The Supervisory Board shall be composed of the Deputy Executive Director, four other senior officials of the Agency to be appointed by the Management Board and one of the representatives of the Commission to the Management Board. The Supervisory Board shall be chaired by the Deputy Executive Director.~~

- ~~3. The Supervisory Board shall report to the Management Board.~~

Article 70

Consultative Forum

1. A Consultative Forum shall be established by the Agency to assist the Executive Director and the Management Board in fundamental rights matters.
2. The Agency shall invite the European Asylum Support Office, the European Union Agency for Fundamental Rights, the United Nations High Commissioner for Refugees and other relevant organisations to participate in the Consultative Forum. On a proposal by the Executive Director, the Management Board shall decide on the composition and the working methods of the Consultative Forum and the modalities of the transmission of information to the Consultative Forum.
3. The Consultative Forum shall be consulted on the further development and implementation of the Fundamental Rights Strategy, Codes of Conduct and common core curricula.
4. The Consultative Forum shall prepare an annual report of its activities. That report shall be made publicly available.
5. The Consultative Forum shall have access to all information concerning the respect for fundamental rights, including by carrying out on spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State.

Article 71

Fundamental Rights Officer

1. A Fundamental Rights Officer shall be designated by the Management Board and shall have the necessary qualifications and experience in the field of fundamental rights.
2. The Fundamental Rights Officer shall be independent in the performance of his or her duties as a Fundamental Rights Officer, he or she shall report directly to the Management Board and cooperate with the Consultative Forum. The Fundamental Rights Officer shall report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights.
3. The Fundamental Rights Officer shall be consulted on the operational plans drawn up in accordance with Articles 15, 16 and 32(4) and shall have access to all information concerning respect for fundamental rights, in relation to all the activities of the Agency.

Article 72

Complaint Mechanism

1. The Agency, in cooperation with the Fundamental Rights Officer, shall take the necessary measures to set up a complaint mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of the Agency.
2. Any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, return operation or return intervention, and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any third parties intervening on behalf of such a person, may submit a complaint, in writing, to the Agency.
3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible. Complaints which are anonymous, malicious, frivolous, vexatious, hypothetical or inaccurate shall be excluded from the complaint mechanism.
4. The Fundamental Rights Officer shall be responsible for handling complaints received by the Agency in accordance with the right to good administration. For this purpose, the Fundamental Rights Officer shall review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the Executive Director, forward complaints concerning **the members of the teams border guards** to the home Member State and register the follow-up by the Agency or that Member State.
5. In case of a registered complaint concerning a staff member of the Agency, the Executive Director shall ensure appropriate follow-up, including disciplinary measures as necessary. The Executive Director shall report back to the Fundamental Rights Officer as to the findings and follow-up given by the Agency to a complaint.
6. In case of a registered complaint concerning a border guard of a host Member State or a member of the teams, including seconded members of the teams or seconded national experts, the home Member State shall ensure appropriate follow-up, including disciplinary measures as necessary or other measures in accordance with national law. The relevant Member State shall report back to the Fundamental Rights Officer as to the findings and follow-up to a complaint.
7. The Fundamental Rights Officer shall report to the Executive Director and to the Management Board as to the findings and follow-up given to complaints by the Agency and the Member States.

8. In accordance with the right to good administration, if a complaint is admissible, complainants shall be informed that a complaint has been registered, that an assessment has been initiated and that a response may be expected as soon as it becomes available. If a complaint is not admissible, complainants shall be informed of the reasons and provided with further options for addressing their concerns.
9. The Fundamental Rights Officer shall, after consulting the Consultative Forum, draw up a standardized complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights. The Fundamental Rights Officer shall submit that form to the Executive Director and to the Management Board.

The Agency shall ensure that the standardized complaint form is available in most common languages and that it shall be made available on the Agency's website and in hardcopy during all activities of the Agency. Complaints shall be considered by the Fundamental Rights Officer even when they are not submitted in the standardized complaint form.

10. Any personal data contained in a complaint shall be handled and processed by the Agency and the Fundamental Rights Officer in accordance with Regulation (EC) No 45/2001 and by Member States in accordance with Directive 95/46/EC and Council Framework Decision 2008/977/JHA.

The submission of the complaint is understood as the complainant consenting to the processing of his or her personal data in the meaning of point (d) of Article 5 of Regulation (EC) No 45/2001 by the Agency and the Fundamental Rights Officer.

In order to safeguard the interest of the complainants, complaints shall be dealt with confidentially unless the complainant waives his or her right to confidentiality. For complainants who waive their right to confidentiality, it is understood that he or she consents to the Fundamental Rights Officer or the Agency disclosing his or her identity in relation to the matter under complaint.

Article 73

Language arrangements

1. The provisions laid down in Regulation No 1¹ shall apply to the Agency.
2. Without prejudice to decisions taken on the basis of Article 342 TFEU, the consolidated annual activity report and the work programme referred to in Article 61(1)(d) and (e), shall be produced in all official languages of the Union.
3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the bodies of the European Union.

Article 74

Transparency and communication

1. The Agency shall be subject to Regulation (EC) No 1049/2001 when handling applications for access to documents held by it.
2. The Agency may communicate on its own initiative in the fields within its mission. It shall make public the consolidated annual activity report referred to in Article 61(1)(d) and ensure in particular that the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.
3. The Management Board shall lay down the practical arrangements for the application of paragraphs 1 and 2.
4. Any natural or legal person shall be entitled to address himself or herself in writing to the Agency in any of the official languages of the Union, **regarding the activities of the Agency**. He or she shall have the right to receive an answer in the same language.
5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 TFEU respectively.

Article 75 - 82

No proposals on the text.

¹ Regulation No 1 determining the languages to be used by the European Economic Community of 15 April 1958 (OJ 17, 6.10.58, p. 385, English special edition: Series I Chapter 1952-1958 p. 59).