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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

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Delegations will find in the Annex to this Note further compromise suggestions submitted by the Presidency on Chapter II Section 3 and Chapter III, Sections 1 and 2, which will be examined at the JHA Counsellors meeting on 29 February 2016. The most recent compromise suggestions reflecting the discussions so far on these provisions and the relevant contributions by delegations are highlighted in bold/underline/strikethrough; the compromise suggestions which had been submitted by the Presidency in previous discussions are marked with underline.

SECTION 3

EXTERNAL BORDER MANAGEMENT

*Article 13*

Actions by the Agency at the external borders

1. **A Member States** may request the Agency for assistance in implementing ~~their~~ **its** obligations with regard to the control of the external borders. The Agency shall also carry out measures as referred to in Article 18.
2. The Agency shall organise the appropriate technical and operational assistance for the host Member State and it may take one or more of the following measures:
  - (a) coordinate joint operations for one or more Member States and deploy European Border and Coast Guard Teams;
  - (b) organise rapid border interventions and deploy European Border and Coast Guard Teams from the rapid reserve pool, and additional European Border and Coast Guards Teams as appropriate;
  - (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with neighbouring third countries;
  - (d) deploy European Border and Coast Guard Teams in the framework of the migration management support teams at hotspot areas;
  - (e) deploy its own experts as well as members of the teams who had been seconded by the Member States to the Agency to support the competent national authorities of the Member States involved for the appropriate duration;
  - (f) deploy technical equipment.

3. The Agency shall finance or co-finance the activities set out in paragraph 2 ~~with grants~~ from its budget in accordance with the financial rules applicable to the Agency.

#### *Article 14*

Initiating joint operations and rapid border interventions at the external borders

1. ~~A~~ Member States may request the Agency to launch joint operations to face upcoming challenges, including present or future threats at ~~its~~ ~~their~~ ~~sections~~ of ~~common~~ external border resulting from ~~irregular~~ illegal immigration or cross-border crime, or to provide increased technical and operational assistance when implementing their obligations with regard to the control of the external borders.
2. At the request of a Member State faced with a situation of specific and disproportionate pressures, especially the arrival at points of the external borders of large numbers of third-country nationals trying to cross the external border ~~enter the territory~~ of that Member State illegally, the Agency may deploy a rapid border intervention for a limited period of time on the territory of that host Member State.
3. The Executive Director shall evaluate, approve and coordinate proposals for joint operations made by Member States. Joint operations and rapid border interventions shall be preceded by a thorough, reliable and up-to-date risk analysis, thereby enabling the Agency to set an order of priority for the proposed joint operations and rapid border interventions, taking into account the impact level to external border sections in accordance with Regulation (EU) No 1052/2013 and the availability of resources.
4. The Executive Director shall, on the advice of the Supervisory Board based on the results of the vulnerability assessment, and taking into account the Agency's risk analysis and the analysis layer of the European situational picture established in accordance with Regulation (EU) No 1052/2013, recommend to the Member State concerned to initiate and carry out joint operations or rapid border interventions. The Agency shall put its technical equipment at the disposal of the host or participating Member States.

5. The objectives of a joint operation or rapid border intervention may be achieved as part of a multipurpose operation which may involve coast guard functions including the rescue of persons in distress at sea or other coast guard functions **and prevention of cross border crime prevention, including** the fight against migrant smuggling or trafficking in human beings, ~~drug trafficking control operations~~, and migration management including identification, registration, debriefing and return.

*Article 15*

Operational plan for joint operations

1. In preparation of a joint operation the Executive Director, in cooperation with the host Member State, shall draw up a list of technical equipment and staff needed taking into account the host Member State's available resources. On the basis of those elements, the Agency shall define a package of operational and technical reinforcement as well as capacity building activities to be included in the operational plan.
2. The Executive Director shall draw up an operational plan for joint operations at the external borders. The Executive Director and the host Member State, in consultation with the participating Member States, shall agree on the operational plan detailing the organisational and procedural aspects of the joint operation.
3. The operational plan shall be binding on the Agency, the host Member State and the participating Member States. It shall cover all aspects considered necessary for carrying out the joint operation, including the following:
  - (a) a description of the situation, with *modus operandi* and objectives of the deployment, including the operational aim;
  - (b) the foreseeable duration of the joint operation;
  - (c) the geographical area where the joint operation will take place;

- (d) a description of the tasks and special instructions for the European Border and Coast Guard Teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
- (e) the composition of the European Border and Coast Guard Teams as well as the deployment of other relevant staff;
- (f) command and control provisions, including the names and ranks of the border guards of the host Member State responsible for cooperating with the members of the teams and the Agency, in particular the names and ranks of those border guards who are in command during the period of deployment, and the place of the members of the teams in the chain of command;
- (g) the technical equipment to be deployed during the joint operation, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;
- (h) detailed provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities;
- (i) a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the final evaluation report;
- (j) regarding sea operations, specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation takes place, including references to national, international and Union law regarding interception, rescue at sea and disembarkation. In that regard the operational plan shall be established in accordance with Regulation (EU) No 656/2014 of the European Parliament and of the Council;<sup>1</sup>

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<sup>1</sup> Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union (OJ L 189, 27.6.2014, p. 93).

(k) modalities of cooperation with third countries, other Union agencies, bodies and offices or international organisations;

(l) procedures ~~setting out a referral mechanism~~ whereby persons in need of international protection, victims of trafficking in human beings, unaccompanied minors and persons in a vulnerable situation are directed to the competent national authorities for appropriate assistance;

(m) procedures setting out a mechanism to receive and transmit to the Agency a complaint against border guards or other staff of the host Member State and members of the European Border and Coast Guard Teams alleging breaches of fundamental rights in the context of their **participation in a** joint operation or rapid border intervention.

(n) ~~where relevant~~, logistical arrangements including information on working conditions and the environment of the area where the joint operations are foreseen.

4. Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State, after consultation of the participating Member States. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

#### *Article 16*

##### Procedure for launching a rapid border intervention

1. A request by a Member State to launch a rapid border intervention shall include a description of the situation, possible aims and envisaged needs. If required, the Executive Director may immediately send experts from the Agency to assess the situation at the external borders of the Member State concerned.
2. The Executive Director shall immediately inform the Management Board of a Member State's request to launch a rapid border intervention.

3. When deciding on the request of a Member State, the Executive Director shall take into account the findings of the Agency's risk analyses and the analysis layer of the European situational picture established in accordance with Regulation (EU) No 1052/2013 as well as the outcome of the vulnerability assessment referred to in Article 12 and any other relevant information provided by the Member State concerned or another Member State.
4. The Executive Director shall take a decision on the request for launching a rapid border intervention within two working days from the date of the receipt of the request. The Executive Director shall simultaneously notify the Member State concerned and the Management Board in writing of the decision. The decision shall state the main reasons on which it is based.
5. If the Executive Director decides to launch a rapid border intervention, he or she shall deploy European Border and Coast Guard Teams from the rapid reserve pool in accordance with Article 19(5), and where necessary, he or she shall decide on the immediate reinforcement by one or more European Border and Coast Guard Teams, in accordance with Article 19(6).
6. The Executive Director together with the host Member State shall draw up an operational plan as referred to in Article 15(3) immediately and in any event no later than three working days from the date of the decision.
7. As soon as the operational plan has been agreed upon **and provided to the Member States**, the Executive Director shall request in writing the Member States to immediately deploy the border guards that form part of the rapid reserve pool. The Executive Director shall indicate the profiles and numbers of border guards, required from each Member State from among those identified in the existing rapid reserve pool.

8. In parallel, and where necessary, to secure the immediate reinforcement of the European Border and Coast Guard Teams deployed from the rapid reserve pool, the Executive Director shall inform the Member States of the requested number and profiles of border guards which are to be additionally deployed. This information shall be provided, in writing to the national contact points and shall indicate the date on which the deployment is to take place. A copy of the operational plan shall also be provided to them.
- ~~9. If the Executive Director is absent or indisposed, the decisions related to the deployment of the rapid reserve pool and any additional deployment of European Border and Coast Guard Teams shall be taken by the Deputy Executive Director.~~
10. Member States shall ensure that the **number and profiles of the** border guards assigned to the rapid reserve pool are immediately [and without exception] made available to the Agency. Member States shall also make additional border guards **from the national pool in accordance with article 19(6). available for the deployment of European Border and Coast Guard Teams at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.**
11. Deployment of the rapid reserve pool shall take place no later than ~~three~~ five working days after the date on which the operational plan is agreed between the Executive Director and the host Member State. Additional deployment of European Border and Coast Guard Teams, shall take place where necessary, within ~~five~~ seven working days of the deployment of the rapid reserve pool.
12. In case the rapid reserve pool is deployed, the Executive Director shall, in consultation with the Management Board, immediately consider the priorities with regard to the Agency's ongoing and foreseen joint operations at other sections of the common external borders in order to provide for possible reallocation of resources to the areas of external borders where ~~the~~ a strengthened deployment is most needed.

## Article 17

### Migration management support teams

1. Where a Member State faces disproportionate migratory pressures at particular hotspot areas of its external border characterised by large influxes of mixed migratory flows, that Member State may request the operational and technical reinforcement by migration management support teams. That Member State shall submit a request for reinforcement and an assessment of its needs to the Agency. The Agency shall inform the ~~and~~ other relevant Union Agencies and in particular the European Asylum Support Office and Europol.
2. The Executive Director, in coordination with other relevant Union Agencies, shall assess the request for assistance of a Member State and the assessment of its needs for the purpose of defining a comprehensive reinforcement package consisting of various activities coordinated by the relevant Union Agencies to be agreed upon by the Member State concerned.
- 2a. The Commission shall, in cooperation with the host Member State, the Agency and the other relevant Union Agencies and in particular the European Asylum Support Office and Europol, establish the modalities of cooperation at the hotspot area, including on the coordination of the activities of the migration management support teams.
3. The operational and technical reinforcement provided by the European Border and Coast Guard Teams, the European Return Intervention Teams and experts from the Agency's staff in the framework of the migration management support teams, may include:
  - (a) the screening of third-country nationals arriving at the external borders, including the identification, registration, and debriefing of those third-country nationals and, where requested by the Member State, the fingerprinting of third-country nationals;

(b) the provision of information to persons in clear need of international protection, **including or** to applicants or potential applicants for relocation;

(c) technical and operational assistance in the field of return, including the preparation and organisation of return operations.

~~4. The Agency shall assist the Commission in the coordination of the activities of the migration management support teams, in cooperation with the other relevant Union Agencies.~~

#### *Article 18*

##### Situation at the external borders requiring urgent action

1. Where a Member State does not take the necessary corrective measures in accordance with a decision of the Management Board referred to in Article 12(6) or in the event of a specific and disproportionate migratory pressure at the external border where a Member State has not requested sufficient support by means of operations as mentioned in Articles 14, 16 or 17 of this Regulation, thus, rendering the control of the external borders ineffective to such an extent that it risks putting in jeopardy the functioning of the Schengen area, the ~~Council~~Commission, based on a proposal from the Commission ~~after consulting the Agency~~, may adopt a decision by means of an implementing act, identifying the measures to be implemented by the Agency and requiring the Member State concerned to cooperate with the Agency in the implementation of those measures. The eCommission shall consult the Agency before making its proposal. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 79(2).

On duly justified imperative grounds of urgency relating to the functioning of the Schengen area, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 79(5).

2. For the purposes of paragraph 1, the decision ~~Commission~~ shall provide for one or more of the following measures to be taken by the Agency:
- (a) organise and coordinate rapid border interventions and deploy European Border and Coast Guard Teams from the rapid reserve pool, and additional European Border and Coast Guards Teams as appropriate;
  - (b) deploy European Border and Coast Guard Teams in the framework of the migration management support teams at hotspot areas;
  - (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with neighbouring third countries;
  - (d) deploy technical equipment;
  - (e) organise return interventions.
3. The Executive Director shall, within two working days from the date of adoption of the ~~Commission-Council~~ decision, and on the advice of the Supervisory Board], determine the actions needed to be taken for the practical execution of the measures identified in the ~~Commission Council~~ decision, including the technical equipment as well as the number and profiles of the border guards and other relevant staff needed to meet the objectives of that decision.
4. In parallel and within the same two working days, the Executive Director shall draw up an ~~submit a draft~~ operational plan ~~to the Member State concerned~~. The Executive Director and the Member State ~~concerned shall agree on the operational plan~~ draw up the operational plan within ~~two-three~~ working days from the date of its submission.

5. The Agency shall, without delay and in any case within ~~three~~ five working days from establishment of the operational plan, deploy the necessary technical equipment and staff from the rapid reserve pool referred to in Article 19(5) for the practical execution of the measures set out in the Council ~~Commission~~ decision. Additional technical equipment and European Border and Coast Guard Teams shall be deployed as necessary at a second stage and in any case within five-seven working days from the deployment of the rapid reserve pool.
6. The Member State concerned shall comply with the Council ~~Commission~~ decision and for that purpose it shall immediately cooperate with the Agency and take the necessary action to facilitate the implementation of that decision and the practical execution of the measures set out in that decision and in the operational plan agreed upon with the Executive Director.
7. The Member States shall make available the border guards and other relevant staff or staff involved in return-related tasks determined by the Executive Director in accordance with paragraph 2. The Member States may not invoke the exceptional situation referred to in Article 19(3) and (6).
- 8. If the Member State concerned does not comply within 30 days with the Council decision and does not cooperate with the Agency as provided for under paragraph 6, that Member State shall without delay inform the Commission and Council in writing of its reasons. The Council may, as a last resort and as a measure to protect the common interests within the area without internal border control, and insofar as those circumstances constitute a serious threat to public policy or internal security within the area without internal border control or within parts thereof, recommend that one or more Member States decide to reintroduce border control at all or specific parts of their internal borders for a period of up to six months. That period may be prolonged, no more than three times, for a further period of up to six months if the absence of cooperation persists. The Council's recommendation shall be based on a Commission proposal.**

**In the event that the recommendation referred to in this paragraph is not implemented by a Member State, that Member State shall without delay inform the Commission in writing of its reasons.**

**In such a case, the Commission shall present a report to the European Parliament and to the Council assessing the reasons provided by the Member State concerned and the consequences for protecting the common interests of the area without internal border control.**

**Article 26 (2) subparagraphs 2 to 4 and Article 26(4) and (5) of Regulation 1051/2013 shall apply accordingly.**

#### *Article 19*

##### Composition and deployment of European Border and Coast Guard Teams

1. The Agency shall deploy border guards and other relevant staff as members of the European Border and Coast Guard Teams to joint operations, rapid border interventions and in the framework of the migration management support teams. The Agency may also deploy experts from its own staff.
2. On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles and the overall number of border guards and other relevant staff to be made available for the European Border and Coast Guard Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall numbers. Member States shall contribute to the European Border and Coast Guard Teams through a national pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.

3. The contribution by Member States as regards their border guards and other relevant staff to specific joint operations for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment.
4. As regards rapid border interventions, on a proposal by the Executive Director of the Agency, the Management Board shall decide by a three-quarter majority on the profiles and the minimum number of border guards that correspond to these profiles to be made available for a rapid reserve pool of European Border and Coast Guard Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall number of border guards of the rapid reserve pool. Member States shall contribute to the rapid reserve pool via a national expert pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.
5. The rapid reserve pool shall be a standing corps placed at the immediate disposal of the Agency and which can be deployed from each Member State within ~~three-five~~ working days from when the operational plan is agreed upon by the Executive Director and the host Member State. For that purpose, each Member State shall, on a yearly basis, make available to the Agency a number of border guards or other relevant staff **commensurate to at least 3% of the staff of Member States without land or sea external borders and 2% of the staff of Member States with land or sea external borders, and** which shall amount to a minimum of 1 500 border guards **or other relevant staff**, corresponding to the profiles identified by the decision of the Management Board.

- 5a. Each Member State shall contribute a fixed percentage of border guards or other relevant staff to the number of border guards established in paragraph 5, as enlisted in annex I.**
- 5b. The Management Board may, based on a proposal of the Executive Director, decide to deviate from these fixed percentages regarding Member States contribution, as long as the total number of border guards and other relevant staff stays the same.**
- 5c. Member States shall make the border guards or other staff from the Rapid Reserve Pool available for deployment at the request of the Agency. In case a vulnerability assessment and the risk analyses show that a member state is faced with a pressure at the external border that would substantially affect the discharge of national tasks, the contribution of this member shall be half of the fixed percentage of Member States contribution in annex I. The Management Board, based on a proposal of the Executive Director, shall decide how the shortage arisen will be filled.**
6. Where necessary, the deployment of European Border and Coast Guard Teams from the rapid reserve pool shall be immediately complemented by additional European Border and Coast Guard Teams. For that purpose, Member States shall, at the request of the Agency, immediately communicate the number, names and profiles of border guards **and other relevant staff** from their national pool which they are able to make available within **five seven** working days from the start of the rapid border intervention. Member States shall make the border guards **or other relevant staff** available for deployment at the request of the Agency unless they are faced with **an exceptional** situation substantially affecting the discharge of national tasks.
7. Member States shall ensure that the border guards and other relevant staff which they contribute match the profiles and the numbers decided upon by the Management Board. The duration of the deployment shall be determined by the home Member State but in **any case principle** it shall not be less than 30 days.

8. The Agency shall contribute to the European Border and Coast Guard Teams with competent border guards or other relevant staff seconded by the Member States as national experts to the Agency. The contribution by Member States as regards the secondment of their border guards or other relevant staff to the Agency for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the border guards or other relevant staff available for secondment, unless that would seriously affect the discharge of national tasks. In such situations Member States may recall their seconded border guards.

Such secondments may be for 12 months or more but in any case it shall not be less than three months. The seconded border guards **and other relevant staff** shall be considered as members of the teams and they shall have the tasks and powers of the members of the teams. The Member State having seconded the border guards or other relevant staff shall be considered as the home Member State.

Other staff employed by the Agency on a temporary basis who are not qualified to perform border control functions shall only be deployed during joint operations for coordination and other tasks which do not require full border-guard training and shall not form part of the European Border and Coast Guard Teams.

9. The Agency shall inform the European Parliament on an annual basis of the number of border guards and other relevant staff that each Member State has committed to the European Border and Coast Guard Teams in accordance with this Article.

## *Article 20*

### Instructions to the European Border and Coast Guard Teams

1. During deployment of European Border and Coast Guard Teams, the host Member State shall issue instructions to the teams in accordance with the operational plan.
2. The Agency, through its Coordinating Officer, may communicate its views to the host Member State on the instructions given to European Border and Coast Guard Teams. In that case, the host Member State shall take those views into consideration and follow them to the extent possible.
3. In cases where the instructions issued to the European Border and Coast Guard Teams are not in compliance with the operational plan, the Coordinating Officer shall immediately report to the Executive Director, who may, where appropriate, take action in accordance with Article 24(2).
4. Members of the teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights, including access to asylum procedures, and human dignity. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, they shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
5. Members of the teams shall remain subject to the disciplinary measures of their home Member State. The home Member State shall provide for appropriate disciplinary or other measures in accordance with its national law in case of violations of fundamental rights or international protection obligations in the course of a joint operation or rapid border intervention.

## Article 21

### Coordinating officer

1. The Agency shall ensure the operational implementation of all the organisational aspects, including the presence of staff members of the Agency during the joint operations, pilot projects or rapid border interventions.
2. The Executive Director shall appoint one or more experts from the staff of the Agency to be deployed as coordinating officer for each joint operation or rapid border intervention. The Executive Director shall notify the host Member State of the appointment.
3. The coordinating officer shall act on behalf of the Agency in all aspects of the deployment of the European Border and Coast Guard Teams. The role of the coordinating officers shall be to foster cooperation and coordination amongst host and participating Member States. In particular, the coordinating officer shall:
  - (a) act as an interface between the Agency, **the host Member State** and the members of the European Border and Coast Guard Teams, providing assistance, on behalf of the Agency, on all issues relating to the conditions for their deployment with the teams;
  - (b) monitor the correct implementation of the operational plan, including on the protection of fundamental rights;
  - (c) act on behalf of the Agency in all aspects of the deployment of the European Border and Coast Guard Teams and report to the Agency on all those aspects;
  - ~~(d) report to the Agency on aspects relating to the provision of sufficient guarantees by the host Member State to ensure the protection of fundamental rights throughout the joint operation or rapid border intervention;~~
  - (e) report to the Executive Director where the instructions issued to the European Border and Coast Guard Teams by the host Member States are not in compliance with the operational plan.

4. In the context of joint operations or rapid border interventions, the Executive Director may authorise the coordinating officer to assist in resolving any disagreement on the execution of the operational plan and deployment of the teams.

*Article 22*

National contact point

Member states shall appoint a ~~The national coordination centre established in accordance with Regulation (EU) No 1052/2013 shall be the~~ national contact point for communication with the Agency on all matters pertaining to the ~~operational~~ activities of the Agency. ~~European Border and Coast Guard Teams.~~ **The national contact point shall be reachable at all times.**

*Article 23*

Costs

1. The Agency shall fully meet the following costs incurred by Member States in making available their border guards for the purposes of deploying European Border and Coast Guard Teams, including the rapid reserve pool:
  - (a) travel costs from the home Member State to the host Member State and from the host Member State to the home Member State;
  - (b) costs related to vaccinations;
  - (c) costs related to special insurance needs;
  - (d) costs related to health care;
  - (e) daily subsistence allowances, including accommodation costs;
  - (f) costs related to the Agency's technical equipment.

2. Detailed rules concerning the payment of the daily subsistence allowance of members of the European Border and Coast Guard Teams shall be established and updated as necessary by the Management Board.

*Article 24*

Suspension or termination of joint operations and rapid border interventions

1. The Executive Director shall terminate, after informing the Member State concerned, joint operation, ~~or~~ rapid border intervention or migration management support teams if the conditions to conduct those activities are no longer fulfilled **or their objectives are met.**
2. The Executive Director may withdraw, after informing the Member State concerned, the financing of joint operation, ~~or~~ rapid border intervention or migration management support teams or suspend or terminate it if the operational plan is not respected by the host Member State.
3. The Executive Director shall withdraw, after informing the Member State concerned, the financing of joint operation, ~~or~~ rapid border intervention or migration management support teams, or suspend or terminate, in whole or in part, joint operation, ~~or~~ rapid border intervention or migration management support teams if he or she considers that there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist. The Executive Director shall inform the Management Board of such a decision.
4. In case the Executive Director decides to suspend or terminate the deployment by the Agency of a migration management support team, he shall inform the other relevant Agencies present participating in the function of that hotspot on this decision.

*Article 25*

Evaluation of joint operations and rapid border interventions

The Executive Director shall evaluate the results of the joint operations, **migration management support teams** and rapid border interventions and transmit the detailed evaluation reports within 60 days following the end of those operations and projects to the Management Board, together with the observations of the Fundamental Rights Officer. **The Executive Director Agency** shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future joint operations and rapid border interventions, and it shall include it in its consolidated annual activity report

# CHAPTER III

## GENERAL PROVISIONS

### SECTION 1

#### GENERAL RULES

##### *Article 33*

##### **Protection of Fundamental Rights and a Fundamental Rights Strategy**

1. The European Border and Coast Guard shall guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the Charter of Fundamental Rights of the European Union, relevant international law, including the Convention Relating to the Status of Refugees and obligations related to access to international protection, in particular the principle of *non-refoulement*. For that purpose, the Agency shall draw up and further develop and implement a Fundamental Rights Strategy.
2. In the performance of its tasks the European Border and Coast Guard shall ensure that no person is disembarked in, forced to enter, conducted to or otherwise handed over or returned to the authorities of a country in contravention of the principle of *non-refoulement*, or from which there is a risk of expulsion or return to another country in contravention of that principle.
3. The European Border and Coast Guard shall, in the performance of its tasks, take into account the special needs of children, victims of trafficking in human beings, persons in need of medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation.

4. In the performance of its tasks, in its relations with Member States and in its cooperation with third countries, the Agency shall take into account the reports of the Consultative Forum and the Fundamental Rights Officer.

#### *Article 34*

#### **Codes of Conduct**

1. The Agency shall draw up and further develop a Code of Conduct applicable to all border control operations coordinated by the Agency. The Code of Conduct shall lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights with particular focus on unaccompanied minors and persons in a vulnerable situation, as well as on persons seeking international protection, applicable to all persons participating in the activities of the Agency.
2. The Agency shall develop and regularly update a Code of Conduct for the return of illegally staying third-country nationals which shall apply during all return operations and return interventions coordinated or organised by the Agency. That Code of Conduct shall describe common standardised procedures to simplify the organisation of return operations and return interventions, and assure return in a humane manner and with full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security and the right to the protection of personal data and non-discrimination.
3. The Code of Conduct for return shall in particular pay attention to the obligation of Member States to provide for an effective forced-return monitoring system as set out in Article 8(6) of Directive 2008/115/EC<sup>1</sup> and to the Fundamental Rights Strategy.
4. The Agency shall develop and regularly update its Codes of Conduct in cooperation with the Consultative Forum.

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<sup>1</sup> OJ L 348, 21.12.2008, p. 98.

## Article 35

### Training

1. The Agency shall, in cooperation with the appropriate training entities of the Member States, develop specific training tools and provide border guards and other relevant staff who are members of the European Border and Coast Guard Teams with advanced training relevant to their tasks and powers. Experts from the staff of the Agency shall conduct regular exercises with those border guards in accordance with the advanced training and exercise schedule referred to in the annual work programme of the Agency.
2. The Agency shall take the necessary initiatives to ensure that all border guards and other relevant staff of the Member States who participate in the European Border and Coast Guard Teams, as well as the staff of the Agency, have received, prior to their participation in operational activities organised by the Agency, training in relevant Union and international law, including on fundamental rights, access to international protection and **where appropriate** search and rescue.
3. The Agency shall take the necessary initiatives to ensure training for staff involved in return-related tasks to be part of the pools referred to in Articles 28, 29 and 30. The Agency shall ensure that all staff who participate in return operations and in return interventions, as well as the staff of the Agency, have received, prior to their participation in operational activities organised by the Agency, training in relevant Union and international law, including fundamental rights and access to international protection.
4. The Agency shall establish and further develop common core curricula for the training of border guards and provide training at European level for instructors of the national border guards of Member States, including with regard to fundamental rights, access to international protection and relevant maritime law. The Agency shall draw up the common core curricula after consulting the Consultative Forum **and the Fundamental Rights Officer**. Member States shall integrate the common core curricula in the training of their national border guards and staff involved in return-related tasks.

5. The Agency shall also offer additional training courses and seminars on subjects related to the control of the external borders and return of third-country nationals for officers of the competent national services of Member States and **where appropriate of third countries.**
6. The Agency may organise training activities in cooperation with Member States and third countries on their territory.
7. The Agency shall establish an exchange programme enabling border guards participating in the European Border and Coast Guard Teams and staff participating in the European Return Intervention Teams to acquire knowledge or specific know-how from experiences and good practices abroad by working with border guards and staff involved in return-related tasks in a Member State other than their own.

*Article 36*

**Research and innovation**

1. The Agency shall proactively monitor and contribute to research and innovation activities relevant for the control of the external borders, including the use of advanced surveillance technology ~~such as remotely piloted aircraft systems,~~ and for return. The Agency shall disseminate the results of that research to the Commission and the Member States. It may use those results as appropriate in joint operations, rapid border interventions, return operations and return interventions.
2. The Agency shall assist the Member States and the Commission in identifying key research themes. The Agency shall assist **Member States and** the Commission in the definition and accomplishment of the relevant Union framework programmes for research and innovation activities.
3. The Agency shall, ~~within the Framework Programme for Research and Innovation, in particular the Specific Programme Implementing Horizon 2020~~ implement the parts of the Framework Programme for Research and Innovation which relate to border security. For that purpose, the Agency shall have the following tasks:

(a) managing some stages of programme implementation and some phases in the lifetime of specific projects on the basis of the relevant work programmes adopted by the Commission, where the Commission has empowered the Agency to do so in the instrument of delegation;

(b) adopting the instruments of budget execution for revenue and expenditure and carrying out all the operations necessary for the management of the programme, where the Commission has empowered the Agency to do so in the instrument of delegation;

(c) providing support in programme implementation where the Commission has empowered the Agency to do so in the instrument of delegation.

4. The Agency may plan and implement pilot projects regarding matters covered by this Regulation.

#### *Article 37*

#### **Acquisition of technical equipment**

1. The Agency may acquire, itself or in co-ownership with a Member State, or lease technical equipment to be deployed during joint operations, pilot projects, rapid border interventions, return operations, return interventions, **migration management support teams** or technical assistance projects in accordance with the financial rules applicable to the Agency.
2. The Agency may acquire technical equipment, **such as fingerprinting equipment**, by decision of the Executive Director in consultation with the Management Board. Any acquisition or leasing of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. Any such expenditure shall be provided for in the Agency's budget as adopted by the Management Board.

3. Where the Agency acquires or leases major technical equipment, ~~such as open sea and coastal patrol vessels, helicopters or other aircraft or vehicles~~<sup>1</sup> the following conditions shall apply:
- (a) in case of acquisition by the Agency or co-ownership, the Agency shall agree with one Member State that that Member State shall provide for the registration of the equipment in accordance with the applicable legislation of that Member State;
- (b) in case of leasing, the equipment shall be registered in a Member State.
4. On the basis of a model agreement drawn up by the Agency, the Member State of registration and the Agency shall agree on modalities ensuring the periods of full availability of the co-owned **assets equipment** for the Agency, as well as on the terms of use of the equipment. Technical equipment owned solely by the Agency shall be made available to the Agency upon its request and the Member State of registration may not invoke the exceptional situation referred to in Article 38(4).
5. The Member State of registration or the supplier of technical equipment shall provide the necessary experts and technical crew to operate the technical equipment in a legally sound and safe manner.

#### *Article 38*

#### **Technical equipment pool**

1. The Agency shall set up and keep centralised records of equipment in a technical equipment pool composed of equipment owned either by the Member States or by the Agency and equipment co-owned by the Member States and the Agency for external border control or return purposes.
2. The Executive Director shall identify the minimum number of technical equipment in accordance with the needs of the Agency, notably in order to be able to carry out joint operations, **migration management support teams** and rapid border interventions, in accordance with the its work programme for the year in question.

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<sup>1</sup> Will be put in recital

If the minimum number of technical equipment proves to be insufficient to carry out the operational plan agreed for joint operations or rapid border interventions, the Agency shall revise it on the basis of justified needs and of an agreement with the Member States.

3. The technical equipment pool shall contain the minimum number of equipment identified as needed by the Agency per type of technical equipment. The equipment listed in the technical equipment pool shall be deployed during joint operations, **migration management support teams** pilot projects, rapid border interventions, return operations or return interventions.
4. Member States shall contribute to the technical equipment pool. The contribution by Member States to the pool and deployment of the technical equipment for specific operations shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements and to the extent that it forms part of the minimum number of technical equipment for a given year, Member States shall make their technical equipment available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such request shall be made at least **30-45 days for major technical equipment and 30 days for other equipment days** before the intended deployment. The contributions to the technical equipment pool shall be reviewed annually.
5. On a proposal of the Executive Director, the Management Board shall decide, on a yearly basis, on the rules relating to technical equipment, including the required overall minimum numbers per type of technical equipment, the conditions for deployment and reimbursement of costs. For budgetary purposes that decision should be taken by the Management Board **[by 31 May each year]**. ~~within 30 days from the date of adoption of the annual work programme.~~

6. The Executive Director shall **regularly** report on the composition and the deployment of equipment which is part of the technical equipment pool to the Management **Board at each of its meetings.** Where the minimum number of technical equipment is not reached, the Executive Director shall inform the Management Board without delay. The Management Board shall take a decision on the prioritisation of the deployment of the technical equipment urgently and take the appropriate steps to remedy the identified shortcomings. The Management Board shall inform the Commission of the identified shortcomings and the steps taken. The Commission shall subsequently inform the European Parliament and the Council thereof, and of its own assessment.
7. The Agency shall inform the European Parliament on an annual basis of the number of technical equipment that each Member State has committed to the technical equipment pool in accordance with this Article.
8. Member States shall register in the technical equipment pool all the means of transport and operating equipment purchased under the Specific Actions of the Internal Security Fund in accordance with Article 7(1) of Regulation (EU) No 515/2014<sup>1</sup> of the European Parliament and of the Council or any other dedicated Union funding made available to the Member States in view of increasing the operational capacity of the Agency. That technical equipment will **be put at the disposal of the Agency in accordance with that Regulation. form part of the minimum number of technical equipment for a given year.**

The Member States shall make that technical equipment available for deployment to the Agency upon its request **and In case of an operation as mentioned in Article 16 or in Article 18,** it may not invoke the exceptional situation referred to in paragraph 4.

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<sup>1</sup> Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).

9. The Agency shall manage the records of the technical equipment pool as follows:
- (a) classification by type of equipment and by type of operation;
  - (b) classification by owner (Member State, Agency, other);
  - (c) overall numbers of required equipment;
  - (d) crew requirements if applicable;
  - (e) other information, such as registration details, transportation and maintenance requirements, national applicable export regimes, technical instructions, or other relevant information to handle the equipment correctly.
10. The Agency shall finance at 100% the deployment of the technical equipment which forms part of the minimum number of technical equipment provided by a given Member State for a given year. The deployment of technical equipment which does not form part of the minimum number of technical equipment shall be co-financed by the Agency up to a maximum of ~~75~~ **100%** of the eligible expenses, taking into account the particular circumstances of the Member States deploying such technical equipment.

*Article 39*

**Tasks and powers of the members of the teams**

1. Members of the teams shall have the capacity to perform all tasks and exercise all powers for border control and return as well as those which are necessary for the realisation of the objectives of Regulation (EC) No 562/2006 and Directive 2008/115/EC, respectively.
2. While performing their tasks and exercising their powers, members of the teams shall comply with Union and international law, and shall observe fundamental rights and the national law of the host Member State.

3. Members of the teams may only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards or staff involved in return-related tasks of the host Member State. **The host Member State may unless authorise members of the teams by the host Member State to act on its behalf.**
4. Members of the teams shall wear, **where appropriate**, their own uniform while performing their tasks and exercising their powers. They shall wear a blue armband with the insignia of the Union and the Agency on their uniforms, identifying them as participating in a joint operation, **migration management support teams**, pilot project, rapid border intervention, return operation or return intervention. For the purposes of identification vis-à-vis the national authorities of the host Member State, members of the teams shall, at all times, carry an accreditation document, which they shall present upon request.
5. While performing their tasks and exercising their powers, members of the teams may carry service weapons, ammunition and equipment as authorised according to the home Member State's national law. However, the host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own legislation applies the same prohibition to its own border guards or staff involved in return-related tasks. The host Member State shall, in advance of the deployment of the members of the teams, inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to Member States.
6. While performing their tasks and exercising their powers, members of the teams shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State. The host Member State may, with the consent of the home Member State, authorise members of the teams to use force in the absence of border guards of the host Member State.

7. Service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of members of the teams or of other persons, in accordance with the national law of the host Member State.
8. For the purpose of this Regulation, the host Member State shall authorise members of the teams to consult ~~its national~~ **and European databases and it may authorise them to consult its national databases** ~~the consultation of which is~~ **are** necessary for border checks, border surveillance and return. The members of the teams shall consult only those data which are required for performing their tasks and exercising their powers. The host Member State shall, in advance of the deployment of the members of the teams, inform the Agency of the national and European databases which may be consulted. The Agency shall make this information available to all Member States participating in the deployment.  
  
That consultation shall be carried out in accordance with Union law and the national law of the host Member State in the area of data protection.
9. Decisions to refuse entry in accordance with Article 13 of Regulation (EC) No 562/2006 shall be taken only by border guards of the host Member State or by the members of the teams if authorised by the host Member State to act on its behalf.

#### *Article 40*

#### **Accreditation document**

1. The Agency shall, in cooperation with the host Member State, issue a document in the official language of the host Member State and another official language of the institutions of the Union to the members of the teams for the purpose of identifying them and as proof of the holder's rights to perform the tasks and exercise the powers as referred to in Article 39. The document shall include the following features of each member of the teams:

- (a) name and nationality;
  - (b) rank or job title;
  - (c) a recent digitised photograph; and
  - (d) tasks authorised to be performed **during the deployment**.
2. The document shall be returned to the Agency at the end of the joint operation, **migration management support teams**, pilot project, rapid border intervention, return operation or return intervention.

*Article 41*

**Civil liability**

1. Where members of the teams are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.
2. Where such damage is caused by gross negligence or willful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State.
3. Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or willful misconduct.
4. Any dispute between Member States relating to the application of paragraphs 2 and 3 which cannot be resolved by negotiations between them shall be submitted by them to the Court of Justice of the European Union in accordance with Article 273 TFEU.

5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Agency shall meet costs related to damage caused to the Agency's equipment during deployment, except in cases of gross negligence or willful misconduct.

*Article 42*

**Criminal liability**

During the deployment of a joint operation, pilot project, **migration management support teams**, rapid border intervention, return operation or return intervention, members of the teams shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them.

## SECTION 2

### INFORMATION EXCHANGE AND DATA PROTECTION

#### *Article 43*

##### **Information exchange systems**

1. The Agency may take all necessary measures to facilitate the exchange of information relevant to its tasks with the Commission and the Member States and, where appropriate, the relevant Union Agencies. It shall develop and operate an information system capable of exchanging classified information with those actors, as well as personal data referred to in Articles 44, 46, 47 and 48 in accordance with Council Decision ~~2013/488~~ 2001/264/EC and Commission Decision (EU, Euratom) 2015/444.<sup>1</sup>
2. The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with the United Kingdom and Ireland if it relates to the activities in which they participate in accordance with Article 50 and Article 61(4).

#### *Article 44*

##### **Data protection**

1. The Agency shall apply Regulation (EC) No 45/2001 when processing personal data.
2. The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor.

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<sup>1</sup> Commission Decision 2015/444 (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

3. Without prejudice to Articles 46, 47 and 48, the Agency may process personal data for administrative purposes.
4. Without prejudice to Article 47, the transfer of personal data processed by the Agency and the onward transfer by Member States to authorities of third countries or third parties of personal data processed in the framework of this Regulation shall be prohibited.

#### *Article 45*

#### **Purposes of processing personal data**

1. The Agency may process personal data only for the following purposes:
  - (a) performing its tasks of organising and coordinating joint operations, pilot projects, rapid border interventions and in the framework of the migration management support teams in accordance with Article 46;
  - (b) performing its tasks of organising and coordinating return operations and return interventions in accordance with Article 47;
  - (c) facilitating the exchange of information with Member States, the European Asylum Support Office, Europol or Eurojust in accordance with Article 46;
  - (d) risk analysis by the Agency in accordance with Article 10;
  - (e) identifying and tracking vessels in the framework of Eurosur in accordance with Article 48.
2. Any such processing of personal data shall respect the principle of proportionality and be strictly limited to personal data necessary for the purposes referred to in paragraph 1.

3. A Member State or other Union Agency providing personal data to the Agency shall determine the purpose or the purposes for which it shall be processed as referred to in paragraph 1. If it has not done so, the Agency in consultation with the provider of personal data concerned shall process it in order to determine its necessity in relation to the purpose or the purposes as referred to in paragraph 1 for which it shall be further processed. The Agency may process information for a different purpose than the one in paragraph 1 only if authorised by the data provider of the information.
4. Member States and other Union Agencies may indicate, at the moment of transferring personal data, any restriction on access or use, in general or specific terms, including as regards transfer, erasure or destruction. Where the need for such restrictions becomes apparent after the transfer provision of information, they shall inform the Agency accordingly. The Agency shall comply with such restrictions.

#### *Article 46*

#### **Processing of personal data collected during joint operations, pilot projects and rapid border interventions and by migration management support teams**

1. The use by the Agency of personal data collected and transmitted to it by the Member States or by its own staff in the context of joint operations, pilot projects and rapid border interventions, and by migration management support teams shall be limited to:
  - (a) personal data regarding persons who are suspected, on reasonable grounds, by the competent authorities of the Member States of involvement in cross-border criminal activities, including in facilitating irregular immigration activities, in trafficking in human beings or terrorism;
  - (b) personal data regarding persons who cross the external borders illegally and whose data is collected by the European Border and Coast Guard Teams, including when acting in the framework of the migration management support teams;

- (c) license plate numbers, **vehicle identification numbers**, telephone numbers or ship identification numbers, which are necessary for investigating and analysing routes and methods used for irregular immigration and cross-border criminal activities.
2. Personal data referred to in paragraph 1 may be processed by the Agency in the following cases:
- (a) where transmission to the European Asylum Support Office, Europol or Eurojust is necessary for use in accordance with their respective mandates and in accordance with Article 51;
- (b) where transmission to the authorities of the relevant Member States which are responsible for border control, migration, asylum or law enforcement is necessary for use in accordance with national legislation and national and EU data protection rules;
- (c) where necessary for the preparation of risk analyses.
3. The personal data shall be deleted as soon as they have been transmitted to the European Asylum Support Office, Europol or Eurojust or to the competent authorities of Member States or used for the preparation of risk analyses. The **storage period term of storage** shall in any event not exceed **90 day ~~three months~~** after the date of the collection of those data. In the result of the risk analyses, data shall be anonymised.

*Article 47*

**Processing of personal data in the context of return operations and return interventions**

1. In performing its tasks of organising and coordinating the return operations and conducting return interventions, the Agency may process personal data of returnees.
2. The processing of such personal data shall be strictly limited to those personal data which are required for the purposes of the return operation or the return intervention.

3. The personal data shall be deleted as soon as the purpose for which they have been collected has been achieved and no later than 30 days after the end of the return operation or the return intervention.
4. Where the personal data of returnees are not transmitted to the carrier by a Member State, the Agency may transfer such data.

*Article 48*

**Processing of personal data in the framework of Eurosur**

The Agency may process personal data as set out in Article 13(2) of Regulation (EU) No 1052/2013.

*Article 49*

**Security rules on the protection of classified information and non-classified sensitive information**

1. The Agency shall apply the Commission's rules on security as set out in Commission Decision (EU, Euratom) 2015/444.<sup>1</sup> Those rules shall apply, *inter alia*, to the exchange, processing and storage of classified information.
2. The Agency shall apply the security principles relating to the processing of non-classified sensitive information as set out in the Decision referred to in paragraph 1 of this Article and as implemented by the Commission. The Management Board shall establish measures for the application of those security principles

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<sup>1</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).