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NOTE

From: Presidency
To: Delegations

Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010

Delegations will find in Annex Presidency compromise suggestions for Chapters 7 and 12 to be examined at the meeting of JHA Counsellors on 16 November. Changes to the previous text, as it appeared in doc 13306/16 are indicated in **bold** and [...].

CHAPTER 7

INFORMATION EXCHANGE AND DATA PROTECTION¹

Article 29

Information exchange systems²

1. The Agency shall facilitate the exchange of information relevant to its tasks with the Commission and the Member States and, where appropriate, the relevant Union bodies, offices and agencies.
2. The Agency shall³, in cooperation with the European agency for the operational management of large-scale IT systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011,⁴ develop and operate an information system capable of exchanging classified information with the actors referred to in paragraph 1, as well as personal data referred to in Articles 31 and 32 in accordance with Council Decision 2013/488⁵ and Commission Decision (EU, Euratom) 2015/444.⁶

¹ **AT:** scrutiny reservation on this Chapter.

² **SE:** scrutiny reservation.

³ **CZ:** "may".

⁴ Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p. 1).

⁵ Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

⁶ 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).

Article 30

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 appointment of a Data Protection Officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor.
3. Without prejudice to Articles 31 and 32, the Agency may process personal data for the necessary administrative purposes **related to personnel**.
4. Without prejudice to Article 35(4), the transfer of personal data processed by the Agency and the onward transfer by Member States to authorities of third countries or third parties, including international organisations, of personal data processed in the framework of this Regulation shall be prohibited.

Article 31

Purposes of processing personal data⁷

1. The Agency may process personal data only for the following purposes:
 - (a) performing its tasks of providing operational and technical assistance in accordance with Articles 16(2) and 21(2);
 - (b) when carrying out case sampling for the purposes of the monitoring exercise referred to in Article 13;⁸

⁷ **SE**: scrutiny reservation.

⁸ **BG, PL**: scrutiny reservations related to monitoring. **FR**: reservation, this point should be deleted.

- (c) when [...] **facilitating the examination of** applications for international protection from [...] **minors** or [...] **applicants in need of special procedural guarantees**, upon request of Member States, as referred to in [...] Article 16(2)(b) [...];
 - (d) facilitating the exchange of information with Member States, the European Border and Coast Guard Agency, Europol or Eurojust in accordance with Article 36 and in the framework of information obtained when performing the tasks listed in Article 21(2);
 - (e) analysing information on the situation of asylum in accordance with Article 4⁹;
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. Member States or other Union bodies, offices and agencies providing personal data to the Agency [...] **shall** only transfer data to the Agency for the purposes referred to in paragraph 1. Any further processing of retained personal data for purposes other than those referred to in paragraph 1 shall be prohibited.
 4. Member States or other Union bodies, offices and 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 restriction becomes apparent after the transfer provision of information, they shall inform the Agency accordingly. The Agency shall comply with such restrictions.

⁹ **FR:** reservation, this point should be deleted.

Article 32

Processing of personal data collected when providing operational and technical assistance¹⁰

- 1.¹¹ The use by the Agency of personal data collected by or transmitted to it by the Member States or by its own staff when providing operational and technical assistance to Member States shall be limited to the **full** name, date of birth, gender, [...] sexual orientation, gender identity, nationality, profession, education, family links, fingerprints and digitised photograph of third-country nationals.
2. Personal data referred to in paragraph 1 may be processed by the Agency in the following cases:
 - (a) where necessary for the identification of **third-country nationals** and registration of **applicants for international protection** referred to in Article 16(2)(a);
 - (b) where necessary to facilitate the examination of applications for international protection that are under examination by the competent national authorities **and to provide them with necessary assistance in the procedure for international protection** as referred to in Article 16(2)(b);
 - (c) [...]
 - [(d) where necessary to assist with the tasks and obligations set out in Regulation (EU) No XXX/XXX [the Dublin Regulation] relocation or transfer of applicants or beneficiaries of international protection within the Union as referred to in Article 16(2)(g);]¹²
 - (e) where transmission to the European Border and Coast Guard Agency, Europol or Eurojust is necessary for the performance of their tasks in accordance with their respective mandates and in accordance with Article 30;

¹⁰ **SE:** scrutiny reservation.

¹¹ **HR:** reference should also be made to all other relevant data collected by a MS according to its national legislation.

¹² *Discussions on this issue will take place in the framework of the examination of the relevant proposal.*

- (f) where transmission to the Member States' authorities or immigration and asylum services is necessary for use in accordance with national legislation and national and Union data protection rules;
- (g) where necessary for analysis of information on the situation of asylum **as referred to in Article 4.**¹³
- (h) **where necessary to coordinate actions on resettlement taken by the Union or to assist Member States in their actions on resettlement as referred in Article 35(4).**

2a. For the purposes of paragraphs 2(a) and 2(b) only, the Agency may process data on sexual orientation, gender identity, ethnicity and religion of the applicant.

3. The personal data shall be deleted as soon as they have been transmitted to the European Border and Coast Guard Agency, Europol or Eurojust or to the competent authorities of Member States or used for information analysis on the situation of asylum. The storage period shall in any case not exceed 30 days after the date on which the Agency collects or receives those data. In the result of the information analysis on the situation of asylum, data shall be anonymised.

CHAPTER 8

COOPERATION BY THE AGENCY

Article 33

Cooperation with Denmark

The Agency shall facilitate operational cooperation with Denmark, including the exchange of information and best practices in matters covered by its activities.

¹³ **FR:** this point should be deleted.

Article 34

Cooperation with associate countries

1. The Agency shall be open to the participation of Iceland, Liechtenstein, Norway and Switzerland.
2. The nature, extent and manner in which those countries are to participate in the Agency's work shall be defined by relevant working arrangements. Such arrangements shall include provisions relating to participation in initiatives undertaken by the Agency, financial contributions, participation in the meetings of the Management Board and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations.

Article 35

Cooperation with third countries¹⁴

1. In matters related to 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 Union's external relations policy, including with regard to the protection of fundamental rights, and in cooperation with the European External Action Service. The Agency and the Member States shall promote and comply with norms and standards equivalent to those set by Union legislation, including when carrying out activities on the territory of those third countries.

¹⁴ **CY**: scrutiny reservation regarding national competence in these matters. **ES**: this new competence of the Agency to cooperate with third countries should be further clarified; it is not clear how this will affect national competences.

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, in particular with a view to promoting Union standards on asylum and assisting third countries as regards expertise and capacity building for their own asylum and reception systems as well as implementing regional development and protection programmes and other actions. The Agency may carry out such cooperation within the framework of working arrangements concluded with those authorities in accordance with Union law and policy. The Management Board shall decide on the working arrangements which shall be subject to prior approval of the Commission. The Agency shall inform the European Parliament and the Council of any such arrangements.
3. The [...] **Executive Director** may, with the agreement of the host Member State, invite officials from third countries to observe the operational and technical measures outlined in Article 16(2), where their presence does not jeopardise the achievement of objectives of those measures, and where it may contribute to improving cooperation and the exchange of best practices.
4. [...]

The Agency may support Member States in the implementation of:

(a) the Union Resettlement Framework established by Regulation (EU) No XXX/XXX [Union Resettlement Framework Regulation] [in accordance with that Regulation];

(b) national resettlement schemes provided that such support does not jeopardise the attainment of the Union's objectives under Regulation (EU) No XXX/XXX [Union Resettlement Framework Regulation].

The Agency shall assist with the tasks and obligations set out in Article 18 of Regulation (EU) No XXX/XXX [the Union Resettlement Framework Regulation] and carry out the tasks and obligations set out in Article 22(3) of Regulation (EU) No XXX/XXX [Dublin Regulation].]

- 5.¹⁵ The Agency shall, where appropriate, 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.
6. 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.

Article 36

Cooperation with Union agencies, bodies and offices

1. The Agency shall cooperate with agencies, bodies and offices of the Union having activities relating to its field of activity, in particular the European Union Agency for Fundamental Rights, [...] the European Border and Coast Guard Agency, **Europol** and **Eurojust** which are competent in matters covered by this Regulation.
2. Such cooperation shall take place within the framework of working arrangements concluded with those bodies, after having received the Commission's approval. The Agency shall inform the European Parliament and the Council of any such arrangements.
3. The cooperation shall create synergies among the relevant Union bodies and it shall prevent any duplication of effort in the work carried out by each one of them pursuant to their mandate.

¹⁵ **AT:** reservation on the obligation. **BG:** add "...in line with its mandate within this Regulation."

Article 37

Cooperation with the UNHCR and other international organisations¹⁶

The Agency shall cooperate with international organisations, in particular UNHCR, in areas governed by this Regulation, within the framework of working arrangements concluded with those bodies, in accordance with the Treaty and the provisions on the competence of those bodies. The Management Board shall decide on the working arrangements which shall be subject to prior approval of the Commission. **The Agency shall inform the European Parliament and the Council of any such arrangements.**

CHAPTER 9

ORGANISATION OF THE AGENCY¹⁷

Article 38

Administrative and management structure

The Agency's administrative and management structure shall comprise:

- (a) a Management Board, which shall exercise the functions set out in Article 40;
- (b) an Executive Director, who shall exercise the responsibilities set out in Article 46;
- (c) a Deputy Executive Director, as established in Article 47.¹⁸

¹⁶ **SE:** it should be guaranteed that there are no overlaps with the work of UNHCR.

¹⁷ **RO:** reservation on the Chapter.

¹⁸ **EL:** reservation on the creation of this function which provides no added value.

Article 39

Composition of the Management Board

1. The Management Board shall be composed of one representative from each Member State and two representatives of the Commission, which shall have the right to vote.
2. The Management Board shall include one representative of UNHCR, without the right to vote.
3. Each member of the Management Board shall have an alternate. The alternate shall represent the member in his or her absence.
4. Members of the Management Board and their alternates shall be appointed in the light of their knowledge and expertise in the field of asylum, taking into account relevant managerial, administrative and budgetary skills. All 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. All parties shall aim to achieve a balanced representation between men and women on the Management Board.
5. The term of office for members of the Management Board shall be four years. That term shall be extendable. On the expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are extended or until they are replaced.

Article 40

Functions of the Management Board

1. The Management Board shall be the Agency's planning and monitoring body. It shall give general orientation for the Agency's activities and ensure that the Agency performs its tasks. It shall, in particular:¹⁹

¹⁹ **FR:** reservation.

- (a) *deleted*
- (b) adopt the annual budget of the Agency by a majority of two-thirds of members entitled to vote and exercise other functions in respect of the Agency's budget pursuant to Chapter 10;
- (c) adopt a consolidated annual activity report on the Agency's activities and send it, by 1 July each year, to the European Parliament, the Council, the Commission and the Court of Auditors. The consolidated annual activity report shall be made public;
- (d) adopt the financial rules applicable to the Agency in accordance with Article 53;
- (e) take all decisions for the purpose of fulfilling the Agency's mandate as laid down in this Regulation;
- (f) adopt an anti-fraud strategy, proportionate to the risk of fraud taking into account the costs and benefits of the measures to be implemented;
- (g) adopt rules for the prevention and management of conflicts of interest in respect of its members;
- (h) adopt and regularly update the communication and dissemination plans referred to in Article 2(3), based on an analysis of needs;
- (i) adopt its rules of procedure;²⁰
- (j) exercise, in accordance with paragraph 2, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment²¹ (appointing authority);

²⁰ **IT** suggested to add "... including the Executive Board, its composition and functions".

²¹ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1)

- (k) adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
- (l) appoint the Executive Director and Deputy Executive Director, exercise disciplinary authority over him or her and, where necessary, extend his or her term of office or remove him or her from office in accordance with Articles 45 and 47;
- (m) adopt an annual report on the situation of asylum in the Union in accordance with Article 65. That report shall be presented to the European Parliament, the Council and the Commission;
- (n) take all decisions on the development of the information systems provided for in this Regulation, including the information portal referred to Article 8(2)(b);
- (o) adopt the detailed rules for applying Regulation (EC) No 1049/2001 in accordance with Article 58;
- (p) adopt the Agency's staff policy in accordance with Article 55;
- (q) adopt each year the Agency's programming document in accordance with Article 41;
- (r) take all decisions on the establishment of the Agency's internal structures and, where necessary, their modification;
- (s) 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);
- (t) adopt the operational standards, indicators, guidelines and best practices developed by the Agency in accordance with Article 12(2);²²

²² **FR:** reservation on the control functions of the Agency.

- (u) endorse the common analysis concerning country of origin information and any review of that common analysis **and guidance notes** in accordance with Article 10(2) and (3);²³
- (v) **adopt [...] the programme for monitoring the operational and technical application of the CEAS in accordance with Article 14(1), and endorse the composition of the teams of experts as set up by the executive Director in accordance with point (na) of Article 46(5);**²⁴
- (w) *deleted*
- (x) adopt the recommendations following a monitoring exercise in accordance with Article 14(3);²⁵
- (y) set up and decide on the profiles and overall numbers of experts to be made available for the asylum support teams including for the asylum reserve pool in accordance with Article 19A(2) and 19A(6);²⁶
- (z) *deleted*
- (aa) adopt a strategy for relations with third countries or international organisations concerning matters for which the Agency is competent, as well as a working arrangement with the Commission for its implementation;
- (bb) authorise the conclusion of working arrangements in accordance with Articles 35, **36 and 37.**

²³ **PL:** scrutiny reservation.

²⁴ **PL:** scrutiny reservation. **FR, LV:** reservations on the control functions of the Agency.

²⁵ **LV, PL:** scrutiny reservation.

²⁶ **FR, LV:** reservations.

2. 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 and on Article 6 of the Conditions of Employment of Other Servants, 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.

- 3.²⁷ The Management Board may establish [...] **a small-sized Executive Board** [...] to assist it and the Executive Director with regard to the preparation of decisions, [...] **programmes** and activities to be adopted by the Management Board. When necessary, the Executive Board may take certain [...] provisional, **urgent** decisions on behalf of the Management Board, in particular on administrative management matters. **The Executive Board shall not take decisions that must be passed by either a majority of two-thirds or three-fourths of the Management Board. The Management Board may delegate certain clearly defined tasks to the Executive Board, in particular where this improves the efficiency of the Agency. It may not delegate to the Executive Board tasks related to the decisions that must be passed by either a majority of two-thirds or three-fourths of the Management Board. The Executive Board shall be composed of the Chairperson of the Management Board, one representative of the Commission to the Management Board and four other members of the Management Board.** For the purposes of establishing the Executive Board, the Management Board shall establish its rules of procedure.

²⁷ **DE, EL:** scrutiny reservations.

Multi-annual programming and annual work programmes

1. By 30 November each year, the Management Board shall adopt, by a majority of two-thirds of members entitled to vote, a programming document containing the multi-annual and annual programming, based on a draft put forward by the Executive Director, taking into account the opinion of the Commission and for the multi-annual programming, after consulting the European Parliament. The Management Board shall forward [...] **the draft programming document** to the European Parliament, the Council and the Commission.

The programming document shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.

A draft version of the programming document shall be sent to the European Parliament, the Council and the Commission no later than 31 January each year as well as any later updated version of that document.

2. The multi-annual programming shall set out the overall strategic programming in the medium and long-term including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.

The multi-annual programming shall set the strategic areas of intervention and explain what needs to be done to achieve the objectives. It shall include the strategy for relations with third countries or international organisations referred to in Articles [...] **35** and **37**, respectively, and the actions linked to that strategy, as well as specification of associated resources.

The multi-annual programming shall be implemented by means of annual work programmes and it shall be updated annually. The multi-annual programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 66.

3. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each activity, in accordance with the principles of the activity-based budgeting and management. The annual work programme shall be consistent with the multi-annual programming referred to in paragraph 2. It shall clearly indicate the tasks that have been added, changed or deleted in comparison with the previous financial year.
4. The Management Board shall amend the adopted annual work programme when a new task is given to the Agency.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as 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 42

Chairperson of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from 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 Board with voting rights.

The Deputy Chairperson shall automatically replace the Chairperson if he or she is prevented from attending to his or her duties.

2. The term of office of the Chairperson and the Deputy Chairperson shall be four years. Their term of office may be renewed once. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date.

Article 43

Meetings of the Management Board

1. The Chairperson shall convene meetings of the Management Board.
2. The Executive Director shall take part in the deliberations, without the right to vote.
3. The representative of UNHCR shall not take part in the meeting when the Management Board performs the functions laid down in points (f), (g), (j), (k), (l), (o), (p), (q), [...] (r) **and** (s) of Article 40(1) and in Article 40(2), and when the Management Board decides to make financial resources available for financing UNHCR activities enabling the Agency to benefit from the its expertise as provided for in Article 49.
4. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of its Chairperson, at the request of the Commission, or at the request of one-third of its members.
5. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.
6. Denmark shall be invited to attend the meetings of the Management Board.
7. The members and the alternates of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted at the meetings by advisers or experts.
8. The Agency shall provide the secretariat for the Management Board.

Article 44

Voting rules of the Management Board

1. Unless otherwise provided, the Management Board shall take its decisions by an absolute majority of its members with voting rights.

2. Each member with voting rights shall have one vote. In the absence of a member with the right to vote, his or her alternate shall be entitled to exercise his or her right to vote.
3. The Chairperson shall take part in the voting.
4. The Executive Director shall not take part in the voting.
- 4a. Member States that do not fully participate in the acquis of the Union in the field of asylum shall not vote where the Management Board is called on to adopt operational standards, indicators, guidelines or best practices which relate exclusively to an asylum instrument of the Union by which they are not bound.
5. The Management Board's Rules of Procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member.

Article 45

Executive Director

1. The Executive Director shall be a member of staff and shall be recruited as a temporary agent of the Agency in accordance with Article 2(a) of the Conditions of Employment of Other Servants.
2. The Executive Director shall be appointed by the Management Board from a list of candidates proposed by the Commission, following an open and transparent selection procedure. The Executive Director shall be appointed on the ground of merit and documented high-level administrative and management skills as well as senior professional experience in the field of migration and asylum.

For the purpose of concluding the contract with the Executive Director, the Agency shall be represented by the Chairperson of the Management Board.

3. Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members.
4. 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.
5. The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 4, may extend the term of office of the Executive Director once for no more than five²⁸ years.
6. The Management Board shall inform the European Parliament if it intends to extend the Executive Director's term of office. Within one month before any such extension, the Executive Director may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members.
7. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
8. The Executive Director may be removed from office only upon a decision of the Management Board acting on a proposal from the Commission.
9. The Management Board shall take decisions on appointment, extension of the term of office or removal from office of the Executive Director by a two-thirds majority of its members with the right to vote.

Article 46

Responsibilities of the Executive Director

1. The Executive Director shall manage the Agency. The Executive Director shall be accountable to the Management Board.

²⁸ **DE:** "*three* years".

2. Without prejudice to the powers of the Commission and the Management Board, the Executive Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government, institution, person or any other body.
3. The Executive Director shall report to the European Parliament on the performance of his or her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his or her duties.
4. The Executive Director shall be the legal representative of the Agency.
5. The Executive Director shall be responsible for the implementation of the tasks assigned to the Agency by this Regulation. In particular, the Executive Director shall be responsible for:
 - (a) the day-to-day administration of the Agency²⁹;
 - (b) implementing decisions adopted by the Management Board;
 - (c) preparing the programming document and submitting it to the Management Board after consulting the Commission;
 - (d) implementing the programming document and reporting to the Management Board on its implementation;
 - (e) preparing the consolidated annual report on the Agency's activities and presenting it to the Management Board for adoption;
 - (f) preparing an action plan following-up 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 and to the Executive Board;

²⁹ **AT:** add a reference to the Management Board.

- (g) without prejudicing the investigative competence of OLAF, protecting 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;
- (h) preparing an anti-fraud strategy for the Agency and presenting it to the Management Board for approval;
- (i) preparing the draft financial rules applicable to the Agency;
- (j) preparing the Agency's draft statement of estimates of revenue and expenditure and implementing its budget;
- (k) exercising the powers laid down in Article 55 in respect of the Agency's staff;
- (l) taking all decisions on the management of the information systems provided for in this Regulation, including the information portal referred to in Article 8(2)(b);
- (m) taking all decisions on the management of the Agency's internal structures;
- (ma) drafting reports on countries of origin as referred to in Article 8;**
- (n) submitting the common analysis to the Management Board in accordance with Article 10(2);³⁰
- (na) set up teams of experts for the purpose of Articles 13 and 14 which shall be composed of experts from the Agency's own staff, the Commission and, where necessary, the Member States.³¹

³⁰ **PL:** scrutiny reservations. **FR:** reservation.

³¹ **FR:** reservation.

- (o) submit [...] **the findings** and draft recommendations in the context of the monitoring exercise to the Member State concerned and subsequently to the Management Board in accordance with Article 14(3) [...];³²
- (p) evaluating, approving and coordinating requests for operational and technical assistance in accordance with Article 16(2) and Article 20;
- (q) ensuring the implementation of the operational plan referred to in Article 19;³³
- (r) ensuring coordination of the Agency's activities in the migration management support teams with the Commission and other relevant Union agencies in accordance with Article 21(1);
- (s) ensuring implementation of the Council decision referred to in Article 22(3);³⁴
- (t) deciding, in consultation with the Management Board, on the acquisition or lease of technical equipment in accordance with Article 23(2);
- (u) appointing a coordinating officer of the Agency in accordance with Article 25(1).

Article 47

Deputy Executive Director³⁵

1. A Deputy Executive Director shall assist the Executive Director in the management of the Agency and in the performance of his or her tasks as referred to in Article 46(5). If the Executive Director is absent or indisposed, the Deputy Executive Director shall take his or her place.

³² **FR, LV, RO:** reservations concerning the monitoring function of the Agency. **PL:** scrutiny reservation.

³³ **PL** suggested "... support the implementation of the operational plan.." **FR:** reservation.

³⁴ **FR, RO:** reservations. **ES:** reservation related to the cross reference to Article 22(3). **IT:** this point should be deleted.

³⁵ **EL:** doubts regarding the necessity of establishing such a position requesting clarification on its selection procedures. **PT:** this should reflect the corresponding provisions in EBCG.

2. The provisions of Article 45 shall apply to the Deputy Executive Director, **insofar as relevant**.

Article 48

Consultative Forum

1. The Agency shall maintain a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, Union or international level. For that purpose, the Agency shall set up a Consultative Forum.
2. The Consultative Forum shall constitute a mechanism for the exchange of information and sharing of knowledge. It shall ensure a close dialogue between the Agency and relevant organisations or bodies as referred to in paragraph 1.
3. The Agency shall invite the European Union Agency for Fundamental Rights, the European Border and Coast Guard Agency, UNHCR and other relevant organisations or bodies as referred to in paragraph 1³⁶.

On a proposal by the Executive Director, the Management Board shall decide on the composition and working methods of the Consultative Forum, including thematic or geographic-focused consultation groups, and the modalities of transmission of information to the Consultative Forum.

4. The Consultative Forum shall advise the Executive Director and the Management Board in matters related to asylum, in accordance with specific needs in areas identified as a priority for the Agency's work.
5. The Consultative Forum shall, in particular:
 - (a) make suggestions to the Management Board on the annual and multi-annual programming referred to in Article 41;

³⁶ **PL:** Europol should also be included.

- (b) provide feedback to the Management Board and suggest measures as follow-up to the annual report on the situation of asylum in the Union referred to in Article 65; and
 - (c) communicate to the Executive Director and the Management Board conclusions and recommendations of conferences, seminars and meetings, as well as on findings from studies or field work carried out by any of the member organisations or bodies of the Consultative Forum which is relevant to the work of the Agency.
6. The Consultative Forum shall meet at least once a year.

CHAPTER 10

FINANCIAL PROVISIONS

Article 49

Budget

1. Estimates of the revenue and expenditure of the Agency shall be prepared each financial year, corresponding to the calendar year, and shall be shown in the Agency's budget.
2. The Agency's budget shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, the Agency's revenue shall comprise:
 - (a) a contribution from the Union entered in the general budget of the European Union;
 - (b) Union funding in the form of delegation agreements or ad hoc grants in accordance with its financial rules referred to in Article 53 and with the provisions of the relevant instruments supporting the policies of the Union;
 - (c) any voluntary financial contribution from the Member States;

- (d) any contribution from the associated countries;
 - (e) charges for publications and any service provided by the Agency;
4. The expenditure of the Agency shall include staff remuneration, administrative and infrastructure expenses as well as operating expenditure.

Article 50

Establishment of the budget

1. Each year the Executive Director shall draw up a provisional draft statement of estimates of the Agency's revenue and expenditure for the following financial year, including the establishment plan, and send it to the Management Board.
2. The Management Board shall, on the basis of that provisional draft, adopt a provisional draft estimate of the Agency's revenue and expenditure for the following financial year.
3. The provisional draft estimate of the Agency's revenue and expenditure shall be sent to the Commission, the European Parliament and the Council by 31 January each year.
4. The Commission shall send the statement of estimates to the budgetary authority together with the draft general budget of the European Union.
5. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it considers necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 of the Treaty.
6. The budgetary authority shall authorise the appropriations for the contribution to the Agency.
7. The budgetary authority shall adopt the Agency's establishment plan.

8. The Agency's budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where necessary, it shall be adjusted accordingly.
9. For any building project likely to have significant implications for the budget of the Agency, the provisions of the Commission Delegated Regulation (EU) No 1271/2013³⁷ shall apply.

Article 51

Implementation of the budget

1. The Executive Director shall implement the Agency's budget.
2. Each year the Executive Director shall send to the budgetary authority all information relevant to the findings of evaluation procedures.

Article 52

Presentation of accounts and discharge

1. By 1 March of the following financial year, the Agency's accounting officer shall send the provisional accounts to the Commission's Accounting Officer and to the Court of Auditors.
2. By 31 March of the following financial year, the Agency shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors.

By 31 March of the following financial year, the Commission's accounting officer shall send the Agency's provisional accounts, consolidated with the Commission's accounts, to the Court of Auditors.

³⁷ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

3. On receipt of the Court of Auditors' observations on the Agency's provisional accounts pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council,³⁸ the Executive Director shall draw up the Agency's final accounts under his or her own responsibility and submit them to the Management Board for an opinion.
4. The Management Board shall deliver an opinion on the Agency's final accounts.
5. The Executive Director shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
6. The final accounts shall be published in the Official Journal of the European Union by 15 November of the following year.
7. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September. The Executive Director shall also send this reply to the Management Board.
8. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 165(3) of the Financial Regulation.
9. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

³⁸ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

Article 53

Financial rules

1. The financial rules applicable to the Agency shall be adopted by the Management Board after consulting the Commission. They shall comply with Delegated Regulation (EU) No 1271/2013 except where a derogation from the provisions of that Regulation is specifically required for the Agency's operation and if the Commission has given its prior consent.
2. The Agency may award grants related to the fulfilment of the tasks referred to in Article 2, in accordance with this Regulation or by delegation of the Commission pursuant to Article 58(1)(c)(iv) of Regulation (EU, Euratom) No 966/2012.³⁹ The relevant provisions of Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012⁴⁰ shall apply.

CHAPTER 11

GENERAL PROVISIONS

Article 54

Legal status

1. The Agency shall be a body of the Union. It shall have legal personality.

³⁹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

⁴⁰ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

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 and dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency shall be independent in implementing its operational and technical mandate.⁴¹
4. The Agency shall be represented by its Executive Director.
5. The seat of the Agency shall be Malta.

Article 55

Staff

1. The Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Union and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the Agency.
2. The Management Board shall adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.
3. The powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants shall be exercised by the Agency in respect of its own staff.
4. The Agency may make use of seconded national experts or other staff not employed by the Agency. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the Agency.
5. The Agency may employ staff to work in the field in Member States.

⁴¹ **IT**: clarify that reference is made to internal operational and technical matters.

Article 56

Privileges and immunities

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

Article 57

Language arrangements

1. The provisions laid down in Council Regulation No 1⁴² shall apply to the Agency.
2. Without prejudice to decisions taken on the basis of Article 342 of the Treaty, the consolidated annual activity report on the Agency's activities and the programming document shall be produced in all the official languages of the institutions of the European Union.
3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre of the bodies of the European Union.

Article 58

Transparency

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.
2. The Agency may communicate on its own initiative in the fields within its mission. It shall make public the consolidated annual activity report 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.

⁴² Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community (OJ 17, 6.10.1958, p. 385).

3. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules 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 official language of the Union. 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 be subject to a complaint to the Ombudsman or an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the Treaty respectively.

Article 59

Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁴³ shall apply without restriction. The Agency shall accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) and adopt appropriate provisions applicable to all the employees of the Agency using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.

⁴³ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (EC, Euratom) No 2185/96.⁴⁴
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

Article 60

Security rules on the protection of classified information and sensitive non-classified information⁴⁵

1. The Agency shall apply the Commission's rules on security as set out in Commission Decisions (EU, Euratom) 2015/443⁴⁶ and 2015/444.⁴⁷ Those rules shall apply, in particular, to the exchange, processing and storage of classified information.
2. The Agency shall also apply the security principles relating to the processing of non-classified sensitive information as set out in the Decisions referred to in paragraph 1 and as implemented by the Commission. The Management Board shall establish measures for the application of those security principles.

⁴⁴ Council Regulation (EC, Euratom) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

⁴⁵ **SE:** scrutiny reservation on the Article.

⁴⁶ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁴⁷ 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).

Article 61

Liability

1. The Agency's contractual liability 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 of the European Union shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.
5. The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

Article 62

Administrative monitoring

The activities of the Agency shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.

Article 63

Headquarters agreement and operating conditions

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the host Member State to the Executive Director, members of the Management Board, Agency staff and members of their families shall be laid down in a Headquarters Agreement between the Agency and the host Member State, concluded after obtaining the approval of the Management Board.
2. The Agency's host Member State shall provide the best possible⁴⁸ conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

CHAPTER 12

FINAL PROVISIONS

Article 64 deleted

Article 65

Reporting⁴⁹

1. The Agency shall draw up an annual activity report on the situation of asylum in the Union, taking due account of information already available from other relevant sources. As part of that report, the Agency shall evaluate the results of activities carried out under this Regulation and make a comprehensive comparative analysis of them with the aim of improving the quality, consistency and effectiveness of the CEAS.

⁴⁸ **DE:** replace with "*the necessary*".

⁴⁹ **CZ:** this Article should be in Article 4 of Chapter 2 instead.

2. The Agency shall transmit the annual activity report to the Management Board, the European Parliament, the Council and the Commission. The Executive Director shall present the annual report to the European Parliament.

Article 66

Evaluation and review

1. No later than three years from the day of entry into force of this Regulation, and every five years thereafter, the Commission shall commission an evaluation to assess, in particular, the Agency's performance in relation to its objectives, mandate and tasks. That evaluation shall cover the Agency's impact on practical cooperation on asylum-related matters and on facilitating the implementation of the CEAS. The evaluation shall take due regard of progress made, within its mandate, including assessing whether additional measures are necessary to ensure effective solidarity and sharing of responsibilities with Member States subject to particular pressure.

The evaluation shall, in particular, address the possible need to modify the mandate of the Agency, and the financial implications of any such modification. It shall also examine whether the management structure is appropriate for carrying out the Agency's duties. The evaluation shall take into account the views of stakeholders, at both Union and national level.

2. The Commission shall send the evaluation report together with its conclusions on the report to the European Parliament, the Council and the Management Board. [...]
3. On the occasion of every second evaluation, the Commission shall consider whether continuation of the Agency is justified with regard to its objectives, mandate and tasks and it may propose that this Regulation be amended accordingly or repealed.

Article 67

Repeal

1. Regulation (EU) No 439/2010 is repealed with effect from entry into force of this Regulation.
2. References to the repealed Regulation shall be construed as references to this Regulation in accordance with the correlation table set out in the Annex.

Article 68

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
