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COM(2016) 271 final

2016/0131 (COD)

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**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Reasons for and objectives of the proposal**

On 6 April 2016, the Commission adopted a Communication entitled "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe",<sup>1</sup> in which it set out its priorities for improving the Common European Asylum System (CEAS). The Commission announced, in response to calls by the European Council,<sup>2</sup> that it would progressively work towards reforming the existing Union framework by establishing a sustainable and fair system for determining the Member States responsible for asylum seekers, by reinforcing the Eurodac system, by achieving greater convergence in the asylum system thereby preventing secondary movements, and by developing an enhanced mandate for the European Asylum Support Office (EASO). This proposal is being presented as part of a first package of reform of the CEAS together with two other proposals, namely a proposal to reform the Dublin system and another proposal amending the Eurodac system.

The aim of this proposal is to strengthen the role of EASO and develop it into an agency which facilitates the implementation and improves the functioning of the CEAS. Since taking up its responsibilities in 2011, EASO has continuously supported Member States to apply the current rules and to improve the functioning of existing tools. The Agency has gained experience and earned credibility for its work as regards practical cooperation among Member States and in supporting them to implement their obligations under the CEAS. In time, the tasks undertaken by EASO progressively evolved so as to meet the growing needs of Member States and of the CEAS as a whole. The Member States increasingly rely on the operational and technical support of the Agency. The Agency increased its knowledge and experience in the field of asylum and it is time to transform it into a centre of expertise in its own right and not one that still significantly relies on information and expertise provided by Member States.

In the Commission's view, the Agency is one of the tools that can be used to effectively address the structural weaknesses in the CEAS which have been further exacerbated by large scale and uncontrolled arrival of migrants and asylum seekers to the European Union particularly during the past year. It would not be plausible to reform the CEAS without providing the Agency with a mandate that corresponds to the demands that the reform will entail. It is essential to equip the Agency with the means necessary to assist Member States in crisis situations, but it is all the more necessary to build a solid legal, operational and practical framework for the Agency to be able to reinforce and complement the asylum and reception systems of Member States.

To reflect this development, the proposal renames EASO as the European Union Agency for Asylum. An enhanced mandate, as set out in this proposal transforms EASO into a fully-fledged Agency which is capable of providing the necessary operational and technical assistance to Member States, increasing practical cooperation and information exchange among Member States, supporting a sustainable and fair distribution of applications for international protection, monitoring and assessing the implementation of the CEAS and the capacity of asylum and reception systems in Member States, and enabling convergence in the assessment of applications for international protection across the Union.

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<sup>1</sup> COM(2016) 197 final.

<sup>2</sup> EUCO 19.02.2016, SN 16/16

- **Consistency with existing policy provisions in the policy area**

On 19 February 2016, the European Council considered that progress must be made towards reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. In its Communication of 6 April 2016, the Commission maintained that the overall objective of Union migration and asylum policy is to move away from a system which by poor design or poor implementation places a disproportionate responsibility on certain Member States and encourages uncontrolled movements towards other Member States. The aim is for the Union to have a robust and effective system for sustainable migration management grounded on the principles of responsibility and solidarity.

In the European Agenda on Migration,<sup>3</sup> the Commission had recognised the significance of EASO's role in developing and maintaining a strong common asylum policy. The Commission considered that EASO could step up practical cooperation, develop a role as the clearing house of national country of origin information to encourage more uniform decisions, take key measures as regards training and set up dedicated networks of national authorities to enhance operational cooperation on asylum-related matters. In its Communication of 6 April 2016, the Commission announced that it would be proposing a stronger mandate for EASO so that it can play a new policy-implementing role and a strengthened operational role. This would be achieved by means of a monitoring mechanism to assess compliance with the CEAS and other key tasks such as the provision and analysis of country of origin information, operating the distribution key of the Dublin system and intervening in support of Member States in emergency situations or where the necessary remedial action would not have been taken.

The aim of this proposal is to provide the European Union Agency for Asylum with the necessary tools for it to develop into an agency which facilitates the implementation and improves the functioning of the CEAS. In this respect, it complements the legal and policy instruments in the field of asylum, in particular as regards asylum procedures, standards for the qualification for individuals for international protection, the Dublin system, relocation and resettlement.

- **Consistency with other Union policies**

This proposal is consistent with the comprehensive long-term policy on better migration management as set out by the Commission in the European Agenda on Migration, which developed President Juncker's Political Guidelines into a set of coherent and mutually reinforcing initiatives based on four pillars. Those pillars consist of reducing the incentive for irregular migration, securing external borders and saving lives, a strong asylum policy and a new policy on legal migration. This proposal further implements the European Agenda on Migration, more specifically as regards the objective of strengthening the Union's asylum policy since the European Union Agency for Asylum will ensure a full and coherent implementation of the CEAS.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legislative proposal is based on Article 78(1) and (2) of the Treaty on the Functioning of the European Union.

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<sup>3</sup> COM(2015) 240 final.

- **Subsidiarity**

The objectives of this proposal are to facilitate the implementation and improve the functioning of the CEAS, to strengthen practical cooperation and information exchange among Member States on asylum-related matters, to promote Union law and operational standards to ensure a high degree of uniformity as regards asylum procedures, reception conditions and the assessment of protection needs across the Union, to monitor the operational and technical application of Union law and standards as regards asylum and to provide increased operational and technical support to Member States for the management of the asylum and reception systems, in particular to Member States subject to disproportionate pressure on their asylum and reception systems.

Since it is a common and shared interest to ensure the proper application of the legal framework on asylum, through concerted action among Member States with the support of the European Union Agency for Asylum, so as to consolidate stability and order in the functioning of the CEAS, the objectives of this proposal cannot be sufficiently achieved by the Member States and can be better achieved at the level of the Union and the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

- **Proportionality**

The proposal is intended to respond to the political realities and challenges faced by the Union in the area of migration and asylum by providing the European Union Agency for Asylum with the necessary tools to address both the disproportionate pressure on Member State's asylum and reception systems, and the inherent weaknesses in these systems for the longer term.

The proposal seeks to ensure that the legislation and operational standards on asylum are fully and correctly applied by Member States, that practical cooperation and information among Member States as well as with third countries is enhanced, that appropriate action is taken to maintain the orderly functioning of the CEAS and to address disproportionate pressure in an effective manner with the assistance of and in cooperation with the Agency. The Agency may assist Member States with the examination of applications for international protection upon the request of the Member States and within a framework set out clearly in the operational plan. The Agency may be required to intervene and provide assistance to a Member State only in those cases where, following up on a monitoring exercise or in case of disproportionate pressure on the asylum and reception systems no action or insufficient measures are taken by the Member State concerned, thereby jeopardizing the functioning of the CEAS. In view of its objective and in accordance with the principle of proportionality, as set out in that Article 5 of the Treaty on European Union, this proposal does not go beyond what is necessary in order to achieve those objectives.

- **Choice of the instrument**

It is only a regulation that can provide the necessary degree of efficiency and uniformity needed in the application of Union law on asylum. Moreover, having regard to the fact that EASO, renamed European Union Agency for Asylum, was established by means of a regulation, the same legal instrument is also appropriate for this proposal.

### 3. CONSULTATION OF INTERESTED PARTIES

In preparation of this proposal, the Commission has relied upon discussions that took place regularly in the European Council and the Council of Ministers, as well as the European Parliament, concerning the development of the Union's migration and asylum policy and the use of Union agencies in better migration management. The role of EASO in providing operational and technical support to Member States including at the external borders in cooperation with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, has been invoked on several occasions. Member States have generally considered that EASO has a significant role in assisting them with relocation and resettlement.

Since EASO has taken up its responsibilities on 1 February 2011, there have been continued discussions with relevant stakeholders at European and national level. In particular, there have been regular discussions in the context of reporting by the Agency in the European Parliament and in the Council. The Agency continuously reports on its activities at the Management Board meetings and through various reports it issues during the year. There have also been regular information exchanges with other Union agencies in particular the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union and the European Union Agency for Fundamental Rights. Several discussions have also been organised with civil society and academia.

An evaluation of EASO was carried out on the basis of Article 46 of Regulation (EU) No 439/2010 which provides for an independent external evaluation which covers EASO's impact on practical cooperation on asylum and on the CEAS. The Commission carried out an internal evaluation of EASO in 2013. In 2014, EASO underwent an external evaluation by an external independent contractor and which covered the period from February 2011 to June 2014. The temporal scope of the external evaluation was subsequently extended to cover the entire period since the Agency took up its responsibilities. The evaluation was conducted between October 2014 and July 2015, and it covered all the activities carried out by EASO across all Member States. This proposal takes into account the recommendations resulting from that evaluation and the views of EASO as regards the future of the Agency.

- **Fundamental rights**

This proposal respects fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union. All activities of the European Union Agency for Asylum shall be carried out in full respect of fundamental rights as enshrined in the Charter, including the right to asylum (Article 18 of the Charter), the protection from *refoulement* (Article 19 of the Charter), the right to respect for private and family life (Article 7 of the Charter), the right to protection of personal data (Article 8 of the Charter) and the right to an effective remedy (Article 47 of the Charter). The proposal fully takes into account the rights of the child and the special needs of vulnerable persons.

### 4. BUDGETARY IMPLICATIONS

The European Union Agency for Asylum, which is to be built on the existing EASO, is tasked with facilitating the implementation and improving the functioning of the CEAS.

The total financial resources necessary to enable the Agency to fulfil its mission under the proposed expanded mandate amount to EUR 363.963 million for the period 2017-2020. For the Agency to carry out its new tasks effectively, 275 temporary agent posts and 82 contract

agents for a total of 357 staff members over the period 2017-2020 will be needed in addition to the current number of temporary and contractual agent posts authorised under the 2016 budget to bring the staff of the Agency to a total of 500 by 2020.

The financial needs are compatible with the current multiannual financial framework and may entail the use of special instruments as defined in the Council Regulation (EU, Euratom) No 1311/2013.<sup>4</sup>

## **5. OTHER ELEMENTS**

### **• Monitoring, evaluation and reporting arrangements**

The European Union Agency for Asylum must draw up an annual activity report on the situation of asylum, in which it needs to evaluate the results of the activities it carries out throughout the year. The report must contain a comparative analysis of the Agency's activities so that the Agency may improve the quality, consistency and effectiveness of the CEAS. That annual activity report must be transmitted by the Agency to the Management Board, the European Parliament and the Council.

The Commission must commission an evaluation within three years of entry into force of this Regulation, and then every five years thereafter, to assess particularly the impact, effectiveness and efficiency of the Agency and its working practices. That evaluation must cover the Agency's impact on practical cooperation on asylum-related matters and on the CEAS. The Commission must send the evaluation report together with its conclusions on the report to the European Parliament, the Council and the Management Board. The findings of the evaluation must be made public.

### **• Detailed explanation of the specific provisions of the proposal**

Regulation (EU) No 439/2010 establishes the European Support Asylum Office (EASO) and it defines the role of EASO as being intended to strengthen practical cooperation among Member States and to provide or coordinate the provision of operational support to Member States. EASO could achieve these objectives by enabling information exchange and pooling of best practices, providing support for training and for relocation, coordinating activities related to the country of origin information, providing support as regards the implementation and the external dimension of the CEAS, setting out technical documents on the implementation of Union asylum instruments and by providing operational support to Member States subject to particular pressure.

This proposal builds upon the current mandate of EASO and expands it so as to transform EASO into a fully-fledged Agency equipped with the necessary tools to: (1) enhance practical cooperation and information exchange on asylum; (2) promote Union law and operational standards to ensure a high degree of uniform application of the legal framework on asylum; (3) ensure greater convergence in the assessment of protection needs across the Union; (4) monitor and assess the implementation of the CEAS; (5) provide increased operational and technical assistance to Member States for the management of the asylum and reception systems, in particular in cases of disproportionate pressure. The proposal renames EASO as the European Union Agency for Asylum to reflect the stronger mandate of the Agency.

#### **(1) Enhance practical cooperation and information exchange on asylum**

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<sup>4</sup> Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

This aspect is covered by Chapter 2 of the proposal concerning practical cooperation and information exchange among Member States and with the Agency. The proposal sets out how the Agency will perform its tasks of facilitating, coordinating and strengthening practical cooperation and information exchange among Member States on various aspects of asylum. Those tasks are not entirely new to the Agency since EASO is already responsible for enabling information exchange and facilitating practical cooperation. However, EASO needed to rely on the voluntary provision of information by Member States. With this proposal, the Agency and the Member States will have a duty to cooperate and an obligation to exchange information.

To be a centre of expertise, the Agency will need to build its own capacity of gathering and analysing information on the situation of asylum in the Union and third countries insofar as this may have an impact on the Union, as well as on the implementation of the CEAS. The information analysis on the situation of asylum should enable the Agency to assist Member States in better understanding the factors for asylum-related migration towards and within the Union, as well as for the purpose of early warning and preparedness of Member States. In this respect, the Agency should work closely not only with Member States but also with other relevant Union agencies, the European External Action Service and with international organisations such as UNHCR.

In the context of a reform of the Dublin system, the Agency will have additional tasks and obligations that will derive from that reform. The Agency is the natural choice to provide Member States with the support they need to operate and manage the corrective mechanism.

The Agency will continue to play an important role in developing and providing training to members of national administrations, courts, tribunals and national services responsible for asylum matters in Member States. With greater involvement of the Agency's own staff in providing operational and technical assistance to Member States, the Agency also will need to ensure appropriate training for its own staff. Furthermore, the Agency must ensure that all those experts who participate in the asylum support teams and the asylum intervention pool receive specialist training relevant to their duties and functions prior to their participation in the operational activities.

## (2) Ensure greater convergence in the assessment of protection needs across the Union

In its conclusions of 21 April 2016 on convergence in asylum decision practices,<sup>5</sup> the Council noted that notwithstanding progress on the CEAS, there are still significant disparities between the Member States in the recognition rates, the nature and quality of the international protection granted and generally, in the outcome of procedures. The Council recognised the need to create a more structured and streamlined EASO COI production process that covers all main countries of origin and thematic issues by strengthening the resources available for EASO COI production, and it invited EASO to assist with the EU-level process of policy development on the basis of joint COI.

To ensure greater convergence and address disparities in the assessment of applications for international protection, the proposal gives the Agency the task of coordinating efforts among Member States to engage and develop a common analysis providing guidance on the situation in third countries of origin as set out in Chapter 3 of the proposal. Until now, the Agency has been required to organise, promote and coordinate activities relating to information on countries of origin, including providing an analysis of that information. This is a task that the

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<sup>5</sup> Council conclusions on convergence in asylum decision practices, 21 April 2016, 8210/16.

Agency will continue to perform and it shall also ensure the coordination of national initiatives producing country of origin information by establishing networks on country of origin information. These networks are to be used to exchange and update national reports, as well as a query system whereby specific questions of fact that may arise from applications for international protection could be sent to the Agency.

Another new task for the Agency is to assist the Commission in regularly reviewing the situation in third countries which are included in the common EU list of safe countries of origin. When considering adding another third country to that EU list of safe countries, the Commission could request the Agency to provide it with information on that particular third country.

(3) Promote Union law and operational standards on asylum

Chapter 4 of the proposal deals with operational standards, guidelines and best practices. Under the current mandate of EASO, the Agency could adopt technical documents on the implementation of the asylum instruments. The proposal distinguishes among the various types of technical documents that may be adopted by the Agency. The Agency will, on its own initiative or at the request of the Commission, develop operational standards on the implementation of the instruments of Union law on asylum and indicators for monitoring compliance with those standards. The Agency will also be able to develop guidelines and best practices related to the implementation of the instruments of Union law on asylum. In cases where Member States would require assistance to apply those operational standards, guidelines and best practices they may request the Agency to provide them with the necessary expertise or operational and technical assistance.

(4) Monitor and assess the implementation of the CEAS

Chapter 5 of the proposal provides for a new task of the Agency, which is to monitor and assess all aspects of the CEAS, in particular asylum procedures, the Dublin system, recognition rates and quality and nature of international protection granted, to monitor compliance with the operational standards and guidelines as well as to verify the asylum and reception systems and the capacity of Member State to manage those systems effectively particularly in times when they would face disproportionate pressure. The aim of the monitoring exercise is, on the one hand, to ensure that any shortcomings in the functioning of the CEAS are addressed as early as possible so as to ensure an orderly management of the asylum and reception systems and on the other, it is to ensure that Member States have the necessary tools in place to be able to address situations of disproportionate pressure adequately.

Article 13 establishes the scope of the monitoring and assessment mechanism and Article 14 sets out the procedure for that exercise. The Agency may base its assessment on information provided by Member States, information analysis on the situation of asylum developed by the Agency, on-site visits and case sampling. The monitoring exercise may be programmed by Member State or on the basis of thematic or specific aspects of the asylum systems. The Agency will set up teams of experts, composed of experts from the Agency and the Commission, to carry out the monitoring exercise and draft a report setting out their findings. The Management Board adopts the report after taking into account comments from the Member State concerned and transmits it to the Commission. In parallel, the Executive Director submits draft recommendations to the Member State concerned for its comments, following consultation of the Commission. The draft recommendations should outline the necessary measures to address shortcomings in the monitoring report. The Management



Board adopts the recommendations and invites the Member State to submit an action plan for the implementation of those recommendations within a maximum of nine months.

Article 15 deals with those situations where after that period, the Member State concerned is still non-compliant and the seriousness of the shortcomings is such that it jeopardizes the functioning of the CEAS. At that stage, the Commission makes its own assessment of the action plan and the seriousness of the shortcomings. The Commission then adopts recommendations and it may, where necessary, identify measures to be taken by the Agency in support of the Member State concerned. That Member State will need to report to the Commission on the state of implementation of the recommendations. If after a time-limit set in the Commission's recommendations the Member State remains non-compliant, the Commission may take further action requiring the Agency to intervene in support of the Member State.

(5) Provide increased operational and technical assistance to Member States

One important task of EASO has been to provide technical assistance to Member States in particular in relation to interpreting services, information on countries of origin and knowledge of handling and management of asylum cases by deploying asylum support teams. Member States retained autonomy on the selection of the number and profiles of experts as well as on the duration of their deployment.

Chapter 6 of the proposal significantly expands the role and functions of the Agency insofar as operational and technical assistance is concerned similarly to what was proposed by the Commission for the European Border and Coast Guard Agency.<sup>6</sup> The proposal sets out clearly the operational and technical measures that may be organised and coordinated by the Agency upon the request of Member States. These measures could include also the possibility for the Agency to facilitate the examination of applications for international protection that are under examination by the competent national authorities. In that case detailed arrangements and a clear description of tasks and a reference to applicable legislation would need to be foreseen in the operational plan.

The Agency will deploy asylum support teams to provide operational and technical assistance to Member States. Those asylum support teams shall be composed of experts from Member States or experts seconded by Member States to the Agency and experts from the Agency's own staff. In cases where the asylum and reception systems are subject to disproportionate pressure that places exceptionally heavy and urgent demands, the Agency will organise and coordinate a comprehensive set of operational and technical measures. This can be done at the request of a Member State or on a proposal from the Agency. In those instances where despite the disproportionate pressure there is no request for assistance, or the offer of the Agency is not accepted or insufficient action is taken by the Member State concerned to the extent of jeopardising the functioning of the CEAS, the Commission may adopt a decision by means of implementing act identifying one or more of the operational and technical measures that the Agency should take to support the Member State concerned. For those purposes, the Agency will set up an asylum intervention pool which will constitute a reserve of not less than 500 experts from the Member States.

The number and profiles of experts in the asylum support teams are decided by the Management Board on a proposal of the Executive Director. Given the increasing number of children and unaccompanied children among the migrants and asylum seekers, it is important

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<sup>6</sup> COM(2015) 671 final.

that there would be those teams include experts with child protection profiles. The duration of deployment is determined by the home Member State but to ensure continuity in the deployment it is necessary to establish a minimum duration which is set at 30 days in the proposal. As for the experts of the asylum intervention pool, the Management Board will decide, on a proposal of the Executive Director, on the profiles of the experts and on the share that each Member State will contribute to constitute the reserve of a minimum 500 experts. The deployment of experts from the asylum intervention pool is mandatory on Member States without the possibility of invoking an exceptional situation that could substantially affect the discharge of national tasks. The Agency may also deploy experts from its own staff to enhance the deployment of experts from the asylum intervention pool.

Regulation (EU) No XXX/XXX provides for setting up migration management support teams at hotspot areas characterised by mixed migratory flows. Those migration management support teams are composed of experts and officials deployed by and through different Union Agencies including the European Union Agency for Asylum. The operational and technical reinforcement that may be provided by the asylum support teams or by experts deployed from the asylum intervention pool may include the screening of third-country nationals, the registration of application for international protection, and where requested by Member States, the examination of such applications, as well as the provision of information and specific assistance to applicants or potential applicants that could be subject to relocation.

Experts forming part of the asylum support teams or deployed from the asylum intervention should be able to consult national and European databases to be able to perform their tasks effectively and assist Member States. For this purpose, the proposal establishes an obligation on Member States to allow those experts to consult European databases and provides for the possibility for them to allow consultation of national databases subject to Union and national law on access and consultation of those databases.

In order to ensure adequate and efficient coordination on the ground, the proposal transforms what until now has been called a 'Union contact point' into a coordinating officer of the Agency, similar to the coordinating officer used in operations coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. The role of the coordinating officer is to foster cooperation and coordination between the host Member State and the participating Member States. The coordinating officer takes instructions only from the Agency and is to report to the Executive Director where the operational plan is not adequately implemented.

In view of the fact that the Agency will be deploying experts from its own staff to form part of the asylum support teams and in addition to the asylum intervention pool, the proposal also foresees the possibility for the Agency to acquire or lease its own technical equipment. This does not affect the obligation of the Member States to supply the necessary facilities and equipment for the Agency to be able to provide operational and technical assistance, and it should complement equipment provided by other Union agencies.

(6) Other aspects

In Chapter 7, the proposal sets out provisions on the protection of personal data and provides the Agency with a mandate to process personal data. The processing of personal data by the Agency is limited to the purpose of performing its tasks when providing operational and technical assistance, facilitating information exchange with Member States and other Union Agencies in particular within the context of the migration management support teams, and analysing information on the situation of asylum. The Agency will, in cooperation with the

European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), also develop and operate an information system capable of exchanging classified information.

As regards cooperation by the Agency, Chapter 8 covers cooperation by the Agency with Denmark and with associate countries, cooperation with third countries, cooperation with other Union bodies and with international organisations, in particular UNHCR. These aspects are not entirely new when compared to the current mandate of EASO where cooperation with stakeholders featured as important aspect.

The main change in this Chapter concerns Article 35 on cooperation with third countries which is now more structured and provides more clearly for possibilities of cooperation by the Agency with third countries. It establishes that the Agency shall coordinate not only the information exchange but also operational cooperation between Member States and third countries, and that officials from third countries may be invited to act as observers in the operational activities carried out by the Agency. As regards resettlement, the Agency will continue to coordinate the exchange of information and other actions taken by Member States including schemes which are carried out at the level of the European Union. The Agency will also be able to participate in the implementation of international agreements concluded by the Union with third countries.

Chapter 9 deals with the organisation of the Agency. This Chapter reflects the existing organisation of EASO and follows the common approach on decentralised agencies agreed upon by the European Parliament, the Council and the Commission. The difference compared to the existing structure is that the proposal provides for the post of a Deputy Executive Director considering that the Agency's tasks have been significantly enhanced and there will be a corresponding large increase in staff until 2020. Another difference compared to current organisation concerns the Consultative Forum. That forum should be independent of the Agency and for that purpose it will no longer be chaired by the Executive Director and it should assist the Executive Director and the Management Board in matters related to asylum.

Chapter 10 covers the financial provisions and Chapter 11 consists of general provisions. Under the financial provisions, the Agency has been provided with the possibility of awarding grants. The general provisions reflect the same provisions as in the existing regulation. Chapter 12 covers the final provisions. New under this chapter is the article on the committee procedure which is intended to cover the possibility for the Commission to adopt implementing acts under this proposal. This last chapter covers the obligation of the Agency to report annually on its activities as well as the evaluation and review of the Agency.

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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(1) and (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The objective of the Union's policy on asylum is to develop and establish a Common European Asylum System (CEAS), consistent with the values and humanitarian tradition of the European Union and governed by the principle of solidarity and fair sharing of responsibility.
- (2) The CEAS is based on common minimum standards for asylum procedures, recognition and protection offered at Union level, reception conditions and a system for determining the Member State responsible for asylum seekers. Notwithstanding progress on the CEAS, there are still significant disparities between the Member States in the granting of international protection and in the form that such international protection takes. Those disparities should be addressed by ensuring greater convergence in the assessment of applications for international protection and by guaranteeing a high and uniform level of application of Union law across the Union.
- (3) In its Communication of 6 April 2016, the Commission set out its options for improving the CEAS, namely to establish a sustainable and fair system for determining the Member States responsible for asylum seekers, to reinforce the Eurodac system, to achieve greater convergence in the asylum system and to prevent secondary movements, and develop an enhanced mandate for the European Asylum Support Office. That Communication is in line with calls by the European Council on 18 February 2016 to make progress towards reforming the EU's existing framework so as to ensure a humane and efficient asylum policy. It also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report of 12 April 2016.
- (4) The European Asylum Support Office was established by Regulation (EU) No 439/2010 of the European Parliament and of the Council<sup>7</sup> and it took up its responsibilities on 1 February 2011. The European Asylum Support Office has enhanced practical cooperation among Member States on asylum-related matters and in assisting Member States in implementing their obligations under the CEAS. The

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<sup>7</sup> Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ L 132, 29.5.2010, p. 11).

European Asylum Support Office also provides support to Member States whose asylum and reception systems are under particular pressure. However, its role and function need to be further strengthened so as to not only support Member States in their practical cooperation but to reinforce and complement the asylum and reception systems of Member States.

- (5) Having regard to structural weaknesses of the CEAS brought to the fore by large-scale and uncontrolled arrival of migrants and asylum seekers to the Union and the need for an efficient, high and uniform level of the application of Union asylum law in Member States, it is necessary to improve the implementation and functioning of the CEAS by building on the work of the European Asylum Support Office and further develop it into a fully-fledged agency which should be responsible for facilitating and improving the functioning of the CEAS, for enabling a sustainable and fair distribution of applications for international protection for ensuring convergence in the assessment of applications for international protection across the Union, and for monitoring the operational and technical application of Union law.
- (6) The tasks of the European Asylum Support Office should be expanded, and to reflect those changes, it should be renamed European Union Agency for Asylum. The Agency should be a centre of expertise and its main role should be to strengthen practical cooperation and information exchange among Member States on asylum, promote Union law and operational standards to ensure a high degree of uniformity as regards asylum procedures, reception conditions and the assessment of protection needs across the Union, monitor the operational and technical application of Union law and standards as regards asylum, support the Dublin system and provide increased operational and technical support to Member States for the management of the asylum and reception systems, in particular those whose systems are subject to disproportionate pressure.
- (7) The European Union Agency for Asylum should work in close cooperation with Member States' asylum authorities, with national immigration and asylum services and other services, drawing on the capacity and expertise of those services, and with the Commission. Member States should cooperate with the Agency to ensure that it is able to fulfil its mandate. It is important that the Agency and the Member States act in good faith and have a timely and accurate exchange of information. Any provision of statistical data should respect the technical and methodological specifications of Regulation (EC) No 862/2007.<sup>8</sup>
- (8) The European Union Agency for Asylum should gather and analyse information on the situation of asylum in the Union and in third countries insofar as this may have an impact on the Union. That should enable the Agency to assist Member States in better understanding the factors for asylum-related migration towards and within the Union, as well as for the purpose of early warning and preparedness of Member States.
- (9) Having regard to the reform of the Dublin system, the European Union Agency for Asylum should provide the necessary support to the Member States, in particular by operating and managing the corrective mechanism.
- (10) The European Union Agency for Asylum should assist Member States with training of experts from all national administrations, courts and tribunals, and national services

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<sup>8</sup> Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

responsible for asylum matters, including the development of a common core curriculum. In addition, the Agency should ensure that all experts participating in asylum support teams or forming part of the asylum intervention pool receive specialist training before their participation in operational activities organised by the Agency.

- (11) The European Union Agency for Asylum should ensure a more structured and streamlined production of information on countries of origin at the level of the European Union. It is necessary for the Agency to gather information and draw up reports providing for country of origin information by making use of European networks on country of origin information so as to avoid duplication and create synergies with national reports. Furthermore, to ensure convergence in the assessment of applications for international protection and the nature and quality of protection granted, the Agency should, together with Member States, engage in and develop a common analysis providing guidance on the situation in specific countries of origin.
- (12) The common EU list of safe countries of origin established by Regulation (EU) No XXX/XXX<sup>9</sup> should be regularly reviewed by the Commission. Having regard to the Agency's expertise, it should assist the Commission in reviewing that list. The Agency should also, at the request of the Commission, provide it with information on specific third countries which could be included in the common EU list of safe countries of origin, and on third countries designated as safe countries of origin or safe third countries or to which the concepts of safe third country, first country of asylum or European safe third country by Member States apply.
- (13) To ensure a high degree of uniformity as regards asylum procedures, reception conditions and the assessment of protection needs across the Union, the Agency should organise and coordinate activities promoting Union law. For that purpose, the Agency should assist Member States by developing operational standards and indicators for monitoring compliance with those standards. The Agency should also develop guidelines on asylum-related matters and should enable the exchange of best practices among Member States.
- (14) The European Union Agency for Asylum, in close cooperation with the Commission and without prejudice to the Commission's responsibility as guardian of the Treaties, should establish a mechanism to monitor and assess the implementation of the CEAS, the compliance by Member States with operational standards, guidelines and best practices on asylum and to verify the functioning of the asylum and reception systems of Member States. The monitoring and assessment should be comprehensive and should be based, in particular, on information provided by Member States, information analysis on the situation of asylum developed by the Agency, on-site visits and case sampling. The Agency should report its findings to the Management Board which in turn should adopt the report. The Executive Director should, after consultation with the Commission, make draft recommendations to the Member State concerned outlining the necessary measures to address serious shortcomings, which in turn shall be adopted by the Management Board as recommendations.
- (15) The recommendations should be followed up on the basis of an action plan prepared by the Member State concerned. If, within the set period of time, the Member State concerned does not take the necessary measures to address the recommendations, and the shortcomings in the asylum and reception systems are so serious that they jeopardize the functioning of the CEAS, the Commission should, based on its own

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assessment of the implementation of the action plan and the seriousness of the shortcomings, adopt recommendations addressed to that Member State outlining the measures needed to remedy the serious shortcomings. The Commission may need to organise on-site visits to the Member State concerned to verify the implementation of the action plan. Where necessary, the Commission should also identify the measures that should be taken by the Agency in support of that Member State. If the Member State should remain non-compliant for a certain period of time, the Commission may take further action requiring the Agency to intervene in support of that Member State.

- (16) To facilitate and improve the proper functioning of the CEAS and to assist Member States in implementing their obligations within the framework of CEAS, the European Union Agency for Asylum should provide Member States with operational and technical assistance, in particular when their asylum and reception systems are subject to disproportionate pressure. The Agency should provide the necessary operational and technical assistance through the deployment of asylum support teams consisting of experts from the Agency's own staff, experts from Member States or experts seconded by Member States to the Agency, and based on an operational plan. Those teams should support Member States with operational and technical measures, including by providing expertise relating to identification and registration of third countries nationals, interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases, as well as by assisting national authorities competent for the examination of applications for international protection and by assisting with relocation. The arrangements for the asylum support teams should be governed by this Regulation in order to ensure their effective deployment.
- (17) In cases where a Member State's asylum and reception systems are subject to disproportionate pressure that places exceptionally heavy and urgent demands on their asylum or reception systems, the European Union Agency for Asylum should assist that Member State upon request or on the Agency's own initiative, by means of a comprehensive set of measures, including the deployment of experts from the asylum intervention pool. To ensure the availability of those experts and their immediate deployment, the asylum intervention pool should constitute a reserve of experts from Member States amounting to a minimum of 500 persons. The Agency should itself be able to intervene in support of a Member State where despite the disproportionate pressure, the Member State concerned does not request for sufficient assistance from the Agency or the Member State does not take sufficient action to address that pressure with the consequence that the asylum and reception systems would be ineffective to the extent of jeopardising the functioning of the CEAS. A disproportionate number of applications for international protection for which a Member States is responsible may be an indication of disproportionate pressure.
- (18) To ensure that the asylum support teams or the experts deployed from the asylum intervention pool are able to perform their tasks effectively with the means necessary, the European Union Agency for Asylum should be able to acquire or lease its own technical equipment. This should, however, not affect the obligation of Member States to supply the necessary facilities and equipment for the Agency to be able to provide the required operational and technical assistance. Any acquisition or leasing of equipment should be subject to a thorough needs and cost/benefit analysis by the Agency.
- (19) For Member States that are faced with specific and disproportionate pressure on their asylum and reception systems due, in particular, to their geographical or demographic

situation, the European Union Agency for Asylum should support the development of solidarity within the Union and assist in the better relocation of beneficiaries of international protection among Member States, while ensuring that asylum and reception systems are not abused.

- (20) At particular areas of the external borders where Member States face disproportionate migratory pressures characterised by large influxes of mixed migratory flows, referred to as hotspot areas, the Member States should be able to rely on increased operational and technical reinforcement by migration management support teams composed of teams of experts from Member States deployed through the European Union Agency for Asylum, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union and Europol or other relevant Union agencies, as well as experts from the staff of the European Union Agency for Asylum and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. The Agency should ensure coordination of its activities in the migration management support teams with the Commission and the other relevant Union agencies.
- (21) For the purpose of fulfilling its mission, and to the extent required for the accomplishment of its tasks, the European Union Agency for Asylum should cooperate with Union bodies, agencies and offices, in particular with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union and the European Union Agency for Fundamental Rights, in matters covered by this Regulation in the framework of working arrangements concluded in accordance with Union law and policy. Those working arrangements should receive the Commission's prior approval.
- (22) The European Union Agency for Asylum should cooperate with the European Migration Network, established by Council Decision 2008/381/EC<sup>10</sup>, to ensure synergies and avoid duplication of activities.
- (23) The European Union Agency for Asylum should cooperate with international organisations, in particular the United Nations High Commissioner for Refugees (UNHCR) in matters covered by this Regulation in the framework of working arrangements so as to benefit from their expertise and support. To that end, the roles of UNHCR and the other relevant international organisations should be fully recognised and those organisations should be involved in the work of the Agency. The working arrangements should receive the Commission's prior approval.
- (24) The European Union Agency for Asylum should facilitate operational cooperation between Member States in matters covered by this Regulation. It should also cooperate with authorities of third-countries in the framework of working arrangements which should receive the Commission's prior approval. The Agency should act in accordance with the Union's external relations policy and under no circumstances should it formulate any independent external policy. In their cooperation with third countries, the Agency and the Member States should comply with norms and standards at least equivalent to those set by Union legislation also when the cooperation with third countries takes place on the territory of those countries.

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<sup>10</sup> Council Decision of 14 May 2008 establishing a European Migration Network (OJ L 131, 21.5.2008, p. 7).



- (25) The European Union Agency for Asylum should maintain a close dialogue with civil society with a view to exchanging information and pooling knowledge in the field of asylum. The Agency should set up a Consultative Forum which should constitute a mechanism for the exchange of information and the sharing of knowledge. The Consultative Forum should assist the Executive Director and the Management Board in matters covered by this Regulation.
- (26) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. All activities of the European Union Agency for Asylum shall be carried out in full respect of these fundamental rights and principles, including the right to asylum, the protection from *refoulement*, the right to respect for private and family life, the right to protection of personal data and the right to an effective remedy. The rights of the child and the special needs of vulnerable persons shall always being taken into account.
- (27) The Commission and the Member States should be represented on the Management Board of the European Union Agency for Asylum in order to exercise a policy and political oversight over its workings. The Management Board should, where possible, consist of the operational heads of the Member States' asylum administrations or their representatives. It should be given the necessary powers, in particular to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision-making by the Agency, and appoint an Executive Director and Deputy Executive Director. The Agency should be governed and operated in line with the principles of the Common Approach on Union decentralised agencies adopted on 19 July 2012 by the European Parliament, the Council and the European Commission.
- (28) In order to ensure uniform conditions for the implementation of this Regulation, in particular as regards situations requiring urgent action at the external borders, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.<sup>11</sup>
- (29) The European Union Agency for Asylum should be independent as regards operational and technical matters and it should enjoy legal, administrative and financial autonomy. To that end, it is necessary and appropriate that the Agency should be a body of the Union having legal personality and exercising the implementing powers conferred upon it by this Regulation.
- (30) In order to guarantee the autonomy of the European Union Agency for Asylum, it should have its own budget, most of which comes essentially from a contribution from the Union. The financing of the Agency should be subject to an agreement by the budgetary authority as set out in point 31 of the Inter-institutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management.<sup>12</sup> The Union budgetary procedure should be applicable to the Union's contribution and to any grant chargeable to the general budget of the European Union. The auditing of accounts should be undertaken by the Court of Auditors.

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<sup>11</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>12</sup> OJ C 373, 20.12.2013, p. 1.

- (31) Any financial resources made available by the Agency under the form of grants, delegated agreements or form of contract in accordance with this Regulation should not result in double financing with other national, European or international sources.
- (32) 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) should apply to the European Union Agency for Asylum.
- (33) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>13</sup> should apply without restriction to the European Union Agency for Asylum, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office.<sup>14</sup>
- (34) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>15</sup> should apply to the European Union Agency for Asylum.
- (35) Any processing of personal data by the European Union Agency for Asylum within the framework of this Regulation should be conducted in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council, and should respect the principles of necessity and proportionality.<sup>16</sup> The Agency may process personal data to perform its tasks of providing operational and technical assistance to Member States, to facilitate the exchange of information with Member States, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, Europol or Eurojust, to analysing information on the situation of asylum and for administrative purposes. Any further processing of retained personal data for purposes other than those set out in this Regulation should be prohibited.
- (36) Regulation (EU) No XXX/2016 of the European Parliament and of the Council<sup>17</sup> on the protection of individuals with regard to the processing of personal data and on the free movement of such data applies to the processing of personal data by the Member States carried out in application of this Regulation unless such processing is carried out by the designated or verifying competent authorities of the Member States for the purposes of the prevention, investigation, detection or prosecution of terrorist offences or of other serious criminal offences including the safeguarding against and the prevention of threats to public security.
- (37) Directive 2016/XXX/EU of the European Parliament and of the Council<sup>18</sup> on the protection of individuals with regard to the processing of personal data by competent

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<sup>13</sup> 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).

<sup>14</sup> OJ L 136, 31.5.1999, p. 15.

<sup>15</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

<sup>16</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

<sup>17</sup> OJ L [...]

<sup>18</sup> OJ L [...]

authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data applies to the processing of personal data by competent authorities of the Member States for the purposes of the prevention, investigation detection or prosecution of terrorist offences or of other serious criminal offences pursuant to this Regulation.

- (38) The rules set out in Regulation (EU) No XXX/2016 regarding the protection of the rights and freedoms of individuals, notably their right to the protection of personal data concerning them, with regard to the processing of personal data should be specified in respect of the responsibility for the processing of the data, of safeguarding the rights of data subjects and of the supervision of data protection, in particular as far as certain sectors are concerned.
- (39) The Agency should process personal data only for the purposes of performing its tasks of providing operational and technical assistance, when carrying out case sampling for the purposes of the monitoring exercise, possibly handling applications for international protection from children or vulnerable persons, facilitating the exchange of information with Member States, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, Europol or Eurojust and in the framework of information obtained when performing its tasks in the migration management support teams at hotspots, and for analysing information on the situation of asylum. Any processing of personal data should respect the principle of proportionality and be strictly limited to personal data necessary for these purposes.
- (40) Any personal data that the Agency processes, except those processed for administrative purposes, should be deleted after 30 days. A longer storage period is not necessary for the purposes for which the Agency processes personal data within the framework of this Regulation;
- (41) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on [...].<sup>19</sup>
- (42) Since the objectives of this Regulation, namely the need to facilitate the implementation and improve the functioning of the CEAS, to strengthen practical cooperation and information exchange among Member States on asylum-related matters, to promote Union law and operational standards to ensure a high degree of uniformity as regards asylum procedures, reception conditions and the assessment of protection needs across the Union, to monitor the operational and technical application of Union law and standards as regards asylum and to provide increased operational and technical support to Member States for the management of the asylum and reception systems, in particular to Member States subject to disproportionate pressure on their asylum and reception systems, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (43) *[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European*

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*Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]*

OR

*[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]*

OR

*[(XX) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.*

*(XX) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]*

OR

*[(XX) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.*

*(XX) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]*

(44) In accordance with Articles 1 and 2 of the Protocol (No 22) on the Position of Denmark, annexed to the Treaties, Denmark is not taking part in the adoption of this Regulation and is not bound by it nor is it subject to its application.

(45) Taking into account that Denmark has until now contributed to the practical cooperation between Member States within the area of asylum, the Agency should facilitate operational cooperation with Denmark. To that end, a Danish representative should be invited to participate in all the meetings of the Management Board, without the right to vote.

(46) The competence to take decisions by Member States' asylum authorities on individual applications for international protection remains with Member States.

(47) This Regulation aims to amend and expand the provisions of Regulation (EU) No 439/2010 of the European Parliament and of the Council. Since the amendments to be made are of a substantial nature, that act should, in the interests of clarity, be replaced and repealed. References to the repealed regulation should be construed as references to this Regulation.

HAVE ADOPTED THIS REGULATION:

## **CHAPTER 1**

### **THE EUROPEAN UNION AGENCY FOR ASYLUM**

#### *Article 1*

##### **Subject-matter and scope**

1. The European Union Agency for Asylum (the Agency) shall ensure the efficient and uniform application of Union asylum law in Member States. It shall facilitate the implementation and improve the functioning of the Common European Asylum System (CEAS), and it shall be responsible for enabling convergence in the assessment of applications for international protection across the Union.
2. The Agency shall be a centre of expertise by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it disseminates, the transparency of its operating procedures and methods, its diligence in performing the duties assigned to it, and the information technology support needed to fulfil its mandate.
3. The European Union Agency for Asylum shall be the new name for the European Asylum Support Office established by Regulation (EU) No 439/2010 of the European Parliament and of the Council. The activities of the Agency shall henceforth be based on this Regulation.

#### *Article 2*

##### **Tasks**

1. The Agency shall perform the following tasks:
  - (a) facilitate, coordinate and strengthen practical cooperation and information exchange among Member States on various aspects of asylum;
  - (b) gather and analyse information on the situation of asylum and on the implementation of the CEAS;
  - (c) support Member States in implementing the CEAS;
  - (d) assist Member States on training of experts from all national administrations, courts and tribunals, and national services responsible for asylum matters, including the development of a common core curriculum;
  - (e) draw up and regularly update reports and other documents providing for information on countries of origin at the level of the Union;
  - (f) coordinate efforts among Member States to engage in and develop a common analysis of the situation in third countries of origin;
  - (g) provide effective operational and technical assistance to Member States, in particular when they are subject to disproportionate pressure on their asylum and reception systems;
  - (h) assist with the relocation or transfer of beneficiaries of international protection within the Union;

- (i) set up and deploy asylum support teams and an asylum intervention pool;
  - (j) deploy the necessary technical equipment for the asylum support teams and the experts from the asylum intervention pool;
  - (k) establish operational standards, indicators, guidelines and best practices in regard to the implementation of all instruments of Union law on asylum;
  - (l) monitor and assess the implementation of the CEAS as well as the asylum and reception systems of Member States;
  - (m) support Member States in their cooperation with third countries in matters related to asylum, in particular as regards resettlement.
2. The Agency shall support Member States in relation to the external dimension of the CEAS. In this regard, and in agreement with the Commission, the Agency shall coordinate the exchange of information and other action taken on issues arising from the implementation of instruments and mechanisms relating to the external dimension of the CEAS.
  3. The Agency may engage in communication activities on its own initiative in the fields within its mandate. Communication activities shall not be detrimental to the tasks referred to in paragraphs 1 and 2, and shall be carried out in accordance with the relevant communication and dissemination plans adopted by the Management Board.

## **CHAPTER 2**

### **PRACTICAL COOPERATION AND INFORMATION ON ASYLUM**

#### *Article 3*

##### **Duty to cooperate in good faith and exchange information**

1. The Agency and the Member States' asylum authorities, national immigration and asylum services and other national services shall be subject to a duty to cooperate in good faith and an obligation to exchange information.
2. The Agency shall work closely with the Member States' asylum authorities, with national immigration and asylum services and other national services and with the Commission. The Agency shall carry out its duties without prejudice to those assigned to other relevant bodies of the Union and shall work closely with those bodies and with the United Nations High Commissioner for Refugees (UNHCR).
3. The Agency shall organise, promote and coordinate activities enabling the exchange of information among Member States, including through the establishment of networks as appropriate. For those purposes, the Agency and the Member States' asylum authorities, national immigration and asylum services and other national services shall share, in a timely and accurate manner, all necessary information.

#### *Article 4*

##### **Information analysis on the situation of asylum**

1. The Agency shall gather and analyse information on the situation of asylum in the Union and third countries insofar as this may have an impact on the Union, including up-to-date information on root causes, migratory and refugee flows as well as on any

sudden arrivals of large numbers of third-country nationals which may cause disproportionate pressure on asylum and reception systems, with a view to foster quick and reliable mutual information to the Member States and to identify possible risks to the Member States' asylum systems.

2. The Agency shall base its analysis on information provided, in particular, by Member States, relevant Union institutions and agencies, the European External Action Service as well as UNHCR and other international organisations.

For this purpose, the Agency shall work in close collaboration with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, and shall, in particular, rely on the risk analysis carried out by that Agency so as to ensure the highest level of consistency and convergence in the information provided by both Agencies.

3. The Agency shall ensure the rapid exchange of relevant information amongst Member States and with the Commission. It shall also submit, in a timely and accurate manner, the results of its analysis to the Management Board.

#### *Article 5*

#### **Information on the implementation of the CEAS**

1. The Agency shall organise, coordinate and promote the exchange of information among Member States and between the Commission and the Member States concerning the implementation of all instruments of Union law on asylum.
2. The Agency shall create factual, legal and case law databases on the application and interpretation of Union, national and international asylum instruments making use, in particular, of existing arrangements. No personal data shall be stored in such databases, unless such data has been obtained by the Agency from documents that are publicly accessible.
3. In particular, the Agency shall gather information on the following:
  - (a) the processing of applications for international protection by national administrations and authorities;
  - (b) national law and legal developments in the field of asylum, including case law;
  - (c) relevant case law of the Court of Justice of the European Union and of the European Court of Human Rights.

#### *Article 6*

#### **Support to the Dublin system**

The Agency shall perform its tasks and obligations as set out in Regulation (EU) No XXX/XXX.<sup>20</sup>

#### *Article 7*

#### **Training**

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1. The Agency shall establish and develop training for members of its own staff, members of all national administrations, courts and tribunals, and national services responsible for asylum matters in the Member States.
2. The Agency shall develop such training in close cooperation with Member States and, in cooperation with appropriate training entities in the Member States, including academic institutions and other relevant organisations.
3. The Agency shall develop general, specific or thematic training tools, which may include ‘train-the-trainers’ methodology and e-learning.
4. The Agency shall establish and develop a European asylum curriculum taking into account the Union's existing cooperation in that field. Member States shall integrate the common core curriculum in the training of staff of national services and authorities responsible for asylum matters pursuant to their obligation under Article 4(3) of Directive 2013/32/EU of the European Parliament and of the Council<sup>21</sup> to ensure proper training of their staff.
5. The specific or thematic training activities regarding asylum matters shall include:
  - (a) international and Union fundamental rights standards, and in particular the provisions of the Charter of Fundamental Rights of the European Union, as well as international and Union law on asylum, including specific legal and case law issues;
  - (b) issues related to the handling of applications for international protection, in particular those from vulnerable persons with specific needs and children, including as regards the best interests of the child assessment, specific procedural safeguards such as respect of the child's right to be heard and child protection aspects such as age-assessment techniques;
  - (c) interview techniques, including special attention given to children, vulnerable groups and victims of torture;
  - (d) fingerprinted data, including data quality and security requirements;
  - (e) the use of expert medical and legal reports in asylum procedures;
  - (f) issues relating to the production and use of information on countries of origin;
  - (g) reception conditions, including special attention given to unaccompanied children and children with their families, vulnerable groups and victims of torture.
6. The training offered shall be of high quality and shall identify key principles and best practices with a view to greater convergence of administrative methods, decisions and legal practice, in full respect of the independence of national courts and tribunals.
7. The Agency shall take the necessary initiatives to ensure that the experts who participate in the asylum support teams and the asylum intervention pool, have received specialist training relevant to their duties and functions prior to their participation in the operational activities organised by the Agency. The Agency shall conduct regular exercises with those experts in accordance with the specialist training and exercise schedule referred to in its annual work programme.

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<sup>21</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ L 180, 29.6.2013, p. 60).



8. The Agency may organise training activities in cooperation with Member States or third countries on their territory.

## **CHAPTER 3**

### **COUNTRY OF ORIGIN INFORMATION**

#### *Article 8*

##### **Information on countries of origin at Union level**

1. The Agency shall be a centre for gathering relevant, reliable, accurate and up-to date information on countries of origin of persons applying for international protection, including child-specific information and targeted information on persons belonging to vulnerable groups. It shall draw up and regularly update reports and other products providing for information on countries of origin at the level of the Union including on thematic issues specific to countries of origin.
2. The Agency shall, in particular:
  - (a) make use of all relevant sources of information, including its information analysis on the situation of asylum and other information gathered from governmental, non-governmental and international organisations, including through the networks referred to in Article 9, as well as Union institutions, agencies, bodies, offices and the European External Action Service;
  - (b) manage and further develop a portal for gathering information on countries of origin;
  - (c) develop a common format and a common methodology including terms of reference, in line with the requirements of Union law on asylum, for developing reports and other products with information on countries of origin at the level of the Union.

#### *Article 9*

##### **European networks on country of origin information**

1. The Agency shall ensure the coordination of national initiatives producing country of origin information by establishing and managing networks among Member States on country of origin information.
2. The purpose of the networks provided for in paragraph 1 shall be for Member States to:
  - (a) exchange and update national reports and other products on countries of origin including thematic issues specific to countries of origin;
  - (b) submit queries to the Agency related to specific questions of fact that may arise from applications for international protection, without prejudice to confidentiality rules as established in national law.

#### *Article 10*

##### **Common analysis on country of origin information**

1. To foster convergence in applying the assessment criteria established in Directive 2011/95/EU of the European Parliament and of the Council,<sup>22</sup> the Agency shall coordinate efforts among Member States to engage in and develop a common analysis providing guidance on the situation in specific countries of origin.
2. The Executive Director shall, after consulting the Commission, submit that common analysis to the Management Board for endorsement. Member States shall be required to take that common analysis into account when examining applications for international protection, without prejudice to their competence for deciding on individual applications.
3. The Agency shall ensure that the common analysis is kept constantly under review and updated to the extent necessary. Any such revision shall likewise require prior consultation of the Commission and endorsement by the Management Board.
4. The Member States shall, on a monthly basis, submit to the Agency relevant information on the decisions taken in relation to applicants for international protection originating from third countries subject to the common analysis. That information shall, in particular, include:
  - (a) statistics on the number of decisions granting international protection to applicants from each country of origin which is the subject of the common analysis and specifying the type of protection;
  - (b) statistics on the number of decisions refusing international protection to applicants from each country of origin which is the subject of the common analysis;
  - (c) statistics on the number of decisions taken in relation to applicants from each country of origin which is the subject of the common analysis but where that common analysis was not followed and the reasons for not following it.

#### *Article 11*

##### **Designation of safe countries of origin and safe third countries**

1. The Agency shall assist the Commission in regularly reviewing the situation in third countries which are included in the common EU list of safe countries of origin established by Regulation (EU) No XXX/XXX, including those that have been suspended by the Commission and those that have been removed from that list.
2. The Agency shall, at the request of the Commission, provide it with information on specific third countries which could be considered for inclusion in the common EU list of safe countries of origin in accordance with Regulation (EU) No XXX/XXX.
3. When notifying the Commission in accordance with Articles 37(4), 38(5) and 39(7) of Directive 2013/32/EU, Member States shall also inform the Agency of the third countries which are designated as safe countries of origin or safe third countries or to which the concepts of first country of asylum, safe third country, or European safe third country is applied pursuant to Articles 35, 38 and 39 of Directive 2013/32/EU, respectively.

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<sup>22</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ L 337, 20.12.2011, p. 9).

The Commission may request the Agency to carry out a review of the situation in any such third country with a view to assess whether the relevant conditions and criteria set out in that Directive are respected.

## **CHAPTER 4**

### **OPERATIONAL STANDARDS AND GUIDELINES**

#### *Article 12*

##### **Operational standards, guidelines and best practices**

1. The Agency shall organise and coordinate activities promoting a correct and effective implementation of Union law, including through the development of operational standards, indicators, guidelines or best practices on asylum-related matters, and the exchange of best practices in asylum-related matters among Member States.
2. The Agency shall, on its own initiative or at the request of the Commission, and in consultation with the Commission, develop operational standards on the implementation of the instruments of Union law on asylum and indicators for monitoring compliance with those operational standards as well as guidelines and best practices related to the implementation of the instruments of Union law on asylum. The Agency shall, following consultation with the Commission and after adoption by the Management Board, communicate those standards, indicators, guidelines or best practices to the Member States.
3. The Agency shall, at the request of Member States, assist them to apply the operational standards, guidelines and best practices to their asylum and reception systems by providing the necessary expertise or operational and technical assistance.

## **CHAPTER 5**

### **MONITORING AND ASSESSMENT**

#### *Article 13*

##### **Mechanism for monitoring and assessing the asylum and reception systems**

1. The Agency, in close cooperation with the Commission, shall establish a mechanism to:
  - (a) monitor the implementation and assess all aspects of the CEAS in Member States, in particular the Dublin system, reception conditions, asylum procedures, the application of criteria determining protection needs and the nature and quality of protection afforded to persons in need of international protection by Member States, including as regards the respect of fundamental rights, child protection safeguards and the needs of vulnerable persons;
  - (b) monitor compliance by Member States with operational standards, indicators guidelines and best practices on asylum;
  - (c) verify the asylum and reception systems, capabilities, infrastructure, equipment, staff available, including for translation and interpretation in Member States, financial resources and the capacity of Member States' asylum

authorities, including the judicial system, to handle and manage asylum cases efficiently and correctly.

2. The Agency may, in particular, base its assessment on information provided by Member States, information analysis on the situation of asylum developed by the Agency, on-site visits and case sampling.

For that purpose, Member States shall, at the request of the Agency, provide it with the necessary information as regards asylum procedures, equipment, infrastructure, reception conditions, recognition rates and quality of protection as well as staff and financial resources at national level to ensure an efficient management of the asylum and reception system. The Member States shall also cooperate with the Agency and shall facilitate any on-site visit that the Agency shall carry out for the purposes of the monitoring exercise.

3. The Agency shall assess the readiness of Member States to meet challenges from possible disproportionate pressure on their asylum and reception systems. The Agency may request Member States to provide it with their contingency planning for measures to be taken to deal with such possible disproportionate pressure and shall assist Member States to prepare and review their contingency planning, where necessary.

#### *Article 14*

##### **Procedure for monitoring and assessment by the Agency**

1. The Management Board shall, in consultation with the Commission, set the programme for monitoring and assessing the asylum and reception systems in each Member State, or of all Member States on the basis of thematic or specific aspects of the asylum systems. That programme shall form part of the multi-annual and annual programming referred to in Article 41.

The multi-annual programming shall list the Member States whose asylum and reception systems shall be monitored each year, ensuring that each Member State shall be monitored at least once in every five-year period.

The annual work programme shall list the Member States to be monitored the following year in accordance with the multi-annual programming and the thematic assessments. It shall include an indication of what the monitoring shall consist of and a schedule for any on-site visits.

The annual work programme may be adapted if necessary in accordance with Article 41.

The Agency may initiate a monitoring exercise for the assessment of the asylum or reception systems of a Member State on its own initiative or at the request of the Commission whenever there are serious concerns regarding the functioning of any aspect of that Member State's asylum or reception systems.

2. The Agency shall set up teams of experts for each monitoring exercise, including for the on-site visits as necessary. The teams of experts shall be composed of experts from the Agency's own staff and Commission representatives. The team of experts shall be responsible for drawing up a report based on the findings of on-site visits and information provided by Member States.

3. The Executive Director shall transmit the draft report of the team of experts to the Member State concerned, which shall provide its comments on that draft report. The Executive Director shall then submit the draft report, taking into account the comments of the Member State concerned, to the Management Board. The Management Board shall adopt the monitoring report and transmit it to the Commission.
4. The Executive Director, after consultation with the Commission, shall submit draft recommendations to the Member State concerned outlining the necessary measures to address shortcomings identified in the monitoring report. The Member State concerned shall be given one month to comment on the draft recommendations. After giving consideration to those comments, the Management Board shall adopt the recommendations and it shall invite the Member State concerned to draw up an action plan outlining the measures to remedy any shortcomings.
5. The Member State concerned shall provide the Agency with an action plan within one month from adoption of the recommendations referred to in paragraph 4. That Member State shall report to the Agency on the implementation of the action plan within three months from the adoption of the recommendations and shall thereafter continue to report every month for a maximum of six months.
6. The Agency shall inform the Commission on a regular basis of the implementation of the action plan.

#### *Article 15*

#### **Follow-up and monitoring**

1. Where, after the period referred to in Article 14(5), the Member State concerned has not fully implemented the action plan and the shortcomings in the asylum and reception systems are so serious that they jeopardize the functioning of the CEAS, the Commission shall, based on its own assessment of the implementation of the action plan and the seriousness of the shortcomings, adopt recommendations addressed to that Member State outlining the measures needed to remedy the serious shortcomings, and where necessary setting out the measures to be taken by the Agency to support that Member State.
2. The Commission may, taking into account the seriousness of the shortcomings identified, organise on-site visits to the Member State concerned to verify the implementation of the action plan.
3. The Member State concerned shall report to the Commission on the implementation of the recommendations referred to in paragraph 1 within the time-limit set in those recommendations. If after that time-limit, the Commission is not satisfied that the Member State has fully complied with those recommendations, it may take further action in accordance with Article 22(3).
4. The Commission shall inform the European Parliament and the Council on a regular basis about the progress made by the Member State concerned.

## CHAPTER 6

### OPERATIONAL AND TECHNICAL ASSISTANCE

#### *Article 16*

##### **Operational and technical assistance by the Agency**

1. Member States may request the Agency for assistance in implementing their obligations with regard to asylum, in particular when their asylum and reception systems are subject to disproportionate pressure.
2. Member States shall submit a request for assistance to the Executive Director describing the situation and the purpose of the request. The request shall be accompanied by a detailed assessment of needs. The Executive Director shall evaluate, approve and coordinate requests for assistance. Each shall be subject to a thorough and reliable assessment enabling the Agency to identify and propose a set of measures as referred to in paragraph 3 that can meet the needs of the Member State concerned.
3. The Agency shall organise and coordinate, for a limited period of time, one or more of following operational and technical measures:
  - (a) assist Member States with the identification and registration of third-country nationals;
  - (b) facilitate the examination of applications for international protection that are under examination by the competent national authorities;
  - (c) provide assistance to competent national authorities responsible for the examination of applications for international protection;
  - (d) facilitate Member States' initiatives of technical cooperation in processing of applications for international protection;
  - (e) assist with the provision of information on the international protection procedure;
  - (f) advise and coordinate the setting up or provision of reception facilities by the Member States, in particular emergency accommodation, transport and medical assistance;
  - (g) assist with the relocation or transfer of beneficiaries of international protection within the Union;
  - (h) provide interpretation services;
  - (i) assist Member States in ensuring that all the necessary child rights and child protection safeguards are in place;
  - (j) form part of the migration management support teams at hotspot areas referred to in Regulation No XXX/XXX.<sup>23</sup>
4. The Agency shall finance or co-finance the activities set out in paragraph 3 from its budget in accordance with the financial rules applicable to the Agency.

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<sup>23</sup> OJ L [...]

5. The Executive Director shall evaluate the result of the operational and technical measures and shall transmit detailed evaluation reports to the Management Board within 60 days from the end of those measures. The Agency shall make a comprehensive comparative analysis of those results which shall be included in the annual activity report referred to in Article 65.

#### *Article 17*

##### **Asylum support teams**

1. The Agency shall deploy asylum support teams to Member States to provide operational and technical assistance in accordance with Article 16.
2. The asylum support teams shall consist of experts from the Agency's own staff, experts from Member States or experts seconded by Member States to the Agency.
3. 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 experts to be made available for the asylum support teams. The same procedure shall apply to any subsequent changes in the profiles and the overall number of experts.
4. Member States shall contribute to the asylum support teams through a national expert pool on the basis of the various defined profiles and by nominating experts corresponding to the required profiles.
5. As part of the asylum support teams, the Agency shall set up a list of interpreters. Member States shall assist the Agency in identifying interpreters for the list of interpreters. Member States may choose either to deploy the interpreters or to make them available by video-conferencing.
6. The contribution by Member States as regards their own experts or experts seconded to the Agency for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and the Member States. In accordance with those agreements, Member States shall make the experts immediately available for deployment unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.
7. Member States shall ensure that the experts that they contribute match the profiles and numbers decided upon by the Management Board. The duration of deployment shall be determined by the home Member State but it shall not be less than 30 days.
8. The Agency shall contribute to the asylum support teams with experts from its own staff employed specifically for field work and interpreters.

#### *Article 18*

##### **Asylum intervention pool**

1. For the purposes of Article 22, the Management Board shall, on a proposal of the Executive Director, set up an asylum intervention pool which shall constitute a reserve of experts placed at the immediate disposal of the Agency. For that purpose, Member States shall, on a yearly basis, make available to the Agency a number of experts of not less than 500 persons.
2. The Management Board shall, on a proposal of the Executive Director, decide by a three-fourths majority of members with a right to vote on the profiles of experts and

on the share that each Member State shall contribute to constitute the asylum intervention pool. The same procedure shall apply to any subsequent changes in the profiles and the overall number of experts.

3. Member States shall contribute to the asylum intervention pool through a national expert pool on the basis of the various defined profiles and by nominating experts corresponding to the required profiles. The duration of deployment shall be determined by the home Member State but it shall not be less than 30 days.

#### *Article 19*

#### **Operational plan**

1. The Executive Director and the host Member State shall agree on an operational plan. The operational plan shall be binding on the Agency, the host and participating Member States.
2. The operational plan shall set out in detail the conditions for the provision of the operational and technical assistance and the deployment of the asylum support teams or experts from the asylum intervention pool, including the following:
  - (a) a description of the situation, with the modus operandi and objectives of the deployment, including the operational objective;
  - (b) the foreseeable duration of the deployment;
  - (c) the location in the host Member State where the asylum support teams or experts from the asylum intervention pool shall be deployed;
  - (d) logistical arrangements including information on working conditions and the environment at the location where the asylum support teams or experts from the asylum intervention pool shall be deployed;
  - (e) a detailed and clear description of the tasks and special instructions for the asylum support teams or experts from the asylum intervention pool, including the national and European databases that they are authorised to consult and the equipment that they may use or carry in the host Member State;
  - (f) the composition of the asylum support teams or the experts to be deployed from the asylum intervention pool;
  - (g) the technical equipment deployed, including specific provisions such as conditions of use, transport and other logistics and financial provisions;
  - (h) regarding assistance with applications for international protection, including as regards the examination of such applications, specific information on the tasks that the asylum support teams or the experts from the asylum intervention pool may perform as well as reference to applicable national and Union law;
  - (i) a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the final evaluation report;
  - (j) modalities of cooperation with third countries, other Union agencies, bodies, offices or international organisations;
  - (k) procedures 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.



3. Having regard to point (e) of paragraph 2, the host Member State shall authorise experts from the asylum support teams or the asylum intervention pool to consult European databases and it may authorise them to consult its national databases in compliance with Union and national law on access and consultation of those databases, and as necessary to achieve the objectives and perform the tasks outlined in the operational plan.
4. Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State. The Agency shall immediately send a copy of the amended or adapted operational plan to the participating Member States.

#### *Article 20*

#### **Procedure for deploying asylum support teams**

1. If necessary, the Executive Director may send experts from the Agency to assess the situation in the Member State requesting assistance. The Executive Director shall immediately notify the Management Board of any request for deployment of asylum support teams.
2. The Executive Director shall take a decision on the request for deployment of asylum support teams within three working days from the date of receipt of the request. The Executive Director shall at the same time notify the Member State requesting assistance and the Management Board of the decision in writing stating the main reasons for his or her decision.
3. When determining the composition of each asylum support team, the Executive Director shall take into account the particular circumstances of the Member State requesting assistance and its assessment of needs. The asylum support team shall be constituted in accordance with the operational plan.
4. The Executive Director and the host Member State shall draw up an operational plan within three working days from the day on which the decision to deploy the asylum support teams is taken.
5. As soon as the operational plan is agreed, the Executive Director shall request the Member States to deploy the experts within no more than seven working days. The Executive Director shall indicate the number and profiles required from the Member States. That information shall be provided, in writing, to the national contact points and shall specify the scheduled date of deployment. A copy of the operational plan shall also be sent to the national contact points.
6. The Executive Director shall, after informing the host Member State, suspend or terminate the deployment of the asylum support teams if the conditions to carry out the operational and technical measures are no longer fulfilled or if the operational plan is not respected by the host Member State.

#### *Article 21*

#### **Migration management support teams**

1. Where a Member State requests operational and technical reinforcement by migration management support teams as referred to in Article 17 of Regulation No XXX/XXX or where migration management support teams are deployed at hotspot areas as referred to in Article 18 of Regulation No XXX/XXX, the Executive

Director shall ensure coordination of the Agency's activities in the migration management support teams with the Commission and with other relevant Union agencies, in particular, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States.

2. The Executive Director shall, as appropriate, launch the procedure for deployment of asylum support teams or experts from the asylum intervention pool in accordance with Articles 17 and 18. The operational and technical reinforcement provided by the asylum support teams or experts from the asylum intervention pool in the framework of the migration management support teams may include:
  - (a) the screening of third-country nationals, including their identification, registration, and where requested by Member States, their fingerprinting;
  - (b) the registration of applications for international protection and, where requested by Member States, the examination of such applications;
  - (c) the provision of information on asylum procedures, including relocation and specific assistance to applicants or potential applicants that could be subject to relocation.

#### *Article 22*

#### **Disproportionate pressure on the asylum and reception system**

1. Where the asylum and reception systems of a Member State are subject to disproportionate pressure that places exceptionally heavy and urgent demands on those systems, the Agency shall, at the request of the Member State concerned or on its own initiative, organise and coordinate a comprehensive set of operational and technical measures as referred to in Article 16 and deploy experts from the asylum intervention pool referred to in Article 18 and experts from its own staff to reinforce the asylum and reception systems within a short period of time.
2. The experts of the asylum intervention pool shall be deployed in accordance with the procedure set out in Article 20 provided however that experts shall be deployed from each Member State within three working days from the date on which the operational plan is agreed upon by the Executive Director and the Member State requesting assistance. The Member States may not invoke the exception provided for in Article 17(6).
3. Where in the event of disproportionate pressure on the asylum or reception systems a Member State does not request the Agency for operational and technical assistance or does not accept an offer by the Agency for such assistance or does not take sufficient action to address that pressure, or where it does not comply with the Commission's recommendations referred to in Article 15(3), thereby rendering the asylum or reception systems ineffective to the extent of jeopardising the functioning of the CEAS, the Commission may adopt a decision by means of an implementing act, identifying one or more of the measures set out in Article 16(3) to be taken by the Agency to support the Member State concerned. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 64.
4. For the purposes of paragraph 3, the Executive Director shall, within two working days from the date of adoption of the Commission decision, determine the actions needed to be taken for the practical execution of the measures identified in the

Commission decision. In parallel, the Executive Director and the Member State concerned shall agree on the operational plan.

5. The Agency shall, without delay and in any case within three working days from date of establishment of the operational plan, deploy the necessary experts from the asylum intervention pool, as well as experts from its own staff. Where necessary, the deployment of experts from the asylum intervention pool shall be immediately complemented by asylum support teams.
6. The Member State concerned 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.
7. The Member States shall make available the experts from the asylum intervention pool as determined by the Executive Director.

### *Article 23*

#### **Technical equipment**

1. Without prejudice to the obligation of Member States to supply the necessary facilities and equipment for the Agency to be able to provide the required operational and technical assistance, the Agency may deploy its own equipment to Member States to the extent that this may be needed by the asylum support teams or the experts from the asylum intervention pool and insofar as this may complement equipment already made available by the Member States or other Union agencies.
2. The Agency may acquire or lease technical equipment by decision of the Executive Director, in consultation with the Management Board. Any acquisition or leasing of equipment 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 and in accordance with the financial rules applicable to the Agency.

### *Article 24*

#### **National contact point**

Each Member State shall appoint a national contact point for communication with the Agency on all matters relating to the operational and technical assistance referred to in Articles 16 and 22.

### *Article 25*

#### **Coordinating officer of the Agency**

1. The Agency shall ensure the operational implementation of all the organisational aspects, including the presence of staff members of the Agency, deployment of asylum support teams or experts from the asylum intervention pool throughout the provision of operational and technical assistance referred to in Articles 16 and 22.
2. The Executive Director shall appoint one or more experts from the staff of the Agency to act or to be deployed as a coordinating officer for the purposes of paragraph 1. The Executive Director shall notify the host Member State of such designations.

3. The coordinating officer shall foster cooperation and coordination between the host Member State and the participating Member States. In particular, the coordinating officer shall:
  - (a) act as an interface between the Agency, the host Member State and experts of the asylum support teams or experts from the asylum intervention pool, providing assistance, on behalf of the Agency, on all issues relating to their conditions of deployment;
  - (b) monitor the correct implementation of the operational plan;
  - (c) act on behalf of the Agency on all aspects of the deployment of the asylum support teams or the experts from the asylum intervention pool and report to the Agency on all those aspects;
  - (d) report to the Executive Director where the operational plan is not adequately implemented.
4. The Executive Director may authorise the coordinating officer to assist in resolving any disputes concerning the implementation of the operational plan and the deployment of asylum support teams or experts from the asylum intervention pool.
5. In discharging his or her duties, the coordinating officer shall take instructions only from the Executive Director.

#### *Article 26*

#### **Civil liability**

1. Where experts of an asylum support team or from the asylum intervention pool 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 wilful misconduct, the host Member State may address the home Member State or the Agency to obtain any sums it has paid to the victims or persons entitled on their behalf from the home Member State or the Agency.
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 wilful misconduct.
4. Any dispute between Member States or with the Agency relating to the application of paragraphs 2 and 3 of this Article 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 of the Treaty.
5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Agency shall meet costs relating to damage caused to the Agency's equipment during deployment, except in cases of gross negligence or wilful misconduct.

#### *Article 27*

#### **Criminal liability**

During the deployment of an asylum support team or experts from the asylum intervention pool, those experts 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.

#### *Article 28*

##### **Costs**

1. The Agency shall meet the costs incurred by Member States when they make their experts available for deployment to asylum support teams or as part of the asylum intervention pool, in particular:
  - (a) travel from the home Member State to the host Member State and from the host Member State to the home Member State;
  - (a) vaccinations;
  - (b) special insurance cover required;
  - (c) health care;
  - (d) daily subsistence allowances, including accommodation;
  - (e) the Agency's technical equipment;
  - (f) experts' fees.
2. The Management Board shall establish detailed rules and update them as necessary as regards the payment of the daily subsistence allowance of experts deployed by Member States to the asylum support teams.

## **CHAPTER 7**

### **INFORMATION EXCHANGE AND DATA PROTECTION**

#### *Article 29*

##### **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.
2. The Agency shall, 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,<sup>24</sup> develop and operate an information system capable of exchanging classified information with those actors, as well as personal data referred to in Articles 31 and 32 in accordance with Council Decision 2013/488<sup>25</sup> and Commission Decision (EU, Euratom) 2015/444.<sup>26</sup>

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<sup>24</sup> 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).

<sup>25</sup> 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).

<sup>26</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).

### *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 administrative purposes.
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 data**

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(3) and 21(2);
  - (b) when carrying out case sampling for the purposes of the monitoring exercise referred to in Article 13;
  - (c) when handling applications for international protection from children or vulnerable persons, upon request of Member States, as referred to in Article 13(2) and Article 16(3)(b) and (c);
  - (d) facilitating the exchange of information with Member States, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, 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 4;
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 agencies providing personal data to the Agency may 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 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.

## *Article 32*

### **Processing of personal data collected when providing operational and technical assistance**

1. 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 name, date of birth, gender, nationality, profession or education, 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 and registration referred to in Article 16(3)(a);
  - (b) where necessary to facilitate the examination of applications for international protection that are under examination by the competent national authorities as referred to in Article 16(3)(b);
  - (c) where necessary to provide assistance to competent national authorities responsible for the examination of applications for international protection as referred to in Article 16(3)(c);
  - (d) where necessary to assist with the relocation or transfer of beneficiaries of international protection within the Union as referred to in Article 16(3)(g);
  - (e) where transmission to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, Europol or Eurojust is necessary for the performance of their tasks in accordance with their respective mandates and in accordance with Article 30;
  - (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.
3. The personal data shall be deleted as soon as they have been transmitted to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, 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 not allow for the identification of a natural person at any time.

## **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.

#### *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 continue to 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 countries**

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.
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 Agency shall seek the prior approval of the Commission for such working arrangements and it shall inform the European Parliament.
3. The Agency 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(3), 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 shall coordinate actions on resettlement taken by Member States or by the Union, including the exchange of information, so as to meet the international protection needs of refugees in third countries and show solidarity with their host countries. The Agency shall gather information, monitor resettlement to Member States and support Member States with capacity building on resettlement. The Agency may also, subject to the agreement of the third country and in agreement with the Commission, coordinate any such exchange of information or other action between Member States and a third country, in the territory of that third country.



5. The Agency shall participate in the implementation of international agreements concluded by the Union with third countries, within the framework of the external relations policy of the Union, and regarding matters covered by this Regulation.
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 and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States and 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 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.

#### *Article 37*

#### **Cooperation with the UNHCR and other international organisations**

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.

### **CHAPTER 9**

## **ORGANISATION OF THE AGENCY**

#### *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.

#### *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 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:
  - (a) give general orientation for the Agency's activities and adopt each year the Agency's programming document by a majority of two-thirds of members entitled to vote and in accordance with Article 41;
  - (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;
  - (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 Employment<sup>27</sup> (appointing authority);

- (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, having requested the opinion of the Commission, the 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);
- (u) endorse the common analysis concerning country of origin information and any review of that common analysis in accordance with Article 10(2) and (3);
- (v) set the programme for monitoring and assessing the asylum and reception systems in accordance with Article 14(1);
- (w) adopt the draft report of the team of experts carrying out the monitoring exercise in accordance with Article 14(3);
- (x) adopt the recommendations following a monitoring exercise in accordance with Article 14(4);
- (y) set up and decide on the profiles and overall numbers of experts to be made available for the asylum support teams in accordance with Article 17(3);
- (z) set up and decide on the profiles and overall numbers of experts to be made available for the asylum intervention pool in accordance with Article 18(2);

<sup>27</sup>

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)

- (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 Article 35.
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. The Management Board may establish an Executive Board, composed of the Chairperson of the Management Board, the two representatives of the Commission to the Management Board and three other members of the Management Board, to assist it and the Executive Director with regard to the preparation of decisions, the annual and multi-annual programming and activities to be adopted by the Management Board. When necessary, because of urgency, the Executive Board may take certain provisional decisions on behalf of the Management Board, in particular on administrative management matters.

#### *Article 41*

##### **Multi-annual programming and annual work programmes**

1. By 30 November each year, the Management Board shall adopt 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 it 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

34 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 (l), (o), (p), (q) and (r) 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 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.
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 five 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.
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 Agency;
  - (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;

- (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;
- (n) submitting the common analysis to the Management Board in accordance with Article 10(2);
- (o) submit draft reports 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) and (4);
- (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;
- (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 Commission decision referred to in Article 22(3);
- (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 Director**

1. A Deputy Executive Director shall assist the Executive Director.
2. The provisions of Article 45 shall apply to the Deputy Executive Director.

#### *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 and shall assist the Executive Director and the Management Board in matters covered by this Regulation.
3. The Agency shall invite the European Union Agency for Fundamental Rights, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, UNHCR and other relevant organisations or bodies as referred to in paragraph 1.

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 assist 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;
  - (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 twice 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 1271/2013<sup>28</sup> shall apply.

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<sup>28</sup> 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).

## *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.
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,<sup>29</sup> 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.

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<sup>29</sup> 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.<sup>30</sup> The relevant provisions of Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012<sup>31</sup> 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.
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 relation to operational and technical matters.
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.

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<sup>30</sup> 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).

<sup>31</sup> 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).

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.

#### *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 1<sup>32</sup> 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.
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.

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<sup>32</sup> 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).

## 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 Council<sup>33</sup> 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.
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.<sup>34</sup>
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 information

1. The Agency shall apply the Commission's rules on security as set out in Commission Decisions (EU, Euratom) 2015/443<sup>35</sup> and 2015/444.<sup>36</sup> 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.

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<sup>33</sup> 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).

<sup>34</sup> 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).

<sup>35</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>36</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).

#### *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 possible conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

## **CHAPTER 12**

### **FINAL PROVISIONS**

#### *Article 64*

##### **Committee Procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.<sup>37</sup>
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the opinion of the committee is obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or two-thirds of the committee members so request.
4. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.
5. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

#### *Article 65*

##### **Reporting**

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.
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 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.

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<sup>37</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).



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. The findings of the evaluation shall be made public.
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*

## **LEGISLATIVE FINANCIAL STATEMENT**

### **1. FRAMEWORK OF THE PROPOSAL**

- 1.1. Title of the proposal
- 1.2. Policy area concerned in the ABM/ABB structure
- 1.3. Nature of the proposal
- 1.4. Objectives
- 1.5. Grounds for the proposal
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  - 3.2.1. *Summary of estimated impact on expenditure*
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## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL

#### 1.1. Title of the proposal

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

#### 1.2. Policy area concerned in the ABM/ABB structure<sup>38</sup>

Policy area: Asylum and Migration (Title 18)

Activity: Asylum

#### 1.3. Nature of the proposal

- The proposal relates to **a new action**
- The proposal relates to **a new action following a pilot project/preparatory action**<sup>39</sup>
- The proposal relates to **the extension of an existing action**
- The proposal relates to **an action redirected towards a new action**

#### 1.4. Objective

##### 1.4.1. *The Commission's multiannual strategic objective targeted by the proposal*

The aim of this proposal is it to strengthen the role of EASO and to develop it into a fully-fledged agency which facilitates the implementation and improves the functioning of the CEAS.

To reflect this development, the proposal renames EASO as the European Union Agency for Asylum.

##### 1.4.2. *Specific objectives and ABM/ABB activities concerned*

Specific objective No 1: Facilitate the implementation and improve the functioning of the CEAS

- Monitor and assess the implementation of CEAS
- Support (activities) for the CEAS implementation
- Support (activities) for MS practical cooperation
- Country of origin information and common analysis
- Promote Union law and operational standards on asylum

Specific Objective No 2: Reinforcement of operational and technical assistance to Member States

- Enhance practical cooperation and information exchange
- Operational support activities
- Cooperation with partners and stakeholders

<sup>38</sup>

ABM: activity-based management; ABB: activity-based budgeting.

<sup>39</sup>

As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

- Operational standards, guidelines and best practices on asylum
- Communication, information exchange

ABM/ABB activity concerned

Activity 18 03: Asylum and Migration

### 1.4.3. *Expected results and impact*

*Specify the effects which the proposal should have on the beneficiaries/groups targeted.*

The aim is to transform EASO into a fully-fledged Agency which is capable of:

- providing the necessary operational and technical assistance to Member States;
- increasing practical cooperation and information exchange among Member States;
- supporting a sustainable and fair distribution of applications for international protection;
- monitoring and assessing the implementation of the CEAS and the capacity of asylum and reception systems in Member States; and
- enabling convergence in the assessment of applications for international protection across the Union.

### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal.*

- Number of shortcomings found during the monitoring and assessment of the implementation of CEAS/year
- Number of support (activities) for the CEAS implementation/year
- Number of support (activities) for MS practical cooperation/year
- Number of countries of origin for which COI reports are drawn up and for which common analysis is carried out/year
- Number of operational standards, guidelines and best practices on asylum/year
- Number of practical cooperation, and networks developed/year
- Number of arrangements for information exchange/year
- Number of operational support activities/year
- Number of arrangements and activities with partners and stakeholders/year
- Number of communication activities/year

## **1.5. Grounds for the proposal**

### 1.5.1. *Requirements to be met in the short or long term*

This proposal builds upon the current mandate of EASO and expands it so as to transform EASO into a fully-fledged Agency equipped with the necessary tools to: (1) enhance practical cooperation and information exchange on asylum; (2) promote Union law and operational standards to ensure a high degree of uniform application of the legal framework on asylum; (3) ensure greater convergence in the assessment of protection needs across the Union; (4) monitor and assess the implementation of the CEAS; (5) provide increased operational and technical assistance to Member States for the management of the asylum and reception systems, in particular in cases of disproportionate pressure.

### 1.5.2. *Added value of EU involvement*

The objectives of this proposal are to facilitate the implementation and improve the functioning of the CEAS, to strengthen practical cooperation and information exchange among Member States on asylum-related matters, to promote Union law

and operational standards to ensure a high degree of uniformity as regards asylum procedures, reception conditions and the assessment of protection needs across the Union, to monitor the operational and technical application of Union law and standards as regards asylum and to provide increased operational and technical support to Member States for the management of the asylum and reception systems, in particular to Member States subject to disproportionate pressure on their asylum and reception systems.

Since it is a common and shared interest to ensure the proper application of the legal framework on asylum, through concerted action among Member States with the support of the European Union Agency for Asylum, so as to consolidate stability and order in the functioning of the CEAS, the objectives of this proposal cannot be sufficiently achieved by the Member States and can be better achieved at the level of the Union.

#### *1.5.3. Lessons learned from similar experiences in the past*

Since taking up its responsibilities in 2011, EASO has continuously supported Member States to apply the current rules and to improve the functioning of existing tools. The Agency has gained experience and earned credibility for its work as regards practical cooperation among Member States and in supporting them to implement their obligations under the CEAS. In time, the tasks undertaken by EASO progressively evolved so as to meet the growing needs of Member States and of the CEAS as a whole. The Member States increasingly rely on the operational and technical support of the Agency. The Agency has gained significant knowledge and experience in the field of asylum and it is time to transform it into a centre of expertise in its own right and not one that still significantly relies on information and expertise provided by Member States.

In the Commission's view, the Agency is one of the tools that can be used to effectively address the structural weaknesses in the CEAS which have been further exacerbated by large scale and uncontrolled arrival of migrants and asylum seekers to the European Union particularly during the past year. It would not be plausible to reform the CEAS without providing the Agency with a mandate that corresponds to the demands that the reform will entail. It is essential to equip the Agency with the means necessary to assist Member States in crisis situations, but it is all the more necessary to build a solid legal, operational and practical framework for the Agency to be able to reinforce and complement the asylum and reception systems of Member States.

#### *1.5.4. Compatibility and possible synergy with other appropriate instruments*

This proposal is consistent with the comprehensive long-term policy on better migration management as set out by the Commission in the European Agenda on Migration, which developed President Juncker's Political Guidelines into a set of coherent and mutually reinforcing initiatives based on four pillars. Those pillars consist of reducing the incentive for irregular migration, securing external borders and saving lives, a strong asylum policy and a new policy on legal migration. This proposal further implements the European Agenda on Migration, more specifically as regards the objective of strengthening the Union's asylum policy since the European Union Agency for Asylum will ensure a full and coherent implementation of the CEAS.

## 1.6. Duration and financial impact

Proposal of **limited duration**

- Proposal in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY

Proposal of **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

## 1.7. Management mode planned<sup>40</sup>

**Direct management** by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

**Shared management** with the Member States

**Indirect management** by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 208 and 209 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

[...]

[...]

<sup>40</sup>

Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

The European Union Agency for Asylum has a duty to report on its activities. The Agency must draw up an annual activity report on the situation of asylum, in which it needs to evaluate the results of the activities it carries out throughout the year. The report must contain a comparative analysis of the Agency's activities so that the Agency may improve the quality, consistency and effectiveness of the CEAS. That annual activity report must be transmitted by the Agency to the Management Board, the European Parliament and the Council.

The Commission must commission an evaluation within three years of entry into force of this Regulation, and then every five years thereafter, to assess particularly the impact, effectiveness and efficiency of the Agency and its working practices. That evaluation must cover the Agency's impact on practical cooperation on asylum-related matters and on the CEAS. The Commission must send the evaluation report together with its conclusions on the report to the European Parliament, the Council and the Management Board. The findings of the evaluation must be made public.

### **2.2. Management and control system**

#### **2.2.1. Risks identified**

- An extension of the Agency's existing competences is necessary to ensure the implementation of the CEAS and that of the reformed Dublin system. Reinforcement of the Agency's staffing and resources is necessary to ensure the fulfilment of its mission. Without these changes, the CEAS is put at risk.
- Large and uncontrolled migratory flows which continue to put asylum and reception systems under pressure thereby delaying the transition from emergency mode to orderly management the migration and asylum systems.
- Staff recruitment: the rhythm of staff recruitment may pose a risk given that the Agency's current capacity is still reduced, recruitment is relatively slow and the increasing volume of emerging tasks. The Commission seeks to mitigate this aspect by providing continuous support and monitoring.
- Delay in the adoption of the legal basis for the amended Dublin system and related IT developments that should be operated and managed by the Agency could impede the fulfilment of the Agency's new tasks in this respect.
- Continued heavy reliance on Member State knowledge and delay for the Agency in developing its own knowledge base and becoming a true centre of expertise in its own right.

#### **2.2.2. Control methods envisaged**

The Agency's accounts will be submitted for approval of the Court of Auditors and subject to the discharge procedure. The Commission's Internal Audit Service will carry out audits in cooperation with the Agency's internal auditor.

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*



- The Agency: The Executive Directive will implement the Agency's budget. Each year the Executive Director will submit to the Commission, the Management Board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous financial year. In addition, the Commission's Internal Audit Service will assist in the management of the Agency's financial operations by controlling risks, monitoring compliance by providing an independent opinion on the quality of management and control systems and making recommendations in order to improve the efficiency and the effectiveness of operations and to ensure economy in the use of the Agency's resources.

The Agency will adopt its Financial Regulation following the Delegation Regulation No 1271/2013, after having received the agreement of the Commission and the Court of Auditors. The Agency will put in place an internal audit system similar to that introduced by the Commission in the framework of its own restructuring.

- Cooperation with OLAF: the staff subject to the Commission's Staff Regulations will cooperate with OLAF to combat fraud.

- Court of Auditors: the Court of Auditors will examine the accounts in accordance with Article 248 of the Treaty and publish an annual report on the Agency's activities.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL

#### 3.1. Heading of the multiannual financial framework and expenditure budget line affected

- Existing budget lines

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [...][Heading 3]	Diff./Non-diff. <sup>41</sup>	from EFTA countries <sup>42</sup>	from candidate countries <sup>43</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	18.03.02 European Asylum Support Office (EASO)	Diff./Non-diff.	NO	NO	YES*	NO

\*EASO receives contributions from Associate Countries.

- New budget lines requested
- There is no need to request a new budget line but budget line 18 03 02 should be renamed accordingly

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [...][Heading.....] .....]	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[...][XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>41</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>42</sup> EFTA: European Free Trade Association.

<sup>43</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	3	Security and Citizenship
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European Union Agency for Asylum			Year	Year	Year	Year	Enter as many years as necessary to show the duration of the impact (see point 1.6)			<b>TOTAL</b>	
			2017 <sup>44</sup>	2018	2019	2020					
• Operational appropriations											
Number of budget line	Commitments	(1)									
	Payments	(2)									
Number of budget line	Commitments	(1a)									
	Payments	(2a)									
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>45</sup>											
Number of budget line		(3)									
<b>TOTAL appropriations for the European Union Agency for Asylum</b>			Commitments	=1+1a +3	66.206	86.971	96.686	114.100			363.963
			Payments	=2+2a +3	66.206	86.971	96.686	114.100			

<sup>44</sup> Year N is the year in which implementation of the proposal starts.

<sup>45</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

<b>Heading of multiannual financial framework</b>	<b>5</b>	'Administrative expenditure'
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EUR million (to three decimal places)

		Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
COMMISSION						
• Human resources		0,536	0,536	0,536	0,536	2,144
• Other administrative expenditure		0,030	0,030	0,030	0,030	0,120
<b>TOTAL COMMISSION</b>	Appropriations	0,566	0, 566	0, 566	0, 566	2,264

<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b>	(Total commitments = Total payments)	0, 566	0, 566	0, 566	0, 566	2,264
------------------------------------------------------------------------------------	--------------------------------------	--------	--------	--------	--------	-------

EUR million (to three decimal places)

		Year 2017 <sup>46</sup>	Year 2018	Year 2019	Year 2020	TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	66.206,5	86.971,5	96.686,5	114.100,5	363.963,5
	Payments	66.206,5	86.971,5	96.686,5	114.100,5	363.963,5

<sup>46</sup> Year N is the year in which implementation of the proposal starts.

3.2.2. *Estimated impact on the appropriations of the European Union Agency for Asylum*

- The proposal does not require the use of operational appropriations
- The proposal requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			Year 2017		Year 2018		Year 2019		Year 2020		TOTAL	
	Type <sup>47</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
<b>SPECIFIC OBJECTIVE No 1<sup>48</sup>: Facilitate the implementation and improve the functioning of the CEAS</b>												
- Output	Support activities for the CEAS implementation	90.104,922	70	7.810.000,00	120	10.810.000,00	150	13.810.000,00	170	13.523.510,20	510	45.953.510,200
- Output	Support activities for MS practical cooperation	40.586,80	100	6.081.250	150	6.081.250	200	6.981.250	200	7.237.654	650	26.381.404,080
- Output	Country of origin information and common analysis	494.651,327	8	4.306.250,00	10	4.645.000,00	10	4.845.000,00	12	5.989.803,06	40	19.786.053,060
<b>Subtotal for specific objective No 1</b>		<b>625.343,05</b>	<b>178</b>	<b>18.197.500,000</b>	<b>280</b>	<b>21.536.250,000</b>	<b>360</b>	<b>25.636.250,000</b>	<b>382</b>	<b>26.750.967,340</b>	<b>1200</b>	<b>92.120.967,340</b>

<sup>47</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>48</sup> As described in point 1.4.2. 'Specific objectives...'

<b>SPECIFIC OBJECTIVE No 2: Reinforcement of operational and technical assistance to Member States</b>												
- Output	Operational support activities	572.666,823	70	28.633.341,16	70	28.633.341,16	70	28.633.341,16	70	28.633.341,16	280	114.533.364,620
- Output	Cooperation with partners and stakeholders	73.281,678	15	1.240.000,00	20	1.740.000,00	25	1.740.000,00	30	1.875.351,02	90	6.595.351,020
- Output	Operational standards and best practices on asylum	43.969,007	15	500.000	20	700.000	20	800.000	20	1.297.675,51	75	3.297.675,510
- Output	Communication, information exchange	82.441,888	10	500.000	10	700.000	10	800.000	10	1.297.675,51	40	3.297.675,510
<b>Subtotal for specific objective No 2</b>		<b>772.359,40</b>	<b>110</b>	<b>30.873.341,155</b>	<b>120</b>	<b>31.773.341,155</b>	<b>125</b>	<b>31.973.341,155</b>	<b>130</b>	<b>33.104.043,195</b>	<b>485</b>	<b>127.724.066,660</b>
<b>TOTAL COST</b>		<b>1.309.064,436</b>	<b>288</b>	<b>49.070.841,155</b>	<b>400</b>	<b>53.309.591,155</b>	<b>485</b>	<b>57.609.591,155</b>	<b>512</b>	<b>59.855.010,535</b>	<b>1685</b>	<b>219.845.034,000</b>

\* This table outlines only operational expenditure as per Title 3

### 3.2.3. Estimated impact on appropriations of an administrative nature

#### 3.2.3.1. Summary

- The proposal does not require the use of appropriations of an administrative nature
- The proposal requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

<b>Human resources</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
C(2013)519 baseline	<b>51</b>	<b>51</b>	<b>51</b>	<b>51</b>
Amendments	40	40	40	40
<b>Modified baseline</b>	<b>91</b>	<b>91</b>	<b>91</b>	<b>91</b>
<b>Requested additional posts (non cumulative)*</b>	<b>64</b>	<b>59</b>	<b>70</b>	<b>82</b>
<b>Establishment posts in headcounts</b>	<b>155</b>	<b>214</b>	<b>284</b>	<b>366</b>
Of which AD	107	135	179	231
Of which AST	48	79	105	135
<b>External personnel (FTE)</b>	<b>52</b>	<b>83</b>	<b>106</b>	<b>134</b>
<i>Of which contract agents</i>	41	72	95	123
<i>Of which Seconded National Experts</i>	11	11	11	11
<b>Total staff</b>	<b>207</b>	<b>297</b>	<b>390</b>	<b>500</b>

\* For 2017, 34 posts are requested under the existing mandate in 2017 while 30 additional are requested with a view to the new mandate.

<b>Staff expenditure</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Establishment plan posts (in headcounts)</b>	<b>16.482.000</b>	<b>24.723.000</b>	<b>33.366.000</b>	<b>43.550.000</b>
- Of which AD	12.060.000	16.214.000	21.038.000	27.470.000
- Of which AST	4.422.000	8.509.000	12.328.000	16.080.000
<b>External staff (FTE)</b>	<b>3.238.000</b>	<b>4.813.000</b>	<b>6.703.000</b>	<b>8.488.000</b>
- Of which contract agents	2.380.000	3.955.000	5.845.000	7.630.000
- Of which Seconded	858.000	858.000	858.000	858.000

National Experts (SNE)				
<b>Total staff</b>	<b>19.720.000</b>	<b>29.536.000</b>	<b>40.069.000</b>	<b>52.038.000</b>

The proposal follows the 5% staff reduction reform (2013-2017) by reducing the Agency's staff gradually at a rate of 1% for the establishment plan for 2017 (a similar reduction rate was followed in the years 2013-2016).

In the course of 2014-2015, the Agency's establishment plan was reinforced with additional 40 posts to enable it to address the asylum related needs of different Member States in the most effective manner. However, in order to implement its new tasks provided for in the Regulation, the Agency will need 275 additional establishment posts by 2020. In particular, the following reinforcement of posts is needed:

<b>Additional staff needed by EASO in order to fulfil its new tasks under the new mandate</b>				
<b>(detail by operational objective)</b>				
<i>Total staff (FTE)</i>	<i>AD</i>	<i>AST</i>	<i>CA</i>	<i>Objective</i>
<b>55</b>	36	8	11	<b>Objective 1:</b> Mechanism for monitoring and assessing the asylum and reception systems and a procedure for monitoring and assessment by the Agency; Dublin system management and operation
<b>44</b>	21	12	11	<b>Objective 2:</b> Information on the implementation of the CEAS; Exchange of information among Member States; Information analysis on the situation of asylum; Quality processes and expertise
<b>32</b>	13	8	11	<b>Objective 3:</b> European network on country of origin information; Common analysis on country of origin information; Designation of safe countries of origin and safe third countries
<b>126</b>	66	29	31	<b>Objective 4:</b> Operational plan; Asylum intervention pool; Asylum support teams; Relocation activities; Disproportionate pressure on the asylum and reception systems; Technical equipment; Migration management support teams
<b>34</b>	16	13	5	<b>Objective 5:</b> Collaboration on ENP countries with EASO (earmarked); Cooperation DK, associate countries, third countries, Union Agencies, bodies and offices, UNHCR and other international organisations, support to Member States in relation to CEAS, Consultative Forum
<b>23</b>	11	9	3	<b>Objective 6:</b> Operational standards, guidelines and best practices
<b>15</b>	2	7	6	<b>Objective 7:</b> Communication initiatives on its own initiative in the fields within its mandate
<b>28</b>	9	15	4	Management and administrative support to the new tasks
<b>357</b>	<b>174</b>	<b>101</b>	<b>82</b>	

### 3.2.3.2. Estimated requirements of human resources

- The proposal does not require the use of human resources.
- The proposal requires the use of human resources, as explained below:



*Estimate to be expressed in full time equivalent units*

	2017	2018	2019	2020	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
<b>• Establishment plan posts (officials and temporary staff)</b>							
XX 01 01 01 (Headquarters and Commission's Representation Offices)	4	4	4	4			
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>49</sup></b>							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)							
<b>XX 01 04 yy<sup>50</sup></b>	- at Headquarters						
	- in Delegations						
XX 01 05 02 (AC, END, INT - Indirect research)							
10 01 05 02 (AC, END, INT - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>			

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Represent the Commission in the Management Board of the Agency. Draw up Commission opinion on the annual work programme and monitor its implementation. Supervise the preparation of the Agency's budget and monitor implementation of the budget. Assist the Agency in developing its activities in line with EU policies including by participating in experts meetings.
External staff	

<sup>49</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

<sup>50</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

### 3.2.4. Compatibility with the current multiannual financial framework

- The proposal is compatible with the current multiannual financial framework and may entail the use of special instruments as defined in Council Regulation (EU, Euratom) No 1311/2013.<sup>51</sup>
- The proposal will entail reprogramming of the relevant heading in the multiannual financial framework.

The Agency's budgets for 2015 and 2016 have been considerably reinforced. The 2015 budget saw the addition of 40 staff members in the establishment plan given the increasing role of the Agency in its support to Member States on asylum matters. The 2016 budget strongly increased in terms of operational expenditure and the dimensions of EASO's interventions to support Member States is continuously increasing.

- The proposal requires application of the flexibility instrument or revision of the multiannual financial framework<sup>52</sup>.

### 3.2.5. Third-party contributions

- The proposal does not provide for co-financing by third parties.
- The proposal provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	2017	2018	2019	2020	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Contribution from Schengen Associated Countries	pm	pm	pm	pm				
TOTAL appropriations co-financed								

<sup>51</sup> Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

<sup>52</sup> See Articles 11 and 17 of Council Regulation (EU, EURATOM) No 1311/2013 laying down the multiannual financial framework for years 2014-2020.

Estimated impact on revenue

- The proposal has no financial impact on revenue.
- The proposal has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal <sup>53</sup>					Enter as many years as necessary to show the duration of the impact (see point 1.6)		
		Year N	Year N+1	Year N+2	Year N+3				
Article .....									

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

[...]

Specify the method for calculating the impact on revenue.

[...]

<sup>53</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.