

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 2007/2004****of 26 October 2004****establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62(2)(a) and 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Whereas:

(1) Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a fundamental component of an area of freedom, security and justice. To this end, the establishment of common rules on standards and procedures for the control of external borders is foreseen.

(2) The efficient implementation of the common rules calls for increased coordination of the operational cooperation between the Member States.

(3) Taking into account the experiences of the External Borders Practitioners' Common Unit, acting within the Council, a specialised expert body tasked with improving the coordination of operational cooperation between Member States in the field of external border management should therefore be established in the shape of a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter referred to as the Agency).

(4) The responsibility for the control and surveillance of external borders lies with the Member States. The Agency should facilitate the application of existing and future Community measures relating to the management of external borders by ensuring the coordination of Member States' actions in the implementation of those measures.

(5) Effective control and surveillance of external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly, there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, including return of third-country nationals illegally present in the Member States, constitutes an important step in this direction.

(6) Based on a common integrated risk analysis model, the Agency should carry out risk analyses in order to provide the Community and the Member States with adequate information to allow for appropriate measures to be taken or to tackle identified threats and risks with a view to improving the integrated management of external borders.

(7) The Agency should provide training at European level for national instructors of border guards and additional training and seminars related to control and surveillance at external borders and removal of third-country nationals illegally present in the Member States for officers of the competent national services. The Agency may organise training activities in cooperation with Member States on their territory.

(8) The Agency should follow up on the developments in scientific research relevant for its field and disseminate this information to the Commission and to the Member States.

(9) The Agency should manage lists of technical equipment provided by the Member States, thereby contributing to the 'pooling' of material resources.

<sup>(1)</sup> Opinion of 9 March 2004 (not yet published in the Official Journal).

<sup>(2)</sup> OJ C 108, 30.4.2004, p. 97.

- (10) The Agency should also support Member States in circumstances requiring increased technical and operational assistance at external borders.
- (11) In most Member States, the operational aspects of return of third-country nationals illegally present in the Member States fall within the competencies of the authorities responsible for controlling external borders. As there is a clear added value in performing these tasks at European level, the Agency should, subject to the Community return policy, accordingly provide the necessary assistance for organising joint return operations of Member States and identify best practices on the acquisition of travel documents and the removal of third-country nationals illegally present in the territories of the Member States.
- (12) For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the Agency may cooperate with Europol, the competent authorities of third countries and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded in accordance with the relevant provisions of the Treaty. The Agency should facilitate the operational cooperation between Member States and third countries in the framework of the external relations policy of the European Union.
- (13) Building upon the experiences of the External Borders Practitioners' Common Unit and the operational and training centres specialised in the different aspects of control and surveillance of land, air and maritime borders respectively, which have been set up by Member States, the Agency may itself create specialised branches responsible for dealing with land, air and maritime borders.
- (14) The Agency should be independent as regards technical matters and have legal, administrative and financial autonomy. To that end, it is necessary and appropriate that it should be a Community body having legal personality and exercising the implementing powers, which are conferred upon it by this Regulation.
- (15) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. The Board should, where possible, consist of the operational heads of the national services responsible for border guard management or their representatives. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency and appoint the Executive Director and his/her deputy.
- (16) In order to guarantee the full autonomy and independence of the Agency, it should be granted an autonomous budget whose revenue comes essentially from a contribution from the Community. The Community budgetary procedure should be applicable as far as the Community contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.
- (17) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>(1)</sup> should apply without restriction to the Agency, which should accede to the Interinstitutional 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 (OLAF)<sup>(2)</sup>.
- (18) 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>(3)</sup> should apply to the Agency.
- (19) 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<sup>(4)</sup> applies to the processing of personal data by the Agency.
- (20) The development of the policy and legislation on external border control and surveillance remains a responsibility of the EU institutions, in particular the Council. Close coordination between the Agency and these institutions should be guaranteed.
- (21) Since the objectives of this Regulation, namely the need for creating an integrated management of operational cooperation at the external borders of the Member States of the European Union, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.
- (22) This Regulation respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.

<sup>(1)</sup> OJ L 136, 31.5.1999, p. 1.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 15.

<sup>(3)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(4)</sup> OJ L 8, 12.1.2001, p. 1.

(23) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC<sup>(1)</sup> on certain arrangements for the application of that Agreement. Consequently, delegations of the Republic of Iceland and the Kingdom of Norway should participate as members of the Management Board of the Agency, albeit with limited voting rights. In order to determine the further modalities allowing for the full participation of the Republic of Iceland and the Kingdom of Norway in the activities of the Agency, a further arrangement should be concluded between the Community and these States.

(24) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it, or subject to its application. Given that this Regulation builds upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law or not.

(25) This Regulation constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis<sup>(2)</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(26) This Regulation constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis<sup>(3)</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(27) The Agency should facilitate the organisation of operational actions in which the Member States may avail

themselves of the expertise and facilities which Ireland and the United Kingdom may be willing to offer, in accordance with modalities to be decided on a case-by-case basis by the Management Board. To that end, representatives of Ireland and the United Kingdom should be invited to attend all the meetings of the Management Board in order to allow them to participate fully in the deliberations for the preparation of such operational actions.

(28) A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar.

(29) The suspension of the applicability of this Regulation to the borders of Gibraltar does not imply any change in the respective positions of the States concerned,

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

#### SUBJECT MATTER

##### *Article 1*

#### **Establishment of the Agency**

1. A European Agency for the Management of Operational Cooperation at the External Borders (the Agency) is hereby established with a view to improving the integrated management of the external borders of the Member States of the European Union.

2. While considering that the responsibility for the control and surveillance of external borders lies with the Member States, the Agency shall facilitate and render more effective the application of existing and future Community measures relating to the management of external borders. It shall do so by ensuring the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States.

3. The Agency shall also provide the Commission and the Member States with the necessary technical support and expertise in the management of the external borders and promote solidarity between Member States.

4. For the purposes of this Regulation, references to the external borders of the Member States shall mean the land and sea borders of the Member States and their airports and seaports, to which the provisions of Community law on the crossing of external borders by persons apply.

<sup>(1)</sup> OJ L 176, 10.7.1999, p. 31.

<sup>(2)</sup> OJ L 131, 1.6.2000, p. 43.

<sup>(3)</sup> OJ L 64, 7.3.2002, p. 20.

## CHAPTER II

**TASKS***Article 2***Main tasks**

1. The Agency shall perform the following tasks:
  - (a) coordinate operational cooperation between Member States in the field of management of external borders;
  - (b) assist Member States on training of national border guards, including the establishment of common training standards;
  - (c) carry out risk analyses;
  - (d) follow up on the development of research relevant for the control and surveillance of external borders;
  - (e) assist Member States in circumstances requiring increased technical and operational assistance at external borders;
  - (f) provide Member States with the necessary support in organising joint return operations.
2. Without prejudice to the competencies of the Agency, Member States may continue cooperation at an operational level with other Member States and/or third countries at external borders, where such cooperation complements the action of the Agency.

Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives.

Member States shall report to the Agency on these operational matters at the external borders outside the framework of the Agency.

*Article 3***Joint operations and pilot projects at external borders**

1. The Agency shall evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States.

The Agency may itself, and in agreement with the Member State(s) concerned, launch initiatives for joint operations and pilot projects in cooperation with Member States.

It may also decide to put its technical equipment at the disposal of Member States participating in the joint operations or pilot projects.

2. The Agency may operate through its specialised branches provided for in Article 16, for the practical organisation of joint operations and pilot projects.

3. The Agency shall evaluate the results of the joint operations and pilot projects and make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and efficiency of future operations and projects to be included in its general report provided for in Article 20(2)(b).

4. The Agency may decide to co-finance the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency.

*Article 4***Risk analysis**

The Agency shall develop and apply a common integrated risk analysis model.

It shall prepare both general and tailored risk analyses to be submitted to the Council and the Commission.

The Agency shall incorporate the results of a common integrated risk analysis model in its development of the common core curriculum for border guards' training referred to in Article 5.

*Article 5***Training**

The Agency shall establish and further develop a common core curriculum for border guards' training and provide training at European level for instructors of the national border guards of Member States.

The Agency shall also offer additional training courses and seminars on subjects related to the control and surveillance of the external borders and return of third country nationals for officers of the competent national services of Member States.

The Agency may organise training activities in cooperation with Member States on their territory.

*Article 6***Follow-up to research**

The Agency shall follow up on the developments in research relevant for the control and surveillance of external borders and disseminate this information to the Commission and the Member States.

*Article 7***Management of technical equipment**

The Agency shall set up and keep centralised records of technical equipment for control and surveillance of external borders belonging to Member States, which they, on a voluntary basis and upon request from another Member State, are willing to put at the disposal of that Member State for a temporary period following a needs and risks analysis carried out by the Agency.

*Article 8***Support to Member States in circumstances requiring increased technical and operational assistance at external borders**

1. Without prejudice to Article 64(2) of the Treaty, one or more Member States confronted with circumstances requiring increased technical and operational assistance when implementing their obligations with regard to control and surveillance of external borders may request the Agency for assistance. The Agency can organise the appropriate technical and operational assistance for the requesting Member State(s).

2. Under the circumstances referred to in paragraph 1, the Agency can:

- (a) assist on matters of coordination between two or more Member States with a view to tackling the problems encountered at external borders;
- (b) deploy its experts to support the competent national authorities of the Member State(s) involved for the appropriate duration.

3. The Agency may acquire technical equipment for control and surveillance of external borders to be used by its experts for the duration of the deployment in the Member State(s) in question.

*Article 9***Return cooperation**

1. Subject to the Community return policy, the Agency shall provide the necessary assistance for organising joint return operations of Member States. The Agency may use Community financial means available in the field of return.

2. The Agency shall identify best practices on the acquisition of travel documents and the removal of illegally present third-country nationals.

*Article 10***Exercise of executive powers**

Exercise of executive powers by the Agency's staff and the Member States' experts acting on the territory of another Member State shall be subject to the national law of that Member State.

*Article 11***Information exchange systems**

The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with the Commission and the Member States.

*Article 12***Cooperation with Ireland and the United Kingdom**

1. The Agency shall facilitate operational cooperation of the Member States with Ireland and the United Kingdom in matters covered by its activities and to the extent required for the fulfilment of its tasks set out in Article 2(1).

2. Support to be provided by the Agency pursuant to Article 2(1)(f) shall cover the organisation of joint return operations of Member States in which Ireland or the United Kingdom, or both, also participate.

3. The application of this Regulation to the borders of Gibraltar shall be suspended until the date on which an agreement is reached on the scope of the measures concerning the crossing by persons of the external borders of the Member States.

*Article 13***Cooperation with Europol and international organisations**

The Agency may cooperate with Europol and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty and the provisions on the competence of those bodies.

*Article 14***Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries**

In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate the operational cooperation between Member States and third countries, in the framework of the European Union external relations policy.

The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty.

### CHAPTER III

#### STRUCTURE

##### Article 15

#### **Legal status and location**

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

In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

The Agency shall be independent in relation to technical matters.

It shall be represented by its Executive Director.

The seat of the Agency shall be decided by unanimity of the Council.

##### Article 16

#### **Specialised branches**

The Management Board of the Agency shall evaluate the need for, and decide upon the setting up of, specialised branches in the Member States, subject to their consent, taking into account that due priority should be given to the operational and training centres already established and specialised in the different aspects of control and surveillance of the land, air and maritime borders respectively.

The specialised branches of the Agency shall develop best practices with regard to the particular types of external borders for which they are responsible. The Agency shall ensure the coherence and uniformity of such best practices.

Each specialised branch shall submit a detailed annual report to the Executive Director of the Agency on its activities and shall provide any other type of information relevant for the coordination of operational cooperation.

##### Article 17

#### **Staff**

1. The Staff Regulations of officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purposes of applying those Regulations and Conditions shall apply to the Agency's staff.

2. The powers conferred on the appointing authority by the Staff Regulations, and by the Conditions of employment of other servants, shall be exercised by the Agency in respect of its own staff.

3. The Agency's staff shall consist of a sufficient number of officials and of national experts in the field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

##### Article 18

#### **Privileges and immunities**

The Protocol on the privileges and immunities of the European Communities shall apply to the Agency.

##### Article 19

#### **Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Communities 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 servants in the performance of their duties.

4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.

5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

##### Article 20

#### **Powers of the Management Board**

1. The Agency shall have a Management Board.

2. The Management Board shall:

(a) appoint the Executive Director on a proposal from the Commission in accordance with Article 26;

(b) before 31 March each year, adopt the general report of the Agency for the previous year and forward it by 15 June at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors. The general report shall be made public;

- (c) before 30 September each year, and after receiving the opinion of the Commission, adopt, by a three-quarters majority of its members with a right to vote, the Agency's programme of work for the coming year and forward it to the European Parliament, the Council and the Commission; this programme of work shall be adopted according to the annual Community budgetary procedure and the Community legislative programme in relevant areas of the management of external borders;
- (d) establish procedures for taking decisions related to the operational tasks of the Agency by the Executive Director;
- (e) carry out its functions relating to the Agency's budget pursuant to Articles 28, 29(5), (9) and (11), Article 30(5) and Article 32;
- (f) exercise disciplinary authority over the Executive Director and over the Deputy Director, in agreement with the Executive Director;
- (g) establish its Rules of Procedure;
- (h) establish the organisational structure of the Agency and adopt the Agency's staffing policy.

3. Proposals for decisions on specific activities to be carried out at, or in the immediate vicinity of, the external border of any particular Member State shall require a vote in favour of their adoption by the Member of the Management Board representing that Member State.

4. The Management Board may advise the Executive Director on any matter strictly related to the development of operational management of the external borders, including follow-up to research as defined in Article 6.

5. Should Ireland and/or the United Kingdom request to participate in the Agency's activities, the Management Board shall decide thereon.

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

6. The Management Board shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.

7. The Management Board may establish an Executive Bureau to assist it and the Executive Director with regard to the preparation of the decisions, programmes and activities to be adopted by the Management Board and when necessary, because of urgency, to take certain provisional decisions on behalf of the Management Board.

#### Article 21

##### Composition of the Management Board

1. Without prejudice to paragraph 3, the Management Board shall be composed of one representative of each Member State and two representatives of the Commission. To this effect, each Member State shall appoint a member of the Management Board as well as an alternate who will represent the member in his/her absence. The Commission shall appoint two members and their alternates. The duration of the terms of office shall be four years. This term of office shall be extendable once.

2. The Management Board members shall be appointed on the basis of their degree of high level relevant experience and expertise in the field of operational cooperation on border management.

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

#### Article 22

##### Chairmanship of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall *ex-officio* replace the Chairperson in the event of his/her being prevented from attending to his/her duties.

2. The term of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of the terms of office of the Chairperson or Deputy Chairperson shall be two years. These terms of office shall be extendable once.

#### Article 23

##### Meetings

1. Meetings of the Management Board shall be convened by its Chairperson.

2. The Executive Director of the Agency shall take part in the deliberations.

3. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet at the instance of the Chairperson or at the request of at least one third of its members.

4. Ireland and the United Kingdom shall be invited to attend the meetings of the Management Board.

5. The Management Board may invite any other person whose opinion may be of interest to attend its meetings as an observer.

6. The members of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

7. The secretariat for the Management Board shall be provided by the Agency.

#### Article 24

##### Voting

1. Without prejudice to Article 20(2)(c) as well as 26(2) and (4), the Management Board shall take its decisions by an absolute majority of its members with a right to vote.

2. Each member shall have one vote. The Executive Director of the Agency shall not vote. In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.

3. The rules of procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member as well as any quorum requirements, where appropriate.

#### Article 25

##### Functions and powers of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. Without prejudice to the respective competencies of the Commission, the Management Board and the Executive Bureau, the Executive Director shall neither seek nor take instructions from any government or from any other body.

2. The European Parliament or the Council may invite the Executive Director of the Agency to report on the carrying out of his/her tasks.

3. The Executive Director shall have the following functions and powers:

(a) to prepare and implement the decisions and programmes and activities adopted by the Agency's Management Board within the limits specified by this Regulation, its implementing rules and any applicable law;

(b) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;

(c) to prepare each year a draft working programme and an activity report and submit them to the Management Board;

(d) to exercise in respect of the staff the powers laid down in Article 17(2);

(e) to draw up estimates of the revenues and expenditure of the Agency pursuant to Article 29, and implement the budget pursuant to Article 30;

(f) to delegate his/her powers to other members of the Agency's staff subject to rules to be adopted in accordance with the procedure referred to in Article 20(2)(g).

4. The Executive Director shall be accountable for his activities to the Management Board.

#### Article 26

##### Appointment of senior officials

1. The Commission shall propose candidates for the post of the Executive Director based on a list following publication of the post in the *Official Journal of the European Union* and other press or internet sites as appropriate.

2. The Executive Director of the Agency shall be appointed by the Management Board on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

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

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

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

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

5. The terms of the offices of the Executive Director and the Deputy Executive Director shall be five years. They may be extended by the Management Board once for another period of up to five years.

#### Article 27

##### Translation

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community<sup>(1)</sup> shall apply to the Agency.

2. Without prejudice to decisions taken on the basis of Article 290 of the Treaty, the general report and programme of work referred to in Article 20(2)(b) and (c), shall be produced in all official languages of the Community.

3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the bodies of the European Union.

#### Article 28

##### Transparency and communication

1. Six months after the entry into force of this Regulation, the Agency shall be subject to Regulation (EC) No 1049/2001 when handling applications for access to documents held by it.

2. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that, in addition to the publication specified in Article 20(2)(b), the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.

3. The Management Board shall lay down the practical arrangements for the application of paragraphs 1 and 2.

4. Any natural or legal person shall be entitled to address himself/herself in writing to the Agency in any of the languages referred to in Article 314 of the Treaty. He/she shall have the right to receive an answer in the same language.

5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

<sup>(1)</sup> OJ 17, 6.10.1958, p. 385. Regulation as last amended by the 2003 Act of Accession.

## CHAPTER IV

### FINANCIAL REQUIREMENTS

#### Article 29

##### Budget

1. The revenue of the Agency shall consist, without prejudice to other types of income, of:

— a subsidy from the Community entered in the general budget of the European Union (Commission section),

— a contribution from the countries associated with the implementation, application and development of the Schengen acquis,

— fees for services provided,

— any voluntary contribution from the Member States.

2. The expenditure of the Agency shall include the staff, administrative, infrastructure and operational expenses.

3. The Executive Director shall draw up an estimate of the revenue and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with an establishment plan.

4. Revenue and expenditure shall be in balance.

5. The Management Board shall adopt the draft estimate, including the provisional establishment plan accompanied by the preliminary work programme, and forward them by 31 March to the Commission and to the countries associated with the implementation, application and development of the Schengen acquis.

6. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft budget of the European Union.

7. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems 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 Article 272 of the Treaty.

8. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.

The budgetary authority shall adopt the establishment plan for the Agency.

9. The Management Board adopts the Agency's budget. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

10. Any modification to the budget, including the establishment plan, shall follow the same procedure.

11. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof as well as the countries associated with the implementation, application and development of the Schengen acquis.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

#### Article 30

##### Implementation and control of the budget

1. The Executive Director shall implement the Agency's budget.

2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>(1)</sup> (hereafter referred to as the general Financial Regulation).

3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.

4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Agency's final accounts under his/her own responsibility and forward them to the Management Board for an opinion.

5. The Management Board shall deliver an opinion on the Agency's final accounts.

6. By 1 July of the following year at the latest, the Executive Director shall send the final accounts, together with the opinion of the Management Board, to the Commission, the Court of Auditors, the European Parliament and the Council as well as the countries associated with the implementation, application and development of the Schengen acquis.

7. The final accounts shall be published.

8. The Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

9. Upon a recommendation from the Council, the European Parliament shall, before 30 April of the discharge year + 2, give a discharge to the Executive Director of the Agency in respect of the implementation of the budget for the discharge year.

#### Article 31

##### Combating fraud

1. In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EC) No 1073/1999 shall apply without restriction.

2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.

3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among the recipients of the Agency's funding and the agents responsible for allocating it.

#### Article 32

##### Financial provision

The financial rules applicable to the Agency shall be adopted by the Management Board after consultation of the Commission. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002<sup>(2)</sup> on the framework Financial Regulation for the bodies referred to in Article 185 of the general Financial Regulation, unless specifically required for the Agency's operation and with the Commission's prior consent.

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

<sup>(2)</sup> OJ L 357, 31.12.2002, p. 72.

## CHAPTER V

## FINAL PROVISIONS

## Article 33

**Evaluation**

1. Within three years from the date of the Agency having taken up its responsibilities, and every five years thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.

2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which shall forward them, together with its own opinion as well as appropriate proposals, to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

## Article 34

**Entry into force**

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

The Agency shall take up its responsibilities from 1 May 2005.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Luxembourg, 26 October 2004.

*For the Council*  
*The President*  
R. VERDONK

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