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PRESIDÊNCIA PORTUGUESA DO CONSELHO DA UNIÃO EUROPEIA NO DOMINIO DA ADMINISTRAÇÃO INTERNA

1 de janeiro - 30 de junho 2021

BALANÇO

Direção de Serviços de Relações Internacionais

da Secretaria Geral do Ministério da Administração Interna

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1. Sumário Executivo

Portugal assumiu no dia 1 de janeiro de 2021 a Presidência do Conselho da União Europeia (PPUE), motivado a trabalhar em prol das oportunidades que emergem da atual crise num esforço de parceria com todos os parceiros europeus e em diálogo com os países terceiros.

O Ministério da Administração Interna (MAI) empenhou-se no desígnio nacional, procurando no quadro das prioridades da PPUE desenvolver esforços para reforçar a resiliência das nossas sociedades, materializar uma abordagem positiva e holística da migração e progredir na promoção de uma Europa segura, que aposta cada vez mais num enfoque preventivo e na proteção.

No domínio das Migrações Schengen e Fronteiras, o MAI promoveu um intenso trabalho na dinamização das negociações do Pacto Migrações e Asilo, seguindo uma abordagem global, abrangente, flexível e realista, patente num relatório de progressos que servirá de base à prossecução dos trabalhos do Conselho, desejando ter contribuído para uma gestão mais eficaz e resiliente a futuras crises. Resultante dos trabalhos com vista a um instrumento primordial, a Presidência Portuguesa empenhou esforços para a adoção do novo mandato da Agência da União Europeia para o Asilo, tendo desenvolvidos contactos, ao nível técnico e político, que permitiram que, volvidos cinco anos de intensos debates, a Presidência do Conselho da União Europeia e o Parlamento Europeu alcançassem, a 29 de junho, um **Acordo Provisório sobre o Regulamento que cria a EASO.**

Conforme prioridades estabelecidas, a Presidência Portuguesa estendeu também as suas prioridades e trabalhos na área da promoção de **canais legais de imigração**, procurando sempre a integração dos migrantes, numa lógica preventiva face à migração

irregular. Nesse sentido; destaca-se o **Acordo sobre a revisão da Diretiva Cartão Azul** alcançado a 17 de maio com o Parlamento Europeu, confirmado no COREPER de 21 de maio e aprovado pela Comissão LIBE a 3 de junho. Com base neste acordo, a União passará a ter um esquema europeu eficiente para atrair e reter pessoas altamente qualificadas, reforçando assim a competitividade da UE na captação global de talentos e potenciando o seu crescimento económico e modernização, permitindo, em simultâneo, atenuar as consequências do envelhecimento demográfico e compensar a escassez de competências e qualificações. O texto de compromisso final estabelece um bom equilíbrio entre a maior atratividade do Cartão Azul da UE para os seus detentores e família, e a manutenção de um elevado grau de flexibilidade e de controlo dos mercados de trabalho nacionais pelos respetivos Estados membros.

Na área das fronteiras, a Presidência Portuguesa orientada na promoção da livre circulação no interior do Espaço Schengen e na manutenção de um elevado nível de segurança e de controlo efetivo das fronteiras externas, trabalhou, a par da implementação das normas sobre interoperabilidade dos sistemas de informação, no sentido da aprovação do **texto de compromisso final do Sistema Europeu de Informação e Autorização de Viagem da UE (ETIAS),** conseguido em COREPER de 31 de março, na sequência do acordo político provisório alcançado no 3º trílogo, realizado em 18 de março. O ETIAS tem como objetivo melhorar a segurança interna, prevenir a imigração ilegal, proteger a saúde pública e reduzir os atrasos nas fronteiras, ao identificar as pessoas que possam representar um risco num destes domínios antes da sua chegada às fronteiras externas, sendo igualmente fundamental para a interoperabilidade entre as bases de dados no domínio da Justiça e dos Assuntos Internos. Ainda a destacar a **adoção** pelo Conselho, a 27 de maio do **Regulamento que altera o Sistema de Informação sobre Vistos (VIS)** que visa reforçar a segurança do procedimento de emissão dos vistos de curta duração, incluir na base de dados do VIS os vistos de longa duração e as autorizações de residência e garantir a interoperabilidade entre o VIS e outros sistemas e bases de dados pertinentes da UE.

No que respeita ao correto **funcionamento do espaço Schengen**, destaca-se a **aprovação,** a 16 de abril por escrito das **Conclusões do Conselho sobre o funcionamento do Mecanismo de Avaliação e de Monitorização de Schengen** (Regulamento (UE) n.º 1053/2013 do Conselho), nas quais o Conselho convida, designadamente a Comissão, a refletir em consulta com os Estados-Membros sobre uma reorganização das avaliações e uma reestruturação dos relatórios com base em critérios pertinentes, no intuito de melhorar a eficiência do funcionamento do espaço Schengen na sua globalidade.

No domínio da promoção da segurança interna da União, a Presidência Portuguesa defendeu como premissa fundamental a procura de resultados mais duradouros, colocando a tónica num real e efetivo intercambio de informações e numa cooperação reforçada entre Estados-membros e Agências europeias, identificando a EUROPOL enquanto pilar no apoio às forças de aplicação da lei ao nível nacional. Neste contexto, a revisão do Regulamento EUROPOL foi claramente um dos grandes desafios da PPUE, implicando um esforço adicional e um elevado número de reuniões para alcançar compromissos entre os Estados-membros em matérias nem sempre consensuais. Foi, assim, **aprovada a Abordagem Geral, em COREPER de 30 de junho, do Regulamento de revisão do Mandato Europol,** conseguindo-se o mandato para se iniciarem as negociações com o Parlamento Europeu. Esta revisão do Regulamento tem como objetivo reforçar o mandato desta Agência Europeia no apoio às forças de aplicação da lei dos Estados-membros na prevenção e combate contra o crime sério e organizado, abordando assuntos legais e operacionais e representando uma oportunidade para se avançar numa cooperação policial mais efetiva, adaptando e capacitando a EUROPOL para um policiamento num mundo digital.

Ainda no domínio da cooperação policial, e tendo presente a crise COVID-19 e os novos fenómenos criminais, ganhou importância crescente o reforço da capacidade de atuação e de adaptação das forças de segurança às novas exigências, tendo o MAI conseguido a 07 de junho **a adoção** de **Conclusões do Conselho sobre o impacto da pandemia de**

COVID-19 na segurança interna: ameaças, tendências, resiliência e ensinamentos retirados para a aplicação da lei na UE. Nas Conclusões, os Estados-Membros são incentivados a identificar soluções práticas para evitar dificuldades à cooperação operacional e tática transfronteiriça em matéria de aplicação da lei, a partilharem as melhores práticas sobre estratégias que melhorem os canais de informação das vítimas de crimes, como a violência doméstica e o abuso sexual, durante situações de bloqueio e de crise, recomendando também que desenvolvam e promovam campanhas de sensibilização dos seus cidadãos para prevenir o impacto das atividades de cibercriminalidade, bem como a desinformação e o discurso de ódio.

De destacar ainda a prioridade defendida quanto a uma efetiva cooperação transfronteiriça, nomeadamente na promoção da segurança pública, na prevenção da violência associada ao desporto e no combate ao comércio ilegal de armas, munições e produtos explosivos, na redução do uso de armas de fogo e produtos explosivos em crimes graves e violentos ou em atentados terroristas. Neste contexto, foram **adotadas** as **Conclusões do Conselho sobre a Proteção dos Espaços Públicos,** a 7 de junho, nas quais o Conselho convida a Comissão a explorar outras oportunidades de apoiar projetos e iniciativas para melhorar a proteção dos espaços públicos e a resiliência da comunidade. Os Estados membros são incentivados a apoiar o desenvolvimento e a implementação de conceitos de segurança a este nível. De igual modo a **adoção,** a 07 de junho, **das Conclusões do Conselho sobre a violência relacionada com o desporto**, salientando a importância da cooperação policial internacional e do intercâmbio de informações e reconhecendo que o acompanhamento das deslocações de adeptos de risco pode ser vital para prevenir a perturbação da ordem pública e a atividade criminosa associada, incentiva a uma cooperação internacional eficaz, a importância de abordar a questão para além dos recintos. Finalmente foram ainda adotadas **Conclusões do Conselho sobre a implementação dos pontos de contacto Nacional para armas de fogo (NFFP),** em COREPER de 30 de junho, cujo objetivo é melhorar o fluxo de informação do uso criminal das armas de fogo nos Estados-membros e no espaço europeu, através do reforço e

incremento da troca de informação, com base nos acessos aos sistemas de informação, e da rastreabilidade das armas de fogo ilegais ou utilizadas em crimes.

No **domínio da Proteção Civil,** os trabalhos desenvolvidos pelo MAI deram prioridade à alteração da Decisão da União Europeia que estabelece o Mecanismo de Proteção Civil da União, com vista a permitir uma resposta mais ágil, flexível e transversal na preparação a situações de catástrofes, bem como o reforço da capacidade de resposta conjunta e dos mecanismos subsidiários à solidariedade dos Estados-membros. Realce-se, assim, a **adoção pelo Conselho,** a 10 de maio, do **Regulamento relativo ao Reforço do Mecanismo da Proteção Civil da União**, com novas regras que permitirão que a UE e os Estados-Membros estejam melhor preparados para prevenir catástrofes naturais e provocadas pelo homem, e respondam mais rapidamente quando estas ocorrem. O novo acordo prevê um total de 1 263 milhões de euros, no contexto do Quadro Financeiro Plurianual 2021-2027, incluindo um montante de até 2 056 milhões de euros para implementar as medidas relacionadas com a proteção civil para fazer face ao impacto da crise Covid-19 prevista no instrumento de recuperação da UE.

Finalmente, no dia 24 de fevereiro foi confirmado acordo, entre o Conselho e o Parlamento Europeu, sobre o **Quadro Financeiro Plurianual** para a Área dos Assuntos Internos 2021-2027. A **14 de junho, foram adotados em Conselho os três regulamentos relativos ao financiamento das políticas de assuntos internos**, passando a União a dispor de **18 mil milhões de euros para implementar medidas nestes domínios.** Os valores inscritos para o Fundo para o Asilo, a Migração e a Integração, para o Instrumento de Apoio Financeiro à Gestão das Fronteiras e dos Vistos e para o Fundo para a Segurança Interna duplicam o orçamento 2014-2020.

Estes resultados tiveram por base os debates promovidos nas três sessões do Conselho Justiça e Assuntos Internos, que tiveram lugar nos dias a 28 e 29 de janeiro, 11 e 12 de março e 7 e 8 de junho e ainda, concretamente no que respeita à área dos assuntos internos, uma reunião conjunta entre os ministros da administração interna e os ministros dos negócios estrangeiros a 15 de março. Estes debates foram preparados, ao nível técnico, pelas quinze instâncias preparatórias da área JAI, nove das quais presididas pelo MAI, tendo sido realizadas mais de cem reuniões. Algumas das matérias receberam ainda impulso através das cerca de quarenta iniciativas promovidas pelo MAI, designadamente cerca de duas dezenas de encontros bilaterais e cerca de duas dezenas eventos, muitos dos quais a nível ministerial. Destas iniciativas, destaque-se algumas iniciativas emblemáticas com países terceiros, em linha com a abordagem e prioridades do Programa do MAI para a PPUE.

A **Conferência ministerial sobre a gestão dos fluxos migratórios** realizada a 11 de maio foi muito bem-sucedida, ao juntar os ministros dos Estados membros da UE com os ministros e representantes da Argélia, do Egito, da Líbia, da Mauritânia, de Marrocos, do Níger, do Senegal e da Tunísia. Para além do Vice-Presidente da Comissão Europeia, e da Comissária Europeia para os Assuntos Internos, o evento contou ainda com a importante participação da Comissária da União Africana para os Assuntos Sociais. A reunião em formato híbrido, contou com a presença, em Lisboa, de cerca de 20 delegações estrangeiras, uma parte muito significativa das quais provenientes dos nossos parceiros africanos, o que ilustra bem o empenho e abertura dos mais altos dirigentes políticos da região no sentido do fortalecimento do diálogo com a UE. Da referida reunião resultou um conjunto de conclusões, de natureza mais técnica, que se espera possam assegurar o aprofundamento do diálogo e da cooperação prática entre a UE e África na gestão dos fluxos migratórios.

A **Conferência relativa ao reforço da cooperação policial da UE com os países MENA**, juntou os EM da União Europeia e países do Norte de Africa e do Médio Oriente. Organizada em formato virtual, a Conferência contou com o S. Ministro MAI, acompanhado pelo Comandante Geral da GNR e pelos Diretores Nacionais da PSP, SEF

e PJ, e a Comissária dos Assunto Internos na sessão de abertura e com a presença física, em Lisboa, e a intervenção ativa dos Diretores Executivos da CEPOL e EUROPOL e do Secretário Geral da Interpol, relevando, assim, a importância e a atualidade deste tema para as Agências Europeias e organizações internacionais. Contou ainda com a participação, por videoconferência, do Diretor executivo da FRONTEX e do Secretário Geral do Conselho Árabe dos Ministros do Interior, bem como do Diretor-Geral da DG Near e do Director Adjunto da DG Home. Desta iniciativa resultou um consenso quanto à necessidade de reforço de diálogo em matéria de cooperação policial, procurando identificar desafios e ameaças comuns e encontrar soluções conjuntas para uma cooperação internacional mais efetiva, designadamente através do reforço dos projetos em curso ou de novas propostas, como o modelo de *policing partnership* apresentado em primeira mão pela Diretora da EUROPOL. A presidência lançou o desafio e o convite para a organização em 2022 de novo encontro para discutir o que se conseguiu alcançar e desenvolver e, em conjunto, se poder definir um roteiro e uma estratégia comum duradoura.

A **Conferência Antecipando-se a 2030 - Uma nova década global de medidas de segurança rodoviária em Portugal, na UE e em África**, em formato virtual, inseriu-se na comemoração da Semana das Nações Unidas para a Prevenção da Sinistralidade Rodoviária. Com esta conferência, organizada em conjunto pela Autoridade Nacional de Segurança Rodoviária, a DG MOV da Comissão Europeia, e a *European Transports Safety Council*, que contou com a participação do Alto Representante das Nações Unidas para esta área, visou contribuir para a sensibilização e para a tomada de medidas concretas que previnam e combatam a sinistralidade rodoviária.

2. Prioridades e objetivos, avanços e resultados

a. Sessões do Conselho Justiça e Assuntos Internos

Portugal assumiu a 1 de janeiro de 2021 a Presidência do Conselho da União Europeia pela quarta vez, motivado a trabalhar em prol das oportunidades que emergem da atual crise num esforço de parceria com todos os parceiros europeus e em diálogo com os países terceiros. Procurou ser um ator agregador de vontades e interesses dos países europeus, tendo sempre como referência os valores, as liberdades fundamentais e os princípios que norteiam a União Europeia (UE), e valorizando o seu papel fulcral na proteção e segurança dos cidadãos europeus e dos que aqui procuram um futuro melhor. No espírito do Programa do Trio de Presidências, o **Ministério da Administração Interna** prosseguiu esforços para reforçar a resiliência das nossas sociedades, materializar uma abordagem positiva e holística da migração promovendo um estreito diálogo, em particular os parceiros africanos, e progredir na promoção de uma Europa segura, que aposta cada vez mais na prevenção.

A PPUE organizou **três sessões do Conselho Justiça e Assuntos Internos** (JAI), que tiveram lugar nos dias a 28 e 29 de janeiro, 11 e 12 de março e 7 e 8 de junho e ainda, concretamente no que respeita à área dos assuntos internos, uma reunião conjunta entre os ministros da administração interna e os ministros dos negócios estrangeiros a 15 de março.

A reunião de **janeiro** centrou-se no debate sobre o Novo Pacto para a Migração e o Asilo, tendo os ministros abordado igualmente as garantias de funcionamento do Espaço Schengen em contexto de pandemia e o reforço do mandato da EUROPOL.

Em **março** esteve em discussão o reforço da resiliência das entidades críticas que prestam serviços essenciais na UE, com o intuito de garantir que as infraestruturas críticas nos países da UE são capazes de prevenir incidentes e recuperar dos mesmos, que

podem ser causados por riscos naturais, acidentes, terrorismo, ameaças internas ou emergências de saúde pública, como as que o mundo enfrenta atualmente. A Presidência Portuguesa fez ponto da situação dos trabalhos do Pacto em Matéria de Migração e Asilo e dinamizou debate sobre os aspetos externos da migração, com base na Comunicação e Relatório da Comissão sobre o reforço da cooperação com os países terceiros em matéria de regresso e readmissão.

A **reunião conjunta dos ministros da administração interna e dos negócios estrangeiros** sobre a temática das migrações**, promovida pela PPUE a 15 de março,** recuperou um formato que não reunia há seis anos. A iniciativa da PPUE foi aclamada em uníssono e considerada muito oportuna, dada a relevância crescente das migrações no contexto das relações externas da União. Os Estados-Membros (EM), em conjunto com a Comissão Europeia e o Serviço Europeu para a Ação Externa (SEAE) acordaram, no espírito *Team Europe*, em avançar para um reforço das parcerias com os países terceiros de origem, trânsito e destino, mutuamente benéficas, contribuindo deste modo para combater o tráfico de seres humanos e de migrantes, dar resposta às causas profundas da imigração irregular, melhorar a cooperação em matéria de retorno e readmissão e promover rotas de migração legal para a Europa. Os esforços com vista à melhoria do nível de cooperação existente, nomeadamente em matéria de regresso e readmissão, serão desenvolvidos através de um diálogo abrangente ao mais alto nível com os parceiros, numa ótica de apoio reforçado conjugando cooperação para o desenvolvimento, comércio e vistos, e fazendo uso de todos os instrumentos e recursos que a UE tem ao seu dispor. Foi igualmente apresentada a iniciativa da PPUE de instituir um diálogo com os países do Norte de África cobrindo um leque alargado de questões em matéria de Justiça e Assuntos Internos, a qual colheu vivo apoio, prosseguindo agora as discussões com vista à sua implementação, lideradas pelo MNE e com participação do MAI.

No Conselho JAI de **junho,** realizado no Luxemburgo e o primeiro a reunir novamente de forma presencial passados 15 meses, foi apresentado um relatório de progressos sobre as

negociações das diversas dimensões do Pacto Migrações e Asilo. Foram ainda apresentados os resultados alcançados relativos à adoção da Diretiva Cartão Azul (*Blue Card*) revista, aprovação do novo Mecanismo Europeu de Proteção Civil, entrada em vigor do Regulamento em matéria de remoção de conteúdos terroristas online, acordo interministerial relativo ao novo Quadro Financeiro Plurianual para os Assuntos Internos e aprovação da revisão do Regulamento de Vistos. Ao almoço os ministros debruçaram-se sobre a gestão conjunta da migração, nomeadamente o aprofundando o diálogo com os países de origem e de trânsito dos fluxos migratórios com destino à UE. Foram adotadas Conclusões do Conselho sobre a proteção dos espaços públicos, sobre a violência nos grandes eventos desportivos e sobre o impacto da COVID19 na segurança interna.

As reuniões foram preparadas ao nível técnico pelas **quinze instâncias preparatórias da área JAI**, nove das quais presididas pelo MAI (Anexo I), tendo sido realizadas **mais de cem reuniões**. Algumas das matérias receberam ainda impulso através das cerca de **quarenta iniciativas promovidas pelo MAI**, designadamente cerca de duas dezenas de **encontros bilaterais** e cerca de duas dezenas **eventos**, muitos dos quais a nível ministerial (Anexo II).

b. Uma Europa que acolhe e protege | Migrações, Schengen e gestão de Fronteiras

"A Presidência Portuguesa dará prioridade ao novo Pacto em matéria de Migração e Asilo e às decorrentes propostas legislativas, (...) fomentará o aprofundamento das parcerias entre a União Europeia e os países de origem e de trânsito, e a promoção de canais legais de imigração. (...)"

O MAI promoveu um intenso trabalho na dinamização das negociações do Pacto Migrações e Asilo, seguindo uma abordagem global, abrangente, flexível e realista, e tendo e vista uma gestão sustentada das políticas de migração e de asilo. Os principais desenvolvimentos ocorridos encontram-se num relatório de progressos e servirão de base à prossecução dos trabalhos pelo Conselho.

No domínio da dimensão interna do Pacto Migrações e Asilo, Presidência Portuguesa procurou encontrar soluções para os desafios mais prementes que a União Europeia enfrenta nesta matéria, nomeadamente os desequilíbrios da pressão migratória. Deste modo, foram realizados debates sobre as propostas de Regulamento de Gestão do Asilo e da Migração, Regulamento de Procedimento de Asilo alterado, bem como Regulamento de Triagem na Fronteira. Estes trabalhos foram essenciais para que, todos os Estados-Membros pudessem confirmar o seu compromisso geral de se apoiarem mutuamente e de oferecerem contribuições de solidariedade, em caso de pressão sobre um deles.

A Presidência Portuguesa empenhou igualmente esforços para a adoção do novo mandato da Agência da União Europeia para o Asilo. Com efeito, ao longo do primeiro semestre de 2021, foram desenvolvidos contactos, ao nível técnico e político, que permitiram que, volvidos cinco anos de intensos debates, a Presidência do Conselho da União Europeia e o Parlamento Europeu alcançassem um **acordo provisório sobre o regulamento que cria a EASO.**

No quadro da prioridade conferida à migração legal, o MAI alcançou **acordo sobre a revisão da Diretiva Cartão Azul** (*Blue Card*), após 3 anos de bloqueio negocial e volvidos

5 anos da apresentação da proposta de revisão da Diretiva pela Comissão Europeia. Este acordo - conseguido a 17 de maio com o Parlamento Europeu, confirmado no Coreper de 21 de maio e aprovado pela Comissão LIBE a 3 de junho - constitui um notável *deliverable* da PPUE e um importante ganho para toda a União, que passará a ter um esquema europeu eficiente para atrair e reter pessoas altamente qualificadas, reforçando assim a competitividade da União na captação global de talentos e potenciando o seu crescimento económico e modernização, ao mesmo tempo que permite atenuar as consequências do envelhecimento demográfico e compensar a escassez de competências e qualificações. O texto de compromisso final estabelece um bom equilíbrio entre a maior atratividade do Cartão Azul da UE para os seus detentores e família, e a manutenção de um elevado grau de flexibilidade e de controlo dos mercados de trabalho nacionais pelos respetivos EM.

A **Dimensão Externa das migrações** foi igualmente identificada como prioritária no Programa MAI pelo seu papel central na gestão dos fluxos migratórios em conjunto com países terceiros estratégicos, permitindo à UE ser mais eficaz a abordar adequadamente as causas profundas da migração e simultaneamente combater a migração irregular e os diversos tráficos associados, promover vias legais para a migração e cooperar melhor em termos de retorno e readmissão. O MAI promoveu ações concretas, em linha com o Pacto e com a nova "Agenda para o Mediterrâneo" (7 de fevereiro), nomeadamente os Conselhos JAI e o Conselho JUMBO de 15 de março e a Conferência Ministerial sobre a Gestão dos Fluxos Migratórios de 11 de maio.

Com efeito, o Ministério da Administração Interna promoveu, a 11 de maio, uma **Conferência Ministerial sobre a Gestão dos Fluxos Migratórios**.

No seguimento da reunião conjunta dos ministros da administração interna e dos negócios estrangeiros da UE sobre a dimensão externa das migrações, realizada no dia 15 de março, esta Conferência permitiu a troca de pontos de vista entre o lado europeu e o lado africano, ao juntar os ministros da área dos assuntos internos dos Estados-Membros da União Europeia e os ministros e representantes da Argélia, Egito, Líbia, Mauritânia, Marrocos, Níger, Senegal e Tunísia, muitos presencialmente em Lisboa.

A iniciativa contou com a participação do Vice-Presidente da Comissão Europeia, Margaritis Schinas, da Comissária Europeia para os Assuntos Internos, Ylva Johansson, e da Comissária da União Africana para os Assuntos Sociais, Amira Elfadil. Associaram-se a este encontro representantes do Processo de Cartum, da FRONTEX, EASO, bem como do ACNUR, da OIM e do ICMPD.

Saudada por todos os participantes, a Conferência demonstrou a sintonia entre a União Europeia e os parceiros africanos sobre a importância de uma cooperação abrangente que promova mecanismos de migração legal, o combate às redes criminosas de tráfico de seres humanos e contrabando de migrantes, e que integre igualmente a cooperação para o desenvolvimento em resposta aos desafios das causas remotas da migração irregular.

Este evento foi antecedido e preparado por um **Seminário Técnico**, que se realizou em formato virtual a **10 de maio**, e durante o qual foi debatido o papel das parcerias com países africanos para a promoção da gestão conjunta dos fluxos migratórios irregulares e

estabelecimento de instrumentos para o retorno eficaz e seguro e readmissão, bem como a promoção de vias legais para a migração tendo com destino à União e o papel de agências como a FRONTEX e o EASO. Do Seminário resultou o documento de Sumário das Conclusões, que foi a base de troca de pontos de vista da sessão Ministerial.

Assim, no domínio da dimensão externa, os Estados-Membros acordaram que a abordagem mais eficaz a seguir será "ao longo da rota", que coordene diversas iniciativas de cooperação e permita maximizar as sinergias e impulsionar as políticas internas e externas da União, refletindo simultaneamente os interesses estratégicos da UE e de cada um dos parceiros, com benefícios mútuos. É fundamental uma rápida operacionalização das parcerias abrangentes, devendo a União apresentar uma narrativa forte e única perante os países terceiros, ganhar a sua confiança e aumentar a credibilidade, fundamental para uma cooperação sustentável e duradoura.

Destas iniciativas resultou ainda a constatação que UE e parceiros africanos concordam com a relevância de uma cooperação abrangente que promova os mecanismos de migração legal, o combate às redes criminosas de tráfico de seres humanos e contrabando de migrantes, e que integre a cooperação para o desenvolvimento em resposta aos desafios das causas profundas da migração irregular, materializada em parcerias com países estratégicos e construídas de forma a capitalizar a experiência ao nível da cooperação bilateral. Para potenciar resultados tangíveis e sustentáveis, e maximizar o impacto na dimensão externa das migrações, é essencial fomentar a partilha de informação entre todos os intervenientes, assegurar a plena utilização dos 10% que o Instrumento de Vizinhança, Desenvolvimento e Cooperação Internacional (IVDCI) dedica à migração, e garantir a complementaridade de iniciativas europeias e regionais – nomeadamente as diversas iniciativas *Team Europe* e projetos-piloto de migração - e uma melhor coordenação dos esforços dos Estados-Membros e da UE (entre delegações da UE e missões diplomáticas dos EM, agências europeias e SEAE).

A Presidência Portuguesa promoverá a livre circulação no interior do Espaço Schengen, primando por manter um elevado nível de segurança e de controlo efetivo das fronteiras externas. A operacionalização do novo mandato da FRONTEX fará igualmente parte das prioridades na área da Administração Interna, a par da implementação das normas sobre interoperabilidade dos sistemas de informação e da aplicação do Sistema de Entrada/Saída (SES) e do Sistema

Por outro lado, no dominio da gestão de fronteiras, a 31 de março o Coreper aprovou o texto de **compromisso final do Sistema Europeu de Informação e Autorização de Viagem da UE (ETIAS)**, na sequência do acordo político provisório alcançado no 3º trílogo, realizado em 18 de março. O sistema ETIAS tem como objetivo melhorar a segurança interna, prevenir a imigração ilegal, proteger a saúde pública e reduzir os atrasos nas fronteiras, ao identificar as pessoas que possam representar um risco num destes domínios antes da sua chegada às fronteiras externas. O ETIAS é também fundamental para assegurar a interoperabilidade entre as bases de dados no domínio da Justiça e dos Assuntos Internos, um importante objetivo político que a UE pretende atingir até ao final de 2023.

O Conselho **adotou**, a 27 de maio o **Regulamento que altera o Sistema de Informação sobre Vistos (VIS)** que visa reforçar ainda mais a segurança do procedimento de emissão dos vistos de curta duração; incluir na base de dados do VIS os vistos de longa duração e as autorizações de residência e garantir a interoperabilidade entre o VIS e outros sistemas e bases de dados pertinentes da UE. Prevê-se a adoção do ato jurídico pelo Parlamento Europeu no mês de julho e posterior publicação no Jornal Oficial da UE.

As Conclusões do Conselho sobre o **funcionamento do Mecanismo de Avaliação e de Monitorização de Schengen** (Regulamento (UE) n.º 1053/2013 do Conselho) foram aprovadas, por procedimento escrito, a 16 de abril ,nas quais o Conselho convida, designadamente a Comissão, a refletir em consulta com os Estados-Membros sobre uma reorganização das avaliações e uma reestruturação dos relatórios com base em critérios pertinentes, no intuito de melhorar a eficiência do funcionamento do espaço Schengen na sua globalidade.

c. Uma Europa segura que aposta na abordagem preventiva | Cooperação Policial

O MAI, em sede Grupo de Trabalho do Conselho sobre a Aplicação da Lei, liderou a negociação, pela Presidência Portuguesa, da **proposta de revisão do Regulamento EUROPOL** apresentada pela Comissão a 9 de dezembro de 2020. Com esta revisão pretende-se reforçar o mandato da EUROPOL para apoiar as forças de aplicação da lei dos Estados-membros na prevenção e combate contra o crime sério e organizado, abordando assuntos legais e operacionais e representando uma oportunidade para se avançar numa cooperação policial mais efetiva, adaptando e capacitando a EUROPOL para um policiamento num mundo digital. A Proposta visa reforçar o mandato da Europol, por exemplo, na sua capacidade de uma cooperação mais efetiva com entidades privadas e com países terceiros, no reforço da cooperação com a Procuradoria Geral Europeia (EPPO), no reforço do seu papel na pesquisa e Inovação e na capacidade de processar um vasto e complexo volume de informação (*big data*) para apoio da investigação criminal.

Num contexto de ameaças transversais, defendemos como prioridade o intercâmbio de informações, uma efetiva cooperação transfronteiriça, nomeadamente na identificação das redes de crime organizado e novos modus operandi, a promoção da segurança pública, incluindo a proteção de espaços públicos, de

As negociações no Conselho que começaram em janeiro de 2021 prolongaram-se por mais quinze reuniões, tendo sido alcançada uma abordagem geral em COREPER de 30 de junho. No seguimento da aprovação desta proposta de Regulamento deverá ser negociada a alteração ao Regulamento SIS, introduzindo e atualizando as disposições necessárias para a criação de um novo tipo de "alerta de informação" a inserir pelos Estados Membros.

Ainda no domínio da Cooperação Policial, o Conselho adotou a 7 de junho quatro importantes documentos para a segurança interna da União.

- Nas **Conclusões do Conselho sobre a Proteção dos Espaços Públicos,** o Conselho convida a Comissão a explorar outras oportunidades de apoiar projetos e iniciativas para melhorar a proteção dos espaços públicos e a resiliência da comunidade. No mesmo sentido, incentiva os Estados membros a apoiarem o desenvolvimento e a implementação de conceitos de segurança a este nível.

- **Conclusões do Conselho sobre o impacto da pandemia de COVID-19 na segurança interna: ameaças, tendências, resiliência e ensinamentos retirados para a aplicação da lei na UE,** o Conselho incentiva os Estados-Membros a identificarem soluções práticas para evitar dificuldades à cooperação operacional e tática transfronteiriça em matéria de aplicação da lei, a partilharem as melhores práticas sobre estratégias que melhorem os canais de informação das vítimas de crimes, como a violência doméstica e o abuso sexual, durante situações de bloqueio e de crise, recomendando também que desenvolvam e promovam campanhas de sensibilização dos seus cidadãos para prevenir o impacto das atividades de cibercriminalidade, bem como a desinformação e o discurso de ódio. O Conselho salienta também necessidade de a Comissão apoiar a Europol e o Laboratório de Inovação a criarem um instrumento comum, resiliente e seguro para as comunicações no quadro da cooperação da UE em matéria de aplicação da lei, como incentiva a CEPOL e os Estados-Membros a desenvolverem formação baseada em cenários e exercícios práticos para garantir a preparação e a resiliência para futuras pandemias e outras crises.

- **Conclusões do Conselho sobre a violência relacionada com o desporto**, o Conselho destacou a importância da cooperação policial internacional e do intercâmbio de informações, reconheceu que o acompanhamento das deslocações de adeptos de risco pode ser vital para prevenir a perturbação da

ordem pública e a atividade criminosa associada, incentivou a uma cooperação internacional eficaz, reconheceu a importância de abordar esta questão para além dos recintos desportivos e apelou aos Estados-Membros para que continuem a monitorizar os conteúdos em linha, a fim de prevenir e atenuar a difusão de mensagens de incitamento à violência, ao extremismo, à radicalização e à xenofobia. Salientou também a necessidade de os Estados-Membros incrementarem avaliações do risco dos adeptos de risco, principalmente dos adeptos com ideologias extremistas, a fim de identificar, prevenir e limitar eventuais atividades hostis e criminosas durante eventos desportivos internacionais.

A 30 de junho foram aprovadas em COREPER **as Conclusões do Conselho sobre a implementação dos pontos de contacto Nacional para armas de fogo (NFFP)**, cujo objetivo é melhorar o fluxo de informação do uso criminal das armas de fogo nos EM e no espaço europeu, através do reforço e incremento da troca de informação, com base nos acessos aos sistemas de informação, e da rastreabilidade das armas de fogo ilegais ou utilizadas em crimes. O conselho encorajou os Estados-membros a designar as autoridades competentes ao nível interno como Pontos Focais, conferindo-lhe as competências legais para o desempenho das suas tarefas, bem como a criação de uma estrutura interna que possa apoiar o papel dos NFFP.

Ainda no domínio da Cooperação policial, o MAI, tal como previsto no seu Programa de

Trabalho, promoveu a cooperação com países terceiros estratégicos. A este título, a 31 de maio teve lugar no Centro Cultural de Belém, e em formato híbrido, a **Conferência sobre o reforço da cooperação policial União Europeia – países do Norte de África e do Médio Oriente.** A Conferência contou com a presença em Lisboa, na sessão de abertura, do Ministro da Administração Interna de Portugal, Eduardo Cabrita, acompanhado pelo Comandante Geral da GNR e pelos Diretores Nacionais da PSP, do SEF e da PJ. A sessão de abertura contou igualmente com a participação, em direto de Bruxelas, da Comissária Europeia dos Assuntos Internos, Ylva Johansson. Contou com a as intervenções dos Diretores Executivos da CEPOL e EUROPOL, e do Secretário Geral da Interpol, a partir de Lisboa e também com a participação remota do Diretor Executivo da FRONTEX e do Secretário Geral do Conselho Árabe dos Ministros do Interior, Diretor-Geral da Vizinhança e do Director Adjunto Assuntos Internos da Comissão Europeia.

Da iniciativa resultou consenso quanto à necessidade de reforço de diálogo em matéria de cooperação policial designadamente através do reforço dos projetos em curso ou de novas propostas, como o modelo de Parceria Policial apresentado em primeira mão pela Diretora da EUROPOL.

A Presidência lançou o desafio e o convite para a organização, em 2022, de novo encontro para discutir os resultados alcançados e desenvolver, em conjunto, um roteiro e uma estratégia comum duradoura.

d. Aprender com o passado na preparação do futuro - Reforçar a resiliência das nossas sociedades | Gestão de catástrofes e proteção civil

"(...) com base num processo contínuo de lições aprendidas resultante da pandemia da COVID-19, (...) contribuir para um sistema de gestão de catástrofes abrangente e transversal que promova, (...) uma maior resiliência coletiva na resposta a emergências (...) Será dada, ainda, a máxima prioridade à alteração da Decisão que estabelece o Mecanismo de Proteção Civil da União, com vista a permitir uma resposta mais ágil,

A 10 de maio o Conselho **adotou Regulamento relativo ao Reforço do Mecanismo da Proteção Civil da União**. As novas regras permitirão que a UE e os Estados-Membros estejam melhor preparados para prevenir catástrofes naturais e provocadas pelo homem, e respondam mais rapidamente quando estas ocorrem.

Para isso, o novo acordo prevê um total de 1 263 milhões de euros, no contexto do Quadro Financeiro Plurianual 2021-2027, incluindo um montante de até 2 056 milhões de euros para implementar as medidas relacionadas com a proteção civil para fazer face ao impacto da crise Covid-19 prevista no instrumento de recuperação da UE.

O **Workshop "continuidade da Ação da Proteção civil e Desenvolvimento de Capacidades – lições aprendidas com a COVID´19"** realizado a 13 e 14 de abril de 2021 reuniu em formato virtual, 110 participantes de 29 MS, os quais, durante dois dias, partilharam experiências e melhores práticas sobre como gerir os impactos de um evento de saúde pública avassalador, como a COVID-19, mantendo a rotina diária dos serviços que funcionam numa base 24/7.

O foco foi colocado nas lições aprendidas em relação a: formação e exercícios; missões de assistência/avaliação e planos de continuidade e gestão de pessoal.

Como principal conclusão, o workshop destacou que o papel da proteção civil foi reforçado ao longo da pandemia e que as autoridades de proteção civil têm mostrado adaptabilidade e resiliência, com capacidade para enfrentar os vários desafios causados pela pandemia e ainda assim manter elevados níveis de eficiência na prossecução da sua missão.

e. Os meios para responder aos desafios

No dia 24 de fevereiro foi confirmado acordo, entre o Conselho e o Parlamento Europeu, sobre o **Quadro Financeiro Plurianual para a Área dos Assuntos Internos 2021-2027**. A a **14 de junho, foram adotados em Conselho os três regulamentos** relativos ao financiamento das políticas de assuntos internos, passando a União a dispor de **18 mil milhões de euros para implementar medidas nestes domínios.**

Os valores inscritos para o Fundo para o Asilo, a Migração e a Integração, para o Instrumento de Apoio Financeiro à Gestão das Fronteiras e dos Vistos e para o Fundo para a Segurança Interna duplicam o orçamento 2014-2020.

Estas dotações refletem, assim, o reforço da resposta da União Europeia e dos seus Estados-Membros a matérias relacionadas com.

- o asilo e a migração – migração legal e integração, migração irregular e retorno, e solidariedade e partilha de responsabilidades entre EM;
- a gestão integrada de fronteiras – expansão da Guarda Europeia de Fronteiras e Costeira, a modernização da política comum de vistos e o desenvolvimento e interoperabilidade de sistemas informáticos de grande escala;
- a segurança interna – reforçar as capacidades de prevenção e combate ao terrorismo e à radicalização, ao crime grave e organizado e à cibercriminalidade, melhorar o intercâmbio de informação e intensificar a cooperação transfronteiriça.

3. Outros eventos MAI ou com participação MAI

a. Asilo, migrações e fronteiras

A 25 de maio, realizou-se no Centro Cultural de Belém, em formato híbrido, a **Conferência Dez anos sobre a Diretiva Europeia Anti Tráfico e a nova Abordagem Estratégica contra o Tráfico de Seres Humanos (2021-2025).** Organizada pelo Ministério da Administração Interna/Observatório do Tráfico de Seres Humanos e pela Comissão para a Cidadania e a Igualdade de Género, contou com a participação do Ministro da Administração Interna, da Comissária Europeia para os Assuntos Internos, da Secretária de Estado da Justiça, e da Secretária de Estado para a Cidadania e a Igualdade, na sua Sessão de Abertura.

O Ministro da Administração Interna assinalou a importância da Diretiva Anti Tráfico e

principalmente da nova Estratégia Europeia de Combate ao Tráfico de Seres Humanos para o período 2021-2025 apresentada publicamente em 14 de abril, durante a Presidência Portuguesa, e que aponta o caminho dos novos tempos nos domínios da Prevenção, Proteção e Punição, e em estreita articulação entre a dimensão interna, europeia e com os países terceiros e vizinhos. A Conferência organizada em uma Sessão Plenária e três sessões temáticas contou com oradores/as nacionais e europeus de elevado prestígio, e com a participação de representantes de entidades/agências europeias como o Presidente da Comissão para as Liberdades Cívicas, da Justiça e dos Assuntos Internos do Parlamento Europeu, do Coordenador interino da União Europeia da Luta Anti tráfico, Comissão Europeia, do Instituto Europeu para a Igualdade de Género e do Eurostat. De assinalar que no âmbito da Conferência foi ainda apresentado e lançado publicamente o "Protocolo para a definição de procedimentos de atuação destinado à

Prevenção, Deteção e Proteção de crianças (presumíveis) vítimas de tráfico de seres humanos – Sistema de Referenciação Nacional".

A **Conferência Anual da Rede Europeia das Migrações** aconteceu a 30 de abril e foi subordinada ao tema "Transformação Digital nas Migrações". O Ministro da Administração Interna presidiu à sessão de abertura, que contou também com as intervenções da Comissária Europeia para os Assuntos Internos, do Diretor Geral da Organização Internacional das Migrações e do Secretário Geral da OCDE. Na reunião, realizada em formato remoto, os especialistas nas áreas da migração e também da transformação digital e tecnologias de inteligência artificial realizaram uma reflexão conjunta em torno dos riscos e oportunidades de uma maior digitalização no domínio das fronteiras e dos processos de migração e as tecnologias em curso para o futuro, dada as suas múltiplas aplicações em matéria documental, biométrica e de cooperação policial.

b. Cooperação policial

O **Seminário Segurança e Proteção dos Espaços Públicos e de Infraestruturas Críticas,** realizado a 17 e 18 de março contou com a presença do Ministro da Administração Interna que na sessão de abertura sublinhou a identificação da prevenção e o combate às ameaças comuns e transversais como prioridades da PPUE. A segurança e proteção dos Espaços Públicos e Infraestruturas Críticas deve basear-se numa estratégia capaz de antecipar, prevenir, proteger e responder a antigas e novas ameaças.

A 14 de abril o **Seminário "Armas e Explosivos – dimensão transversal**, constituiu-se como um espaço de debate multidisciplinar no âmbito do combate ao tráfico ilícito de armas de fogo e dos desafios futuros que se apresentam ao nível do controlo e

supervisão das atividades relacionadas com o fabrico, comercio, armazenamento, transporte e emprego de produtos explosivos, artigos de pirotecnia e precursores de explosivos. O Seminário visou, em concreto, consolidação de legislação recentemente aprovada e dos planos de ação de combate ao tráfico de armas, o novo 3.º Ciclo Político do EMPACT (2022-2025), o Manual sobre armas de fogo para Guardas de Fronteiras e Alfandegas, o Programa Global de armas de Fogo da UNODC e os Planos de Recuperação e Resiliência na área dos explosivos e pirotecnia.

Em paralelo, a **Reunião plenária e do Comité Director dos Peritos Europeus em armas de fogo** promovida a 13 de abril permitiu a análise das atividades desenvolvidas pelo grupo de Peritos em armas de fogo e dos projetos em curso, bem como apresentação de casos criminais ou técnicos relacionados com armas, tendo em consideração os objetivos estratégicos definidos para 2021. Na **Reunião sobre Explosivos e Pirotécnicos** e tendo presente a cooperação europeia em matéria de fiscalização de mercado, foram debatidas as questões relacionadas com o objetivo de garantir uma vigilância de mercado eficiente, abrangente e consistente neste setor específico.

Finalmente, a **Reunião Plenária da CARPOL** - fórum de intercâmbio de informações relativo aos fenómenos de criminalidade automóvel com repercussões transfronteiriças – debateu os resultados de operações conjuntas, o reforço da cooperação e a organização de atividades realizadas com o apoio de parceiros como a Europol, a Frontex, bem como com parcerias público-privadas.

c. Proteção Civil

Nos dias 13 e 14 de maio, a **46ª Reunião de Diretores Gerais de Proteção Civil da União** debateram o futuro desenvolvimento das capacidades, a continuidade da ação da proteção civil em situações extraordinárias e a resposta global do Mecanismo de Proteção Civil da União. Aproveitando o momento atual, em que a revisão da legislação

veio criar novas regras para preparar melhor e responder mais rápido a emergências, esta reunião, que decorreu num formato virtual, traduziu-se num evento de natureza estratégica que levou a cabo uma reflexão em torno do futuro do Mecanismo com vista a uma Europa mais ágil, forte e coesa, na prevenção, preparação e resposta a catástrofes.

A **10ª Reunião de Peritos UE / Estados Unidos / Canadá sobre Resiliência de Infraestruturas críticas** que teve lugar a 8 e 9 de junho de 2021, inseriu-se no âmbito do pilar externo do Programa Europeu de Proteção de Infraestruturas Críticas e visou dar corpo à importância estratégica que a cooperação internacional tem no reforço da resiliência deste tipo de equipamentos, face aos diferentes riscos e ameaças a que estes estão expostos. O primeiro dia da reunião foi dedicado à discussão de iniciativas, regras e regulamentos no âmbito da proteção e resiliência de infraestruturas críticas; no segundo dia, o foco foi centrado nas lições aprendidas com a pandemia causada pela COVID-19. No evento participaram cerca de 100 delegados, em ambiente virtual, dos Estados-Membros da União Europeia, Estados Unidos, Canadá e Austrália (observador). A organização foi partilhada pela Comissão Europeia e pela Presidência Portuguesa.

d. Segurança Rodoviária

O MAI organizou a 20 de maio em parceria com a Comissão Europeia e o European Transport Safety Council a **Conferência online "Antecipando-se a 2030 - Uma nova década global de medidas de segurança rodoviária em Portugal, na UE e em África** inscrita na comemoração da 6ª Semana mundial das Nações Unidas para a Segurança Rodoviária, que contou com a participação do Ministro da Administração Interna na qualidade de Presidência do Conselho da União Europeia, e da Comissária Europeia dos Transportes, Adina Vălean, bem como do Enviado Especial da ONU para Segurança Rodoviária e de representantes da Comissão da União Africana,

de Cabo Verde, da Global Road Safety Partnership e do World Resources Institute. Representantes de Moçambique e Angola fizeram apresentações neste Fórum.

e. Relações Externas

O MAI copresidiu a 14 de abril à reunião de **Altos Funcionários UE-EUA**, no domínio da Justiça e Assuntos Internos, que preparou a **Reunião ministerial UE-EUA no domínio JAI**, que teve lugar em **Lisboa a 22 de junho.**

A Ministerial de Lisboa representou a primeira reunião de nível político na área da Justiça e Assuntos Internos com a Administração Biden e a primeira reunião presencial para promover o diálogo transatlântico neste domínio desde dezembro de 2019, altura em que a UE e os EUA se reuniram em Washington. Ocorrendo poucos dias após a Cimeira entre a UE e os EUA, este encontro constituiu a oportunidade para dar continuidade ao momento positivo por que passa o relacionamento e reavivar o ímpeto de reforço da cooperação. Em Declaração Conjunta, as Partes reafirmaram o seu compromisso em prosseguir o trabalho conjunto para a renovação da parceria transatlântica nas áreas da Justiça e Assuntos Internos para dar resposta e combater as ameaças existentes e emergentes que afetam ambas as sociedades, desde o terrorismo ao extremismo violento, os desafios da transformação digital - não excluindo do debate os seus aspetos positivos e as oportunidades que oferece aos domínios da Segurança Interna, a necessária gestão da migração - constatando o interesse mútuo em expandir o diálogo existente neste domínio, em particular abordar as causas profundas da imigração irregular, melhorar o regresso e a readmissão de migrantes e reforçar a cooperação no combate ao tráfico de migrantes. Ambas as Partes reiteraram também o seu compromisso em prosseguir com os melhores

esforços para uma retoma completa e segura das viagens entre a UE e os EUA bem como para atingir a plena reciprocidade em matéria de vistos.

A 17 de maio, por videoconferência, o MAI copresidiu a **Reunião de Altos Funcionários EU- Balcãs Ocidentais no domínio da Justiça e Assuntos Internos**. A sessão dedicada aos Assuntos Internos permitiu uma troca positiva e frutífera de experiências e dos últimos desenvolvimentos em matéria de gestão migratória, asilo, condições de receção dos migrantes, regressos - capítulo no qual os parceiros solicitaram, em particular, o reforço do apoio por parte da UE - e atualização da troca de informações no âmbito dos sistemas nacionais biométricos de registo de requerentes de asilo e da migração irregular, tendo em vista a integração dos dados relativos a estes fluxos migratórios ao nível regional, através de uma maior interoperabilidade, trabalhada já na perspetiva de, no futuro, ser extensível e compatível com a UE. Foi igualmente abordado a prevenção e investigação da exploração de crianças online e off-line, com a apresentação pela Comissão Europeia dos objetivos, documentos e medidas estratégicas mais recentes adotadas no âmbito da União neste domínio. Os parceiros dos Balcãs Ocidentais partilharam as respetivas estratégias nacionais de prevenção e investigação deste crime, cujo combate foi unissonamente considerado um desafio comum, tendo sido reiterada a vontade de estreitar a cooperação, nomeadamente através da rede de peritos para o cibercrime a ser desenvolvida no contexto do novo Ciclo Político.

f. Política Comum de Segurança e Defesa

O MAI participou, a 24 de março de 2021, no **Webinar sobre Processos nacionais em torno da implementação do Pacto da PCSD Civil** organizado pelo Ministério dos Negócios Estrangeiros e o Serviço Europeu de Ação Externa.

A 19 de abril teve lugar a **Conferência internacional sobre a Política Comum de Segurança e Defesa (PCSD) Civil, intitulada "Advancing Synergies** que reuniu decisores políticos, profissionais no terreno, peritos e *think tanks*, tendo como principal objetivo dar seguimento aos resultados da Conferência Anual de Revisão e aprofundar o debate em torno da PCSD Civil e da PCSD como um todo. Na conferência foram abordados temas como o fomento da implementação do Pacto para a PCSD Civil, o reforço do nexo de segurança interna-externa (cooperação PCSD-JAI) e a integração da PCSD Civil na Bússola Estratégica. O MAI contribuiu com a perspetiva e a experiência operacional essenciais para os futuros desenvolvimentos da PCSD Civil e das ambições da União Europeia em geral. Do evento resultou reconhecimento dos progressos alcançados e a consciência de que ainda existe muito trabalho por fazer, o que invoca mais cooperação, melhor coordenação, assim como estratégias e planeamentos ajustados para fazer frente às inúmeras ameaças securitárias.

Decorreu, de 21 a 25 de junho, em Lisboa, no Quartel de Conde de Lippe, o **Curso Piloto de Gestão da Mudança em Gestão de Crises Civis** que teve como objetivo dotar os participantes com conhecimentos, competências e ferramentas para a compreensão abrangente relativa ao conceito de gestão da mudança no contexto das missões de gestão civil de crises e, concomitantemente, sensibilizar para a reflexão acerca dos atuais desafios inerentes à implementação dessa abordagem. O curso contou com a participação de 17 formandos oriundos de Missões da União Europeia e da Organização para a Segurança e Cooperação na Europa (OSCE), da Bélgica, da Dinamarca, de Espanha, da Estónia, de França e de Portugal, bem como, formandos da Guarda Nacional Republicana e da Polícia de Segurança Pública.

g. Segurança Marítima

A 22 de abril, o MAI apoiou e participou a **Conferência Internacional sobre a Segurança Marítima,** organizada pelo Ministério dos Negócios Estrangeiros. O evento visou uma reflexão alargada sobre a segurança marítima, debater a cooperação internacional na segurança marítima, a operacionalização de conceitos como o projeto das Presenças Marítimas Coordenadas e a cibersegurança, perspetivar os desafios futuros para a União e contribuir para a discussão em torno da definição de uma Bússola Estratégica que redefina e coordene uma verdadeira estratégia de defesa europeia. O MAI abordou "Quadros de cooperação para a cibersegurança em domínio marítimo como contributo para o debate da Segurança Marítima no quadro da Bússola Estratégica da UE".

4. Outras iniciativas e projeção MAI

a. Comunicação e Visibilidade

No domínio da comunicação foi desenvolvida uma **página web específica para a Presidência Portuguesa da União Europeia na área de governação MAI,** em língua portuguesa e língua inglesa, alojada na página oficial da Secretaria-Geral do MAI https://www.sg.mai.gov.pt/ppue21/, permitindo dar visibilidade ao trabalho realizado pelas entidades, forças e serviços de segurança (FSS) do MAI.

Outro elemento importante foi a conceção e impressão do **Programa de Trabalho da Administração Interna**, em versão portuguesa e inglesa, e que foi divulgado através desse subsite e igualmente remetido aos principais atores nacionais e internacionais que, embora de formas distintas, cooperaram com o MAI na prossecução dos objetivos da PPUE2021 na área dos Assuntos Internos.

b. Empenhamento nacional e Projeção internacional

Saliente-se ainda que a PPUE2021 no MAI resultou de um trabalho conjunto das várias entidades, forças e serviços de segurança. Assim, a partir do segundo semestre de 2020, passaram a trabalhar diretamente com a Direção de Relações Internacionais da SGMAI

três Oficiais de Ligação (OL), destacados pela Guarda Nacional Republicana, pela Polícia de Segurança Púbica e pelo Serviço de Estrangeiros e Fronteiras. A colaboração próxima possibilitou um fluxo de trabalho mais dinâmico e direto com as FSS, com importantes ganhos ao nível dos diversos eventos produzidos durante a PPUE2021 e do trabalho preparatório inerente às diversas instâncias preparatórias do Conselho, que o MAI presidiu durante o primeiro semestre de 2021.

Para além disso, o MAI, durante a presidência alemã do Conselho da União Europeia, Estado parceiro do TRIO, conseguiu destacar um técnico superior da SGMAI no F*ederal Ministry of the Interior, Building and Community*, em Berlim, durante o mês de setembro-outubro de 2020, de forma a permitir uma melhor preparação da PPUE2021, com trabalho de campo e em estreita colaboração com os colegas alemães.

De igual forma, o *Federal Ministry of the Interior, Building and Community* da Alemanha destacou para Lisboa um oficial de ligação, para trabalhar diretamente com o MAI durante a Presidência Portuguesa. O destacamento do OL alemão, de 30 de novembro de 2020 a 30 de junho de 2021, permitiu um excelente e dinâmico intercâmbio de informações entre Portugal e Alemanha, partilha de boas práticas e de conhecimentos ao MAI, dado que o OL foi um dos elementos que preparou e executou a Presidência Alemã.

ANEXOS

ANEXO I – Lista dos Presidentes das instâncias preparatórias do Conselho

ANEXO II – Atividade desenvolvida ao nível das instâncias preparatórias do Conselho

ANEXO III – Documentos adotados

ANEXO I

Lista dos Presidentes das instâncias preparatórias do Conselho

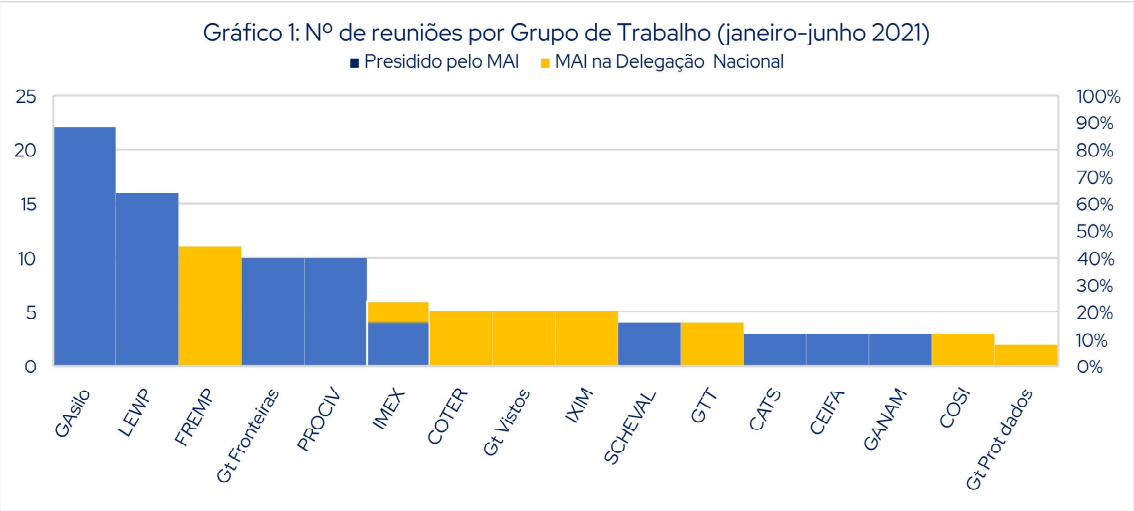
Grupos de trabalho		Presidentes
B.3 - Grupo de Alto Nível do Asilo e da Migração (GANAM)		ICS Fernando Parreiral Silva (SEF)
E.1 - Comité Estratégico da Imigração, Fronteiras e Asilo (CEIFA)		ICS Carlos Moreira (SEF)
E.2- Grupo da Integração, Migração e Afastamento (IMEX)	Admissão	Dr. Mário Pedro (SEF/Conselh. Técnico REPER)
	Afastamento	ICS Paulo Batista (SEF)
E.4 - Grupo do Asilo		ICS Pedro Correia Matos (SEF)
E.6 - Grupo das Fronteiras	Fronteiras	ICS Luís Gouveia (SEF)
	Doc. Falsos	ICh Octávio Rodrigues (SEF)
E.21 - Grupo da Proteção Civil (PROCIV)		Pres: Dra. Ana Freitas (ANEPC) Vice-Pres: Eng.º Paulo Sacadura (ANEPC)
E.25 - Comité de Coordenação no domínio da Cooperação Policial e Judiciária em matéria Penal (CATS) (Copresidência MJ/MAI)		Dr. Ricardo Carrilho (SGMAI) Dr. João Arsénio de Oliveira (MJ/DGPJ)
E.26 - Grupo da Aplicação da Lei (LEWP)		Pres: Superintendente Luís Elias (PSP) Vice-Pres: Dra. Ana Marta Ferreira (SGMAI)
E.27 - Grupo para as Questões de Schengen	Avaliação Schengen	ICS Carlos Matos Moreira (SEF)
	Acervo Schengen	ICS Luís Gouveia (SEF/OL MAI na REPER)
	SIS/TECH	Dr. Bruno Fragoso (SEF)
E.29: Grupo Ad Hoc em Instrumentos Financeiros na Área JAI *		Dr. Ricardo Carrilho (SGMAI)

*este GT não reuniu durante o primeiro semestre de 2021. Todavia, o trabalho da Presidência foi exercido em sede de reuniões técnicas e trílogos com o Parlamento Europeu.

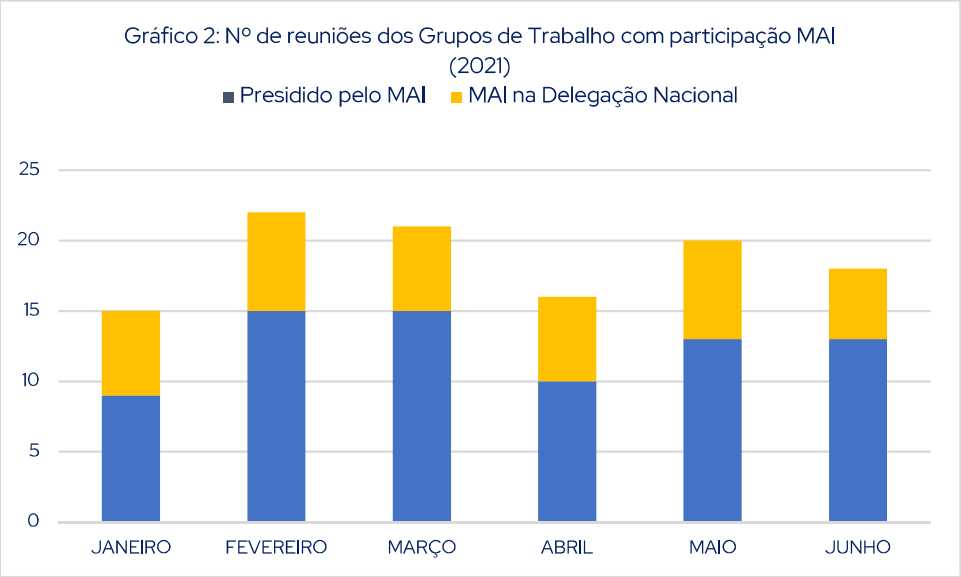
ANEXO II

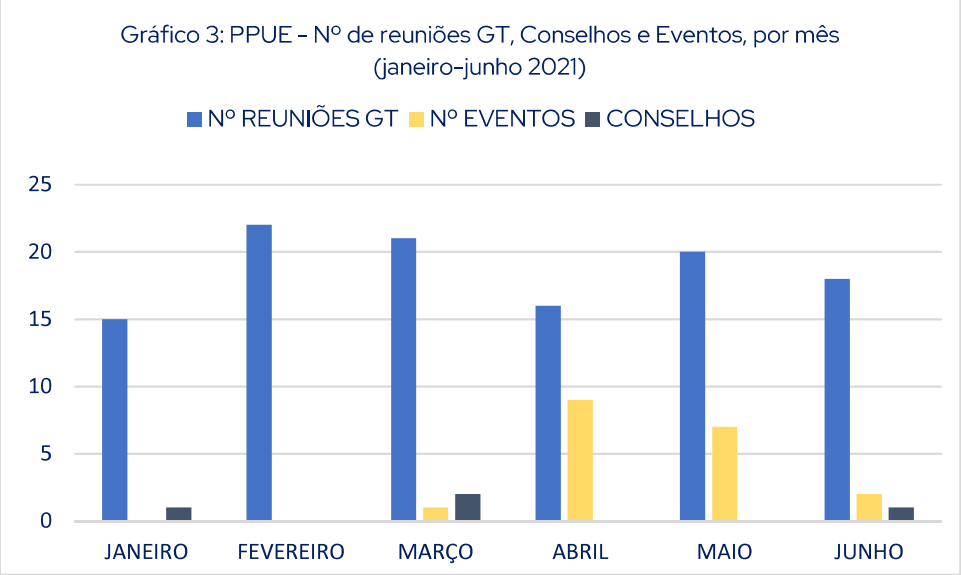
Atividade desenvolvida ao nível das instâncias preparatórias do Conselho

As reuniões foram preparadas ao nível técnico pelos 9 Grupos de Trabalho a que o MAI presidiu (alguns deles com sub-formações), tendo também sido igualmente colhidos importantes contributos de Grupos de Trabalho nos quais elementos do MAI participaram enquanto delegação nacional.



O gráfico número 1 demonstra como o trabalho desenvolvido ao nível técnico permitiu a concretização das linhas definidas pelo MAI no seu Programa. De facto, em consonância com o objetivo de prosseguir com as negociações do Pacto Migrações e Asilo, o Grupo do Asilo e o Grupo de Trabalho Fronteiras encontram-se entre os que tiveram o maior número de reuniões. Igualmente em destaque está o Grupo de Aplicação da Lei (LEWP), com um número muito elevado de encontros dedicados ao debate sobre os vários aspetos de cooperação policial nomeadamente a revisão do regulamento EUROPOL. O Grupo da Proteção Civil (PROCIV) reuniu por 10 vezes, confirmando assim a relevância que o MAI deu também a este tópico durante a sua Presidência.





Os grupos de trabalho estiveram muito ativos ao longo de todo o semestre. Os meses de fevereiro, março e maio destacam-se como os que tiveram o maior número de reuniões, possibilitando assim uma preparação mais profícua das reuniões de Ministros que aconteceram em março e junho. Em Abril, os Grupos de Trabalho reuniram um menor número de vezes, contudo, foi o mês com maior atividade ao nível da organização de eventos, destacando-se também o mês de maio quanto aos eventos promovidos pelo MAI.

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1 de janeiro - 30 de junho 2021

BALANÇO-ANEXO III

Documentos adotados

Anexo III – Documentos adotados

A) Uma Europa que acolhe e protege | Migrações, Schengen e gestão de fronteiras

B) Uma Europa segura que aposta numa abordagem preventiva | Cooperação Policial

C) Aprender com o passado na preparação do futuro – Reforçar a resiliência das nossas sociedades | Gestão de catástrofes e proteção civil

D) Os meios para responder aos desafios

2021
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A) Uma Europa que acolhe e protege | Migrações, Schengen e gestão de fronteiras

Council of the European Union

Brussels, 29 June 2021
(OR. en)

10196/21

Interinstitutional File: 2016/0131(COD)

LIMITE

ASILE 42
CODEC 981

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	9905/21
No. Cion doc.:	8742/16 + ADD 1
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (First reading) = Confirmation of the final compromise text with a view to agreement

1. On 4 May 2016, in the framework of the reform of the Common European Asylum System (CEAS), the Commission adopted a proposal for the EUAA Regulation. The proposal aimed to strengthen the role of EASO and develop it into a full-fledged asylum Agency.

2. On 20 December 2016, the Council adopted a partial general approach on the proposal, excluding the text in square brackets relating to other proposals in the field of the CEAS. Negotiations with the European Parliament were conducted by the Maltese and Estonian Presidencies.

3. On 6 December 2017, COREPER took note of the provisional agreement reached with the European Parliament on the text of the proposal.

4. On 12 September 2018, the Commission presented an amended proposal for the EUAA Regulation, which builds on the provisional agreement reached by the co-legislators in 2017.

5. The proposal made by the Commission in 2016, was not modified by the 2020 Pact on Migration and Asylum presented on 23 September 2020. The German Presidency, took forward technical work on the basis of the 2016 proposal, with the aim to align it with the Common European Asylum System *acquis* that is currently in force.

6. Two technical trilogues were held on 29 Oct 2020 and 27 Nov 2020, where it was agreed to replace references to other proposals of the CEAS package, previously placed between square brackets, with dynamic references or more general wording. An addition in regard to Article 19, allowing for the use of external experts in asylum support teams, was also made.

7. The current Presidency continued work on this important legislative proposal, in order to find a compromise representing a fair and balanced approach and taking into account views expressed by delegations.

8. The changes introduced in the final compromise text refer to the entry into force of the provisions in regard to the monitoring mechanism for the operational and technical application of the CEAS. These provisions are linked, *inter alia*, with the system determining the Member State responsible established by Regulation (EU) No 604/2013 and since such system may change, application of these provisions would be deferred to 31 December 2023.

9. In addition, the provisions on the said mechanism which relate to the adoption of recommendations addressed to Member States, as well as the provisions of this Regulation on a situation of disproportionate pressure or ineffectiveness of the asylum and reception systems, would only be applied from the date of the replacement of the Regulation (EU) No 604/2013, but not sooner than 31 December 2023.

10. The JHA Counsellors examined the Presidency compromise text proposal on the abovementioned subject on 14 June 2021. On 16 June 2021, Coreper granted an extended mandate for negotiations with the European Parliament.

11. On 29 June 2021, a provisional political agreement was reached by the Portuguese Presidency of the Council of the EU and the EP rapporteur on a new enhanced mandate that will re-establish EASO as the European Union Agency for Asylum (EUAA).

12. The Presidency considers that the final compromise text represents a fair and balanced approach taking into account views expressed by delegations.

13. The changes in the text of the draft Regulation as compared to the Commission proposal are indicated in **bold** and deleted text is marked in […]. New text compared to the text of document 9905/21 establishing mandate for negotiations with the European Parliament on 16 June 2021, is indicated in **bold underlined, and deleted text is marked in […]**.

13. On the basis of the above Coreper is invited to:

– approve the final compromise text, as set out in the Annex to this note, and

– agree that the Chair of Coreper can indicate in writing to the Chair of the LIBE Committee that, should the European Parliament, in accordance with Article 294(3) of the Treaty on the Functioning of the European Union, adopt its position at first reading as regards the Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, in the form of the text as set out in the Annex to this note, subject to revision of these texts by the lawyer-linguists of both Institutions, the Council would, in accordance with Article 294(4) of that Treaty, approve the European Parliament's position and adopt the act.

ANNEX I

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

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 Union and governed by the principle of solidarity and fair sharing of responsibility.

(1a) A common policy on asylum, which is based on the full and inclusive application of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967 relating to the status of refugees (Geneva Convention), is a constituent part of the Union's objective of establishing progressively an area of freedom, security and justice open to third-country nationals or stateless persons who seek international protection in the Union.

(2) The CEAS is based on common minimum standards for procedures for international protection, recognition and protection offered at Union level, reception conditions and **establishes** a system for determining the Member State responsible for asylum seekers. Notwithstanding **the** progress **made** on the CEAS, there are still significant disparities between the Member States **as regards** the granting of international protection and 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** […] uniform level of application of Union law, **based on high protection standards,** across the Union.

(3) In its Communication **"Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe"** of 6 April 2016, the Commission set out **priority areas** for **structurally** improving the CEAS, namely […] **the** establish**ment of** a sustainable and fair system for determining the Member States responsible for asylum seekers, […] **the** reinforce**ment of** the Eurodac system, […] **the** achieve**ment of** greater convergence in the asylum system and […] **the** prevent**ion** of secondary movements, and **the** develop**ment of** an enhanced mandate for the European Asylum Support Office **(EASO).** That Communication is in line with calls by the European Council on 18 February 2016 to make progress towards reforming the […] **U**n**ion**'s existing framework so as to ensure a humane**, fair** and efficient asylum policy. […] **The Communication** also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report **"The situation in the Mediterranean and the need for a holistic EU approach to migration"** of 12 April 2016.

(4) […] **EASO** was established by Regulation (EU) No 439/2010 of the European Parliament and of the Council[1] and it took up its responsibilities on 1 February 2011. […] **EASO** […] enhance**s** practical cooperation among Member States on asylum-related matters and **assists** […] Member States in implementing their obligations under the CEAS. […] **EASO** 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 […] **contribute to ensuring the efficient functioning** of the asylum and reception systems of Member States.

[1] 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).

(5) Having regard to **the** structural weaknesses of the CEAS**, which were** brought to the fore by **the** 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 […] **EASO** and further develop**ing** it into a fully-fledged agency. The Agency should be a centre of expertise **on asylum**. **It** should facilitate and improve **the functioning of the CEAS by coordinating and** strengthening practical cooperation and information exchange **on asylum** among Member States […], **by** promot**ing** Union **and international law on asylum and** operational standards in order **to ensure** a high degree of uniformity **based on high protection standards** as regards procedures for international protection, reception conditions and the assessment of protection needs across the Union, **by enabling genuine and practical solidarity towards Member States, in order to assist the affected Member States in general and the applicants in particular, and in accordance with Article 80 TFEU, which stipulates that relevant Union acts shall contain appropriate measures to give effect to the principle of solidarity, as well as in order to apply in a sustainable way the Union rules for determining the Member State responsible for the examination of the application for international protection,** […] **and in order to enable** convergence in the assessment of applications for international protection across the Union, **by** monitoring the operational and technical application of […] **the CEAS,** […] **by supporting Member States with resettlement and […] the implementation of Regulation (EU) No 604/2013 and by providing operational and technical assistance to Member States for the management of their asylum and reception systems, in particular those whose systems are subject to disproportionate pressure.**

(6) The tasks of the European Asylum Support Office should be expanded and **in order** to reflect those changes, it should be ~~[…]~~ **replaced and succeeded by the** European Union Agency for Asylum **('the Agency')** […], **with full continuity in all of its activities and procedures.** […]

(6a) **In order to guarantee that it is independent and that it can carry out its tasks properly, the Agency should be provided with sufficient financial and human resources, including sufficient own staff to form part of the asylum support teams and the teams of experts for the monitoring mechanism.**

(7) The […] Agency […] should work in close cooperation with **the authorities of the** Member States' […] **responsible for** asylum **and** immigration and other **relevant** 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 […] **capable of** fulfil**ling** its mandate. It is important**, for the purposes of this Regulation,** that the Agency and the Member States act in good faith and […] exchange […] information **in a timely and accurate manner**. Any provision of statistical data should respect the technical and methodological specifications **laid down in** Regulation (EC) No 862/2007 **of the European Parliament and of the Council.**[2]

[2] 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).

(8) The […] Agency […] should gather and analyse information on the situation of asylum in the Union and in third countries insofar as […] **it** may have an impact on the Union. That should enable the Agency to **provide** Member States **with up-to-date information including on migratory and refugee flows**, as well as **to identify possible risks for Member States' asylum and reception systems. For this purpose, the Agency should work in close collaboration with the European Border and Coast Guard Agency.**

(8-a) No personal data should be stored in databases or published on web portals created by the Agency concerning legal developments in the field of asylum including relevant case law, unless such data are publicly accessible.

(8a) The Agency should be able to deploy liaison officers to the Member States to foster cooperation and to act as an interface between the Agency and the national authorities responsible for asylum and immigration and other relevant services. Liaison officers should facilitate communication between the Member State concerned and the Agency and share relevant information from the Agency with the Member State concerned. They should support the collection of information and contribute to promoting the application and implementation of Union law on asylum, including with regard to the respect for fundamental rights. Liaison officers should regularly report on the situation of asylum in Member States to the Executive Director and those reports should be taken into account for the purposes of the monitoring mechanism. Where such reports raise concerns about one or more aspects relevant for the Member State concerned, the Executive Director should inform that Member State without delay.

(9) […] **T**he Agency should provide the necessary support to the Member States […] **in carrying out […] their tasks and obligations […] under Regulation (EU) No 604/2013. […]**

(9a) As regards resettlement, the Agency should be able to provide the necessary support to Member States at their request. To that end, the Agency should develop and offer expertise in resettlement in order to support […] actions on resettlement taken by Member States […].

(10) The […] Agency […] should assist Member States with **the** training of experts from all national administrations, courts and tribunals, and national […] **authorities** responsible for asylum matters, including **through** the development of a […] **European asylum** curriculum. **Member States should develop appropriate training on the basis of the European asylum curriculum with the aim of promoting best practices and common standards in the implementation of Union law. In this respect, Member States should include core parts of the European asylum curriculum into their training. Those core parts should cover issues related to the determination of whether applicants qualify for international protection, interview techniques and evidence assessment.** In addition, the Agency should **verify and, where necessary,** ensure that all experts participating in asylum support teams or forming part of the asylum […] **reserve** pool receive […] **the necessary** training before their participation in operational activities organised by the Agency.

(11) The […] Agency […] should ensure a more structured, **up to date** and streamlined production of information on **relevant third countries** at […] **Union** level[…]. It is necessary for the Agency to gather **relevant** information and draw up reports providing for country information. **For this purpose, the Agency should establish and manage** European networks on […] **third-country** information so as to avoid duplication and create synergies with national reports. **The country information should refer, among others, to the political, religious and security situation in the country concerned, as well as violations of human rights including ~~of~~ torture and ill-treatment in the country concerned.**

(11a) […] **In order** to […] **foster** convergence in the assessment of applications for international protection and the […] **type** of protection granted, the Agency should **together with** Member States […] develop a common analysis […] **and** guidance **notes** on the situation in specific countries of origin. **The common analysis should consist of an assessment of the situation in relevant countries of origin based on the country of origin information. The guidance notes should be based on an interpretation of that common analysis developed by the Agency and Member States. When developing the common analysis and guidance notes the Agency should take note of the most recent UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from specific countries of origin and it should be able to take into account other relevant sources. Without prejudice to Member States' competence for deciding on individual applications for international protection, Member States should take into account the relevant common analysis and guidance notes when assessing applications for international protection from applicants who originate from third countries for which a common analysis and guidance notes have been developed in accordance with this Regulation.**

(12) […] **The Agency** should assist the Commission **and should be able to assist the Member States** […] **by providing information and analysis on third countries regarding the safe country of origin and safe third country concepts ('safe country concepts').** […] **When providing such information and analysis the Agency should report to the European Parliament and the Council in accordance with this Regulation.**

(13) **In order t**o ensure a high degree of uniformity **based on high protection standards** as regards procedures for international protection, reception conditions and the assessment of protection needs across the Union, the Agency should organise and coordinate activities promoting **the correct and effective implementation of** Union law **on asylum through tools of a non-binding nature**. For that purpose, the Agency should develop operational standards and relevant indicators, […] **as well as** guidelines on asylum-related matters. **The Agency** should enable **and promote** the exchange of best practices among Member States.

(14) The […] Agency […], in close cooperation with the Commission and without prejudice to the Commission's responsibility as guardian of the Treaties, should monitor […] **the operational and technical application** of the CEAS […] **with the aim of preventing or identifying possible shortcomings in the asylum and reception systems of the Member States and of assessing their capacity and preparedness to manage situations of disproportionate pressure in order to enhance the efficiency of those systems.** […] **That** monitoring mechanism […] should be comprehensive, **it** should be based on information provided by **the** Member State **concerned**, **as well as the** information analysis on the situation of asylum developed by the Agency, on-site visits, **including short-notice visits, and** case sampling **and information provided by intergovernmental organisations or bodies**, **in particular UNHCR, and other relevant organisations on the basis of their expertise.** […] **The Executive Director should provide for the possibility for the Member State concerned to comment on the draft findings** […] **and subsequently on the draft recommendations. The draft recommendations should be prepared in consultation with the Commission. After taking into account the comments of the Member State concerned, t**he Executive Director should […] **submit to the Management Board the findings** of the monitoring exercise **and** the draft recommendations […], outlining the […] measures to […] **be taken by the Member State concerned including with the assistance of the Agency, as necessary,** to address […] **any** shortcoming**s** or issues of capacity and preparedness. **The draft recommendations should specify** […] **the time-limits within which those measures should be taken.** The Management Board […] **should adopt the** recommendations. **It should be possible for the Member State concerned to request specific financial support from relevant Union financial instruments, and assistance from the Agency for the implementation of the recommendations.**

(14a) The monitoring exercise should take place in close collaboration with the Member State concerned, including as regards on-site visits and case sampling, where necessary. Case sampling should consist of a selection of positive and negative decisions relevant to the aspect of the CEAS that is being monitored, covering a particular period of time and it should be based on objective indications, such as recognition rates. Case sampling should be without prejudice to Member States' competence for deciding on individual applications for international protection and it should be carried out in full respect of the principle of confidentiality.

(14b) In order to focus the monitoring exercise on particular elements of the CEAS, the Agency should also have the possibility to conduct monitoring of thematic or specific aspects of the CEAS. Where the Agency initiates a monitoring exercise on thematic or specific aspects of the CEAS, it should ensure that all Member States are subject to this specific or thematic monitoring. However, in a year during which the operational and technical application of all aspects of the CEAS of a particular Member State is being monitored, that Member State should not be subject to a monitoring exercise on thematic or specific aspects of the CEAS so as to avoid duplication of the Agency's work.

(15) […] **Where** the Member State concerned does not take the necessary measures to **implement** the recommendations **adopted by the Management Board within the set time limit and thereby does not address the identified** shortcomings in **its** asylum and reception systems […] or any issues of capacity and preparedness which result in […] **serious consequences for** the functioning of the CEAS, the Commission should, based on its own assessment […], adopt recommendations addressed to that Member State […] **identifying** the measures needed to remedy the […] **situation, including, where necessary, specific measures to be taken by the Agency in support of the Member State concerned. It should be possible for t**he Commission […] to organise on-site visits to the Member State concerned **in order** to verify the implementation of the […] **recommendations**. **In its assessment the Commission should consider the seriousness of the identified shortcomings in relation to their consequences for the functioning of the CEAS.**

Where, following the expiry of the time-limit set in the recommendations, the Member State **has** not complied with the recommendations, the Commission may […] **make a proposal for a Council implementing act identifying measures to be taken by the Agency to support the Member State concerned and requiring the Member State to cooperate with the Agency in the implementation of those measures.**

(15b) When setting up teams of experts for carrying out the monitoring exercise, the Agency should invite an observer from UNHCR. The absence of such an observer should not prevent the teams from performing their tasks.

(16) To facilitate and improve the proper functioning of the CEAS and to assist Member States in implementing their obligations within the framework of **the** CEAS, the Agency should provide Member States with operational and technical assistance, in particular whe**re** their asylum and reception systems are subject to disproportionate pressure. […] **Such assistance should be provided based on an operational plan and** through the deployment of asylum support teams. **Those teams should** consist of experts from the Agency's own staff, experts from Member States, experts seconded by Member States to the Agency **or other experts not employed by the Agency with demonstrated relevant knowledge and experience in line with operational needs. The Agency should only make use of such other experts not employed by it where it cannot otherwise ensure the proper and timely exercise of its tasks due to the lack of available experts from Member States or the Agency's own staff.**

(16-a) Th**e asylum support** teams should support Member States with operational and technical measures, including by providing expertise relating to **the** identification and registration of third-countr**y** nationals, interpreting services, information on countries of origin […] **and on** 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 **the** relocation **or transfer of applicants for, or beneficiaries of, international protection**. […] […] **A**rrangements for asylum support teams should be governed by this Regulation in order to ensure their effective deployment.

(16a) Experts who participate in asylum support teams should complete the necessary training relevant to their duties and functions for their participation in operational activities. The Agency should, where necessary and in advance of or upon deployment, provide those experts with training which is specific to the operational and technical assistance that is being provided in the host Member State. For experts forming part of the asylum support teams to be involved in facilitating the examination of applications for international protection, they should demonstrate relevant experience of at least a year.

(16b) To ensure the availability of experts for the asylum support teams and to ensure that they can be immediately deployed as necessary, the asylum reserve pool should be established. That pool should constitute a reserve of experts from Member States amounting to a minimum of 500 persons.

(17) In cases where a Member State's asylum and reception systems are subject to disproportionate pressure […], the Agency should, **upon the request of a Member State or** on **its** own initiative **with the agreement of the Member State concerned**, **be able to** assist that Member State […] by means of a comprehensive set of measures, including the deployment of experts from the asylum […] reserve pool. […]

(17a) The Agency should [...] be able to intervene, **on the basis of a Council implementing act**, in support of a Member State where [...] **its asylum and reception systems are rendered ineffective to the extent of having serious consequences for the functioning of the CEAS. Such an intervention may be justified where the asylum and reception systems of that Member State would be subject to disproportionate pressure that places heavy and urgent demands on those systems and** the Member State **concerned** does not take sufficient action to address that pressure […]**, including by not requesting operational and technical assistance or by not agreeing to an initiative of the Agency for such assistance, or the Member State concerned does not comply with the Commission's recommendations following a monitoring exercise. Such an intervention by the Agency should be without prejudice to any infringement procedure that may be initiated by the Commission.**

[…]

(17b) In order to address the situation where the asylum or reception systems of a Member State are rendered ineffective to the extent of having serious consequences for the functioning of the CEAS and are subject to disproportionate pressure that places exceptionally heavy and urgent demands on those systems and the Member States concerned does not take sufficient action to address that pressure, or the Member State concerned does not comply with the Commission's recommendations following a monitoring exercise, the Commission should propose to the Council a decision identifying the measures to be taken by the Agency and requiring the Member State concerned to cooperate with the Agency in the implementation of those measures. The implementing power to adopt such a decision should be conferred on the Council due to the potentially politically sensitive nature of the measures to be decided, and the possible impact which such measures might have on the tasks of the national authorities.

(18) To ensure that the asylum support teams […]**, including those** deployed from the asylum reserve pool, are able to perform their tasks effectively with the means necessary, the Agency […] should **itself** be able to acquire or lease technical equipment. This should not, however, affect the obligation of **the host** 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 […] Agency […] should support solidarity **measures** within the Union […]and **perform its tasks and obligations with regard to** the relocation **or transfer** of **applicants or** beneficiaries of international protection **within the Union**[…], while ensuring that **advantage is not taken of** asylum and reception systems […].

(20) **Where a Member State faces specific and** disproportionate migratory **challenges** at particular areas […] of the external borders, referred to as hotspot areas, **it** should be able to **request the Agency to provide operational and technical assistance and it should thus 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 Agency, the European […] **Border and Coast Guard Agency** and Europol or other relevant Union **bodies, offices and** agencies, as well as experts from the staff of the Agency and the European […] **Border and Coast Guard Agency with the aim of managing such challenges**. The Agency should **assist the Commission in the coordination among the different agencies on the ground.**

(20a) In hotspot areas, the Member States should operate cooperate with relevant Union agencies which should act within their respective mandates and powers, and under the coordination of the Commission. The Commission, in cooperation with the relevant Union agencies, should ensure that activities in hotspot areas comply with relevant Union law.

(21) For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the Agency should cooperate with Union bodies, […] offices **and agencies**, in particular **the agencies in the field of Justice and Home Affairs** […] 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 […] Agency […] should cooperate with the European Migration Network, established by Council Decision 2008/381/EC[3], to ensure synergies and avoid duplication of activities.

(23) The […] Agency […] 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 […] other relevant international organisations should be fully recognised and those organisations should be involved in the work of the Agency. Th**os**e working arrangements should receive the Commission's prior approval.

(24) The […] Agency […] should facilitate operational cooperation between Member States **and third countries in matters related to its activities and to the extent necessary for the fulfilment of its tasks. The Agency** should also cooperate with **the** authorities of third countries **in matters covered by this Regulation** 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, **should integrate its external activities in broader strategic cooperation with third countries, and the Agency should not**, under […] **any** […] circumstances**,** […] formulate […] independent external policy. In their cooperation with third countries, the Agency and the Member States should respect the fundamental rights set out in the Charter of Fundamental Rights of the European Union **(the Charter)** and should comply with norms and standards […] **which form part of** Union **law, including** […] whe**re** the **activities are carried out on** […] the territory of those **third** countries.

(24a) The Agency should be able to deploy experts from its own staff as liaison officers to relevant third countries to facilitate cooperation with third countries on matters related to asylum. Prior to the deployment of a liaison officer, the Agency should assess the human rights situation in the country concerned in order to ensure that that country complies with non-derogable human rights standards.

[3] Council Decision of 14 May 2008 establishing a European Migration Network (OJ L 131, 21.5.2008, p. 7).

(25) The […] Agency […] 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 **on asylum**. The Consultative Forum should […] **advise** the Executive Director and the Management Board in matters covered by this Regulation. **The composition and size of the Consultative Forum should be determined having due regard to the efficiency of its activities. Adequate human and financial resources should be allocated by the Agency to the Consultative Forum.**

(26) This Regulation respects fundamental rights and observes the principles recognised, in particular, **by international and Union law,** including the Charter[…]. All activities of the […] Agency […] shall be carried out in full respect of those fundamental rights and principles, in particular the right to asylum, the protection from *refoulement*, the right to respect for private and family life, **including family reunification under Union law**, **the rights of the child**, the right to protection of personal data and the right to an effective remedy **and to a fair trial**. The rights of the child and the special needs of persons in a vulnerable situation […] **should** always be taken into account**. The Agency should therefore carry out its tasks with respect for the best interests of the child, in compliance with the United Nations Convention on the Rights of the Child, taking due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.**

(26a) Where the operational and technical assistance provided by the Agency concerns persons in a vulnerable situation, that assistance should be adapted to the situation of those persons in accordance with the requirements laid down by Union and national law on asylum.

(26b) The Agency should establish and implement a fundamental rights strategy to monitor and ensure the protection of fundamental rights.

(26c) An independent fundamental rights officer should be appointed to ensure that the Agency complies with fundamental rights in the course of its activities and to promote the respect for fundamental rights within the Agency in accordance with the Charter, including by making a proposal for the Agency's fundamental rights strategy and ensuring its implementation, as well as by handling complaints received by the Agency under the complaints mechanism. To that end, the Agency should provide the fundamental rights officer with adequate resources and staff corresponding to its mandate and size.

(26d) The Agency should establish a complaints mechanism in cooperation with the Fundamental Rights Officer. The aim of the complaints mechanism should be to safeguard the respect for fundamental rights in all the activities of the Agency. The complaints mechanism should be an administrative mechanism. The fundamental rights officer should be responsible for handling complaints received by the Agency in accordance with the right to good administration. The complaints mechanism should be effective, ensuring that complaints are properly followed up. The complaints mechanism should be without prejudice to access to administrative and judicial remedies and should not constitute a requirement for seeking such remedies. The complaints mechanism should not constitute a mechanism for challenging any decision of a national authority on individual applications for international protection. Criminal investigations should be conducted by the Member States, where necessary. In order to increase transparency and accountability, the Agency should report on the complaints mechanism in its annual report on the situation of asylum. The Agency's annual report should cover, in particular, the number of complaints it has received, the types of fundamental rights violations involved and where possible, the operations concerned as well as the follow-up measures taken by the Agency and Member States.

(27) The Commission and the Member States should be represented on the Management Board of the […] Agency […] in order to exercise a policy and political oversight over its workings. The Management Board **should give general orientation for the Agency's activities and should ensure that the Agency performs its tasks. It** should, where possible, consist of the operational heads of the Member States' asylum administrations or their representatives. **All parties represented in the Management Board should make efforts to limit turnover of their representatives, in order to ensure continuity of the board's work.** […] **The Management Board** 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) *deleted*

(29) The […] Agency […] 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 […] be a body of the Union having legal personality and exercising the implementing powers conferred upon it by this Regulation.

(29a) The Agency should report on its activities to the European Parliament and to the Council.

(30) In order to guarantee […] **its** autonomy, the **Agency** 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 Interinstitutional 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.[4] The Union budgetary procedure should be applicable to the Union's contribution and to any grant chargeable to the general budget of the […] Union. The auditing of accounts should be undertaken by the Court of Auditors.

(30a) The consolidated annual activity report on the Agency's activities should set out the proportions of the expenditure for each of the Agency's main activities.

(31) Any financial resources made available by the Agency […] **in** the form of grants, delegated agreements or […] contract**s** in accordance with this Regulation should not result in double financing with other national, […] **Union** 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 […] Agency[…].

(33) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[5] 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.[6]

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4 OJ C 373, 20.12.2013, p. 1.

5 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).

6 OJ L 136, 31.5.1999, p. 15.

(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[7] should apply to the […] Agency […].

(35) Any processing of personal data by the […] Agency […] within the framework of this Regulation should be conducted in accordance with Regulation (E**U**) […] **2018/1725** of the European Parliament and of the Council[8] and should respect the principles of necessity and proportionality. The Agency […] **should be able to** process personal data **in order** to perform its tasks relating to the provision of operational and technical assistance to Member States, **to resettlement,** to […] **the facilitation** of the exchange of information with Member States, the European […] **Border and Coast Guard Agency**, Europol or Eurojust, to **analysing** information on the situation of asylum, and for administrative purposes. **Personal data of a sensitive nature, which are necessary for assessing whether a third-country national qualifies for international protection, should only be processed for the purposes of facilitating the examination of international protection or providing the necessary assistance in the procedure for international protection, […] and for the purposes of resettlement[…]. Such processing should be limited to what is strictly necessary for the purposes of conducting a complete assessment of the applications for international protection in the interest of the applicant.** Any further processing of retained personal data for purposes other than those set out in this Regulation should be prohibited.

(36) Regulation (EU) **2016/679** of the European Parliament and of the Council[9] on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, **and repealing Directive 95/46/EC (General Data Protection Regulation)** 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

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7 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).

8 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).

9 OJ L 119, 4.5.2016, p. 1.

prosecution of terrorist offences or of other serious criminal offences including the safeguarding against and the prevention of threats to public security.

(37) Directive **(EU) 2016/680** of the European Parliament and of the Council[10] 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) 2016/679** regarding the protection of the rights and freedoms of individuals, in particular their right to the protection of personal data which concerns 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 task~~s~~ of providing operational and technical assistance, when carrying out case sampling for the purposes of the monitoring exercise, […] **potentially** handling applications for international protection […], facilitating the exchange of information with Member States, the European […] **Border and Coast Guard Agency**, Europol or Eurojust and in the framework of information obtained when performing its tasks in the migration management support teams at hotspots, for analysing information on the situation of asylum and for resettlement. Any processing of personal data should respect the principle of proportionality and be strictly limited to personal data necessary for th**o**se purposes.

[10] OJ L 119, 4.5.2016, p. 89

(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 21 September 2016.[11]

(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 **on asylum** and operational standards to ensure a high degree of uniformity as regards procedures for international protection, reception conditions and the assessment of protection needs across the Union, to monitor the operational and technical application of the […] **CEAS** and to provide increased operational and technical […] **assistance** 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.

[11] OJ C […]

(43) 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 Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(45) Taking into account the fact 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.

(45a) To fulfil its purpose, the Agency should be open to participation by countries which have concluded agreements with the Union by virtue of which they have adopted and apply law of the Union in the field covered by this Regulation, in particular Iceland, Liechtenstein, Norway and Switzerland. Having regard to the fact that until now Iceland, Liechtenstein, Norway and Switzerland have participated in the activities of the Agency based on arrangements concluded by those countries with the Union on the modalities of their participation in the European Asylum Support Office, those countries should be able to continue participating in the Agency and contribute to the practical cooperation between Member States and the Agency according to the terms and conditions defined by those arrangements. To that end, Iceland, Liechtenstein, Norway and Switzerland should continue to participate as observers.

(46) The competence […] of Member States' asylum authorities **to take a decision** on individual applications for international protection […] **should remain unaffected**.

(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 […] **in its entirety in relation to the Member States bound by this Regulation**. **The Agency, as established by this Regulation, should replace and assume the functions of EASO, as established by Regulation (EU) No 439/2010, which, as a consequence, should be repealed. For the Member States bound by this Regulation** […] **r**eferences to the repealed regulation should be construed as references to this Regulation.

(48) The provisions of this Regulation on the monitoring mechanism for the operational and technical application of the CEAS are linked, inter alia, with the system determining the Member State responsible established by Regulation (EU) No 604/2013. Since such system as established by that Regulation may change, it is deemed necessary to defer the application of those provisions to a later date, namely until […] 31 December 2023. Moreover, the provisions on that mechanism which relate to the adoption of recommendations addressed to the Member State concerned, as well as the provisions of this Regulation on a situation of disproportionate pressure or ineffectiveness of the asylum and reception systems, are more directly linked to, and affected by, the responsibility aspects of the system established by Regulation (EU) No 604/2013. Since that Regulation may be replaced by a new legislative act currently under negotiation, and given the importance of the relevant aspects of such a new legislative act, those provisions should only be applied from the date of the replacement of that Regulation, unless such replacement occurs before […] 31 December 2023, in which case those provisions should apply from […] 31 December 2023.

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

THE EUROPEAN UNION AGENCY FOR ASYLUM

Article 1

Subject-matter and scope

-1. **A European Union Agency for Asylum (the Agency) is hereby established. The Agency, as established by this Regulation, shall replace and succeed the European Asylum Support Office established by Regulation (EU) No 439/2010.**

1. The European Union Agency for Asylum (the Agency) shall **[…] contribute to ensuring** the efficient and uniform application of Union law **on asylum** in Member States **in full respect of fundamental rights. […] The Agency** shall facilitate **and support the activities of Member States in** the implementation **[…]** of the Common European Asylum System (CEAS), **[…] including by** enabling convergence in the assessment of applications for international protection across the Union **and by coordinating and strengthening practical cooperation and information exchange.**

The Agency shall improve the functioning of the CEAS, including through the monitoring mechanism and by providing operational and technical assistance to Member States, in particular where their asylum and reception systems are under disproportionate pressure.

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 **collects and** 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. […]

Article 2

Tasks

1. **For the purposes of Article 1,** the Agency shall perform the following tasks:

(a) facilitate, coordinate and strengthen practical cooperation and information exchange among Member States on […] **their** asylum **and reception systems**;

(b) gather and analyse information **of a qualitative and quantitative nature** on the situation of asylum and on the implementation of the CEAS;

(c) support Member States […] **when carrying out their tasks and obligations in the framework of** the CEAS;

(d) assist Member States on training **and, where appropriate, provide training to Member States'** experts from all national administrations, courts and tribunals, and national services responsible for asylum matters, including **through the** development of a **European asylum** curriculum;

(e) draw up and regularly update reports and other […] **products** providing for information on **the situation in relevant third countries, including** countries of origin**,** at the level of the Union;

(ee) set up and coordinate European networks on third country information;

(f) **organise activities and** coordinate efforts among Member States to […] develop a common analysis […] **and guidance notes on** the situation in […] countries of origin;

[…] (ff) provide information and analysis on third countries regarding the safe country concepts;[…]

(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) provide adequate support to Member States in carrying out their tasks and obligations under Regulation (EU) No 604/2013;

(ha) assist with the relocation or transfer of applicants or beneficiaries of international protection within the Union;

(i) set up and deploy asylum support teams […];

(ii) set up an asylum reserve pool;

(j) **acquire and** deploy the necessary technical equipment for the asylum support teams and deploy the experts from the asylum **reserve** pool;

(k) **develop** operational standards, indicators, guidelines and best practices in regard to the implementation of all instruments of Union law on asylum;

(ka) deploy liaison officers to Member States;

(l) monitor […] **the operational and technical application** of the CEAS […] **with a view to assisting Member States to enhance the efficiency of their** asylum and reception systems […];

(m) support Member States in their cooperation with third countries in matters related to […] **the external dimension of the CEAS, including through the deployment of liaison officers to third countries;**

(ma) assist Member States with their actions on resettlement.

[…]

2. The Agency […] **shall** engage in communication activities on its own initiative in the fields within its mandate**. It shall provide the public with accurate and comprehensive information about its activities.** Communication activities shall not be detrimental to the tasks referred to in paragraph 1 […]. **Communication activities shall be carried out without prejudice to Article 60** and […] in accordance with the relevant communication and dissemination plans adopted by the Management Board.

Article 2a

National contact points for communication

Each Member State shall appoint at least one national contact point for communication with the Agency on matters relating to its tasks listed in Article 2.

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' […] authorities **responsible for asylum and immigration** and other relevant services shall […] cooperate in good faith […].

1a. In order to perform the tasks and obligations conferred on them by this Regulation, in particular for the Agency to carry out its tasks referred to in Article 2 of this Regulation, the Agency and the Member States' authorities responsible for asylum and immigration and other relevant services shall exchange all necessary information in a timely and accurate manner.

2. The Agency shall work closely with the Member States' authorities **responsible for asylum and immigration and other relevant** services and […] with the Commission. The Agency shall carry out its duties without prejudice to those assigned to other relevant bodies of the Union**. The Agency** shall **cooperate** with those bodies, **intergovernmental organisations, in particular** the United Nations High Commissioner for Refugees (UNHCR**) and other relevant organisations as provided for in this Regulation.**

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 **[…]**.

3a. Where, after calling upon a Member State to provide the Agency with the information necessary for it to perform its tasks in accordance with this Regulation, the Executive Director establishes that the Member State concerned has systematically failed to do so, he or she shall report that fact to the Management Board and to the Commission.

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 in third countries insofar as this may have an impact on the Union, including up-to-date information on root causes, migratory and refugee flows**, the presence of unaccompanied minors, the overall reception capacity and resettlement needs of third countries** as well as on **[…] possible** arrivals of large numbers of third-country nationals which may cause disproportionate pressure on **Member States'** asylum and reception systems, with a view to **[…] provide timely and reliable** information to the Member States and to identify possible risks to the Member States' asylum **and reception** systems.

For this purpose, the Agency shall work in close collaboration with the European […] **Border and Coast Guard Agency**, and shall […], **as appropriate, take into account** the risk analysis carried out by […] **the European Border and Coast Guard** Agency so as to ensure the highest level of consistency and convergence in the information provided by both Agencies.

2. **In addition,** 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, **particularly the UNHCR Global Resettlement Needs. The Agency may also take into account available information from relevant** organisations **on the basis of their expertise**.

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. **The Agency shall report on the information analysis to the European Parliament twice a year**.

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 **also** create […] databases **and web portals** on […] Union, national and international asylum instruments making use, in particular, of existing arrangements.

No personal data shall be stored in such databases **or web portals**, unless such data has been obtained by the Agency from documents that are publicly accessible.

3. […] **The databases and web portals referred to in paragraph 2 shall have publicly accessible parts which shall contain** information on the following:

(a) […] **statistics on** applications for international protection **and decisions taken by** national […] authorities **responsible for asylum matters** […];

(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

Liaison officers in Member States

1. The Executive Director shall appoint experts from the staff of the Agency to be deployed as liaison officers in Member States.

2. The Executive Director shall, in consultation with the Member States concerned, make a proposal on the nature and terms of the deployment and the Member State or region to which a liaison officer may be deployed. The Executive Director may decide that a liaison officer covers up to four Member States which are geographically close to each other. The proposal from the Executive Director shall be subject to approval by the Management Board.

2a. The Executive Director shall notify the Member State concerned of the appointment of liaison officers and shall determine, together with the Member State concerned, the location of deployment.

3. Liaison officers shall act on behalf of the Agency and shall foster cooperation and dialogue between the Agency and the Member States' authorities responsible for asylum and immigration and other relevant services. Liaison officers shall, in particular:

(a) act as an interface between the Agency and Member States' authorities responsible for asylum and immigration and other relevant services;

(b) support the collection of information referred to in Article 4 and any other information required by the Agency;

(c) contribute to promoting the application of the Union law on asylum, including with regard to respect for fundamental rights;

(d) where requested, assist the Member States in preparing their contingency planning for measures to be taken to deal with possible disproportionate pressure on their asylum and reception systems;

(e) facilitate communication between Member States, between the Member State concerned and the Agency, share relevant information from the Agency with the Member State concerned, including information about ongoing assistance;

(f) report regularly to the Executive Director on the situation of asylum in the Member State concerned and its capacity to manage its asylum and reception systems effectively;

Where the reports referred to in point (f) raise concerns about one or more aspects relevant for the Member State concerned, that Member State shall be informed without delay by the Executive Director. Those reports shall be taken into account for the purposes of the monitoring mechanism and shall be transmitted to the Member State concerned.

3a. For the purposes of paragraph 3, the liaison officer shall keep regular contacts with the Member States' asylum and immigration authorities and other relevant services, whilst informing a point of contact designated by the Member State concerned.

4. In carrying out their duties, the liaison officers shall take instructions only from the Agency.

Article 7

Training

1. The Agency shall establish, develop **and review** training for members of its own staff, members of […] **relevant** national administrations, courts and tribunals, and national […] **authorities** responsible for asylum **and reception** matters in the Member States.

2. The Agency shall develop such training in close cooperation with Member States and […], **where appropriate, with the European Border and Coast Guard Agency, the European Union Agency for Fundamental Rights as well as relevant training entities, academic institutions, judicial associations, training networks or relevant organisations.**

3. The Agency shall […] develop a European asylum curriculum taking into account the Union's existing cooperation in […] **the** field **of asylum in order to promote best practices and high standards in the implementation of Union law on asylum.**

Member States shall develop the appropriate training for their staff pursuant to their obligations under Union law on asylum on the basis of the European asylum curriculum and shall include core parts of that curriculum into that training.

4. The training offered **by the Agency** 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**s**, in full respect of the independence of national courts and tribunals.

As part of the European asylum curriculum, the training offered by the Agency shall cover, in particular:

(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,

(aa) issues related to the determination of whether an applicant qualifies for international protection and the rights of beneficiaries of international protection;

(b) issues related to the […] **processing** of applications for international protection […];

(c) interview techniques;

(cc) evidence assessment;

(cb) relevant case law of national courts, the European Court of Justice, the European Court of Human Rights and other relevant developments in the field of asylum law;

(d) **fingerprint** data, including data **protection aspects, data** quality and security requirements;

(e) the use of expert medical and legal reports in […] **the procedure for international protection;**

(f) issues relating to the production and use of information on **third** countries […];

(g) reception conditions […];

(gg) issues related to minors, in particular unaccompanied minors, 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, age assessment techniques, and reception conditions for children and families;

(gh) issues related to applicants in need of special procedural guarantees or applicants with special reception needs or other persons in a vulnerable situation, with particular attention to victims of torture, victims of human trafficking and related gender-sensitive issues;

(h) issues related to interpretation and cultural mediation;

(i) issues related to resettlement;

[…] (k) issues related to the handling of relocation procedures; […]

(l) resilience and stress-management skills notably for staff with managerial positions.

5. **T**he Agency shall provide general, specific or thematic training **as well as *ad hoc* training activities**, including by using the 'train-the-trainers' methodology and e-learning.

6. The Agency shall take the necessary initiatives to **verify, and where necessary,** ensure that the experts**, including experts not employed by it**, who participate in the asylum support teams, have received the necessary training relevant to their duties and functions […] **for** their participation in the operational activities organised by the Agency.

The Agency shall, **where necessary and in advance of or upon deployment, provide those experts with […] training which is specific to the operational and technical assistance being provided in the host Member State.**

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

CHAPTER 3

COUNTRY […] INFORMATION **AND GUIDANCE**

Article 8

Information on **third** countries […] at Union level

1. The Agency shall be a centre for gathering relevant, reliable, **objective,** accurate and up-to date information on **relevant third** countries […] **in a transparent and impartial manner, making use of relevant information,** including child-specific **and gender-specific** information, **as well as** targeted information on persons belonging to vulnerable **[…] and minority groups**. It shall draw up and regularly update reports and other products providing for information on **relevant third** countries […] at the level of the Union including on thematic issues specific to **relevant third** countries […].

2. The Agency shall, in particular:

(a) make use of all relevant sources of information, including **[…]** information gathered from […] international organisations, **in particular UNHCR and other relevant organisations, including members of the Consultative Forum,** Union institutions, agencies, bodies, offices **[…] and** the European External Action Service as well as through the networks referred to in Article 9 **and fact-finding missions**.

(b) manage and further develop a **web** portal for gathering **and sharing** information on **relevant third** countries […] **which shall include a public section for general users and a restricted section for internal users who are employees of the Member States' asylum and immigration authorities or any other body mandated by a Member State to carry out research on country information;**

(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 **relevant third** countries […] at the level of the Union.

Article 9

European networks on **third** country […] information

1. The Agency shall ensure the coordination of national initiatives producing […] information **on third countries** by establishing and managing networks among Member States on **third** country […] information. **Such networks may, where appropriate and on a case by case basis, involve external experts with relevant expertise from UNHCR or other relevant organisations.**

2. The purpose of the networks provided for in paragraph 1 shall be for Member States to, **in particular**:

(a) exchange and update national reports and other products **as well as other relevant information** on **third** countries […] including **on** thematic issues […];

(b) submit queries to the Agency **and assist in responding to queries** related to specific questions of fact that may arise from applications for international protection, without prejudice to **privacy, data protection and, as established in national law,** confidentiality rules […];

(c) to contribute to the development and update of Union level products providing information on relevant third countries.

Article 10

Common analysis […] **and guidance notes on countries of origin**

1. To foster convergence in applying the assessment criteria established in **Directive 2011/95/EU** […], the Agency shall coordinate efforts among Member States to […] develop a common analysis […] on the situation in specific countries of origin **and guidance notes to assist Member States in the assessment of relevant applications for international protection.**

In the development of the common analysis and guidance notes, the Agency shall take note of the most recent UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from specific countries of origin.

2. The Executive Director shall, after consulting the Commission, […] submit […] **the guidance notes** to the Management Board for endorsement. […] **The guidance notes shall be accompanied by the common analysis.**

2a. Member States shall […] take into account […] **the guidance notes and** common analysis […] 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 […] **and guidance notes are** kept […] under **regular** review and updated […] **as necessary. Such a review and update shall be carried out in cases where there is a change in the situation in the country of origin or where there are objective indications that the common analysis and guidance notes are not being used**. Any such […] **review or update** shall likewise require consultation of the Commission and endorsement by the Management Board.

4. Member States shall submit […] to the Agency **any** relevant information […] **indicating that a review or an update of the common analysis and guidance notes is necessary.**

[...]Article 11

Information and analysis on […] safe countries of origin and safe third countries

1. **The Agency may assist the Member States in applying the safe country concepts in accordance with Directive 2013/32/EU by providing information and analysis.**

2. **The Agency shall assist the Commission in the context of its tasks regarding the safe country concepts in accordance with Directive 2013/32/EU by providing information and analysis.**

3. **The information and analysis provided by the Agency under paragraphs 1 and 2 shall be compiled in accordance with the general principles provided for in Article 8.**

4. **The European Parliament and the Council shall receive the information and analyses produced by the Agency under paragraphs 1 and 2 both on a regular basis and upon request.**

[…]

CHAPTER 4

OPERATIONAL STANDARDS AND GUIDELINES

Article 12

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

1. The Agency shall organise and coordinate activities promoting a correct and effective implementation of Union law **on asylum**, 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 Management Board or** the Commission, develop operational standards […] **and relevant** indicators […]**,** guidelines and best practices related to the implementation of the instruments of Union law on asylum […].

2a. In the development of the operational standards, indicators, guidelines and best practices referred to in paragraph 2, the Agency shall consult the Commission, the Member States and, where appropriate, UNHCR. The Agency may also, based on relevant expertise, consult intergovernmental or other organisations as well as judicial associations and expert networks.

2b. The operational standards, indicators, guidelines and best practices referred to in paragraph 2 shall be adopted by the Management Board. After their adoption, the Agency shall communicate those operational standards, indicators, guidelines and best practices to the Member States **and to the Commission**.

3. The Agency shall, at the request of Member States, assist them to apply the operational standards, **indicators,** guidelines and best practices to their asylum and reception systems by providing the necessary expertise or operational and technical assistance.

3a. The Agency shall take into account the operational standards, indicators, guidelines and best practices when carrying out the monitoring.

CHAPTER 5

MONITORING

Article 13

Monitoring mechanism for […] **the operational and technical application of the CEAS**

1. The Agency, in close cooperation with the Commission, shall […] **monitor the operational and technical application of the CEAS in order to prevent or identify possible shortcomings in the asylum and reception systems of Member States and to assess their capacity and preparedness to manage situations of disproportionate pressure so as to enhance the efficiency of those systems.**

2. The Management Board shall, on a proposal of the Executive Director and in consultation with the Commission, establish a common methodology for the monitoring mechanism as set out in this Chapter. The common methodology shall include the objective criteria against which the monitoring shall be carried out, a description of the methods, processes and tools for the monitoring mechanism such as practical arrangements for on-site visits including short-notice visits, rules and principles for the establishment of the teams of experts.

3. The monitoring shall be carried out with respect to the operational and technical application of all aspects of the CEAS, in particular:

(a) […] **the system of determining the Member State responsible established by Regulation (EU) No 604/2013,** procedures **for international protection**, the application of criteria **for assessing the need for protection and the type of protection granted,** including as regards the respect of fundamental rights, child protection safeguards and the **specific** needs of persons **in a vulnerable situation**;

(**b**) **staff available and capacity in terms of** translation **and** interpretation **as well as** the capacity to handle and manage asylum cases efficiently, **including the handling of appeals**, **without prejudice to the judicial independence and with full respect to the organisation of the judiciary of each Member State;**

(c) the reception conditions, capacity, infrastructure, equipment and, to the extent possible, financial resources.

4. **The monitoring may be carried out, in particular, on the basis of the** information provided by **the** Member State **concerned**, information analysis on the situation of asylum […] **referred to in Article 4** […] and case sampling.

The Agency may also take into account available information from relevant intergovernmental organisations or bodies, in particular UNHCR, and other relevant organisations on the basis of their expertise.

4a. On-site visits may also be used for the monitoring exercise. The short-notice visits referred to in paragraph 6 may only be used for the purposes of Article 14(2).

5. […] Member States shall, at the request of the Agency, provide it with […] information […] **on the aspects referred to in paragraph 3**.

[…] Member States **shall, at the** request of the Agency, provide it with **information** on their contingency planning for measures to be taken to deal with […] possible disproportionate pressure. **The Agency** shall, **with the agreement of the Member State concerned**, assist Member States to prepare and review their contingency planning […].

6. The Member States shall […] cooperate with the Agency […], **including by facilitating** any on-site visit […] **carried** out for the purposes of the monitoring exercise. **The Executive Director shall provide the Member States concerned with sufficient prior notice of any such visit. In the case of short-notice visits, the Executive Director shall provide the Member State concerned with a prior notice of 72 hours.**

Article 14

Procedure […] and **follow-up**

1. The Management Board shall, **based on a proposal of the Executive Director and** in consultation with the Commission, […] **adopt** the programme for monitoring **which shall cover** […] **the operational and technical application of all aspects of the CEAS** in each Member State **and, in addition**, thematic or specific aspects […] **of the CEAS with regard to** all Member States.

That programme **for monitoring** shall […] **indicate which Member States' asylum and reception systems shall be monitored in a particular year,** ensuring that each Member State shall be monitored at least once in every five-year period.

2. **In addition,** the Agency […] **shall** initiate a monitoring exercise […] **either** on its own initiative, **in consultation with the Commission**, or at the request of the Commission […], **where the information analysis raises serious concerns regarding the functioning of a Member State's asylum or reception systems**.

3. The Executive Director shall […] **send the findings of the monitoring exercise** to the Member State concerned […] **for comments, including indications of its needs as appropriate, with a time-limit of one month.**

3a. The Executive Director shall […], **based on the findings referred to in paragraph 3 and** taking into account the comments of the Member State concerned […], **and in consultation with the Commission, draw up draft recommendations. Those draft recommendations shall outline the measures to be taken by the Member State concerned, including with the assistance of the Agency as necessary, and a time-limit by when any necessary measures need to be taken by the Member State concerned to address the shortcomings or issues of capacity and preparedness identified in the monitoring exercise.** The Member State concerned shall be given […] **one month** to comment on the draft recommendations**. In the cases referred to in Article 14(2), the Member State concerned shall provide its comments within 15 days.**

After […] **taking into account** those comments, […] **the Executive Director** shall […] **submit the findings and draft recommendations to the Management Board which shall, by a decision of two-thirds of its members with a right to vote, adopt those recommendations. The Agency shall inform the Commission about the implementation of the recommendations. The Agency shall transmit the recommendations to the European Parliament.**

4. Where […] **a** Member State […] **does not implement the measures outlined in the recommendations of the Agency referred to in paragraph 3a within the set time-limit resulting in** serious **consequences** […] for the functioning of the CEAS, the Commission shall, based on its own assessment […], adopt recommendations addressed to that Member State […] **identifying** the measures needed to remedy the […]shortcomings , and where necessary, […] **specific** measures to be taken by the Agency to support that Member State.

5. The Commission may, taking into account the seriousness of the shortcomings […], organise on-site visits to the Member State concerned […]. **The Commission shall provide the Member States concerned with sufficient prior notice of any such visit.**

6. The Member State concerned shall report to the Commission on the implementation of the recommendations referred to in paragraph […] **4** within the time-limit set in those recommendations. If after that time-limit, the […] **Member State has not** complied with those recommendations, […] **the Commission** may […] **make a proposal for a Council implementing act** […] in accordance with Article 22(**1**).

7. The Commission shall inform the European Parliament and the Council of any follow up to monitoring that it carries out. It shall transmit the recommendations referred to in paragraph 4 to them, and shall inform them on a regular basis about the progress made by the Member State concerned in the implementation of these recommendations.

CHAPTER 6

OPERATIONAL AND TECHNICAL ASSISTANCE

Article 16

Operational and technical assistance by the Agency

1. The Agency shall provide operational and technical assistance to Member States in accordance with this Chapter:

(a) at the request of the Member State to the Agency with regard to the implementation of its obligations under the CEAS;

(b) at the request of the Member State to the Agency where its asylum or reception systems are subject to disproportionate pressure;

(c) at the request of the Member State facing disproportionate migratory challenges and requesting operational and technical reinforcement through the deployment of migration management support teams in accordance with Article 21;

(d) upon the initiative of the Agency where a Member State's asylum or reception systems are subject to disproportionate pressure, and with the agreement of the Member State concerned;

(e) where the Agency provides operational and technical assistance in accordance with Article 22.

2. The Agency shall organise and coordinate […] **the appropriate operational and technical assistance which may entail taking** one or more of the following operational and technical measures **in full respect for fundamental rights:**

(a) assist Member States with the identification and registration of third-country nationals, **as appropriate, in close cooperation with other Union Agencies;**

(aa) **assist Member States with […]receiving and registering[…] applications for international protection;**

(b) facilitate the examination of applications for international protection that are under examination by the competent national authorities **or provide them with the necessary assistance in the procedure for international protection**;

(d) facilitate […] **joint** initiatives of […] **Member States** in the processing of applications for international protection;

(e) assist with the provision of information on the international protection procedure;

(f) advise, […] **assist or** coordinate the setting up or the provision of reception facilities by the Member States, in particular emergency accommodation, transport and medical assistance;

g) provide adequate support to Member States in carrying out their tasks and obligations under Regulation (EU) No 604/2013;

(ga) assist with the relocation or transfer of applicants or 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**, in particular as regards unaccompanied minors.**

(ja) assist Member States in […] **identifying applicants in need of special procedural guarantees or applicants with special reception needs, or other persons in a vulnerable situation, including minors, as well as in referring those persons to the competent national authorities for appropriate assistance on the basis of national measures, and in ensuring that all the necessary safeguards for those applicants are in place;**

(k) form part of the migration management support teams at hotspot areas referred to in Regulation **2019/1896**[12] **in close cooperation with other relevant Union Agencies**;

(l) deploy asylum support teams;

(m) deploy technical equipment for the asylum support teams, as appropriate.

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

4. The Executive Director shall evaluate the result of the operational and technical measures and shall transmit detailed evaluation reports **in accordance with the reporting and evaluation scheme provided for in the operational plan** to the Management Board within 60 days from the end of **the provision of** those measures, **together with the observations of the Fundamental Rights Officer.** 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.

12 OJ L 295, 14.11.2019, p.1.

Article 17

Procedure for providing operational and technical assistance

1. A request for assistance **by the Member State as referred to in Article 16(1)(a), (b) and (c) shall be addressed to the Executive Director and shall** describe the situation and the purpose of the request. **Such a** request shall be accompanied by a detailed assessment of needs **and, as appropriate, a description of the measures already taken at national level**.

2. **Where a Member State agrees to the assistance proposed on the initiative of the Agency as referred to in Article 16(1)(d), the Member State concerned shall submit to the Agency a detailed assessment of needs and, as appropriate, a description of the measures already taken at national level.**

3. The Executive Director shall evaluate, approve and coordinate requests for assistance, **including the deployment of asylum support teams.** The Executive Director shall immediately notify the Management Board of **[…]** requests **for assistance or the Agency's own initiative to provide assistance, and shall examine the detailed assessment of needs submitted by the Member State concerned**.

4. Each request **and initiative** for assistance shall be subject to a thorough and reliable assessment enabling the Agency to identify and propose **[…] one or more** measures as referred to in Article 16(2) that can meet the needs of the Member State concerned. If necessary, the Executive Director may send experts from the Agency to assess the situation of the Member State requiring assistance.

5. The Executive Director shall take a decision on **[…] the provision of operational and technical assistance including the** deployment of asylum support teams within three working days from the date of receipt of the request or **the agreement of the Member State to the Agency's own initiative or within five working days from that same date where experts are sent to the Member State concerned as referred to in paragraph 4.** The Executive Director shall at the same time notify the Member State concerned and the Management Board of the decision in writing stating the main reasons **[…] on which the** decision **is based**.

Article 18

Operational plan

1. The Executive Director […] shall draw up an operational plan **in cooperation with the host Member State.** The Executive Director and the host Member State shall agree on an operational plan **within ten working days from the day on which the decision referred to in Article 17(5) is taken in the case referred to in Article 16(1)(a) or within five working days from the day on which such a decision is taken in the case referred to in Article 16(1)(b) or agreement provided in the case referred to in Article 16(1)(d). The participating Member States shall be consulted, where necessary, on the operational plan through the national contact points referred to in Article 24.**

2. The operational plan shall **be binding on the Agency, the host and the participating Member States. […] It** shall set out in detail the conditions for the […] deployment of the asylum support teams […] **within the framework** of the operational and technical assistance, **as well as organisational aspects,** 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) […] location in the host Member State where the asylum support teams […] shall be deployed;

(d) logistical arrangements including information on working conditions […] for the asylum support teams […];

(e) a detailed and clear description of the tasks and […] **responsibilities of the asylum support teams, including with regard to the respect for fundamental rights;**

(ee) […] instructions for the asylum support teams […], including **as regards** 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 […] **in terms of profiles and number of** experts […];

(g) the technical equipment […], including specific provisions such as conditions of use, transport and other logistics and financial provisions;

(h) capacity-building activities related to the operational and technical assistance being provided;

(i) regarding assistance with applications for international protection, including as regards the examination of such applications, **and without prejudice to the competence of Member States to decide on individual applications**, specific information on the tasks that the asylum support teams […] may perform as well as […] **a clear description of their responsibilities and of the** applicable national**, international** and Union law, **including the liability regime**;

(j) a reporting and evaluation scheme containing benchmarks for the evaluation report**,** and final date of submission of the final evaluation report;

(k) **where appropriate,** modalities of cooperation with third countries, other Union agencies, bodies, offices or international organisations **within the respective mandates of those actors**;

(l) […] **measures for referring** persons in need of international protection, victims of trafficking in human beings, minors and **any other** vulnerable persons […] to the competent national authorities for appropriate assistance.

(k a) practical arrangements related to the complaints mechanism referred to in Article 48a.

2a. In Member States where UNHCR is operational and has the capacity to contribute to the request for operational and technical assistance, the Agency shall coordinate with UNHCR as regards the implementation of the operational plan, where appropriate, and upon agreement of the Member State concerned.

3. Having regard to point (e**e**) of paragraph 2, the host Member State shall authorise experts from the asylum support teams […] to consult European databases and it may authorise them to consult its national databases in accordance with **relevant** 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, **after consultation of the participating Member States, where necessary**. The Agency shall immediately send a copy of the amended or adapted operational plan to the **national contact points of** participating Member States **referred to in Article 24**.

5. The Executive Director shall, after informing the host Member State, suspend or terminate, in whole or in part, 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 or if, after consulting the Fundamental Rights Officer, he or she considers that there are breaches of fundamental rights or international protection obligations by the host Member State that are of a serious nature or are likely to persist.

Article 19

Composition of asylum support teams

1. **The Executive Director shall determine** the composition of each asylum support team […]. The asylum support teams shall consist of experts from the Agency's own staff, experts from Member States**,** experts seconded by Member States to the Agency, **or other experts not employed by the Agency**. **For the purpose of composing the asylum support teams,** the Executive Director shall take into account the particular circumstances of the Member State **concerned** […]. The asylum support team shall be constituted in accordance with the operational plan.

2. On a proposal by the Executive Director, the Management Board shall decide 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.

3. Member States shall contribute to the asylum support teams through **the nomination** of national experts […] **who correspond to the required** profiles as decided upon by the Management Board in accordance with paragraph 1. The **number of experts to be made available by each Member State for the following year shall be defined** on the basis of annual bilateral negotiations and agreements between the Agency and the Member State concerned.

In accordance with those agreements, Member States shall make **their own** experts **or experts seconded to the Agency** available for deployment at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks**.**

4. The Agency shall contribute to the asylum support teams with experts from its own staff […], **including experts** employed […] **and trained** for field work and interpreters **with at least basic training or proven experience who may be recruited in the host Member States, or with other experts not employed by the Agency with demonstrated relevant knowledge and experience in line with operational needs.**

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, […] **including individuals who do not form part of the national administration of Member States. Assistance with interpretation may be provided through the deployment of interpreters in the Member State concerned or, where appropriate,** via video-conferencing.

6. […] **An asylum reserve pool of a minimum of 500 persons shall be set up for the purposes of deploying asylum support teams in the cases referred to in Articles 16(1)(b) and (d) and Article 22. That** pool […] shall constitute a reserve of experts to be placed at the immediate disposal of the Agency. For that purpose, **each** Member State shall […] make available to the Agency a number of experts […] **and shall be responsible for its contribution to the number of experts in accordance with the Annex *I***. 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 […] **of** the asylum […] **reserve** pool. The same procedure shall apply to any subsequent changes in the profiles […] of experts.

6a. The Executive Director may verify whether the experts made available by Member States in accordance with paragraph 6 correspond to the defined profiles. In advance of deployment, the Executive Director may request that a Member State remove an expert from the asylum reserve pool where the required profile is not met and replace him with an expert having one of the required profiles.

6b. **Without prejudice to Article 22(5) and when faced with an exceptional situation substantially affecting the discharge of national tasks as evidenced by the information analysis referred to in Article 4,** a Member State may request the Management Board in writing to be temporarily exempted from the obligation to contribute experts to the asylum reserve pool referred to in paragraph 6. Such a request shall provide comprehensive reasons and information on the situation in that Member State. The Management Board shall decide by a majority of three-fourths of members with the right to vote to temporarily exempt that Member State from part of its contribution fixed in the Annex ***I***.

Article 20

Deployment of asylum support teams

1. The Agency shall deploy asylum support teams to Member States to provide operational and technical assistance […] **as referred to in 16(1)**.

2. As soon as the operational plan is agreed, the Executive Director shall request the Member States to deploy the experts within no more than […] **ten** working days. […] That information shall be provided, in writing, to the national contact points **referred to in Article 24** and shall specify the scheduled date of deployment. A copy of the operational plan shall also be sent to […] **those** national contact points.

4. The Executive Director shall deploy asylum support teams from the asylum reserve pool in the cases referred to in Article 19(6). The deployment of experts from the asylum reserve pool shall take place […] within **seven** working days from […] when the operational plan is agreed upon […] **as referred to in Article 18(1) and Article 22(2).**

5. Member States shall, **without undue delay,** make **the experts from the asylum reserve pool** available […] **for deployment** as determined by the Executive Director. **The host Member State shall not deploy experts forming part of its fixed contribution to that pool. If there is a shortage of experts for deployment in the asylum reserve pool, the Management Board shall, on a proposal of the Executive Director, decide how that shortage is to be filled. The Executive Director shall also inform the European Parliament, the Council and the Commission.**

6. The duration of deployment shall be determined by the home Member State but it shall not be less than **45** days, unless the particular operational and technical assistance is required for a shorter duration.

7. The Executive Director shall request that a Member State remove an expert from the asylum support teams in the case of misconduct or infringement of the applicable deployment rules. In such cases, the expert concerned shall not be considered for future deployments.

8a. The Agency shall inform the European Parliament by means of its annual report on the situation of asylum of the number of experts committed and deployed to the asylum support teams in accordance with this Article. That report shall list the Member States that have invoked the exceptional situation referred to in article 19(3) or 19(6b) in the previous year. It shall also include the reasons for invoking the exceptional situation and information provided by the Member State concerned.

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 […] **40** of Regulation No 201**9**/**1896** […] **or where migration management support teams are deployed at hotspot areas based on Article 42 […] of Regulation No 2019/1896, the Executive Director shall work closely with the European Border and Coast Guard Agency when, as provided for in Article 40(2) of Regulation 2019/1896, in coordination with other relevant Union agencies, he or she assesses a Member State's request for reinforcement and the assessment of its needs for the purpose of defining a comprehensive reinforcement package consisting of various activities coordinated by the relevant Union agencies to be agreed upon by the Member State concerned.**

1**a**. […] **The Commission shall, in cooperation with the host Member State and the relevant Union agencies, establish the terms of cooperation at the hotspot area and be responsible for the** coordination of the activities **of** the migration management support teams.

2. The Executive Director shall **[…] in the cases referred to in paragraph 1 of this Article**, launch the procedure for deployment of asylum support teams as part of migration management support teams, **including experts from the asylum reserve pool as appropriate.** The operational and technical reinforcement provided by the asylum support teams in the framework of the migration management support teams may include:

(a) **assistance in** screening of third-country nationals, including their identification, registration, and where requested by **the host** Member State, their fingerprinting **and provision of information of the purpose of those procedures**;

(aa) **[…] the provision of initial information to third-country nationals who wish to make an application for international protection and their referral to the competent national authorities of the Member States**;

(**b**) the provision of information […] **to applicants on the procedure for international protection and with regard to reception conditions as appropriate**, relocation and […] **the provision of necessary** assistance to applicants or potential applicants that could be subject to relocation;

(**c**) the registration of applications for international protection and, where requested by **the host** Member State, the **facilitation of the** examination of such applications.

Article 22

Situation of disproportionate pressure **or ineffectiveness of** the asylum and reception systems

1. Where the asylum and reception systems of a Member State are rendered ineffective to the extent of having serious consequences for the functioning of the CEAS and:

(a) the asylum or reception systems of a Member State are subject to disproportionate pressure that places exceptionally heavy and urgent demands on those systems and the Member State concerned does not take sufficient action to address that pressure, including by not requesting the Agency for operational and technical assistance or not agreeing to an initiative of the Agency for such assistance

or

(b) where the Member State concerned does not comply with the Commission Recommendation referred to in Article 14(4)

the Council, on the basis of a proposal from the Commission, may adopt without delay a decision by means of an implementing act, identifying one or more of the measures set out in Article 16(2) to be taken by the Agency to support the Member State concerned and requiring the Member State to cooperate with the Agency in the implementation of those measures. The Council shall transmit that decision to the European Parliament.

2. […] The Executive Director shall, within […] **three** working days from the date of adoption of the […] **Council decision**, determine […] **the details of the practical implementation of the Council decision**. In parallel, the Executive Director […] shall draw up the operational plan **and submit it to the Member State concerned. The Executive Director and the Member State concerned shall agree on the operational plan within three working days from the date of its submission.**

3. The Agency shall […] deploy the necessary experts from the asylum […] **reserve** pool, as well as experts from its own staff **in accordance with Article 20(4)**. […] **The Agency may deploy additional asylum support teams as necessary**.

4. The Member State concerned shall […] **comply with the Council decision. For that purpose, it** shall immediately cooperate with the Agency and take the necessary action to facilitate the implementation of that decision and the practical execution of the measures set out in that decision and in the operational plan**, without prejudice to its competence for deciding on individual applications**.

5. **For the purposes of this Article, t**he Member States shall make available the experts from the asylum […] **reserve** pool as determined by the Executive Director **and may not invoke the situation referred to in Article 19(3) and Article 19(6a). The host Member State where experts from the asylum reserve pool are deployed shall not deploy experts forming part of its fixed contribution to that pool.**

Article 23

Technical equipment

1. Without prejudice to the obligation of host Member State to provide 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 **the host** Member **State including at its request,** to the extent that this may be needed by the asylum support teams […] and insofar as this may complement equipment already made available by the host Member State 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.

2a. The Agency shall be responsible for ensuring the security of its own equipment throughout the life cycle of the equipment.

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 […] throughout the provision of operational and technical assistance […].

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:

(**b**) act as an interface between the Agency, the host Member State and experts of the asylum support teams […], providing assistance, on behalf of the Agency, on all issues relating to their conditions of deployment;

(**c**) monitor the correct implementation of the operational plan;

(**a**) act on behalf of the Agency on all aspects of the deployment of the asylum support teams […] 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 […].

5. In discharging his or her duties, the coordinating officer shall **work in close cooperation with the competent national authorities and** shall take instructions only from the Executive Director.

Article 26

Civil liability

1. Where experts of an asylum support team […] 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 **reimbursement of** 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 […], **the deployed** 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 […] experts […] **deployed** to asylum support teams […], in particular:

(a) travel from the home Member State to the host Member State, from the host Member State to the home Member State **and within the host Member State for the purposes of deployment**;

(b) **costs related to** vaccinations;

(c) **costs related to** special insurance needs;

(d) **costs related to** health care;

(e) daily subsistence allowances, including accommodation;

(f) **costs related to** the Agency's technical equipment;

(g) experts' fees.

(f a) transportation costs including car rental and all related costs such as insurance, fuel and tolls;

(f b) telecommunication costs;

2. The Management Board shall establish detailed rules and update them as necessary as regards the payment of […] **the costs incurred by experts in accordance with this Article**.

CHAPTER 7
INFORMATION EXCHANGE AND DATA PROTECTION

Article 29
Information exchange systems

1. The Agency shall […] facilitate the exchange of information relevant to its tasks with the Commission and the Member States and, where appropriate, the relevant Union **bodies, offices and** agencies.

2. The Agency 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 **2018/1726**,[13] develop and operate an information system capable of exchanging classified information with […] **the** actors **referred to in paragraph 1**, as well as personal data referred to in Articles 31 and 32 in accordance with Council Decision 2013/488[14] and Commission Decision (EU, Euratom) 2015/444.[15]

Article 30

Data Protection

1. The Agency shall apply Regulation (E**U**) No **2018/1725** when processing personal data.

2. The Management Board shall establish measures for the application of Regulation (E**U**) No **2018/1725** by the Agency, including those concerning the appointment of a Data Protection Officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor.

3. Without prejudice to Articles 31 and 32, the Agency may process personal data for **the necessary** administrative purposes **related to personnel**.

4. 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.

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13 Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99–137).

14 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).

15 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).

[…]4a. By way of derogation from paragraph 4, the Agency may transfer, subject to the informed and freely given consent of the third-country national, the full name of the third-country national identified for the sole purpose of conducting a resettlement procedure, information on the course of the resettlement procedure and information on the outcome of the resettlement procedure to relevant international organisations to the extent necessary to meet that purpose. Such personal data shall not be further processed for any other purpose or transferred onwards. […]

4b. When the processing of personal data is carried out by experts of the asylum support teams under the instructions of the host Member State and when providing operational and technical assistance to that Member State, Regulation (EU) 2016/679 shall apply.

Article 31

Purposes of processing personal data

1. The Agency may process personal data only **to the extent necessary and** for the following purposes:

(a) performing its tasks of providing operational and technical assistance in accordance with Articles 16(**2**) and 21(2) **and 21(3)**;

(b) when carrying out case sampling for the purposes of the monitoring ~~exercise~~ referred to in Article 13;

c) *deleted.*

(d) facilitating the exchange of information **with the competent authorities of the** Member States, the European […] **Border and Coast Guard Agency**, Europol or Eurojust in accordance with Article 36 and in the framework of information obtained when performing the tasks listed in Article 21(2) **where it is necessary for the performance of their tasks in accordance with their respective mandates**;

(e) analysing information on the situation of asylum in accordance with Article 4.

[…] (f) when assisting Member States with their actions on resettlement. […]

2. Any such processing of personal data shall respect the principle of proportionality and be strictly limited to personal data necessary for the purposes referred to in paragraph 1.

3. Member States or other Union **bodies, offices and** agencies providing personal data to the Agency shall only transfer data to the Agency for the purposes referred to in paragraph 1. Any further processing of retained personal data for purposes other than those referred to in paragraph 1 shall be prohibited.

4. Member States or other Union **bodies, offices and** agencies may indicate, at the moment of transferring personal data, any restriction on access or use, in general or specific terms, including as regards transfer, erasure or destruction. Where the need for such restriction becomes apparent after the transfer provision of information, they shall inform the Agency accordingly. The Agency shall comply with such restrictions.

Article 32

Processing of personal data […] **for** providing operational and technical assistance […] **and for resettlement[…]**

1. The […] **processing** 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 […]**and in case of resettlement[…]** shall be limited to the **full** name, date **and place** of birth, **place of residence or stay,** gender, **age,** nationality, profession […]**,** education, **family, date and place of arrival**, fingerprints, **facial image data of a** third-country national **and the status of a third-country national in relation to international protection.**

2. Personal data referred to in paragraph 1 may be processed by the Agency in the following cases:

(a) where necessary, **to assist Member States with** the identification and registration **of third-country nationals, as appropriate,** referred to in Article 16**(2)**(a) **and receiving and registering applicants for international protection referred to in Article 16(2)(aa)**;

(b) where necessary to facilitate the examination of applications for international protection that are under examination by the competent national authorities **or to provide them with necessary assistance in the procedure for international protection** as referred to in Article 16(**2**)(b);

(c) *deleted*

(d) where necessary to provide adequate support to Member States in carrying out their tasks and obligations under Regulation (EU) No 604/2013;

(da) where necessary to assist with the relocation or transfer of applicants or beneficiaries of international protection within the Union;

(e) where transmission to the European […] **Border and Coast Guard Agency**, Europol or Eurojust is necessary for the performance of their tasks in accordance with their respective mandates and in accordance with Article 30;

(f) where transmission to the Member States' authorities **responsible for asylum and** immigration **and other relevant** services is necessary for use in accordance with national legislation and national and Union data protection rules;

(g) where necessary for analysis of information on the situation of asylum as referred to in Article 4.

[…] (h) where necessary to assist Member States with their actions on resettlement. […]

2a. When it is strictly necessary for the purposes referred to in points (b) […]and (h) […] of paragraph 2 the Agency may, in relation to a specific case, process personal data necessary for the assessment of whether a third-country national qualifies for international protection, data concerning health or specific vulnerabilities of a third-country national. Those data shall be made accessible only to staff who, in the specific case, needs knowledge of those data and who shall safeguard the confidentiality of that data. Such personal data shall not be further processed or transferred onwards.

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

[…]3-a. Personal data obtained for the purpose referred to in Article 31(1)(f) shall be deleted as soon as they are no longer necessary for the purpose for which they have been obtained and in any event no later than 30 days from when the third-country national has been resettled. […]

3a. Experts from the asylum support teams transmitting personal data pursuant to paragraph 1 shall provide the third-country national, at the time of the collection of his or her personal data, with the contact details of the relevant supervisory authority responsible for monitoring and enforcing compliance with Regulation (EU) 2016/679 in addition to the information referred to in Article 13 of that Regulation and without prejudice to other rights provided for in that Regulation.

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 **[...]** 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 […] **which form part of** 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 Management Board shall decide on** the working arrangements […] **which shall be subject to** prior approval of the Commission […]. **The Agency shall inform the European Parliament and the Council before a working arrangement is concluded.**

3. In the framework of cooperation with third countries, the Agency may support Member States in the implementation of resettlement schemes, upon the request of the Member State concerned.

4. The Agency shall**, where appropriate,** participate in the implementation of international agreements concluded by the Union with third countries, within the framework of the external relations policy of the Union, and regarding matters covered by this Regulation.

5. 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.

6[…]. The Agency shall inform the European Parliament of activities conducted pursuant to this Article through its annual report on the situation of asylum. That report shall also include an assessment of the cooperation with third countries.

[…]

Article 35a

Liaison officers in third countries

1. The Agency may deploy experts from its own staff as liaison officers, who should enjoy the highest possible protection when carrying out their duties in third countries. Liaison officers shall only be deployed to third countries in which migration and asylum management practices comply with non-derogable human rights standards.

2. Within the framework of the external relations policy of the Union, priority for the deployment of liaison officers shall be given to those third countries which, on the basis of its information analysis, constitute a country of origin or transit regarding asylum-related migration. The deployment of liaison officers shall be approved by the Management Board.

3. The tasks of the Agency's liaison officers shall include, in compliance with Union law and in full respect of fundamental rights, establishing and maintaining contacts with the competent authorities of the third country to which they are assigned with a view to gathering information and contributing to the establishment of protection-sensitive migration management and, as appropriate, to facilitating access to legal pathways to the Union for persons in need of protection including through resettlement. The liaison officers shall coordinate closely with Union delegations as well as international organisations and bodies, in particular UNHCR, where appropriate.

4. The decision to deploy liaison officers to third countries shall be subject to receiving the prior opinion of the Commission. The European Parliament shall be kept fully informed of those activities without delay.

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 agencies in the field of Justice and Home Affairs which are competent in matters covered by this Regulation.

2. Such cooperation shall take place within the framework of working arrangements concluded with those bodies, after having received the Commission's approval. The Agency shall inform the European Parliament and the Council of any such arrangements.

3. The cooperation shall create synergies among the relevant Union bodies and it shall prevent any duplication of effort in the work carried out by each one of them pursuant to their mandate.

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. **The Agency shall inform the European Parliament and the Council of any such arrangements.**

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.

(ca) a Fundamental Rights Officer, as established in Article 47a;

(cb) a Consultative Forum, as established in Article 48.

Article 39

Composition of the Management Board

1. The Management Board shall be composed of one representative from each Member State and two representatives of the Commission, which shall have the right to vote.

2. The Management Board shall include one representative of UNHCR, without the right to vote.

3. Each member of the Management Board shall have an alternate. The alternate shall represent the member in his or her absence.

4. Members of the Management Board and their alternates shall be appointed in the light of their knowledge **and expertise** in the field of asylum, taking into account relevant managerial, administrative and budgetary skills. […] All parties 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 give general orientation for the Agency's activities and shall ensure that the Agency performs its tasks. **It shall in particular:**

(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[16] (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;

(l a) appoint the Fundamental Rights Officer, subject to the Staff Regulations and the Conditions of Employment, from a selection of candidates proposed by the Executive Director;

(laa) appoint an accounting officer, subject to the Staff Regulations and the Conditions of Employment, who shall be totally independent in the performance of his or her duties;

(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 **and shall be made public**;

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16 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)

(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;

(o a) establish measures for the application of Regulation (EU) 2018/1725 by the Agency, including those concerning the appointment of a Data Protection Officer of the Agency;

(p) adopt the Agency's staff policy in accordance with Article 55;

(q) adopt […] **each year the Agency's** programming document in accordance with Article 41;

(r) take all decisions on the establishment of the Agency's internal structures and, where necessary, their modification;

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

(t) adopt the operational standards, indicators, guidelines and best practices developed by the Agency in accordance with Article 12(2);

(u) endorse […] **the guidance notes** concerning country of origin information and any review […] **or the update of those guidance note**s in accordance with Article 10(2) and (3);

(uu) adopt a decision establishing a common methodology for the monitoring mechanism referred to in Article 13(2);

(v) adopt the programme for monitoring […] **the operational and technical application of the CEAS** in accordance with Article 14(1).

(x) adopt the recommendations following a monitoring exercise in accordance with Article 14(**3**);

(y) set up and decide on the profiles and overall numbers of experts to be made available for the asylum support teams **including for the asylum reserve pool** in accordance with Article […] **19(2) and 19(6);**

(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 **and approve** the conclusion of working arrangements in accordance with Article**s** 35, **36 and 37**.

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

Article 41

Multi-annual programming and annual work programmes

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

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

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

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

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

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

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

4. The Management Board shall amend the adopted annual work programme when a new task is given to the Agency.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

Article 42

Chairperson of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from its members with voting rights. The Chairperson and the Deputy Chairperson shall be elected by a majority of two-thirds of the members of the Management Board with voting rights.

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

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

Article 43

Meetings of the Management Board

1. The Chairperson shall convene meetings of the Management Board.

2. The Executive Director shall take part in the deliberations, without the right to vote.

3. The representative of UNHCR shall not take part in the meeting when the Management Board performs the functions laid down in points (**f**), (**g**), **(j**), (**k**), (**l**), (o), (p), (q), (r) and (**s**) of Article 40(1) and in Article 40(2), and when the Management Board decides to make financial resources available for financing UNHCR activities enabling the Agency to benefit from the its expertise as provided for in Article 49.

4. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of its Chairperson, at the request of the Commission, or at the request of one-third of its members.

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

6. Denmark shall be invited to attend the meetings of the Management Board.

7. The members and the alternates of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted at the meetings by advisers or experts.

8. The Agency shall provide the secretariat for the Management Board.

Article 44

Voting rules of the Management Board

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

2. Each member with voting rights shall have one vote. In the absence of a member with the right to vote, his or her alternate shall be entitled to exercise his or her right to vote.

3. The Chairperson shall take part in the voting.

4. The Executive Director shall not take part in the voting.

4a. Member States that do not fully participate in the acquis of the Union in the field of asylum shall not vote where the Management Board is called on to adopt operational standards, indicators, guidelines or best practices which relate exclusively to an asylum instrument of the Union by which they are not bound.

5. The Management Board's Rules of Procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member.

Article 45

Executive Director

1. The Executive Director shall be a member of staff and shall be recruited as a temporary agent of the Agency in accordance with Article 2(a) of the Conditions of Employment of Other Servants.

2. The Commission shall propose at least three candidates for the post of executive director based on a list following publication of the post in the *Official Journal of the European Union* and, as appropriate, other press or internet sites.

2a. The Executive Director shall be appointed by the Management Board 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. Before appointment the candidates proposed by the Commission shall be invited to make a statement before the competent committee or committees of the European Parliament and answer questions put by its or their members.

Following such a statement, the European Parliament shall adopt an opinion setting out its views and may indicate a preferred candidate.

The Management Board shall appoint the executive director taking these views into account. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

If the Management Board takes a decision to appoint a candidate other than the candidate whom the European Parliament indicated as its preferred candidate, the Management Board shall inform the European Parliament and the Council in writing of the manner in which the opinion of the European Parliament was taken into account.

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

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;

(ma) drafting reports on the situation in third countries as referred to in Article 8;

(n) submitting the common analysis and guidance notes to the Management Board in accordance with Article 10(2);

(na) setting up teams of experts for the purpose of Articles 13 and 14 which shall be composed of experts from the Agency's own staff, the Commission and, where necessary, the Member States and, as an observer, UNHCR;

(nb) initiating a monitoring exercise either on its own initiative, in consultation with the Commission, or at the request of the Commission in accordance with Article 14(2);

(o) submit**ting** the findings and draft recommendations in the context of the monitoring exercise to the Member State concerned and subsequently to the Management Board in accordance with Article 14(3) […];

(oa) reporting to the Management Board and to the Commission in accordance with Article 3(3a);

(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 Council decision referred to in Article 22(**1**);

(t) deciding, in consultation with the Management Board, on the acquisition or lease of technical equipment in accordance with Article 23(2);

(t a) proposing a selection of candidates for appointment as the Fundamental Rights Officer in accordance with Article 47a.

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

2. The Deputy Executive Director shall be appointed by the Management Board on a proposal of the Executive Director. **The Deputy Executive Director shall be appointed on the grounds of merit and appropriate administrative and management skills, including relevant professional experience in the field of asylum. The Executive Director shall propose at least three candidates for the post of the Deputy Executive Director. The Management Board shall have the power to extend the term of office or to remove the Deputy Executive Director from office acting on the proposal from the Executive Director.** The provisions of Article 45 **(1), (4), (7) and (9)** shall apply to the Deputy Executive Director.

Article 47a

Fundamental Rights Officer

1. A Fundamental Rights Officer shall be appointed by the Management Board from a selection of candidates proposed by the Executive Director. The Fundamental Rights Officer shall have the necessary qualifications and experience in the field of fundamental rights and asylum.

2. The Fundamental Rights Officer shall be independent in the performance of his or her duties and shall report directly to the Management Board [...].

3. The Fundamental Rights Officer shall be responsible for ensuring the Agency's compliance with fundamental rights in the course of its activities and promoting the respect of fundamental rights by the Agency. The Fundamental Rights Officer shall also be responsible for implementing the complaints mechanism.

4. The Fundamental Rights Officer shall cooperate with the Consultative Forum.

5. The Fundamental Rights Officer shall be consulted on, inter alia, the operational plans, the evaluation of the Agency's operational and technical assistance, the code of conduct [...] and the European asylum curriculum. The Fundamental Rights Officer shall have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency, including by organising visits where the Agency is carrying out operational activities, and with the consent of the Member State concerned [...].

Article 48

Consultative Forum

1. The Agency shall maintain a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, Union or international level. For that purpose, the Agency shall set up a Consultative Forum.

2. The Consultative Forum shall constitute a mechanism for the exchange of information and sharing of knowledge. It shall ensure a close dialogue between the Agency and relevant organisations or bodies as referred to in paragraph 1 […].

3. The Agency shall invite the European Union Agency for Fundamental Rights, the European **Border and Coast Guard** Agency […], UNHCR and other relevant organisations or bodies as referred to in paragraph 1.

On a proposal by the Executive Director, the Management Board shall decide on the composition of the Consultative Forum, including thematic or geographic-focused consultation groups, and the modalities of transmission of information to the Consultative Forum. **The Consultative Forum shall, after consulting the Management Board and the Executive Director, define its working methods including thematic or geographic-focused working groups as deemed necessary and useful.**

4. The Consultative Forum shall **advise** the Executive Director and the Management Board in matters related to asylum, in accordance with specific needs in areas identified as a priority for the Agency's work.

5. The Consultative Forum shall, in particular:

(a) make suggestions to the Management Board on the annual and multi-annual programming referred to in Article 41;

(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; 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.

(5a) The Consultative Forum shall be consulted on the establishment and implementation of the Fundamental Rights Strategy, the code of conduct, the complaints mechanism and the European asylum curriculum.

6. The Consultative Forum shall meet in full session at least once a year and shall organise meetings for the thematic or geographic-focused consultation groups as necessary.

Article 48a

Complaints mechanism

1. The Agency shall [...] take the necessary measures to set up a complaints mechanism in accordance with this Article to ensure the respect for fundamental rights in all the activities of the Agency.

2. Any person who is directly affected by the actions of experts in the asylum support teams, and who considers that his or her fundamental rights have been breached due to those actions, or any party representing such a person, may submit a complaint in writing to the Agency.

3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible. Complaints which challenge any decision of national authorities on an individual application for international protection shall be inadmissible. Complaints which are anonymous, abusive, malicious, frivolous, vexatious, hypothetical or inaccurate shall also be inadmissible.

4. The Fundamental Rights Officer shall be responsible for handling complaints received by the Agency in accordance with the right to good administration. For this purpose, the Fundamental Rights Officer shall review the admissibility of a complaint, register admissible complaints, forward all registered complaints to the Executive Director, forward complaints concerning experts of the asylum support teams to the home Member State, inform the relevant authority or body competent for fundamental rights in a Member State, and register and ensure the follow-up by the Agency or that Member State.

5. In accordance with the right to good administration, where a complaint is admissible, the complainant shall be informed that a complaint has been registered, that an assessment has been initiated and that a response may be expected as soon as it becomes available. Where a complaint is forwarded to a national authority or body, the complainant shall be provided with the contact details of that authority or body. Where a complaint is inadmissible, the complainant shall be informed of the reasons for the inadmissibility and, where possible, provided with further options for addressing his or her concerns. Any decision shall be in written form and reasoned.

6. In the case of a registered complaint concerning a staff member of the Agency, the Executive Director shall ensure appropriate follow-up, in consultation with the Fundamental Rights Officer, including disciplinary measures as necessary. The Executive Director shall report back within a determined timeframe to the Fundamental Rights Officer as to the findings and follow-up made by the Agency in response to a complaint, including disciplinary measures as necessary.

6a. Where a complaint is related to data protection issues, the Executive Director shall involve the Data Protection Officer of the Agency. The Fundamental Rights Officer and the Data Protection Officer shall establish, in writing, a memorandum of understanding specifying their division of tasks and cooperation as regards complaints received.

7. In the case of a complaint concerning an expert of a Member State , including seconded national experts, the home Member State shall ensure appropriate follow-up, including disciplinary measures as necessary or other measures in accordance with national law. The relevant Member State shall report back to the Fundamental Rights Officer as to the findings and follow-up made in response to a complaint within a determined time period, and if necessary, at regular intervals thereafter. The Agency shall follow-up the matter where no report is received from the relevant Member State.

8. Where an expert deployed by the Agency or a Member State, including a seconded national expert is found to have violated fundamental rights or international protection obligations, the Executive Director shall request the Member State to remove that expert or seconded national expert immediately from the activities of the Agency. In the case of an expert deployed by the Agency, the Executive Director shall remove that expert from the activities of the Agency.

9. The Fundamental Rights Officer shall report to the Executive Director and to the Management Board as to the findings and follow-up made by the Agency and the Member States in response to a complaint. The Agency shall include information on the complaints mechanism in its annual report on the situation of asylum in the Union.

9a. Any personal data contained in a complaint shall be handled and processed by the Agency including the Fundamental Rights Officer in accordance with Regulation (EU) No 2018/1725 and by Member States in accordance with Regulation 2016/679 or Directive (EU) 2016/680, as appropriate. When a complainant submits a complaint, that complainant shall be understood to consent to the processing of his or her personal data by the Agency and the fundamental rights officer within the meaning of point (d) of Article 5 of Regulation (EU) No 2018/1725. In order to safeguard the interests of the complainants, complaints shall be dealt with confidentially by the fundamental rights officer in accordance with national and Union law unless the complainant explicitly waives his or her right to confidentiality. When complainants waive their right to confidentiality, it shall be understood that they consent to the Fundamental Rights Officer or the Agency disclosing their identity to the competent authorities or bodies in relation to the matter under complaint, where necessary.

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[17] shall apply.

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[17] 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,[18] 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.

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[18] 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).

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.

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 **and make use of framework contracts** 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.[19] The relevant provisions of Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012[20] shall apply.

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[19] 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).

[20] 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).

CHAPTER 11

GENERAL PROVISIONS

Article 54-a

Protection of Fundamental Rights and Fundamental Rights

Strategy

1. The Agency shall guarantee the protection of fundamental rights in the performance of its tasks under this Regulation in accordance with relevant Union law, including the Charter and relevant international law, in particular the Geneva Convention. [...]

1a. The best interests of the child shall be a primary consideration when applying this Regulation.

2. The Agency shall, on a proposal of the Fundamental Rights Officer, establish and implement a Fundamental Rights Strategy to ensure respect for fundamental rights in all the activities of the Agency.

Article 54-ab

Code of Conduct

The Agency shall establish and implement a code of conduct applicable to all experts in the asylum support teams. The code of conduct shall lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights with particular focus on children, unaccompanied minors and other persons in a vulnerable situation.

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 as regards 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.

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[21] 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.

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

3. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for the application of paragraphs 1 and 2.

4. Any natural or legal person shall be entitled to address himself or herself in writing to the Agency in any official language of the Union. He or she shall have the right to receive an answer in the same language.

5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may be subject to a complaint to the Ombudsman or an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the Treaty respectively.

Article 59

Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[22] 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.

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

3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (EC, Euratom) No 2185/96.[23]

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[24] and 2015/444.[25] 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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[23] 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).

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

[25] 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).

2a. Classification shall not preclude information being made available to the European Parliament. The transmission and handling of information and documents transmitted to the European Parliament in accordance with this Regulation shall comply with rules concerning the forwarding and handling of classified information which are applicable between the European Parliament and the Commission.

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 […] **necessary** conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

Article 65

Report on the situation of asylum in the Union

The Agency shall draw up an annual […] report on the situation of asylum in the Union […]. The Agency shall transmit […] **that** 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. **The annual report on the situation of asylum shall be made public.**

Article 66

Evaluation and review

0. Three months following the replacement of Regulation (EU) No 604/2013, the Commission shall report to the European Parliament and the Council, having evaluated whether this Regulation needs to be amended for the purpose of ensuring coherence and internal consistency of the EU legal framework, in particular as regards the provisions on the monitoring mechanism, and present the necessary proposals to amend this Regulation as appropriate.

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 **independent external** evaluation to assess, in particular, the Agency's performance in relation to its objectives, mandate and tasks. That evaluation shall cover the Agency's impact on practical cooperation on asylum-related matters and **on facilitating the implementation of** the CEAS. The evaluation shall take due regard of progress made, within its mandate, including assessing whether additional measures are necessary to ensure effective solidarity and sharing of responsibilities with Member States subject to particular pressure.

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

2. The Commission shall send the evaluation report together with its conclusions on the report to the European Parliament, the Council and the Management Board. […]

3. On the occasion of every second evaluation, the Commission shall consider whether continuation of the Agency is justified with regard to its objectives, mandate and tasks and it may propose that this Regulation be amended accordingly or repealed.

Article 66a

The staff of the European Asylum Support Office shall be transferred to the agency established by this Regulation without any modification of their contracts. The change of agency shall not be considered as a new entry into service and the continuity of career shall be ensured in all respects.

Article 67

Replacement and […] **r**epeal

1. Regulation (EU) No 439/2010 is **hereby replaced for Member States bound by this Regulation. Therefore, Regulation (EU) No 439/2010 is** repealed with effect from **the date of** entry into force of this Regulation.

2. **For the Member States bound by this Regulation […]r**eferences 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.

Point (l) of Article 2(1), Article 13, Article 14 (1-~~[…]~~3) shall apply from ~~[…]~~31 December 2023 and Articles 14(3a -7) and 22 shall apply from the date of the replacing of Regulation (EU) No 604/2013, unless that replacing occurs before […]31 December 2023, in which case they shall apply from[…] 31 December 2023.

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

ANNEX II

TABLE OF CONTRIBUTIONS TO BE PROVIDED TO THE ASYLUM RESERVE POOL OF 500 EXPERTS

Belgium	15
Bulgaria	**8**
Czech Republic	8
Germany	8**6**
Estonia	6
Greece	25
Spain	46
France	80
Croatia	5
Italy	40
Cyprus	3
Latvia	5
Lithuania	**6**
Luxembourg	4
Hungary	**10**
Malta	4
Netherlands	2**4**
Austria	15
Poland	40
Portugal	**7**
Romania	20
Slovenia	5
Slovakia	10
Finland	**9**
Sweden	1**9**
Total	**500**/500

Council of the European Union

Brussels, 19 May 2021
(OR. en)

8585/21

Interinstitutional File: 2016/0176(COD)

LIMITE

MIGR 84
SOC 257
EMPL 189
EDUC 155
CODEC 663

NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	10012/16 + ADD 1 - 7
Subject:	Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment - Confirmation of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 7 June 2016, the Commission adopted a proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment[1]. This proposal, which replaces the existing EU Blue Card Directive (2009/50/EC), aims to improve the EU's ability to attract and retain highly skilled third-country nationals, as well as to enhance their mobility and circulation between jobs in different Member States.

2. The Slovak Presidency started the examination of the 2016 proposal in the Council preparatory bodies soon after its presentation. The proposal was considerably modified by the Council under the Slovak and Maltese Presidencies. The Estonian Presidency was eventually granted a mandate to begin interinstitutional negotiations on 26 July 2017[2].

[1] 10012/16.
[2] 10552/17.

3. The LIBE Committee of the European Parliament adopted a mandate to enter into interinstitutional negotiations on 15 June 2017. The Report of the LIBE Committee was later endorsed by the Plenary of the European Parliament on 28 June 2017.

4. Interinstitutional negotiations began soon thereafter, on 12 September 2017, under the Estonian Presidency. Between September and December 2017, four trilogues and several technical meetings took place, which led to a number of provisions being agreed.

5. Since the positions of the two institutions differed considerably on several key issues, the Estonian Presidency presented a compromise package to COREPER on 20 December 2017, but discussions did not result in a clear outcome as Member States were divided on a variety of questions.

6. Under the Bulgarian Presidency, efforts to agree to a compromise package continued but were ultimately unsuccessful. Due to the European Parliaments' strong views in favour of harmonisation, interinstitutional negotiations were paused at the beginning of 2018.

7. In January 2019, the Romanian Presidency tried to make progress on the file and presented JHA Counsellors with a possible compromise package. However, the European Parliament concluded that it did not see the package as a basis for resuming negotiations.

8. No progress on the file was possible during the Finnish and Croatian Presidencies due to ongoing institution change following the 2019 elections to the European Parliament.

9. On 31 January 2020, Claude Moraes (S&D, UK) was replaced by Javier Moreno Sánchez (ES, S&D) as rapporteur.

10. In September 2020, the Commission presented its new Pact on Migration and Asylum, in which it signalled some flexibility on the continued existence of parallel national schemes, acknowledging Member States' specific labour market needs. As a result, the German Presidency decided to relaunch interinstitutional negotiations and a political trilogue took place on 25 November 2020. Several technical meetings were held in November and December 2020 and various compromise proposals were presented to JHA Counsellors by the Presidency. On 10 December 2020, another political trilogue was held at which a number of issues were agreed.

11. Work continued under the Portuguese Presidency and a political trilogue took place on 11 February 2021 at which further progress was achieved. Numerous technical meetings were held between January and May 2021.

12. In order to resolve remaining difficulties on various key issues, the Presidency presented a comprehensive compromise package on all outstanding issues to JHA Counsellors in April 2021. This compromise package was widely supported by delegations and was further refined in April and May 2021.

13. At the beginning of May 2021, negotiations continued at technical level on the basis of this compromise package and the co-legislators were able to agree on most outstanding issues.

14. The Presidency has kept Member States constantly updated on developments in the negotiations, convening a number of meetings of the JHA Counsellors for this purpose, as well as organising numerous consultations on compromise proposals tabled during the negotiations.

15. At the last trilogue, on 17 May 2021, the co-legislators found an agreement on all remaining issues.

16. Further revision of the text will be done in due time by the legal/linguistic experts.

17. Provided that COREPER indicates that it can agree to the text of the provisional compromise, the LIBE Committee is expected to vote to confirm the political agreement at its meeting of 3 June 2021.

II. ANALYSIS OF THE POLITICAL AGREEMENT

18. The compromise package resulting from the trilogues is set out below for delegations' consideration.

19. Regarding the issue of harmonisation, the Council's initial negotiation mandate included a possibility for Member States to keep parallel national schemes (in addition to the EU Blue Card) for the admission of highly qualified third-country nationals. This issue proved to be very controversial during the first stage of interinstitutional negotiations in 2017, the European Parliament and the Commission insisting on full harmonisation and the abolition of national schemes. Following the presentation of its new Pact on Migration and Asylum, the Commission signalled that it could potentially agree to the continued existence of parallel national schemes, acknowledging Member States' specific labour market needs. By way of a compromise, the co-legislators eventually agreed to include a set of provisions guaranteeing a level playing field between the EU Blue Card and national schemes for highly qualified workers from third countries. Essentially, these provisions ensure that EU Blue Card holders do not enjoy less favourable treatment than third country nationals employed under a national scheme in a number of areas. These provisions are notably included in Articles 5, 11, 12, 13, 15, 16, 17 and 25, as well as in recital 6.

20. The mandatory recognition of professional skills in addition to educational qualifications was difficult to resolve and led to the abovementioned pause in interinstitutional negotiations in 2018. The Parliament initially insisted on the mandatory recognition of such skills with a requirement of only three years of professional experience. The Council's negotiating mandate, on the other hand, included an optional recognition of professional skills with a requirement of five years professional experience. By way of a compromise, the Presidency suggested to follow a sectoral approach and to initially include only highly skilled workers from the Information and Communications Technology (ICT) sector, with a requirement of three years professional experience. The exact professions that benefit from a mandatory recognition of skills are identified on the basis of their ISCO classification in an Annex to the directive. By way of a compromise, a review clause was agreed according to which the Commission will assess every two years whether this list should be revised. If a revision is deemed necessary, the ordinary legislative procedure must be followed. It should be noted that the required length of professional experience is specific to each profession listed in the Annex (e.g. three years for highly skilled ICT professionals). As in the current Blue Card Directive, Member States retain the option of granting a Blue Card to highly skilled workers from other sectors than those listed in the Annex, but this is not mandatory. These changes are reflected in Articles 2, 9 and 26, as well as in recitals 10, 11, 19 and 22.

21. The issue of intra-EU mobility also proved difficult to resolve due to the Parliament's insistence that long-term intra-EU mobility should be substantially facilitated with little or no control by the second Member State. This was challenged by the Council, notably on the basis that Member States need to retain a sufficient level of control over their labour market policies. By way of a compromise, the co-legislators eventually agreed to a simplified application procedure with shortened procedural deadlines. The Council resisted the Parliament's request for a mere notification procedure without any verification of the Blue Card holder's professional qualifications by the second Member State. The final compromise includes a shortened 30-day procedural deadline for examining the mobility application (which may be extended by an additional 30 days in cases justified by the complexity of the application). Moreover, at the latest 30 days after submitting the complete application, the applicant is allowed to start working in the second Member State. For unregulated professions, the second Member State may require Blue Card holders to present documents attesting their higher professional qualifications only where the Blue Card holder has worked for less than two years in the first Member State. For regulated professions, Blue Card holders must provide evidence of the fulfilment of the conditions set out under national law for the exercise of the relevant profession regardless of how long they have been Blue Card holders. In all cases, mobile Blue Card holders must also present a valid work contract. These compromise solutions are notably reflected in Articles 20, 21, and 23, as well as in recitals 15, 28, 33, 53 and 54. In addition, Article 22 contains specific provisions on the residence of family members of the Blue Card holder in the second Member State.

22. The issue of unemployment proved to be one of the toughest issues in the negotiations. The European Parliament's position included a very wide-ranging protection of Blue Card holders in case of unemployment, according to which Member States could only withdraw a Blue Card after a period of unemployment of minimum six months. During the negotiations, the Council, which favoured a period of three months, made it clear that the Parliament's approach would lead to a disproportionate burden on the social security systems of Member States. The Council also underlined that the length of authorised unemployment should be linked to the period of time during which the Blue Card holder has contributed to the social security system. The agreed compromise strikes a balance between these divergent views and makes a distinction between third country nationals that have held a Blue Card for less than two years and those that have held a Blue Card for two years or more. The former may only cumulate a period of three months of unemployment before their Blue Card may be withdrawn, whereas the latter may cumulate six months of unemployment. This compromise is reflected in Articles 8 and 15.

23. With regard to long-term residence, the Parliament's initial position included a right for Blue Card holders to acquire long-term residence status after already three years, by way of derogation from the five-year period provided for in the Long-Term Residents Directive. While the Council agreed that Blue Card holders should benefit from a facilitated access to long-term residence status compared to other third-country nationals in order to enhance the attractiveness of the EU Blue Card, its negotiating mandate only included the option (and not the obligation) for Member States to grant Blue Card holders such a status after already three years. During the course of the negotiations, it appeared that such an option would entail serious legal and practical difficulties and it was agreed to go back to the general five-year rule contained in the Long-Term Residents Directive. By way of a compromise, in order to facilitate the access to long-term residence, it was agreed that Blue Card holders exercising mobility should be able to cumulate periods of residences accrued under different residence schemes in other Member States. In particular, periods of residence as holders of a national residence permits for highly qualified employment, as students and researchers or as beneficiaries for international protection may be cumulated in order to fulfil the requirement concerning the duration of residence. Finally, the co-legislators agreed to allow longer periods of absence from the EU than those specified in the Long-Term Residents Directive for Blue Card holders. These compromise solutions are reflected in Articles 18 and 19, as well as in recitals 48 and 49.

24. With respect to the applicable salary threshold, the Council mandate included a range of between 1.1 and 1.7 times the average gross annual salary in the concerned Member State. This relatively wide range reflected the fact that some Member States were in favour of a high salary threshold, as a measure to attract truly highly qualified workers, whereas others expressed their preference for a lower threshold, in order to increase the inclusiveness of the EU Blue Card. The Parliament, on the other hand, favoured a narrower range between 1.0 and 1.4 times the average gross annual salary. The final compromise remains close to the Council mandate and includes a range between 1.0 and 1.6 times the average gross annual salary. By way of a compromise, the co-legislators agreed that Member States must choose the applicable salary threshold after consultation with social partners within this lower and upper limit. This consultation must occur "according to national practices" and does not bind the concerned Member State. With regard to the possible derogations to the applicable salary threshold, the co-legislators ultimately agreed not to include the derogation proposed by the Council for paragraph 2a of Article 5 (average annual salary lower than half of the average and EU level, combined with significant regional differences). The wide range of 1.0 to 1.6 times the average gross annual salary was already considered sufficiently wide to address such situations. Finally, the other applicable derogations contained in the Commission's proposal (for professions with shortages and young graduates) were retained, as proposed in the Council mandate. The final compromise reflected in paragraphs 3, 4 and 5 of Article 5, as well as in recital 32, strikes a balance between further harmonising the admission conditions and ensuring that Member States retain a sufficient level of flexibility to take into account the specificities of their labour markets.

25. Regarding the issue of labour market access, the main concern of Member States related to the need to progressively integrate Blue Card holders into the labour market, with sufficient safeguards to ensure that persons admitted as highly-qualified workers actually end up in corresponding occupations and that the EU Blue Card scheme is not used for abusive purposes. In that regard, the negotiations mainly revolved around the question of labour market tests in case of (1) change of employer (within the same Member State) ; and (2) mobility towards a second Member State. In both cases, the fundamental principle according to which Member States may conduct a labour market test before granting a Blue Card or allowing a Blue Card holder to change employer or exercise mobility was retained, as proposed in the Council mandate. By way of a compromise, to avoid tying a person to an employer for a disproportionate period of time, the co-legislators agreed to limit the possibility of conducting labour market tests to the first 12 months of employment. With regard to mobility towards a second Member State, it was agreed that labour market tests should only be applied if this possibility exists for first-time Blue Card applicants in the concerned Member State. By way of a compromise, the co-legislators also agreed not to apply labour market tests to family members of Blue Card holders. Another issue concerned the access to self-employed activities (subsidiary to a person's main activity as a Blue Card holder). In that regard, the final compromise remains close to the Council mandate: Member States may allow Blue Card holders to engage in such activities and are entitled to limit the scope of the self-employed activity. The conditions for exercising such activities must however be no less favourable than those for exercising self-employed activities under national schemes for highly qualified employment. These compromise solutions are reflected in Articles 7, 15, 17 and 21, as well as in recitals 36, 40 and 41.

26. Finally, on the issue of the scope of the directive, interinstitutional negotiations mainly focused on the issue of applicants and beneficiaries of international protection. Regarding applicants, the Council managed to keep such third-country nationals outside the scope of the directive. Conversely, as already foreseen in the Council mandate, beneficiaries of international protection were included in the scope. By way of a compromise, the co-legislators agreed that beneficiaries should also be allowed to apply for a Blue Card in the Member State that granted them protection, without any waiting period. This solution was considered necessary to increase the attractiveness of the EU Blue Card and avoid any unjustified discrimination between beneficiaries of international protection and other holders of residence permits in the same Member State. The co-legislators agreed that the advantages of such a solution outweigh the potential administrative burden caused by the double status certain Blue Card holders will therefore have. This compromise is reflected in Article 3 and recital 13.

27. At the very end of the technical negotiations, the European Parliament linked the acceptance of the Presidency's compromise package to some incremental changes being made to the provisions regarding (1) the extension of the list of highly skilled workers included in the Annex ; (2) the documents to be presented in case of intra-EU mobility; and (3) the protection of Blue Card holders against unemployment. Eventually, the European Parliament accepted to drop all its requests.

III. CONCLUSION

28. In light of the above, COREPER is invited to:

- approve the text set out in the Annex to this note[3], and

- agree that the Chair of Coreper will send a letter to the Chair of the LIBE Committee accordingly, confirming that should the European Parliament, in accordance with Article 294(3) of the Treaty on the Functioning of the European Union, adopt its position at first reading in the form of the text as contained in the Annex to this letter, after its revision by the lawyer-linguists in accordance with the usual procedure, the Council would, in accordance with Article 294(4) of that Treaty, approve the European Parliament's position and adopt the act.

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[3] Changes compared to the Commission proposal are marked in ***bold/italics*** for additions and ~~strikethrough~~ for deletions.

PE-CONS No/YY – 2016/0176(COD)

DIRECTIVE (EU) …/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on the conditions of entry and residence of third-country nationals for the purposes of highly *qualified* employment

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 points (a) and (b) of Article 79(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[ ],

Having regard to the opinion of the Committee of the Regions[ ],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The Commission ▌**'**s Communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth'[3] sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand ***and identifies the need for a comprehensive labour migration policy and for better integration of migrants***. Measures to facilitate the admission of third-country national highly ***qualified*** workers have to be seen in that broader context.

(2) The conclusions of the European Council of 26 and 27 June 2014 state that in order to remain an attractive destination for talents and skills, Europe must compete in the global race for talent. Strategies to maximise the opportunities of legal migration should therefore be developed, including the streamlining of existing rules.

(3) The European Agenda on Migration adopted on 13 May 2015 calls for an attractive EU ▌wide scheme for highly qualified third-country nationals, and specifies that a review of Council Directive 2009/50/EC ▌ is needed to make it more effective in attracting talents to the Union and thereby address both the demographic challenges faced by the Union and labour and skills shortages in key sectors of the Union economy. ***This call is reiterated in the New Pact on Migration and Asylum adopted on 23 September 2020, stating that the reform of the EU Blue Card must bring real EU added value in attracting skills through an effective and flexible EU-wide instrument.***

(4) The European Parliament, in its resolution of 12 April 2016 called for an ambitious and targeted review of the Directive, including on the scope.

▌

(5) It is necessary to respond to the challenges identified in the implementation report on Directive 2009/50/EC. The Union should aim at establishing a more attractive and effective EU-wide scheme for highly ***qualified*** workers. The Union approach on attracting highly ***qualified*** workers should be further harmonised and the EU Blue Card should be made the primary tool in that regard with faster procedures, more flexible and inclusive admission criteria, and more extensive rights including more facilitated intra-EU mobility. As this would entail substantial changes to Directive 2009/50/EC, that Directive should therefore be repealed and replaced by a new Directive.

(6) ***A clear and transparent*** EU-wide admission system to attract and retain highly ***qualified*** workers into the Union ***and promote mobility*** should be created. ***This Directive should be applicable regardless of whether the initial purpose of residence of the third-country national is highly qualified employment or if he or she resides first on other grounds and changes status towards this purpose subsequently. It is necessary to take into account the priorities, labour market needs and reception capacities of the*** Member States***. This Directive*** should ***be without prejudice to*** the ***competence*** of ***the*** Member States ▌ to issue ***national residence*** permits other than EU Blue ***Cards for the purpose of highly qualified employment. Moreover, this Directive should not affect the possibility for an EU Blue Card holder to enjoy additional rights and benefits which may be provided by national law, and which are compatible with this Directive.***

▌

(7) Member States should apply a level playing field between the EU Blue Card and national residence permits for the purpose of highly qualified employment, in terms of procedural and equal treatment rights, procedures and access to information. In particular, Member States should ensure that EU Blue Card holders and their family members do not enjoy a lower level of procedural safeguards and rights than holders of national residence permits. They should also ensure that applicants for an EU Blue Card are not in a less favourable position than applicants for national residence permits with regard to recognition procedures for employers, and that they are not required to pay a higher level of fees for the handling of their application. Finally, Member States should ensure that the EU Blue Card benefits of the same level of information, promotion and advertisement activities than the national residence permits, for example through information on the national websites on legal migration, information campaigns and training programmes for the competent migration authorities.

(8) In order to reinforce and promote the EU Blue Card scheme and attract highly qualified workers, Member States are encouraged to strengthen advertisement activities and information campaigns concerning the EU Blue Card, including where appropriate towards third countries.

(9) ***Member States should give effect to this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation in accordance, in particular, with Council Directive 2000/43/EC and Council Directive 2000/78/EC. For the principle of non-discrimination to be effective, EU Blue Card holders should be able to seek legal redress and lodge complaints as provided for by national law, if they face any kind of discrimination, including in the labour market.***

(10) ***Having regard to the Eurostat report 'ICT specialists – statistics on hard-to-fill vacancies in enterprises' of December 2018 and its conclusions regarding a widespread shortage of highly-skilled workers in the ICT (Information and Communication Technologies) sector in the labour markets of Member States, higher professional skills should be considered equivalent to higher education qualifications for the purpose of applying for an EU Blue Card in two 'higher' positions: Information and Communications Technology Services Managers (ISCO-08 classification 133) and Information and Communications Technology Professionals (ISCO-08 classification 25).***

Considering that a bachelor degree takes at least three years to complete, the relevant period of required professional experience should be three years. This length of professional experience also appears justified given the fast pace of technological evolution in the ICT sector and the changing needs of employers.

Member States are encouraged to facilitate the assessment and validation of higher professional skills for the purpose of the Blue Card.

It is envisaged that the list of occupations in the Annex could be amended, in particular following an assessment to this end by the Commission on the basis of, among other sources, the information provided by the Member States regarding the needs of their labour markets, for the purpose of recognising professional experience under this Directive in other fields of activity. This assessment is to be provided every two years.

For the occupations not listed in Annex, Member States may accept applications for an EU Blue Card on the basis of evidence of higher professional skills, attested by at least five years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer.

I

(11) ***The concept of highly qualified employment should entail that the person employed not only has a high level of competence, as proven by higher professional qualifications, but also that the work to be carried out is inherently regarded as demanding such competence. While in the modern labour market a direct link between the qualifications and the job is not always and necessarily required, the tasks and duties related to the work contract for highly qualified employment should be so specialised and complex that the required level of competence to perform those duties is usually associated with completion of education programmes and resulting qualifications at ISCED (International Standard Classification of Education) 2011 levels 6, 7 and 8, or, where appropriate, to the broadly equivalent EQF (European Qualifications Framework) levels 6, 7 and 8, according to the national law of the Member State concerned, or, for specific occupations, with comparable higher professional skills.***

(12) This Directive should not affect the right of the Member States to determine the volumes of admission of third-country nationals coming from third countries to their territory in order to seek work in accordance with Article 79(5) of the Treaty ***on the Functioning of the European Union (TFEU)***. On that basis, Member States should be able to either consider an application for an EU Blue Card inadmissible or reject it. ▌

(13) Beneficiaries of international protection as defined in Article 2(a) of Directive 2011/95/EU of the European Parliament and of the Council ▌ have a wide set of rights**,** including labour market access in the Member State having granted them protection. In order to ▌ enhance their labour market opportunities across the Union, those who are highly ***qualified*** should be entitled to apply for an EU Blue Card ***in Member States other than the one which granted them protection. In those Member States, they*** should be subject to the same rules as any other third ▌ country national falling within the scope of this Directive, while ***this Directive should have no impact on their status in the Member State having granted them international protection. Beneficiaries*** of international protection ***are also entitled to apply for an*** EU Blue Card ▌ in ***the Member State that granted them international protection. In such a case***, for reasons of legal clarity and coherence, the provisions on equal treatment and family reunification of this Directive should not apply to ***them***. Those rights should remain regulated under the asylum acquis and, where applicable, Council Directive 2003/86/EC ▌.

(14) The transfer of responsibility for protection of beneficiaries of international protection is outside the scope of this Directive: the protection status and the rights associated with it should not be transferred to another Member State on the basis of the issuance of an EU Blue Card.

(15) In order to facilitate the independent intra-EU mobility and business activities of those highly ***qualified*** third-country nationals who are beneficiaries of the right to free movement, they should be given access to the EU Blue Card ***in accordance with*** the same rules as any other third-country national falling within the scope of this Directive. This ***entitlement concerns persons enjoying free movement rights based on family ties to a Union citizen in accordance with relevant legislation and it*** should apply regardless of whether or not the Union citizen of reference has exercised the fundamental right to move and reside freely under Article 21 TFEU and regardless of whether the third-country national concerned was first an EU Blue Card holder or a beneficiary of the right to free movement. ***Those Blue Card holders should thus be entitled to engage in highly qualified employment, perform business trips and take up residence in different Member States regardless of whether or not the third-country national accompanies the Union citizen of reference.*** The rights that these third-country nationals acquire as EU Blue Card holders should be without prejudice to rights they may enjoy under Directive 2004/38/EC of the European Parliament and of the Council ▌. For reasons of legal clarity and coherence, in terms of family reunification and equal treatment the rules under Directive 2004/38/EC should prevail. All provisions regarding the beneficiaries of the right to free movement in this Directive should also apply where that right is derived from those third-country nationals who enjoy rights of free movement equivalent to those of Union citizens under agreements either between the Union and its Member States and third countries or between the Union and third countries.

(16) ▌ This Directive should not apply to third-country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Directive (EU) 2016/801 of the European Parliament and of the Council ▌ which introduces a specific procedure for admitting third-country nationals for the purposes of scientific research. However, ***legally residing third-country nationals*** admitted under Directive ▌ EU ▌ 2016/801 ***should be entitled to apply for an EU Blue Card under this Directive. Equally***, legally residing ***EU Blue Card holders should be entitled to apply to reside as*** researchers ***under Directive 2016/801. In order to ensure such a possibility, Directive 2016/801 should be amended accordingly.***

(17) ***While this Directive should not apply to third-country nationals who apply to be admitted to the EU as intra-corporate transferees pursuant to Directive 2014/66/EU, intra-corporate transferees legally residing in the EU*** should be entitled to apply for an EU Blue Card under this Directive for other purposes than those covered under Directive ***2014/66/***EU ▌***.***

▌

(18) It is necessary to provide for a flexible demand-driven***, clear and balanced*** admission system based on objective criteria, such as a work contract or a binding job offer of at least 6 months, ***compliance with the applicable laws, collective agreements or national practices in the relevant occupational branches,*** a salary threshold adaptable by the Member States to the situation in its labour market and higher professional qualifications ***or, where appropriate, higher professional skills***.

(19) This Directive is without prejudice to national procedures on the recognition of diplomas. In order to evaluate if the third-country national concerned possesses higher education or equivalent qualifications, reference should be made ▌ to ISCED (International Standard Classification of Education) 2011 levels 6, 7 and 8, or***, where appropriate,*** to the broadly equivalent EQF (European Qualifications Framework) levels 6, 7 and 8, according to the ***national law*** of the Member State concerned.

Member States are encouraged to facilitate the recognition of documents attesting the relevant higher professional qualifications of the third-country national concerned and, as concerns beneficiaries of international protection who may not have the necessary documents, to establish appropriate assessments and validation arrangements of their prior higher education qualifications or, where relevant, their higher professional skills.

(20) In order to ensure a sufficient level of harmonisation in the admission conditions throughout the Union, both ***a lower*** and ***upper*** factor ▌ for ▌ the salary threshold should be determined. ***The lower and upper limit for setting the national salary threshold should be determined by multiplying these factors with the average gross annual salary in the Member State concerned. A salary threshold should be chosen, after consultation with the social partners according to national practices, within the range of the lower and upper limit. This salary threshold should set out the minimum salary which a Blue Card holder should earn. Therefore, in order to be admitted under this Directive, applicants should earn a salary which is equal to or greater than the salary threshold chosen by the Member State concerned***.

(21) ***Member States should be able to provide a*** lower salary threshold ▌ for specific professions where it is considered by the Member State concerned that there is a particular lack of available workforce and where such professions belong to major group 1 or 2 of the ISCO ("International Standard Classification of Occupation") classification. ***In any event, this salary threshold should not be lower than 1.0 times the average gross annual salary in the Member State concerned.***

(22) In line with the priorities of the New Skills Agenda, in particular to improve skills matching and to tackle skills shortages, Member States are encouraged, where appropriate, after consultation of the social partners, to compile lists of sectors of employment which face shortages of highly qualified workers.

(23) ***Member States should be able to provide a*** lower salary threshold ▌ to benefit third-country nationals during a certain period after their graduation. This period should be granted each time that the third-country national reaches a level of education relevant for the purposes of this Directive, namely levels 6, 7 or 8 of ISCED 2011 ▌ or***, where appropriate, EQF*** levels 6, 7 ***and*** 8 ▌, according to the national law of the Member State concerned. It should apply whenever the third-country national applies for an initial or renewed EU Blue Card within three years from the date of obtaining the qualifications and in addition, when that third-country national applies for a ▌ renewal of the EU Blue Card and ***a period of 24 months has not elapsed since the issuance of*** the initial EU Blue Card ▌. After these grace periods – which may run in parallel – have elapsed the young professionals can be reasonably expected to have gained sufficient professional experience in order to fulfil the regular salary threshold. ***In any event, this lower salary threshold should not be lower than 1.0 times the average gross annual salary in the Member State concerned.***

(24) The conditions of entry and residence of third-country nationals for the purposes of highly ***qualified*** employment, including the eligibility criteria related to a salary threshold should be defined. ***The salary threshold set by the Member State*** should not aim to determine salaries and therefore should not derogate from the rules or practices at Member State level or from collective agreements, and should not be used to constitute any harmonisation in this field. ***The salary paid to the Blue Card holder should not be lower than the applicable salary threshold but it may be higher, as determined between the employer and the third-country national, in line with market conditions, labour laws, collective agreements and practices in the Member State concerned.*** This Directive should fully respect the competences of Member States, particularly on employment, labour and social matters.

(25) Member States should be able to require the third-country national to provide for his or her address at the time of application. In case the third-country national does not yet know his or her future address, Member States should accept a temporary address, which could be the address of the employer.

(26) ***The period of validity for the EU Blue Card*** should ▌ be ▌ ***at least 24 months. In cases where the duration of the work contract is shorter, the EU Blue Card should be issued at least for the duration of the work contract plus three months,*** for a ***maximum of 24 months. If the*** third-country national ***holds*** a travel document whose ***period of*** validity ***is shorter than 24 months or*** the ▌ duration of the ***work contract, the*** EU Blue Card ***should be issued at least for the period of validity of the travel document***. Third-country nationals should be allowed to renew their travel document while holding an EU Blue Card.

(27) Member States should reject applications for an EU Blue Card and be allowed to withdraw or refuse to renew an EU Blue Card if there is a threat to public policy, public security or public health. ***A threat to public health is to be understood in line with Regulation (EU) 2016/399.*** Any rejection on grounds of public policy or public security should be based on the individual behaviour of the person concerned, in accordance with the principle of proportionality. Illness or disability suffered after the third-country national was admitted to the territory of the first Member State should not constitute the sole ground for withdrawing or refusing to renew an EU Blue Card or for not issuing an EU Blue Card in a second Member State.

Moreover, Member States should have the possibility not to withdraw or not to refuse to renew an EU Blue Card, where the obligation to present a valid work contract or the applicable salary threshold are temporarily not met due to illness, disability or parental leave.

(28) Member States should be allowed to withdraw or refuse to renew an EU Blue Card where the EU Blue Card holder has ▌ failed to comply with the conditions for mobility under this Directive***, including in the case of abusive use of*** mobility rights ▌, for example by ***not respecting the period allowed for carrying out a business activity or by not submitting an application for long-term mobility within the requested time frame in second Member States, or by*** applying for ***an*** EU Blue ***Card*** in ***a*** second Member ***State*** and beginning employment ***sooner than allowed*** while it is clear that the conditions will not be fulfilled and the application will be refused.

(29) Any decision to reject an application for an EU Blue Card or to withdraw or refuse to renew an EU Blue Card should take into consideration the specific circumstances of the case and ***be proportionate***. In particular, where the ground for rejection***, withdrawal or refusal to renew*** is related to the ***conduct*** of the employer, ▌ minor misconduct ***of the employer*** should not in any case constitute the sole ground for rejecting an application or withdrawing or refusing to renew the permit.

(30) Any decision rejecting an application for an EU Blue Card should not affect the right of a third-country national to submit another application. The submission of such a new application should not authorise the person concerned to remain in the territory of the Member State concerned, except when provided by national law.

(31) Once all the conditions for admission are fulfilled, Member States should issue an EU Blue Card within specified time limits. If a Member State issues residence permits only on its territory and all the conditions of this Directive relating to admission are fulfilled, the Member State should grant the third-country national concerned the requisite visa. It should be ensured that the competent authorities effectively cooperate ***for that purpose. In the event that the Member State does not issue visas, it should grant the third-country national concerned an equivalent permit allowing entry***.

(32) The rules on processing times for EU Blue Card applications should guarantee the swift issuance of permits in all cases. The processing time for examining the application for an EU Blue Card should not include the time required for the recognition of professional qualifications, where applicable, or the time required for issuing a visa, if required. ***In case the validity of the EU Blue Card expires during the procedure for renewal, the third-country national should be entitled, until the decision on the application is taken by the competent authorities, to stay, work and enjoy the rights provided for under this Directive in the territory of the Member State which issued the EU Blue Card, but not the right to mobility to a second Member State.***

(33) Where a Member State has determined that an application for an EU Blue Card or for intra-EU mobility is to be made by the employer, it should not restrict the procedural safeguards enjoyed by the third-country national concerned during the application procedure, or the rights enjoyed by the EU Blue Card holder during the period of employment or the EU Blue Card renewal procedure.

(34) The format of the EU Blue Card should be in accordance with Regulation (EC) No 1030/2002[4], thus enabling the Member States to refer in particular to the information on the conditions under which the person is permitted to work. ***Member States should be able to indicate additional information in paper format or store such information in electronic format, as referred to in Article 4 of that Regulation and point a(16) of the Annex thereto, in order to provide more precise information on the employment activity concerned. The provision of this additional information should be optional for Member States and should not constitute an additional requirement that would compromise the single permit and the single application procedure.***

(35) The Member State concerned should ensure that applicants have the right to challenge before a court or tribunal any decision rejecting an application for an EU Blue Card, or ***any decision*** not ***to renew*** or ***to withdraw*** an EU Blue Card. This is without prejudice to the possibility to designate an administrative authority to carry out a prior administrative review of such ***decision***.

▌

[4] Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

(*36*) ***Since this Directive aims to address labour and skills shortages in key sectors in the EU labour market, Member States should be able to check whether a vacancy which an applicant for an EU Blue Card intends to fill could instead be filled by national or Union workforce, by third-country nationals lawfully resident in the concerned Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter III of the Directive 2003/109/EC. In case Member States decide to make use of this possibility, they should communicate this in a clear, accessible and transparent way to applicants and employers, including online. This check should not be part of the EU Blue Card renewal procedure in the first Member State. In case of long-term mobility, taking into account the situation of the labour market should only be possible if that Member State has also introduced checks for applicants coming from third countries.***

(37) In implementing this Directive, Member States should refrain from pursuing active recruitment in developing countries in sectors suffering from a lack of personnel. Ethical recruitment policies and principles applicable to public and private sector employers should be developed in key sectors, for example the health sector. This is consistent with EU's commitment to the 2010 WHO Global Code on the International Recruitment of Health Personnel in addition to the Council and Member States' conclusions of 14 May 2007 on the European Programme for Action to tackle the critical shortage of health workers in developing countries (2007-2013) and the education sector, as appropriate. These principles and policies should be strengthened by the development and application of mechanisms, guidelines and other tools to facilitate, as appropriate, circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly ***qualified*** immigration on developing countries in order to turn "brain drain" into "brain gain".

(38) In line with the priorities of the New Skills Agenda, in particular to improve skills matching and to tackle skills shortages, Member States are encouraged, where appropriate, after consultation of the social partners, to compile lists of sectors of employment which face shortages of highly qualified workers.

(39) A simplified procedure for employers which have been recognised for that purpose should be provided, optional for Member States. The status of recognised employer should bring specific facilitation in terms of procedures and admission conditions – amounting to a simplified procedure – under this Directive and Member States should include sufficient safeguards against abuse. ***In accordance with the principle of proportionality, these safeguards must take into account the gravity and nature of the misconduct.*** Where the status of recognised employer is withdrawn during the period of validity of an EU Blue Card issued under the simplified procedure, regular admission conditions should apply upon renewing that EU Blue Card, unless the third-country national concerned is employed by another recognised employer.

(40) In order to ensure that the criteria for admission are still fulfilled, Member States should be allowed to require that, during the first twelve months of legal employment as an EU Blue Card holder, a change of employer or other significant changes, be subject to a communication, including a check of the labour market situation. After these first twelve months, Member States should be able to require only the communication to the competent authorities of a change of employer or a change affecting the fulfilment of the criteria for admission as set out in Article 5, including, where necessary, the new work contract. No check of the labour market situation should be carried out.

This procedure should be limited to an assessment of the elements that have changed.

(41) In order to promote innovative entrepreneurship, third-country nationals admitted under this Directive ***may*** be given the ***possibility*** to exercise in parallel a self-employed activity without it affecting the right of residence as an EU Blue Card holder. This ▌ should be without prejudice to the continuous obligation to meet the conditions for admission under this Directive, and the EU Blue Card holder should therefore remain in highly ***qualified*** employed activity. ***Member States should have the possibility to lay down in their national law the conditions for access to self-employed activity. Member States should also be entitled to limit the scope of allowed self-employed activity. Member States shall give EU Blue Card holders access to self-employed activities under no less favourable conditions than those provided for under existing national schemes. Any income derived from self-employment will not contribute towards meeting the salary threshold required to qualify as an EU Blue Card holder.***

(42) In order to enhance the contribution that the EU Blue Card holder may make through his higher professional qualifications, Member States should also have the possibility to lay down in their national law provisions allowing EU Blue Card holders to engage in other professional activities which are complementary to their main activity as an EU Blue Card holder. Any income derived from these professional activities will not contribute towards meeting the salary threshold required to qualify as an EU Blue Card holder.

(43) Equal treatment ***should be*** granted to EU Blue Card holders ▌ in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council ▌. This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the third-country nationals falling within its scope.

(44) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council ▌ applies. This Directive should not confer more rights to the mobile EU Blue Card holder than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.

(45) Professional qualifications acquired by a third-country national in another Member State should be recognised in the same way as those of Union citizens. Qualifications acquired in a third country should be taken into account in accordance with Directive 2005/36/EC of the European Parliament and of the Council ▌. ***This Directive should be without prejudice to the conditions set out under*** national ***law*** for ***the exercise of regulated professions. It should also not prevent Member States from maintaining national restrictions on access to employment which entails at least occasional involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the State, and national rules on activities reserved to nationals, Union citizens or EEA citizens, including in case of mobility to other Member States, which existed at the time of the entry force of the Directive***.

(46) The rights acquired by a beneficiary of international protection as an EU Blue Card holder should be without prejudice to rights enjoyed by the person concerned under Directive 2011/95/EU and under the Geneva Convention in the Member State which granted the protection status. In that Member State, in order to avoid situations of conflicting rules, the provisions on equal treatment and family reunification of this Directive should not apply. Persons who are beneficiaries of international protection in one Member State and EU Blue Card holders in another should enjoy the same rights including equality of treatment with nationals of the Member State of residence ***and family reunification rights*** as any other EU Blue Card holders in the latter Member State. ***The status of a beneficiary of international protection is without prejudice to the fact that the person is also an EU Blue Card holder or that his or her EU Blue Card expires.***

(47) Favourable conditions for family reunification and ▌access to work for spouses should be a fundamental element of this Directive in order to facilitate the attraction of highly ***qualified*** workers. Specific derogations from Council Directive 2003/86/EC***, which is applicable in both the first and the second Member States,*** should be provided for in order to reach this aim***. Member States should have the possibility to restrict the scope of self-employed activities in which spouses may engage, under the same conditions that apply to EU Blue Card holders***. Conditions related to integration or waiting periods should not be applied before allowing family reunification, as highly ***qualified*** workers and their families are likely to have ***a*** favourable starting point regarding integration in the host community. With the aim of facilitating the swift entry of highly ***qualified*** workers, residence permits to their family members should be issued at the same time as the EU Blue Card, where the relevant conditions are fulfilled and the applications were lodged simultaneously.

(48) ***Derogations from Council Directive 2003/109/EC should be provided for in*** order to attract highly ***qualified*** workers and encourage their continuous stay in the Union, while enabling mobility within the Union as well as circular migration ▌**.** EU Blue Card holders ***who have availed themselves of the possibility to move from one Member State to another Member State should be granted*** easier access to EU long-term resident status***, by allowing them to cumulate periods of residence in different Member States, provided they can demonstrate the number of years of legal and continuous residence required under Article 4(1) of Council Directive 2003/109/EC as holders of an EU Blue Card, of a national permit for highly qualified employment, an authorisation as a student or researcher in accordance with Directive (EU) 2016/801 or as beneficiaries of international protection. They should also demonstrate two years of legal and continuous residence as an EU Blue Card holder immediately prior to the submission of the relevant application within the territory of the Member State where the application for the EU long-term resident status is submitted. As provided for in Council Directive 2003/109/EC, only half of the periods of residence for study purposes may be taken into account in the calculation of the five years of legal and continuous residence, in the Member States where periods of residence for study purposes are taken into account for the calculation of continuous residence***.

(49) In order to foster the mobility of highly ***qualified*** workers between the Union and their countries of origin, derogations from Directive 2003/109/EC should be provided for in order to allow longer periods of absence than those provided for in that Directive after highly ***qualified*** third-country workers have acquired the EU long-term resident status **.**

(50) The occupational and geographical mobility of third-country highly ***qualified*** workers should be recognised as an important contributor to improving labour market efficiency across the Union, addressing skills shortages and offsetting regional imbalances. Mobility within the Union should be facilitated.

(51) This Directive shall be without prejudice to the provisions of Directive 96/71/EC of the European Parliament and of the Council and Directive 2014/67/EU of the European Parliament and of the Council.

(52) Existing legal uncertainty surrounding business trips of highly ***qualified*** workers should be addressed by defining this notion and setting a list of activities that in any case should be considered as business activities in all Member States. ***These activities should be directly linked to the interests of the employer in the first Member State and related to the duties of the Blue Card holder in the employment for which the Blue Card was granted.*** Second Member States should not be allowed to require from EU Blue Card holders engaging in business activities a ***visa,*** work permit or any other authorisation than the EU Blue Card issued by the first Member State. Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full, its holder should be entitled to enter and stay in one or several second Member States for the purpose of business activity for up to 90 days in any 180-day period based on the EU Blue Card.

(53) EU Blue Card holders should be allowed to move to a second Member State under simplified conditions where they intend to apply for a new EU Blue Card based on an existing work contract or binding job offer. Second Member States should not be allowed to require from EU Blue Card holders any other authorisation than the EU Blue Card issued by the first Member State. As soon as they submit ***a complete*** application for an EU Blue Card within the deadline provided for in this Directive, ***it*** should be ***possible for*** the second Member State ***to allow them to begin employment.*** EU Blue Card ***holders*** should be ***entitled to begin employment at the latest 30 days after submitting the application. Mobility*** should ***be*** demand-driven and therefore a work contract should always be required in the second Member State, ***all the conditions in applicable laws, collective agreements or practices in the relevant occupational branch should be met*** and the salary should meet the threshold set by the second Member State in accordance with this Directive.

(54) Where EU Blue Card holders intend to apply for an EU Blue Card in a second Member State in order to exercise a regulated profession, their professional qualifications should be recognised in the same way as those of Union citizens exercising the right to free movement, in accordance with Directive 2005/36/EC and other applicable Union and national law.

(55) While some special rules are provided in this Directive regarding entry and stay in a second Member State for the purpose of business activity, as well as moving to a second Member State to ***reside and work there under the*** EU Blue Card in its territory, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen acquis apply.

(56) Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full and the EU Blue Card holder, in the mobility situations provided for in this Directive, crosses an external border within the meaning of Regulation (EU) 2016/399 of the European Parliament and of the Council ▌, a Member State should be entitled to require evidence that the EU Blue Card holder is entering its territory either for the purpose of business activities or in order to ***reside and work there under the*** EU Blue Card based on a work contract or binding job offer. In the case of mobility for carrying out business activities, that Member State should be able to require evidence of the business purpose of the stay, such as invitations, entry tickets, or documents describing the business activities of the company and the position of the EU Blue Card holder in the company.

(57) Where the EU Blue Card holder moves to a second Member State to apply for an EU Blue Card and he or she is accompanied by family members, that Member State should be able to require ***the family members to present*** their ▌ residence ***permit issued*** in the first Member State. Besides, in case of crossing of an external border within the meaning of Regulation (EU) 2016/399, the Members States applying the Schengen acquis in full should consult the Schengen information system and should refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council ▌, has been issued in that system

(58) This Directive should allow the second Member State to request that the EU Blue Card holder, who moves on the basis of an EU Blue Card issued by the first Member State and whose application in the second Member State is rejected, leaves its territory. Where the EU Blue Card holder still has a valid EU Blue Card issued by the first Member State, the second Member State should be able to request that the EU Blue Card holder goes back to the first Member State in accordance with Directive 2008/115/EC of the European Parliament and of the Council[5]. Where the EU Blue Card issued by the first Member State is withdrawn or has expired during the examination of the application, it should be possible for the second Member State to either decide to return the EU Blue Card holder to a third country, in accordance with Directive 2008/115/EC, or request the first Member State to allow re-entry of the EU Blue Card holder to its territory without unnecessary formalities or delay. In this latter case, the first Member State should issue the EU Blue Card holder with a document allowing re-entry to its territory.

(59) For the purpose of residence of beneficiaries of international protection across Member States, it is necessary to ensure that Member States other than the one which issued international protection are informed of the protection background of the persons concerned in order to enable Member States to comply with their obligations regarding the principle of non-refoulement.

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5 ***Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).***

(60) Where a Member State intends to expel a person who has acquired an EU Blue Card in that Member State and who is a beneficiary of international protection in another Member State, that person should enjoy the protection against expulsion guaranteed under Directive 2011/95/EU and under Article 33 of the Convention Relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967 (the Geneva Convention).

(61) Where the expulsion of a beneficiary of international protection outside the territory of the Member States is permitted under Directive 2011/95/EU, Member States should be obliged to ensure that all information is obtained from relevant sources, including, where appropriate, from the Member State that granted international protection, and that it is thoroughly assessed with a view to guaranteeing that the decision to expel that beneficiary is in accordance with Article 4 of the Charter of Fundamental Rights of the European Union.

(62) Specific reporting provisions should be provided for to monitor the implementation of this Directive, with a view to identifying and possibly counteracting its possible impacts in terms of brain drain in developing countries and in order to avoid brain waste.

(63) Since the objectives of this Directive, namely the establishment of a special admission procedure and the adoption of conditions of entry and residence, and the rights, applicable to third-country nationals for the purpose of highly ***qualified*** employment and their family members, cannot be sufficiently achieved by the Member States, especially – to better exploit the EU's overall attractiveness – as regards ensuring their mobility between Member States and offering a clear and single set of admission criteria across the Member States, and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(64) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in accordance with Article 6 of the Treaty on European Union (TEU).

(65) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ▌, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(66) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to TEU and TFEU, and without prejudice to Article 4 of ▌ that Protocol, ***Ireland is*** not taking part in the adoption of this Directive and ***is*** not bound by or subject to its application.

(67) In accordance with Articles 1 and 2 of the Protocol 22 on the position of Denmark annexed to TEU and TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application.

(68) Directive 2009/50/EC should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive lays down:

(a) the conditions of entry and residence for more than three months in the territory of the Member States, and the rights, of third-country nationals for the purpose of highly *qualified* employment, and of their family members;

(b) the conditions of entry and residence, and the rights, of third-country nationals and of their family members, referred to in point (a), in Member States other than the Member State which first granted an EU Blue Card.

Article 2

Definitions

For the purposes of this Directive:

(a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty *on the Functioning of the European Union*;

(b) "highly *qualified* employment" means the employment of a person who:

- in the Member State concerned, is protected as an employee under national employment law or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else;

- is paid; and

- has the required ▌higher professional qualifications***;***

(c) "EU Blue Card" means the residence permit bearing the term "EU Blue Card" entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;

(d) "first Member State" means the Member State which first grants a third-country national an "EU Blue Card";

(e) "second Member State" means any Member State in which the EU Blue Card holder intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;

(f) "family members" means third-country nationals as defined in Article 4(1) of Directive 2003/86/EC;

(g) "higher professional qualifications" means qualifications attested by evidence of higher education qualifications or higher professional skills;

(h) "higher education qualifications" means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education or equivalent tertiary education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution or equivalent tertiary educational institution by the State in which it is situated, where the studies needed to acquire those qualifications lasted at least three years and correspond at least to ISCED 2011 level 6 or***, where appropriate,*** to EQF level 6, according to national law;

(i) *"*higher professional skills*", as concerns the occupations listed in the Annex,* means ***knowledge,*** skills ***and competences attested by professional experience of a level comparable to higher education qualifications, which are relevant in the profession or sector specified in the work contract or binding job offer, and which have been acquired over the duration defined in the Annex for each relevant occupation ; as concerns other occupations, only where provided for by national law or national procedures, means knowledge, skills and competences*** attested by at least ***five*** years of professional experience of a level comparable to higher education qualifications and which ***are*** relevant in the profession or sector specified in the work contract or binding job offer;

ANNEX I – List of occupations referred to in Article 2, point (i)

- Information and communications technology managers and professionals, who have acquired at least three years of relevant professional experience within seven years prior to the application for an EU Blue Card, belonging to the following groups in the ISCO-08 classification:

- 133 Information and communications technology service managers;

- 25 Information and communications technology professional.

(j) "professional experience" means the actual and lawful pursuit of the profession concerned;

(k) "regulated profession" means a regulated profession as defined in Article 3(1) (a) of Directive 2005/36/EC;

(l) "business activity" means a temporary activity ***directly*** related to the business interests of the employer ***and to the professional duties of the EU Blue Card holder based on the employment contract in the first Member State, including at least*** attending internal and external business meetings, attending conferences and seminars, negotiating business deals, undertaking sales or marketing activities, ▌ exploring business opportunities, or attending and receiving training;

(m) "international protection" has the meaning as defined in Article 2(a) of Directive 2011/95/EU of the European Parliament and of the Council.

Article 3

Scope

1. This Directive shall apply to third-country nationals who apply to be admitted or who have been admitted to the territory of a Member State for the purpose of highly ***qualified*** employment.

2. This Directive shall not apply to third-country nationals:

(a) who seek international protection and are awaiting a decision on their status or who are beneficiaries of temporary protection in accordance with the Council Directive 2001/55/EC ▌ in a Member State;

(b) who seek protection in accordance with national law, international obligations or practice of the Member State and are awaiting a decision on their status, or who are beneficiaries of protection in accordance with national law, international obligations or practice of the Member State;

(c) who apply to reside in a Member State as researchers within the meaning of Directive (EU) 2016/801 in order to carry out a research project;

(d) who enjoy EU long-term resident status in a Member State in accordance with Directive 2003/109/EC and exercise their right to reside in another Member State in order to carry out an economic activity in an employed or self-employed capacity;

(e) who enter a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons, with the exception of third-country nationals who have been admitted to the territory of a Member State as intra-corporate transferees pursuant to Directive 2014/66/EU of the European Parliament and of the Council ▌;

(f) whose expulsion has been suspended for reasons of fact or law;

(g) who are covered by Directive 96/71/EC of the European Parliament and of the Council ▌ as long as they are posted on the territory of the Member State concerned;

(h) who under agreements between the Union and its Member States and third countries***, as nationals of those third countries,*** enjoy rights of free movement equivalent to those of Union citizens.

3. This Directive shall be without prejudice to ▌***the right of the*** Member States ***to*** issue ***residence permits*** other ▌ than an EU Blue Card ▌ for the purpose of highly ***qualified*** employment. ***Such residence permits shall not confer the right of residence in the other Member States as provided for in this Directive.***

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:

   (a) Union law, including bilateral or multilateral agreements concluded between the Union or the Union and its Member States on the one hand and one or more third countries on the other;

   (b) bilateral or multilateral agreements ▌ concluded between one or more Member States and one or more third countries***;***

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions in respect of Articles 8(5), 11, 15(4), 16, 17 and 18(4).

CHAPTER II

CRITERIA FOR ADMISSION, REFUSAL AND WITHDRAWAL

Article 5

Criteria for admission

1. ***As regards the admission of a*** third-country national ***under this Directive, the applicant*** shall:

(a) present a valid work contract or, as provided for in national law, a binding job offer for highly *qualified* employment, of at least six months in the Member State concerned;

(b) for unregulated professions, present the documents attesting relevant higher professional qualifications in relation to the work to be carried out ;

(c) for regulated professions, present ***the documents*** attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law;

(d) present a valid travel document, as determined by national law, and, if required, an application for a visa or a valid visa or, where applicable, a valid residence permit or a valid long-stay visa ▌.

(e) ***provide*** evidence of having or, if provided for by national law, having applied for a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract.

2. ***Member States shall require that all conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly qualified employment are met.***

3. In addition to the conditions laid down in ***paragraphs*** 1 ***and 2***, the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer shall not be inferior to the salary threshold set and published for that purpose by the Member States. The salary threshold ***shall be*** set by the Member States***, after consultation with the social partners according to national practices, and*** be at least 1.0 times but not higher than ***1.6*** times the average gross annual salary in the Member State concerned.

▌

4. By way of derogation from paragraph 3, and for employment in professions which are in particular need of third-country national workers and which belong to major groups 1 and 2 of ISCO, ▌***Member States may apply a lower*** salary threshold ***of at least*** 80 percent of the salary threshold set by the Member State concerned in accordance with paragraph 3***, which in any event shall not be lower than 1.0 times the average gross annual salary in the Member State concerned***.

5. By way of derogation from paragraph 3, as regards third-country nationals who have obtained a higher education qualification not more than three years before submitting the application for an EU Blue Card, ***Member States may apply a lower*** salary threshold ***of at least*** 80 percent of the salary threshold set by the Member State concerned in accordance with paragraph 3 ▌***, which in any event shall not be lower than 1.0 times the average gross annual*** salary ▌ in the ***Member State concerned***.

Where the EU Blue Card issued during the period of three years is renewed ▌, the salary threshold referred to in ***the first subparagraph*** shall ***continue to*** apply ***if:***

(a) the ***initial*** period of three years ***has not elapsed; or***

(b) ***a period of*** 24 months ***after*** the ***issuance of*** the first ***EU Blue Card has not elapsed***.

6. ***Where an application for an EU Blue Card concerns a third-country national who holds a national residence permit for the purpose of highly qualified employment issued by the same Member State, the concerned Member State shall not:***

(a) ***require the applicant to present the*** documents ***provided for in point (b) or (c) of paragraph 1 if*** the relevant higher professional qualifications ***were already verified in the context of the application for the national residence permit;***

(b) ***require the applicant to present the evidence provided for in point (e) of paragraph 1 unless the application is submitted in the context of a change of employment, in which case Article 15 shall apply accordingly;***

(c) ***apply Article 7(2)(a) unless the application is submitted in the context of a change of employment, in which case Article 15 shall apply accordingly***.

7. Member States may require the third-country national concerned to provide his or her address in their territory.

Where the national law of a Member State requires an address to be provided at the time of application and the third-country national concerned does not yet know his or her future address, Member States shall accept a temporary address. In such a case, the third-country national shall provide his or her permanent address at the latest when the EU Blue Card pursuant to Article 9 is issued.

Article 6

Volumes of admission

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals in accordance with Article 79(5) TFEU.

Article 7

Grounds for refusal

1. Member States shall reject an application for an EU Blue Card ▌:

(a) where ▌ Article 5 ***is not complied with***; ***or***

(b) where the documents presented have been fraudulently acquired, or falsified or tampered with.

(c) where the third-country national is considered to pose a threat to public policy, public security or public health; or

(d) where the employer's business was established or operates for the main purpose of facilitating the entry of third-country nationals.

2. Member States may reject an application for an EU Blue Card:

(a) where ***the competent authorities of the Member State, after checking the*** labour market situation***, for example where there is*** a high level of unemployment***, conclude that*** the concerned vacancy ***may*** be filled by national or Union workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Union or national law, or by EU long-term residents wishing to move to that Member State for highly ***qualified*** employment in accordance with Chapter III of Directive 2003/109/EC***;***

▌

(b) ***where*** the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

(c) ***where*** the employer's business is being or has been wound up under national insolvency laws or no economic activity is taking place; ▌

(d) ***where*** the employer has been sanctioned for employment of illegally staying third-country nationals in accordance with Article 9 of Directive 2009/52/EC of the European Parliament and of the Council ▌, or for undeclared work or illegal employment according to national law***;***

(e) to ensure ethical recruitment in ***professions*** suffering from a lack of qualified workers in the countries of origin***, including on the basis of an agreement listing professions for this purpose between the Union and its Member States and one or more third countries on the one hand or between the Member States and one or more third countries on the other hand***.

3. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 8

Withdrawal or non-renewal of the EU Blue Card

1. Member States shall withdraw or refuse to renew an EU Blue Card where:

(a) the EU Blue Card or the documents presented have been fraudulently acquired, or have been falsified or tampered with;

(b) the third-country national no longer holds a valid work contract for highly ***qualified*** employment***;***

(c) ***the third-country national no longer holds*** the qualifications required ***in*** points (b) ***or*** (***c***) of Article 5(1)***;*** or ▌

(d) ***the*** salary ***of the third-country national*** no longer meets the salary threshold as set in accordance with Article 5(3), (4) or (5), as applicable ▌.

2. Member States may withdraw or refuse to renew an EU Blue Card ▌:

(a) for reasons of public policy, public security or public health;

(b) where appropriate, where the employer has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

(c) ***wherever the EU Blue Card holder does not have sufficient resources to maintain himself or herself and, where applicable, the members of his or her family without having recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages or minimum income and pensions as well as the number of family members of the EU Blue Card holder. Such evaluation shall take into account the contributions of the family members to the household income***

(d) ***where the EU Blue Card holder is residing in the Member State concerned for purposes other than those for which he or she was authorised to reside.***

(e) where the conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly ***qualified*** employment are no longer met;

(f) where the ***EU Blue Card holder*** has not ***complied with the relevant procedures as provided for*** in Article ***15 (2) (a***), ***(3), or (4***);

(g) where the third-country national no longer holds a valid travel document ▌**,** ***provided that*** prior to withdrawing ▌ the EU Blue Card, ***the Member State had*** set a reasonable deadline for the third-country national concerned to obtain and present a valid travel document***;***

(h) where the third-country national fails to comply with the conditions of mobility under Chapter V.

3. ***By way of derogation from point (f) of paragraph 2, the*** lack of communication pursuant to ***point (a) of*** Article 15(***2***) or ***to Article 15(3) or (4***) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card if the holder proves that the communication did not reach the competent authorities for a reason independent of the holder's will.

4. By way of derogation from points (b) and (d) of paragraph 1, Member States may decide not to withdraw or not to refuse to renew an EU Blue Card where the EU Blue Card holder temporarily and in any case for no longer than 12 months does not fulfil the criteria for admission in point (a) of paragraph 1 of Article 5 or paragraph 2 of Article 5 or, where applicable, paragraph 4 or 5 of Article 5 as a result of illness, disability or parental leave.

5. By way of derogation from points (b) and (d) of paragraph 1 and point (c) of paragraph 2, the EU Blue Card shall not be withdrawn or not renewed in case of unemployment of the EU Blue Card holder except where:

(a) the EU Blue Card holder cumulates a period of unemployment exceeding three months and has held an EU Blue Card for less than two years, or

(b) the EU Blue Card holder cumulates a period of unemployment exceeding six months and has held an EU Blue Card for more than two years.

Member States may allow longer periods of unemployment before withdrawing or not renewing the EU Blue Card.

6. Where a Member State intends to withdraw or not renew the EU Blue Card in accordance with points (b) and (e) of paragraph 2, the competent authority shall notify the EU Blue Card holder in advance and set him or her a reasonable deadline of at least three months to seek new employment subject to the conditions set out in Article 15(1), (2) and (3). The period to seek employment shall be six months where the EU Blue Card holder has been previously employed for, at least, two years.

7. Without prejudice to paragraph 1, any decision to withdraw or refuse to renew an EU Blue Card shall take account of the specific circumstances of the case and respect the principle of proportionality.

CHAPTER III

EU BLUE CARD AND PROCEDURE

Article 9

EU Blue Card

1. Where a third-country national fulfils the criteria set out in Article 5 and where no ground for rejection pursuant to Article 7 applies, he or she shall be issued with an EU Blue Card.

   Where a Member State only issues residence permits on its territory and the third-country national fulfils all the admission conditions laid down in this Directive, the Member State concerned shall issue him or her the requisite visa.

2. Member States shall set a standard period of validity for the EU Blue Card, which shall be at least 24 months. If the work contract covers a shorter period, the EU Blue Card shall be issued at least for the duration of the work contract plus three months ***but no longer than the standard period set out in accordance with the first sentence. If the period of validity of the travel document is shorter than the period set out in accordance with the first or the second sentence, the*** EU Blue Card ***shall be issued at least for the*** period of validity ***of the travel document***.

3. The EU Blue Card shall be issued by the competent authorities of the Member State using the uniform format as laid down in Regulation (EC) No 1030/2002. In accordance with point (a)***12*** of the Annex to that Regulation, Member States ***may*** indicate on the EU Blue Card the conditions for access to the labour market as set out in Article 15(1) of this Directive. Member States shall enter the words "EU Blue Card" under the heading "type of permit" in the residence permit ▌

Member States may indicate additional information related to the employment relationship of the EU Blue Card holder in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and in point (a)16 of the Annex thereto.

4. Where a Member State issues an EU Blue Card to a third-country national to whom it has granted international protection, it shall enter the following remark in that third-country national's EU Blue Card, under the heading "Remarks": "International protection granted by [name of the Member State] on [date]". Where that Member State withdraws the international protection enjoyed by the EU Blue Card holder, it shall, where appropriate, issue a new EU Blue Card not containing that remark.

5. Where an EU Blue Card is issued by a Member State to a third-country national who is a beneficiary of international protection in another Member State, the Member State issuing the EU Blue Card shall enter the ***following*** remark ***in that third-country national's EU Blue Card, under the heading "Remarks": "***International protection granted by [name of the Member State] on [date]***"***.

Before the Member State enters that remark, it shall notify the Member State to be mentioned in that remark of the issuance of the EU Blue Card and request that Member State to provide information as to whether the EU Blue Card holder is still a beneficiary of international protection. The Member State ***to be*** mentioned in the remark shall reply no later than one month after receiving the request for information. Where international protection has been withdrawn by a final decision, the Member State issuing the EU Blue Card shall not enter that remark.

Where, in accordance with the relevant international instruments or national law, responsibility for the international protection of the EU Blue Card holder was transferred to the Member State after it issued an EU Blue Card in accordance with the first subparagraph, that Member State shall amend the remark accordingly within three months after the transfer.

6. Where an EU Blue Card is issued by a Member State on the basis of higher professional skills in occupations not listed in the Annex, the Member State issuing the EU Blue Card shall enter the following remark in that third-country national's EU Blue Card, under the heading "Remarks": ["Occupations not listed in the Annex"].

7. During the period of its validity, the EU Blue Card shall entitle its holder to:

(a) enter, re-enter and stay in the territory of the Member State issuing the EU Blue Card;

(b) enjoy the rights recognised in this Directive.

Article 10

Applications for admission

1. Member States shall determine whether applications for an EU Blue Card are to be made by the third-country national or by the employer. Member States may also allow an application from either of the two.

2. The application shall be considered and examined either when the third-country national concerned is residing outside the territory of the Member State to which he or she wishes to be admitted, or when he or she is already ***residing*** in the territory of that Member State ***as holder of a valid residence permit or long-stay visa.***

3. ***By way of derogation from paragraph 2, a Member State may accept, in accordance with its national law, an application submitted when the third-country national concerned is not in possession of a valid residence permit or long-stay visa but is legally present in its territory***.

Article 11

Procedural safeguards

1. The competent authorities of the Member States shall adopt a decision on the application for an EU Blue Card and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned. The ***decision*** shall be ***adopted and notified as soon as possible, but*** at the latest within ***90*** days of the date of submission of the ***complete*** application.

   Where the employer has been recognised in accordance with Article 13, the ***decision*** shall be ***adopted and notified as soon as possible but not later than*** 30 days of the date ***on which*** the ***complete*** application ***was submitted***.

2. Where the information or documents supplied in support of the application are inadequate or incomplete, the competent authorities shall notify the applicant of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information or documents required. If the additional information or documents have not been provided within the deadline, the application may be rejected.

3. Any decision rejecting an application for an EU Blue Card, ***any*** decision ▌ to withdraw an EU Blue Card***, or any decision not to renew an EU Blue Card*** shall be notified in writing to the third-country national concerned and, where relevant, to his ***or her*** employer in accordance with the notification procedures set out in the relevant national law. The notification shall specify the reasons for the decision and the competent authority with which an appeal may be submitted as well as the time limit for submitting the appeal. Member States shall provide an effective judicial remedy, in accordance with national law.

4. An applicant shall be allowed to submit an application for renewal before the expiry of the EU Blue Card. Member States may set a maximum deadline of ***90*** days prior to the expiry of the EU Blue Card for submitting an application for renewal.

5. Where the validity of the EU Blue Card ▌ expires during the procedure for renewal, Member States shall allow the third-country national to stay ***as an EU Blue Card holder*** on their territory until the competent authorities have taken a decision on the application.

6. Where Member States issue national residence permits for the purpose of highly qualified employment, they shall grant EU Blue Card holders the same procedural safeguards as those provided for under the national scheme, where these are more favourable than those provided for in paragraphs 1 to 5 of this Article.

Article 12

Fees

Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of fees required by ***a*** Member ***State*** for the processing of applications shall not be disproportionate or excessive.

Where Member States issue national permits for the purpose of highly skilled employment, they shall not require EU Blue Card applicants to pay higher fees than those required from applicants for national permits.

Article 13

Recognised employers

1. Member States may decide to provide for recognition procedures for employers in accordance with their national law or administrative practice for the purpose of applying simplified procedures for obtaining an EU Blue Card.

   Where a Member State decides to provide for recognition procedures, it shall provide clear and transparent information to the employers concerned about, among others, the conditions and criteria for approval, the period of validity of the recognition and the consequences of non-compliance with the conditions, including possible withdrawal and non-renewal, as well as any sanction applicable.

   The recognition procedures shall not entail disproportionate or excessive administrative burden or costs for the employers***, in particular for small and medium-sized enterprises***.

▌

2. The simplified procedures shall include processing of applications as provided for in the second subparagraph of Article 11(1). Applicants shall be exempt from presenting ***one or more pieces of*** evidence referred to in points (***b***) ***or*** (e) of Article 5(1) ***or*** in Article 5(7).

3. ***Member States may refuse to recognise an employer pursuant to paragraph 1, where the employer has been sanctioned for:***

(a) employment of illegally staying third-country nationals pursuant to Directive 2009/52/EC, or

(b) undeclared work or illegal employment according to national law, or

(c) failing to meet its legal obligations regarding social security, taxation, labour rights or working conditions.

Any decision to refuse to recognise an employer shall take account of the specific circumstances of the case, including the time elapsed since the sanction was imposed, and respect the principle of proportionality.

4. Member States may ▌ refuse to renew or decide to withdraw the status of recognised employer where the employer has not respected its obligations under this Directive or in cases where the recognition has been fraudulently acquired.

5. Where Member States issue national residence permits for the purpose of highly qualified employment and have established recognition procedures for employers facilitating the issuance of such permits, they shall apply the same recognition procedures to applications for EU Blue Cards, where these procedures are more favourable than those provided for in paragraphs 1 to 4 of this Article.

Article 14

Sanctions against employers

1. Member States shall provide for sanctions against employers who have not fulfilled their obligations under this Directive. Those sanctions shall be effective, proportionate and dissuasive.

2. Member States shall provide for measures to prevent possible abuses of this Directive. Those measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice.

CHAPTER IV

RIGHTS

Article 15

Labour market access

1. EU Blue Card holders shall have ▌access to highly ***qualified*** employment in the Member State concerned ***under the conditions provided for in this Article***.

2. During the first twelve months of legal employment as an EU Blue Card holder, Member States may***:***

(a) require that a change of employer ***or a change which may affect the fulfilment of the criteria for admission as set out in Article 5 be communicated to the competent authorities in the Member State concerned, in accordance with procedures laid down in national law,*** and ▌

(b) require that a change of employer be subject to a check of the labour market situation, where Member States carry out such a check in accordance with Article 7(2)(a).

The right of the Blue Card holder to pursue such a change in employment may be suspended for a maximum of 30 days while the Member State concerned checks that the conditions for admission laid down in Article 5 are fulfilled and that the vacancy concerned could not be filled by the persons listed in Article 7(2)(a). The concerned Member State may oppose the change of employment within those 30 days.

3. ***After these first twelve months, Member States may only require that a change of employer or a change*** affecting the fulfilment of the criteria for admission as set out in Article 5 ***be*** communicated in accordance with procedures laid down by national law. The communication procedure shall not suspend the right of the EU Blue Card holder to pursue the ***new employment.***

4. ***During a period of unemployment, the EU Blue Card holder shall be allowed to seek and take up employment in accordance with the conditions set out in this Article. The EU Blue Card holder shall communicate the beginning and, where appropriate, the end of the period of unemployment to the competent authorities of the Member State of residence, in accordance with the relevant national procedures***.

5. Without prejudice to the criteria for admission set out in Article 5, ***Member States may allow*** EU Blue Card holders ***to*** engage in self-employed activity in parallel to the activity in highly ***qualified*** employment ***in accordance with conditions laid down in national law. Member States are entitled to limit the scope of allowed self-employed activity.***

Any such activity shall be subsidiary to their main activity as an EU Blue Card holder.

6. ***Where Member States issue national residence permits for the purpose of highly qualified employment, they shall guarantee EU Blue Card holders access to self-employed activities under no less favourable conditions than those provided for under the national scheme.***

7. ***Without prejudice to the criteria for admission set out in Article 5, Member States may allow EU Blue Card holders to engage in professional activities other than their main activity as an EU Blue Card holder in accordance with conditions laid down in national law***.

8. By way of derogation from paragraph 1, Member States may retain restrictions on access to employment, ***in accordance with existing national or Union law, provided such*** employment activities entail ***at least occasional*** involvement in the exercise***,*** of public authority and the responsibility for safeguarding the general interest of the State ***or where such employment activities are reserved to nationals, Union citizens or EEA citizens***.

9. This Article shall apply without prejudice to the principle of preference for Union citizens where applicable under the provisions of the relevant Acts of Accession.

Article 16

Equal treatment

1. EU Blue Card holders shall enjoy equal treatment with nationals of the Member State issuing the EU Blue Card, as regards:

(a) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace;

(b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

(c) education and vocational training;

(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;

(e) branches of social security, as defined in Article 3 of Regulation (EC) No 883/2004;

(f) access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing, as well as information and counselling services afforded by employment offices.

2. With respect to point (c) of paragraph 1 the Member State concerned may restrict equal treatment as regards study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training. Access to university and post-secondary education may be subject to specific prerequisites in accordance with national law.

With respect to point (f) of paragraph 1 the Member State concerned may restrict equal treatment as regards procedures for obtaining housing. This shall be without prejudice to the freedom of contract in accordance with Union and national law.

3. EU Blue Card holders moving to a third country, or their survivors who reside in a third country and who derive rights from the EU Blue Card holder, shall receive, in relation to old age, invalidity and death, statutory pensions based on the EU Blue Card holder's previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country.

4. The right to equal treatment laid down in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the EU Blue Card in accordance with Article 8.

5. This Article shall not apply to EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the Member State concerned.

6. This Article shall apply to EU Blue Card holders who are beneficiaries of international protection only when they reside in a Member State other than the Member State which granted them international protection.

7. Where Member States issue national residence permits for the purpose of highly qualified employment, they shall grant EU Blue Card holders the same equal treatment rights as the ones granted to holders of national residence permits, where these are more favourable than those provided for in this Article.

Article 17

Family members

1. Council Directive 2003/86/EC shall apply with the derogations laid down in this Article.

2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the requirement of the EU Blue Card holder having reasonable prospects of obtaining the right of permanent residence***, to hold a residence permit for a period of validity of one year or more or*** having a minimum period of residence.

3. By way of derogation from the third subparagraph of Article 4(1) and from the second subparagraph of Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification.

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, where the conditions for family reunification are fulfilled and the ***complete*** applications were submitted simultaneously, ***the decision on the application of*** family members shall be ***adopted and notified*** at the same time as the ***decision on the application for an*** EU Blue Card. Where the family members join the EU Blue Card holder after the EU Blue Card has been granted to him or her and where the conditions for family reunification are fulfilled, ***the decision*** shall be ***adopted and notified as soon as possible but*** at the latest within ***90*** days from the date on which the ***complete*** application was submitted. ***Article 11(2) and (3) of this Directive shall apply accordingly.***

5. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permits of family members shall be the same as that of the EU Blue Card insofar as the period of validity of their travel documents allows it.

6. By way of derogation from Article ***14*** (2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market. ***By way of derogation from Article 14(1)(b) of that Directive, and without*** prejudice to the restrictions referred to in Article 15(8) of this Directive, family members shall have access to any ***employment, and to*** self-employed activity in ***accordance with applicable requirements under national law, in*** the Member State concerned ▌.

7. By way of derogation from Article 15(1) of Directive 2003/86/EC, for the purposes of calculation of the five years of residence required for the acquisition of an autonomous residence permit, residence in different Member States shall be cumulated. ***Member States may require two years of legal and continuous residence immediately prior to the submission of the relevant application within the territory of the Member State where the application for an autonomous residence permit is submitted.***

8. This Article shall not apply to ***family members of those*** EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the Member State concerned.

9. This Article shall apply to ***family members of those*** EU Blue Card holders who are beneficiaries of international protection only when ***those EU Blue Card holders*** reside in a Member State other than the Member State which granted them international protection.

10. Where Member States issue national residence permits for the purpose of highly qualified employment, they shall grant EU Blue Card holders and their family members the same rights as those granted to holders of national residence permits and their family members, where these are more favourable than those provided for in this Article.

Article 18

EU long-term resident status for EU Blue Card holders

1. Directive 2003/109/EC shall apply with the derogations laid down in this Article.

2. By way of derogation from Article 4(1) of Directive 2003/109/EC, the EU Blue Card holder having made use of the possibility provided for in Article 21 of this Directive is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if that holder has accumulated:

(a) ***the number of*** years of legal and continuous residence ***required under Article 4(1) of Directive 2003/109/EC as a holder of an EU Blue Card, of a national residence permit for highly qualified employment, of an authorisation as researcher or, where appropriate, of an authorization as a student in accordance with the second paragraph of Article 4(2) of Directive 2003/109/EC or as a beneficiary of international protection*** within the territory of the Member States; and

(b) two years of legal and continuous residence as an EU Blue Card holder immediately prior to the submission of the relevant application within the territory of the Member State where the application for the EU long-term resident status is submitted.

3. For the purpose of calculating the five years period of legal and continuous residence in the Union referred to in point (a) of paragraph 2 [of this Directive] and by way of derogation from the first subparagraph of Article 4(3) of Directive 2003/109/EC, periods of absence from the territory of the Member States shall not interrupt the five years period if those periods of absence are shorter than twelve consecutive months and do not exceed in total eighteen months within the five years period of legal and continuous residence.

4. By way of derogation from Article 9(1)(c) of Directive 2003/109/EC, Member States shall extend to 24 consecutive months the period of absence from the territory of the Member States which is allowed to an EU long-term resident holder of a long-term residence permit with the remark referred to in Article 19(2) of this Directive and of his family members having been granted the EU long-term resident status.

5. Point (f) of Article 16(1), ***Article 16(3),*** Article 20 and, where applicable, Articles 17 and 22 shall apply to holders of a long-term residence permit with the remark referred to in Article 19(2).

6. Where the EU long-term resident who holds a long-term residence permit with the remark referred to in Article 19(2) of this Directive is exercising his or her right to move to a second Member State pursuant to Chapter III of Directive 2003/109/EC, Article 14(3) and (4▌) of that Directive shall not apply. The second Member State may apply measures in accordance with Article 21(8) of this Directive.

Article 19

Long-term residence permit

1. EU Blue Card holders who fulfil the conditions set out in Article 18 of this Directive for the acquisition of the EU long-term resident status shall be issued with a residence permit in accordance with ▌Regulation (EC) No 1030/2002.

2. Member States shall enter the words "Former EU Blue Card holder" in the residence permit referred to in paragraph 1 of this Article under the heading "remarks".

CHAPTER V

MOBILITY BETWEEN MEMBER STATES

Article 20

Short-term mobility

1. Where a third-country national who holds a valid EU Blue Card issued by a Member State applying the Schengen acquis in full enters and stays in one or several second Member States for a period of 90 days in any 180-day period for the purpose of carrying out a business activity, the second Member State shall not require any authorisation for exercising such activity other than the EU Blue Card issued by the first Member State.

2. A third-country national who holds a valid EU Blue Card issued by a Member State not applying the Schengen acquis in full shall be entitled to enter and stay for the purpose of carrying out a business activity in one or several second Member States for up to 90 days in any 180-day period on the basis of the EU Blue Card issued by the first Member State ***and a valid travel document. Where the EU Blue Card holder crosses an internal border where controls have not yet been lifted, the second Member State applying the Schengen Acquis in full may require the EU Blue Card holder to provide evidence of the business purpose of the stay***. The second Member State shall not require any authorisation for exercising the business activity other than the EU Blue Card issued by the first Member State.

Article 21

Long-term mobility

1. After twelve months of legal residence in the first Member State as an EU Blue Card holder, the third-country national shall be entitled to enter***, reside and work in*** a second Member State for the purpose of highly ***qualified*** employment on the basis of the EU Blue Card and a valid travel document under the conditions set out in this Article.

2. Where the EU Blue Card is issued by a Member State not applying the Schengen acquis in full and the EU Blue Card holder crosses, for the purpose of long-term-mobility, an internal border where controls have not yet been lifted, the second Member State applying the Schengen Acquis in full may require the EU Blue Card holder to present the valid EU Blue Card issued by the first Member State and a work contract or a binding job offer for highly qualified employment of at least six months in the second Member State.

3. As soon as possible and no later than one month after ***the EU Blue Card holder entered*** the territory of the second Member State, the ▌application for an EU Blue Card ***shall be submitted*** to the competent authority of that Member State***,*** and ***shall be accompanied by*** all the documents proving the fulfilment of the conditions referred to in paragraph 4 for the second Member State. ***Member States shall determine whether the application is to be made by the third-country national or by the employer. Member States may also allow an application from either of the two.***

The EU Blue Card holder shall be allowed to work in the second Member State ***at the latest 30 days*** after ***the submission of*** the ***complete*** application.

The application may also be submitted to the competent authorities of the second Member State while the EU Blue Card holder is still residing in the territory of the first Member State.

4. For the purposes of the application referred to in paragraph 3, the ***applicant*** shall present:

(a) the valid EU Blue Card issued by the first Member State;

(b) a valid work contract or, as provided for in national law, a binding job offer for highly ***qualified*** employment, of at least six months in the second Member State;

(c) for regulated professions, ***the documents*** attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law***. For the purpose of applying for an EU Blue Card in a second Member State, EU Blue Card holders shall enjoy equal treatment with Union citizens as regards recognition of professional qualifications, in accordance with applicable Union and national law.***

(d) a valid travel document, as determined by national law;

(e) evidence of meeting the salary threshold set in the second Member State in application of paragraph 2 or, where applicable, of paragraphs 4 or 5 of Article 5.

For unregulated profession, where the first Member State has issued the EU Blue Card on the basis of higher professional skills for occupations not listed in the Annex, the applicant may be required to present the documents attesting higher professional qualifications in relation to the work to be carried out, as provided for in the national law of the second Member State.

5. For the purposes of the application referred to in paragraph 3, the Member State concerned may require the applicant:

(a) for unregulated professions, where the EU Blue Card holder has worked for less than two years in the first Member State, to present the documents attesting higher professional qualifications in relation to the work to be carried out as provided for in national law;

(b) to provide evidence of having, or if provided for by national law, applied for a sickness insurance for all the risks normally covered for nationals of the Member States concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract.

6. The second Member State shall reject an application for an EU Blue Card ***where***:

(a) ▌ paragraph 4 ***is*** not ***complied with***;

(b) the documents were fraudulently acquired, or falsified or tampered with;

(c) the employment does not comply with the conditions laid down in the applicable laws, collective agreements or practices as referred to in Article 5(2)***;***

(d) the EU Blue Card ***holder*** poses a threat to public policy, public security or public health.

7. In respect of any application procedure for the purpose of long-term mobility, the procedural safeguards set out in Article 11 (2) and (3) shall apply accordingly. Without prejudice to paragraph 4, a decision to reject an application for long-term mobility shall take account of the specific circumstances of the case and respect the principle of proportionality.

8. The second Member State may reject an application for an EU Blue Card on the basis of a check ***carried out*** in accordance with Article ***7(2)(a)*** only if ***that*** Member State ***carries out*** such checks ***when it is the first Member State***.

9. ***The*** second Member State shall adopt a decision on an application for an EU Blue Card ▌ to either:

▌

(a) where the conditions laid down in this Article are fulfilled, issue an EU Blue Card and allow the third-country national to reside on its territory for the purpose of highly qualified employment; or

(b) where the conditions ***for mobility*** laid down in this Article are not fulfilled, ***reject the application*** and oblige the applicant and his ***or her*** family members, in accordance with the procedures provided for in national law, to leave its territory.

By way of derogation from Article 11(1), the second Member State shall notify the applicant and the first Member State in writing of its decision as soon as possible, but at the latest within 30 days of the date of submission of the complete application.

Under exceptional and duly justified circumstances linked to the complexity of the application, Member States may extend the maximum period by 30 days. They shall inform the applicant of the extension before that maximum period has expired.

In its notification to the first Member State, the second Member State shall specify the grounds referred to in (b) and (d) of paragraph 6 for rejecting the application.

10. Where the EU Blue Card issued by the first Member State expires during the procedure, the second Member State may issue, if so required by national law, national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities.

11. From the second time that an EU Blue Card holder and, where applicable, his family members, make use of the possibility to move to another Member State ***under this Article and Article 22***, "first Member State" shall be understood as meaning the Member State from where the person concerned moves and "second Member State" as meaning the Member State to which he ***or she*** is applying to reside. By way of derogation from paragraph 1, an EU Blue Card holder may move to another Member State a second time after six months of legal residence in the first Member State as an EU Blue Card holder.

Article 22

Residence in the second Member State for family members

1. Where the EU Blue Card holder moves to a second Member State in accordance with Article 21 and where the family was already constituted in the first Member State, the members of his or her family shall be ***entitled*** to accompany ▌ or ***join the EU Blue Card holder.***

Directive 2003/86/EC and Article 17 shall apply, subject to the derogations provided for in paragraphs 2 to 7.

Where the family was not already constituted in the first Member State, Article 17 shall apply.

2. ***By way of derogation from Article 13(1) of Directive 2003/86/EC, the members of the EU Blue Card holder's family shall be entitled*** to enter and stay in the second Member State based on the valid residence permits obtained as family members of an EU Blue Card holder in the first Member State.

Where the residence permits of the family members are issued by a Member State not applying the Schengen acquis in full and the family members of an EU Blue Card holder join him or her, when crossing an internal border where controls have not yet been lifted for the purpose of moving to a second Member State, the second Member State applying the Schengen Acquis in full may require that family members present their residence permits in the first Member State as family members of the EU Blue Card holder.

3. ***By way of derogation from Article 5(3) of Directive 2003/86/EC, no*** later than one month after entering the territory of the second Member State, the family members concerned or the EU Blue Card holder, in accordance with national law, shall submit an application for a residence permit as a family member to the competent authorities of that Member State.

Where the residence permit of the family member issued by the first Member State expires during the procedure or no longer entitles the holder to reside legally on the territory of the second Member State, the second Member State shall allow the family member to stay in ***its*** territory, if necessary by issuing national temporary residence permits or equivalent authorisations, until a decision on the application has been taken by the competent authorities of the second Member State.

4. ***By way of derogation from Articles 5(2) and 7(1) of Directive 2003/86/EC, the*** second Member State may require the family members concerned to present with their application for a residence permit:

(a) their residence permit in the first Member State and a valid travel document, or certified copies thereof;

(b) evidence that they have resided as members of the family of the EU Blue Card holder in the first Member State***;***

(c) evidence referred to in points (b) of Article 7(1) of Directive 2003/86/EC.

5. Where the conditions set out in this Article are fulfilled and the applications were submitted simultaneously, the second Member State shall issue the residence permits for family members at the same time as the EU Blue Card.

▌By way of derogation from Article 17(4) [of this Directive], where the ***conditions set out in this Article are fulfilled and the*** family members join the EU Blue Card holder after ***the EU Blue Card*** has ***been granted*** to ***him or her***, residence permits ***for family members*** shall be granted at the latest within 30 days from the date on which the application was submitted▌.

▌In ***duly justified circumstances linked to the complexity of*** the ***application,*** Member ***States may extend the period by a maximum of 30 days***.

6. This Article shall apply to ***family members of*** EU Blue Card holders who are beneficiaries of international protection only when ***those EU Blue Card holders*** move to reside in a Member State other than the Member State which granted them international protection.

7. This Article shall not apply to ***family members of*** EU Blue Card holders who are beneficiaries of the right to free movement under Union law in the second Member State.

Article 23

Safeguards and sanctions **in cases of mobility**

▌

1. Notwithstanding Article 8(1)(a) and 8(2)(a), where a Blue Card holder makes use of the possibility to move to another Member State pursuant to Article 21, the first Member State shall not withdraw his or her EU Blue Card until the second Member State has taken a decision on the application for long-term mobility.

2. Where the second Member State rejects the application for an EU Blue Card in accordance with point (b) of Article 21(9), the first Member State shall, upon the request of the second Member State, allow re-entry of the EU Blue Card holder and, where applicable, his ***or her*** family members, without formalities and without delay. This shall also apply if the EU Blue Card issued by the first Member State has expired or has been withdrawn during the examination of the application. ▌

3. The EU Blue Card holder or his ***or her*** employer in the second Member State may be held responsible for the costs related to the re-entry of the EU Blue Card holder and his ***or her*** family members referred to in paragraph ***2***.

4. Member States may ***provide for sanctions in accordance with Article 14 against*** the employer of the EU Blue Card holder ***who is*** responsible for ***the*** failure to comply with the conditions of mobility laid down in this Chapter ▌.

5. Where a Member State withdraws or does not renew an EU Blue Card which contains the remark referred to in Article ***9(5***) and decides to expel the third-country national, it shall request the Member State mentioned in that remark to confirm whether the person concerned is still a beneficiary of international protection in that Member State. The Member State mentioned in the remark shall reply within one month after receiving the request for information.

   Where the third-country national is still a beneficiary of international protection in the Member State mentioned in the remark, that person shall be expelled to that Member State, which shall, without prejudice to the applicable Union or national law and to the principle of family unity, immediately allow the re-entry, without formalities, of that beneficiary and his or her family members.

By way of derogation from the second subparagraph, the Member State which adopted the expulsion decision shall retain the right to remove, in accordance with its international obligations, the third-country national to a country other than the Member State which granted international protection, where that person fulfils the conditions specified in Article 21(2) of Directive 2011/95/EU.

6. Where the EU Blue Card holder or his or her family members cross the external border of a Member State applying the Schengen acquis in full, that Member State shall***, in accordance with Regulation (EU) 2016/399,*** consult the Schengen information system. That Member State shall refuse entry for persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system.

CHAPTER VI
FINAL PROVISIONS

Article 24
Access to information and monitoring

1. Member States shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence conditions, including the rights, obligations and procedural safeguards, of the third-country nationals falling under the scope of this Directive and of their family members. This information shall include information on the salary thresholds set in the Member State concerned in accordance with Article 5(3), (4) and (5), and on the applicable fees.

This information shall also include information:

(a) on business activities allowed in the territory of the Member State concerned to an EU Blue Card holder from another Member State as referred to in Article 20 ***;***

(b) on the procedures applicable to obtaining an EU Blue Card as well as residence permits for family members, in a second Member State, as referred to in Article 21 and 22.

In the case where Member States decide to ***introduce legislative or regulatory measures in accordance with Article 6 or*** make use of the possibility provided for by Article ***7(2)(a)***, ***this information shall be communicated in the same way. The information on check of the labour market situation pursuant to Article 7(2)(a) shall specify, where appropriate, the sectors, occupations and regions concerned.***

2. Where Member States issue national residence permits for the purpose of highly qualified employment, they shall ensure the same access to information on the EU Blue Card as on the national residence permits.

3. Member States shall communicate to the Commission ▌ upon each modification, ***but at least once per year:***

(a) the factor they have decided to set for determining the annual salary thresholds, and the resulting nominal amounts, in accordance with ***paragraph 2 or, where applicable, paragraphs 4 or 5 of*** Article ***5;***

(b) ▌ the list of the professions for which a derogation in accordance with Article 5(4) applies***;***

(c) the list of allowed business activities, as meant in Article 2(l), for the application of Article 20;

(d) information on legislative or regulatory measures in accordance with Article 6, where applicable;

(e) information on a check of the labour market situation provided for in Article 7(2)(a), where applicable.

Where Member States refuse applications for an EU Blue Card based on ethical recruitment considerations in accordance with Article ***7(2)(e***), they shall communicate ***and justify*** to the Commission and to the other Member States ***each year*** the countries and ***professions*** concerned.

Member States shall ***inform*** the Commission ▌ of ***agreements with third countries concluded in accordance with Article 7(2)(e)***.

Article 25

Statistics

1. Annually, and for the first time by … ▌ at the latest, Member States shall, in accordance with Regulation (EC) No 862/2007 ▌, communicate to the Commission statistics on the numbers of third-country nationals who have been granted an EU Blue Card and on those whose ***applications*** have been rejected, specifying those rejected in application of Article ***6 or 7(2)(a), on applications considered inadmissible on grounds of Article 6***, as well as on the numbers of third-country nationals whose EU Blue Card has been renewed or withdrawn, during the previous calendar year. Those statistics shall be disaggregated by the citizenship, ▌ length of validity of the permits, sex and age of the applicants ▌ and**,** ***where available, by occupation, size of the employer's undertaking and*** economic sector. Those statistics for third-country nationals who have been granted an EU Blue Card shall be further disaggregated into beneficiaries of international protection, beneficiaries of the right to free movement and those who have acquired EU long-term resident status in accordance with Article 18.

Statistics on admitted family members shall be communicated in the same manner, except as regards information on their occupation and the economic sector.

For EU Blue Card holders, and members of their families, who have been granted residence permits in a second Member State in accordance with Articles 21 and 22, the information provided shall, in addition, specify the Member State of previous residence.

2. For the purpose of the implementation of paragraphs Article 5(3), (4) and (5), reference shall be made to data ***provided by Member States*** to Eurostat in accordance with Regulation (EU) No 549/2013 ***and, where appropriate, national data.***

Article 26

List of occupations in the Annex

1. The occupations for which the knowledge, skills and competences attested by a number of required years of relevant professional experience are considered equivalent, for the purpose of applying for an EU Blue Card, to the knowledge, skills and competence attested by higher education qualifications shall be listed in the Annex.

2. Every two years, and for the first time no later than [five years after the entry into force of the Directive], the Commission shall report to the European Parliament and the Council on its assessment of the list of occupations in the Annex, in view of the changing needs of the labour market. This report shall be drawn up after consulting national authorities and on the basis of a public consultation which shall include social partners. On the basis of the report, if appropriate, the Commission may submit legislative proposals for the amendment of the Annex.

Article 27

Reporting

Every ***four*** years, and for the first time by [five years after the date of entry into force of this Directive], the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States**.**

This report shall, in particular***, assess*** the impact of Articles 5, 13 ▌ and ***Chapter V***. ▌ The Commission shall propose any amendments that are necessary.

The Commission shall notably assess the relevance of the salary threshold set out in Article 5 and of the derogations provided for in that Article, taking into account, among others, the diversity of the economical, sectorial and geographical situations ▌ .

Article 28

Cooperation between contact points

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information needed to implement Articles 18, 20, 21 and 24 and shall cooperate effectively with each other.

2. The Member States' contact points shall in particular cooperate effectively regarding validation arrangements with stakeholders in the education, training, employment and youth sectors, as well as other relevant policy areas, needed to implement Articles 5(1)(***b***).

3. Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in paragraph 1. Member States shall give preference to exchanging information via electronic means.

*Article **29***

Amendment to Directive (EU) 2016/801

In Article 2 of Directive (EU) 2016/801, point (g) is replaced by the following:

"(g) who apply to reside in a Member State for the purpose of highly skilled employment within the meaning of Directive (EU) 2021/...[*+].

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[*] ***Directive (EU) .../... of the European Parliament and of the Council of ... on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (OJ L ..., p. ...)."***

[+] ***OJ: Please insert in the text the number of the Directive contained in document under interinstitutional code (2016/0176(COD)) and insert the number, name, date and OJ reference of that Directive in the footnote.***

***Article** 30*

Repeal of Directive 2009/50/EC

Directive 2009/50/EC is repealed with effect from … [two years+1 day after the date of entry into force of this Directive].

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation tables in Annex [].

Article 31

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [Two years after the date of entry into force of this Directive]. They shall forthwith inform the Commission thereof.

   When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

▌

Article 32

Entry into force

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

Article 33

Addressees

This Directive is addressed to the Member States, in accordance with the Treaties.

▌

For the European Parliament	*For the Council*
The President	*The President*

Council of the European Union

Brussels, 31 March 2021
(OR. en)

7520/21

Interinstitutional Files:
2019/0001(COD)
2019/0002(COD)

IXIM 61
FRONT 119
VISA 66
SIRIS 33
COPEN 161
CODEC 476
COMIX 182

OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	7170/21
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for accessing other EU information systems for ETIAS purposes and amending Regulation (EU) 2018/1240, Regulation (EC) No 767/2008, Regulation (EU) 2017/2226 and Regulation (EU) 2018/1861 Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for accessing the other EU information systems and amending Regulation (EU) 2018/1862 and Regulation (EU) yyyy/xxx [ECRIS-TCN] - Letter to the Chair of the European Parliament LIBE Committee

Following the Permanent Representatives Committee meeting of 31 March 2021 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annexes, to the Chair of the European Parliament LIBE Committee.

Council of the European Union
General Secretariat

SGS 21 / 001665

Mr Juan Fernando López Aguilar
Chairman, European Parliament Committee on LIBE
BRUSSELS

Brussels, 31 March 2021

Subject: Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for accessing other EU information systems for ETIAS purposes and amending Regulation (EU) 2018/1240, Regulation (EC) No 767/2008, Regulation (EU) 2017/2226 and Regulation (EU) 2018/1861

Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for accessing the other EU information systems and amending Regulation (EU) 2018/1862 and Regulation (EU) yyyy/xxx [ECRIS-TCN]

Dear Mr López Aguilar,

Following the informal meeting between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annexes to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation, which should enable us to reach agreement on this dossier at first reading.

Yours sincerely,

Nuno Brito

Nuno BRITO
Chairman of the Permanent Representatives' Committee (Part 2)

Copy to: Ylva Johansson, Commissioner
Jeroen Lenaers, EP Rapporteur

Rue de la Loi/Wetstraat 175 - B-1048 Bruxelles/Brussel - Belgique/België
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1/46

ANNEX I

REGULATION (EU) 2021/…

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

amending Regulations (EU) 2018/1240, (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1860, (EU) 2018/1861 and (EU) 2019/817 as regards the establishment of the conditions for accessing other EU information systems for the purposes of the European Travel Information and Authorisation System

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 points (a), (b) and (d) of Article 77(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[1],

Whereas:

[1] Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ... .

(1) Regulation (EU) 2018/1240 of the European Parliament and of the Council[2] established the European Travel Information and Authorisation System ('ETIAS') for third-country nationals exempt from the requirement to be in possession of a visa when crossing the external borders. It laid down the conditions and procedures to issue or refuse a travel authorisation under that system.

(2) ETIAS enables consideration of whether the presence of those third-country nationals in the territory of the Member States would pose a security, illegal immigration or high epidemic risk.

(3) In order to enable the processing of the application files by the ETIAS Central System referred to in Regulation (EU) 2018/1240, it is necessary to establish the interoperability between the ETIAS Information System, other EU information systems and Europol data referred to in that Regulation.

[2] Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

(4) This Regulation lays down how this interoperability and the conditions for the consultation of data stored in other EU information systems and Europol data by the ETIAS automated process for the purposes of identifying hits are to be implemented. As a result, it is necessary to amend Regulations (EU) 2018/1240, (EC) No 767/2008[3], (EU) 2017/2226[4], (EU) 2018/1860[5], (EU) 2018/1861[6] and (EU) 2019/817[7] of the European Parliament and of the Council, in order to connect the ETIAS Central System to the other EU information systems and to Europol data and to specify the data that will be sent to and from those EU information systems and Europol data.

(5) The European Search Portal (ESP), established by Regulation (EU) 2019/817, will enable the data stored in ETIAS to be compared to the data stored in the other EU information systems concerned by means of a query.

(6) Technical modalities should be defined to enable ETIAS to regularly and automatically verify in other systems whether the conditions for the retention of application files, as laid down in Regulation (EU) 2018/1240, are still fulfilled.

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3 Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

4 Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

5 Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ L 312, 7.12.2018, p. 1).

6 Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14).

7 Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

(7) It is necessary, for the purposes of ensuring the full attainment of ETIAS objectives, as well as to further the Schengen Information System ('SIS') objectives, to include in the scope of the automated verifications new alert categories introduced by the recent revision of SIS, namely the alert on persons subject to inquiry checks and the alert on third-country nationals subject to a return decision.

(8) The return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with Directive 2008/115/EC of the European Parliament and of the Council[8], is an essential component of the comprehensive efforts to tackle irregular migration and represents an important reason of substantial public interest.

(9) In order to ensure a high level of accuracy and reliability of data, it is important to report on false hits generated at the level of the ETIAS Central Unit.

(10) In order to supplement certain detailed technical aspects of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the specification of the conditions for the correspondence between the data present in a record, alert or file of the other EU information systems consulted and an application file.

It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[9]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member State' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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8 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

9 OJ L 123, 12.5.2016, p. 1.

(11) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to define the technical modalities for the implementation of certain provisions related to data retention and to detail further the rules relating to the support to be provided by the ETIAS Central Unit. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[10].

(12) ETIAS travel authorisation may be revoked following the registration in SIS of new alerts on refusal of entry and stay, or concerning a travel document reported as lost, stolen, misappropriated or invalidated. In order for ETIAS Central System to be automatically informed by SIS of such new alerts, an automated process should be established between SIS and ETIAS.

(13) With a view to rationalise and simplify the work of border guards through the implementation of a more uniform border control process for all third-country nationals entering for a short stay, following the adoption of Regulation (EU) 2017/2226 and Regulation (EU) 2018/1240, it is now desirable to align the way EES and ETIAS are working together on the way EES and VIS are integrated for the purpose of border control process and registration of border crossings in EES.

[10] 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).

(14) The conditions, including access rights, under which the ETIAS Central Unit and ETIAS National Units may consult data stored in other EU information systems for the purposes of ETIAS should be safeguarded by clear and precise rules regarding the access by the ETIAS Central Unit and ETIAS National Units to the data stored in other EU information systems, the type of queries and categories of data, all of which should be limited to what is strictly necessary for the performance of their duties. Member States' access by the ETIAS National Units to the other EU Information Systems should be in accordance with the participation in the respective legal instruments. In the same vein, the data stored in the ETIAS application file should only be visible to those Member States that are operating the underlying information systems in accordance with the modalities of their participation. As an example, the provisions of this Regulation relating to the Schengen Information System and the Visa Information System constitute provisions building upon all the provisions of the Schengen acquis, for which the Council Decisions[11] on the application of the provisions of the Schengen acquis relating to the Schengen Information System and the Visa Information System are relevant.

(15) In the case of technical difficulties making it impossible for carriers to access the ETIAS Information System through the carrier gateway, the ETIAS Central Unit should provide operational support to carriers in order to limit the impact on passenger travel and carriers to the extent possible. For this reason, it is necessary to align the procedure provided for the VIS to the ETIAS and the EES.

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11 Council Decision 2010/365/EU of 29 June 2010 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 166, 1.7.2010, p. 17); Council Decision (EU) 2017/733 of 25 April 2017 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Croatia (OJ L 108, 26.4.2017, p. 31); Council Decision (EU) 2017/1908 of 12 October 2017 on the putting into effect of certain provisions of the Schengen acquis relating to the Visa Information System in the Republic of Bulgaria and Romania (OJ L 269, 19.10.2017, p. 39–43); Council Decision (EU) 2018/934 of 25 June 2018 on the putting into effect of the remaining provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 165, 2.7.2018, p. 37).

(16) According to Regulation (EU) 2018/1240, the European agency for the operational management of large-scale information systems in the area of freedom, security and justice ('eu-LISA'), established by Regulation (EU) 2018/1726 of the European Parliament and of the Council[12], should be responsible for the design and development phase of the ETIAS Information System.

(17) This Regulation is without prejudice to Directive 2004/38/EC of the European Parliament and of the Council[13].

(18) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, 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*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(19) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[14]; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

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12 Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

13 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

14 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* (OJ L 64, 7.3.2002, p. 20).

(20) As regards Iceland and Norway, this Regulation constitutes a development of the provisions 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 latters' association with the implementation, application and development of the Schengen *acquis*[15] which fall within the area referred to in Article 1, points A, B, C and G of Council Decision 1999/437/EC[16].

(21) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[17] which fall within the area referred to in Article 1, points A**,** B, C and G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[18].

(22) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[19] which fall within the area referred to in Article 1, points A**,** B, C and G of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[20].

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15 OJ L 176, 10.7.1999, p. 36.

16 Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application 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 (OJ L 176, 10.7.1999, p. 31).

17 OJ L 53, 27.2.2008, p. 52.

18 Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1).

19 OJ L 160, 18.6.2011, p. 21.

20 Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European

(23) As regards Cyprus, Bulgaria, Romania and Croatia, the provisions of this Regulation relating to the VIS, the SIS and the EES constitute provisions building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2011 Act of Accession read in conjunction with Council Decisions 2010/365/EU, (EU) 2017/733, (EU) 2017/1908 and (EU) 2018/934.

(24) Regulations (EU) 2018/1240, (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1860, (EU) 2018/1861 and (EU) 2019/817 should therefore be amended accordingly.

(25) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 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.

(26) The European Data Protection Supervisor was consulted, in accordance with Article 41(2) of Regulation (EU) 2018/1725 of the European Parliament and the Council[21],

HAVE ADOPTED THIS REGULATION:

Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

21 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

CHAPTER I

AMENDMENTS TO REGULATION (EU) 2018/1240

Article 1

Amendments to Regulation (EU) 2018/1240

Regulation (EU) 2018/1240 is amended as follows:

(1) in Article 3, paragraph1, the following point is added:

"(28) 'other EU information systems' means the Entry/Exit System ('EES'), the Visa Information System ('VIS'), the Schengen Information System ('SIS'), Eurodac and the European Criminal Record Information System – Third Country Nationals ('ECRIS-TCN').";

(2) Article 4 is amended as follows:

(a) point (e) is replaced by the following:

"(e) support the objectives of SIS related to alerts on third-country nationals subject to a refusal of entry and stay, alerts on persons wanted for arrest for surrender purposes or extradition purposes, alerts on missing persons, alerts on persons sought to assist with a judicial procedure, alerts on persons for discreet checks or specific checks and alerts on third-country nationals subject to a return decision;";

(b) the following point is added:

"(h) support the objectives of the EES.";

(3) in Article 6, paragraph 2, the following point is inserted:

"(da) a secure communication channel between the ETIAS Central System and the EES Central System;";

(4) Article 7 is amended as follows:

(a) in paragraph 2, point (a) is replaced by the following:

"(a) in cases where the automated application process has reported a hit, verifying in accordance with Article 22 whether the applicant's personal data correspond to the personal data of the person having triggered that hit in the ETIAS Central System, any of the EU information systems that are consulted, Europol data, any of the Interpol databases referred to in Article 12, or the specific risk indicators referred to in Article 33, and where a correspondence is confirmed or where doubts remain, launching the manual processing of the application as referred to in Article 26;";

(b) the following paragraph is added:

"4. The ETIAS Central Unit shall provide periodical reports to the Commission and eu-LISA concerning false hits referred to in Article 22(4) which are generated during the automated processing referred to in Article 20(2).";

(5) Article 11 is replaced by the following:

"*Article 11*

Interoperability with other EU information systems and Europol data";

1. Interoperability between the ETIAS Information System, other EU information systems and Europol data shall be established to enable the automated processing referred to in Articles 20 and 23, point (ii) of Article 24(6)(c), Article 41 and point (b) of Article 54(1) and shall rely on the European Search Portal ('ESP'), established by Article 6 of Regulation (EU) 2019/817 of the European Parliament and of the Council* and Article 6 of Regulation 2019/818 of the European Parliament and of the Council**, from the date referred to in Article 72(1a) of Regulation (EU) 2019/817 and Article 68(1a) of Regulation (EU) 2019/818.

2. For the purpose of proceeding to the verifications referred to in Article 20(2)(i), the automated processing referred to in Article 11(1), shall enable the ETIAS Central System to query the VIS, established by Regulation (EC) 767/2008 of the European Parliament and of the Council***, with the following data of points (a), (aa), (c) and (d) of Article 17(2) of this Regulation:

   (a) surname (family name) ;

   (b) surname at birth;

   (c) first name(s) (given name(s)) ;

   (d) date of birth;

   (e) place of birth;

   (f) country of birth;

   (g) sex;

   (h) current nationality;

   (i) other nationalities (if any);

   (j) type, number, the country of issue of the travel document.

3. For the purpose of proceeding to the verifications referred to in Article 20(2)(g) and (h), the automated processing referred to in Article 11(1), shall enable the ETIAS Central System to query the EES, established by Regulation (EU) 2017/2226, with the following data of points (a) to (d) of Article 17(2):

(a) surname (family name) ;

(b) surname at birth;

(c) first name(s) (given name(s)) ;

(d) date of birth;

(e) sex;

(f) current nationality;

(g) other names (alias(es);

(h) artistic name(s);

(i) usual name(s));

(j) other nationalities (if any);

(k) type, number, the country of issue of the travel document.

4. For the purpose of proceeding to the verifications referred to in points (c), (m)(ii) and (o) of Article 20(2), and Article 23, the automated processing referred to in Article 11(1), shall enable the ETIAS Central System to query the SIS established by Regulations (EU) 2018/1860 of the European Parliament and of the Council**** and (EU) 2018/1861 of the European Parliament and of the Council***** with the following data of points (a) to (d) of Article 17(2) and point (k) of Article 17(2):

(a) surname (family name) ;

(b) surname at birth;

(c) first name(s) (given name(s)) ;

(d) date of birth;

(e) place of birth;

(f) sex;

(g) current nationality;

(h) other names (alias(es);

(i) artistic name(s);

(j) usual name(s));

(k) other nationalities (if any);

(l) type, number, the country of issue of the travel document;

(m) for minors, surname and first name(s) of applicant's parental authority or legal guardian.

5. For the purpose of proceeding to the verifications referred to in points (a), (d) and (m)(i) of Article 20(2) and Article 23(1), the automated processing referred to in Article 11(1), shall enable the ETIAS Central System to query the SIS established by Regulation (EU) 2018/1862 of the European Parliament and of the Council******, with the following data of points (a) to (d) and point (k) of Article 17(2):

(a) surname (family name) ;

(b) surname at birth;

(c) first name(s) (given name(s)) ;

(d) date of birth;

(e) place of birth;

(f) sex;

(g) current nationality;

(h) other names (alias(es);

(i) artistic name(s);

(j) usual name(s));

(k) other nationalities (if any);

(l) type, number, the country of issue of the travel document;

(m) for minors, surname and first name(s) of applicant's parental authority or legal guardian.

6. For the purpose of proceeding to the verifications referred to in point (n) of Article 20(2), the automated processing referred to in Article 11(1), shall enable the ETIAS Central System to query the ECRIS-TCN data in the CIR established by Regulation (EU) 2019/818, with the following data of points (a) to (d) of Article 17(2):

   (a) surname (family name) ;

   (b) surname at birth;

   (c) first name(s) (given name(s)) ;

   (d) date of birth;

   (e) place of birth;

   (f) country of birth;

   (g) sex;

   (h) current nationality;

   (i) other names (alias(es);

   (j) artistic name(s);

   (k) usual name(s));

   (l) other nationalities (if any);

   (m) type, number, the country of issue of the travel document.

7. For the purpose of proceeding to the verifications referred to in point (j) of Article 20(2), the automated processing referred to in Article 11(1) shall enable the ETIAS Central System to query the Europol data, with the information of Article 17(2) as listed in Article 20(2) of this Regulation.

8. Where hits are identified, the ESP, shall provide temporary read-only access to the results of the automated processing in the application file to the ETIAS Central Unit, until the end of the manual process pursuant to Article 22(2) and Article 23(2). Where the data made available correspond to those of the applicant or where doubts remain, the unique reference number of the record in the queried EU information systems of the data having triggered a hit shall be kept in the application file.

Where hits are identified, pursuant to this paragraph, the automated processing shall receive the appropriate notification in accordance with Article 21(1a) of Regulation (EU) 2016/794.

9. A hit shall be triggered where all or some of the data from the ETIAS application file used for the query correspond fully or partially to the data present in a record, alert or file of the other EU information systems consulted. The Commission shall adopt delegated acts in accordance with Article 89 in order to specify the conditions for the correspondence between the data present in a record, alert or file of the other EU information systems consulted and an application file.

10. For the purpose of paragraph 1, the Commission, shall, by means of an implementing act, define the technical modalities for the implementation of point (c)(ii) of Article 24(6) and point (b) of Article 54(1) related to data retention.

11. For the purpose of Article 25(2), Article 28(8) and Article 29(9) when registering the data related to hits into the ETIAS application file, the origin of the data shall be indicated. This shall include the type of the alert, except for alerts referred to in Article 23(1), the source of the data (which other EU information systems or Europol data), the reference number in the queried EU information system of the record having triggered the hit and the Member State that entered or supplied the data having triggered the hit and, where available, the date and time when the data was entered in the other EU information systems or Europol data. Those data shall only be accessible and visible by the ETIAS Central Unit where the ETIAS Central System is not able to identify the Member State responsible.";

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* Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008,

(EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

** Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

*** Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

**** Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ L 312, 7.12.2018, p. 1).

***** Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14).

****** Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).";

(6) the following articles are inserted:

"Article 11a

Support of the objectives of the EES

For the purpose of Articles 6, 14, 17 and 18 of Regulation (EU) 2017/2226, an automated process, using the secure communication channel of point (da) of Article 6(2) of this Regulation, shall query and import from the ETIAS Central System, the information referred to in Article 47(2) of this Regulation, as well as the application number and the date on which the validity period of an ETIAS travel authorisation ends, and create or update the entry/exit record or the refusal of entry record in the EES accordingly.

Article 11ab

Interoperability between ETIAS and EES for the purpose of self-revocation of an ETIAS travel authorisation

1. For the purpose of implementing Article 41(8), an automated process, using the secure communication channel of point (da) of Article 6(2) of this Regulation, shall query the EES Central System to verify that the applicants requesting the revocation of their travel authorisations are not present on the territory.

2. Where the outcome of the verification in the EES Central System indicates that the person is not present on the territory of a Member State, the self-revocation shall be effective immediately.

3. Where the outcome of the verification in the EES Central System indicates that the person is present on the territory of a Member State, the revocation shall be suspended in accordance with Article 41(8). The EES Central System shall record that a notification has to be sent to the ETIAS Central System as soon as an entry/exit record indicating that the applicant having requested revocation of the travel authorisation has left the territory of the Member States has been recorded.";

(7) Article 12 is replaced by the following:

"1. The ETIAS Central System shall query the Interpol Stolen and Lost Travel Document database (SLTD) and the Interpol Travel Documents Associated with Notices database (TDAWN).

2. Any queries and verification shall be performed in such a way that no information shall be revealed to the owner of the Interpol alert.

3. If the implementation of paragraph 2 is not ensured, ETIAS shall not query Interpol's databases.";

(8) in Article 17, paragraph 4, point (a) is replaced by the following:

"whether he or she has been convicted of any criminal offence listed in the Annex over the previous 15 years and in the case of terrorist offences, over the previous 25 years, and if so when and in which country;";

(9) Article 20, paragraph 2 is amended as follows:

(a) the first subparagraph is replaced by the following:

"2. The ETIAS Central System shall launch a query by using the ESP to compare the relevant data referred to in points (a), (aa), (b), (c), (d), (f), (g), (j), (k) and (m) of Article 17(2) and in Article 17(8) to the data present in a record, file or alert registered in an application file stored in the ETIAS Central System, SIS, the EES, VIS, Eurodac, ECRIS-TCN, Europol data and in the Interpol SLTD and TDAWN databases.";

(b) in the second subparagraph, the following points are added:

"(n) whether the applicant corresponds to a person whose data is recorded in the ECRIS-TCN and flagged in accordance with point (c) of Article 5(1) of Regulation (EU) 2019/816 of the European Parliament and of the Council*. The data may only be used for the purpose of verification by the ETIAS Central Unit pursuant to Article 22 of this Regulation and for the purpose of consultation of the national criminal records by the ETIAS National Units pursuant to Article 25a(2) of this Regulation. National criminal records shall be consulted prior to the assessment and decision pursuant to Article 26 of this Regulation and, if applicable, prior to the assessment and opinion pursuant to Article 28 of this Regulation;

(o) whether the applicant is subject to an alert on return entered in SIS";

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* Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).';

(10) Article 22 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. When consulted, the ETIAS Central Unit shall have access to the application file and any linked application files, as well as to all the hits triggered during automated processing pursuant to Article 20(2), (3) and (5) and to the information identified by the ETIAS Central System under Article 20(7) and (8).";

(b) in paragraph 3, point (b) is replaced by the following:

"(b) the data present in the ETIAS Central System;";

(c) paragraph 5 is replaced by the following:

"5. Where the data correspond to those of the applicant, where doubts remain concerning the identity of the applicant, or where the automated processing pursuant to Article 20(4) reported a hit, the application shall be processed manually in accordance with the procedure laid down in Article 26.";

(d) the following paragraph is added:

"7. The ETIAS Information System shall keep records of all data processing operations carried out for assessments under paragraphs 2 to 6 by the ETIAS Central Unit. Those records shall be created and entered automatically in the application file. They shall show the date and time of each operation, the data linked to the hit received, the staff member having performed the manual processing under paragraphs 2 to 6 and the outcome of the verification and the corresponding justification.";

(11) Article 23 is amended as follows:

(a) in paragraph 1, point (c) is replaced by the following:

"(c) an alert on persons for discreet checks, inquiry checks or specific checks.";

(b) in paragraph 2, the first subparagraph is replaced by the following:

"2. Where the comparison referred to in paragraph 1 reports one or several hits, the ETIAS Central System shall send an automated notification to the ETIAS Central Unit. When notified, the ETIAS Central Unit shall have access in accordance with Article 11(8) to the application file and any linked application files, in order to verify whether the applicant's personal data correspond to the personal data contained in the alert having triggered that hit and if a correspondence is confirmed, the ETIAS Central System shall send an automated notification to the SIRENE Bureau of the Member State that entered the alert. The SIRENE Bureau concerned shall further verify whether the applicant's personal data correspond to the personal data contained in the alert having triggered the hit and take any appropriate follow-up action.";

(c) in paragraph 2, the following third subparagraph is added:

"When the hit concerns an alert on return, the SIRENE Bureau of the issuing Member State shall verify, in cooperation with its ETIAS National Unit, whether the deletion of the alert on return in accordance with Article 14(1) of Regulation (EU) 2018/1860 and the entry of a refusal of entry and stay alert in accordance with Article 24(3) of Regulation (EU) 2018/1861 is required.";

(d) paragraph 4 is replaced by the following:

"4. The ETIAS Central System shall add a reference to any hit obtained pursuant to paragraph 1 to the application file. That reference shall only be visible to and accessible by the ETIAS Central Unit and the SIRENE Bureau notified in accordance with paragraph 3, unless other limitations are provided for in this Regulation.";

(12) the following article is inserted:

"Article 25a

Use of other EU information systems for the manual processing of application by the ETIAS National Units

1. Without prejudice to Article 13(1) of this Regulation, the duly authorised staff of the ETIAS National Units shall have a direct access to and may consult, in a read-only format, the other EU information systems for examining applications for travel authorisation and adopting decisions relating to those applications in accordance with Article 26 of this Regulation. The ETIAS National Units may consult the data referred to in the following provisions:

   (a) Articles 16 to 18 of Regulation (EU) 2017/2226;

   (b) Articles 9 to 14 of the Regulation (EC) No 767/2008;

   (c) the data referred to in Article 20 of Regulation (EU) 2018/1861 processed for the purposes of Articles 24, 25 and 26 of that Regulation;

   (d) the data referred to in Article 20 of Regulation (EU) 2018/1862 processed for the purposes of Article 26 and points (k) and (l) of Article 38(2), of that Regulation;

   (e) the data referred to in Article 4 of Regulation (EU) 2018/1860 processed for the purposes of Article 3 of that Regulation.

2. Insofar as the hit results from the verification pursuant to point (n) of Article 20(2), the duly authorised staff of the ETIAS National Units shall also have access directly or indirectly, in accordance with national law, to the relevant data from the national criminal records of their own Member State in order to obtain the information on third-country nationals and stateless persons convicted for a terrorist offence or any other criminal offence listed in the annex to this Regulation, for the purposes referred to in paragraph 1.";

(13) Article 26 is amended as follows:

(a) in paragraph 3, point (b) is replaced by the following:

"(b) assess the security or illegal immigration risk and decide whether to issue or refuse a travel authorisation where the hit corresponds to any of the verifications referred to in point (b) and points (d) to (o) of Article 20(2).";

(b) the following paragraph is inserted:

"3a. Where automated processing under point (o) of Article 20(2) has reported a hit, the ETIAS National Unit of the Member State responsible shall:

(a) refuse a travel authorisation where the verification pursuant to the third subparagraph of Article 23(2) led to the update of the return alert into a refusal of entry and stay alert;

(b) assess the security or illegal immigration risk and decide whether to issue or refuse a travel authorisation in all other cases.

The ETIAS National Unit of the Member State having entered the data shall consult its SIRENE Bureau to verify whether the deletion of the alert on return in accordance with Article 14(1) of Regulation (EU) 2018/1860 and, where applicable, the entry of a refusal of entry and stay alert in accordance with Article 24(3) of Regulation (EU) 2018/1861 is required.

(c) in paragraph 4, the following subparagraph is added:

"Where automated processing under point (n) of Article 20(2) has reported a hit but no hit was reported pursuant to point (c) of that Article, the ETIAS National Unit of the Member State responsible shall pay particular consideration to the absence of such hit in its assessment of the security risk in order to decide whether to issue or refuse a travel authorisation."

(14) in Article 28, paragraph 3, the following third subparagraph is added:

"For the purpose of the manual processing pursuant to Article 26 of this Regulation, such opinion shall only be visible by the ETIAS National Unit of the Member State consulted and by the ETIAS National Unit of the Member State responsible.";

(15) Article 37, paragraph 3 is replaced by the following:

"3. Applicants who have been refused a travel authorisation shall have the right to appeal. Appeals shall be conducted in the Member State that has taken the decision on the application and in accordance with the national law of that Member State. During the appeal procedure, the appellant shall be given access to the information in the application file in accordance with the rules referred to in Article 56 of this Regulation. The ETIAS National Unit of the Member State responsible shall provide applicants with information regarding the appeal procedure. The information shall be provided in one of the official languages of the countries listed in Annex II to Regulation (EC) No 539/2001 of which the applicant is a national.";

(16) in Article 41, paragraph 3 is replaced by the following:

“3. Without prejudice to paragraph 2, where a new alert is issued in SIS concerning a refusal of entry and stay, or concerning a travel document reported as lost, stolen, misappropriated or invalidated, SIS shall inform the ETIAS Central System. The ETIAS Central System shall verify whether this new alert corresponds to a valid travel authorisation. Where this is the case, the ETIAS Central System shall transfer the application file to the ETIAS National Unit of the Member State having entered the alert. Where a new alert for refusal of entry and stay has been issued, the ETIAS National Unit shall revoke the travel authorisation. Where the travel authorisation is linked to a travel document reported as lost, stolen, misappropriated or invalidated in SIS or SLTD, the ETIAS National Unit shall manually process the application file.”;

(17) Article 46 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Where it is technically impossible to proceed with the query referred to in Article 45(1) because of a failure of any part of the ETIAS Information System, the carriers shall be exempted of the obligation to verify the possession of a valid travel authorisation. Where such a failure is detected by eu-LISA, the ETIAS Central Unit shall notify the carriers and the Member State. It shall also notify the carriers and the Member State once the failure is remedied. Where such a failure is detected by the carriers, they may notify the ETIAS Central Unit. The ETIAS Central Unit shall inform the Member States without delay about the notification of the carriers.";

(b) paragraph 3 is replaced by the following:

"3. Where for other reasons than a failure of any part of the ETIAS Information System it is technically impossible for a carrier to proceed with the consultation query referred to in Article 45(1) for a prolonged period of time, that carrier shall inform the ETIAS Central Unit. The ETIAS Central Unit shall inform the Member States without delay about the notification of the carriers.";

(c) the following paragraph is added:

5. The ETIAS Central Unit shall provide operational support to carriers in relation to paragraphs 1 and 3 of this Article. The ETIAS Central Unit shall establish procedures to provide such support in Standard Operational Procedures. The Commission is empowered to adopt, by means of implementing acts, further detailed rules relating to the support to be provided and to the means to provide such support.";

(18) in Article 47, paragraph 2, point (a) is replaced by the following:

"(a) whether or not the person has a valid travel authorisation, including whether the person's status corresponds to the status referred to under Article 2(1)(c), and in the case of a travel authorisation with limited territorial validity issued under Article 44, the Member State(s) for which it is valid;";

(19) in Article 64, the following paragraph is added:

"7. The right of access is without prejudice to Article 53 of Regulation (EU) 2018/1861 and Article 67 of Regulation (EU) 2018/1862.";

(20) in Article 73, paragraph 3, the third subparagraph is replaced by the following:

"eu-LISA shall develop and implement the ETIAS Central System, including the ETIAS watchlist, the NUIs, the communication infrastructure and the secure communication channel between the ETIAS Central System and the EES Central System as soon as possible after the entry into force of this Regulation and the adoption by the Commission of:

(a) the measures provided for in Articles 6(4), 16(10), 17(9), Article 31, Articles 35(7), 45(2), 54(2), 74(5), 84(2), 92(8); and

(b) the measures adopted in accordance with the examination procedure referred to in Article 90(2) necessary for the development and technical implementation of the ETIAS Central System, the NUIs, the communication infrastructure, the secure communication channel between the ETIAS Central System and the EES Central System and the carrier gateway, in particular implementing acts for:

(i) accessing the data in accordance with Articles 22 to 29 and Articles 33 to 53;

(ii) amending, erasing and advance erasure of data in accordance with Article 55;

(iii) keeping and accessing the logs in accordance with Article 45 and Article 69;

(iv) performance requirements;

(v) specifications for technical solutions to connect central access points in accordance with Articles 51 to 53.";

(21) Article 88 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

"(a) the necessary amendments to the legal acts establishing the EU information systems referred to in Article 11 with which interoperability, in the meaning of Article 11 of this Regulation, shall be established with the ETIAS Information System have entered into force, with the exception of the recast of Regulation (EU) No 603/2013 (Eurodac);"

(b) point (d) is replaced by the following:

"(d) the measures referred to in Article 11(9) and (10), Article 15(5), Article 17(3), (5) and (6), Article 18(4), Article 27(3) and (5), Article 33(2) and (3), Article 36(3), Article 38(3), Article 39(2), Article 45(3), Article 46(4), Article 48(4), Article 59(4), Article 73(3)(b), Article 83(1), (3), and (4) and Article 85(3) have been adopted;";

(c) the following paragraphs are added:

"6. The interoperability, referred to in Article 11, with ECRIS-TCN shall start when the CIR enters into operations. ETIAS' operations shall start irrespective of whether that interoperability with ECRIS-TCN is put in place.

7. ETIAS shall start its operations irrespective of whether it is possible to query the Interpol databases as referred to in Article 12.";

(22) Article 89 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The power to adopt delegated acts referred to in Article 6(4), Article 11(9), Article 17(3), (5) and (6), Articles 18(4), 27(3), Article 31, Articles 33(2), 36(4), 39(2), 54(2), Article 83(1) and (3) and Article 85(3) shall be conferred on the Commission for a period of five years from 9 October 2018. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.’;

(b) paragraph 3 is replaced by the following:

“3. The delegation of power referred to in Article 6(4), Article 11(9), Article 17(3), (5) and (6), Articles 18(4), 27(3), Article 31, Articles 33(2), 36(4), 39(2), 54(2), Article 83(1) and (3) and Article 85(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.”

(c) paragraph 6 is replaced by the following:

“6. A delegated act adopted pursuant to Article 6(4), Article 11(9), Article 17(3), (5) or (6), Article 18(4), 27(3), Article 31, Article 33(2), 36(4), 39(2), 54(2), Article 83(1) or (3) or Article 85(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.”;

(23) in Article 90, paragraph 1 is replaced by the following:

"1. The Commission shall be assisted by the committee established by Article 68 of Regulation (EU) 2017/2226. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.";

(24) in Article 92, the following paragraph is inserted:

"5a. One year after the end of the transition period referred to in Article 83(1), and every four years thereafter, the Commission shall evaluate the querying of ECRIS-TCN through the ETIAS Central System. The Commission shall transmit the evaluation, together with the opinion of the ETIAS Fundamental Rights Guidance Board and any necessary recommendations, to the European Parliament and the Council.

The evaluation referred to in the first subparagraph shall include the following points in order to assess the extent to which the querying of the ECRIS-TCN through the ETIAS Central System has contributed to the achievement of its objective:

- a comparison of the number of simultaneous hits, for the same application, in ECRIS-TCN relating to convictions for terrorism offences listed in the annex to this Regulation and in SIS on refusal on entry and stay alerts;

- a comparison of the number of simultaneous hits, for the same application, in ECRIS-TCN relating to any other serious criminal offences listed in the annex to this Regulation and in SIS on refusal on entry and stay alerts;

- for applications where the only hit was in ECRIS-TCN, a comparison of the number of refusals of travel authorisations with the total number of hits generated by the query of ECRIS-TCN".

The ETIAS Fundamental Rights Guidance Board referred to in Article 10 of this Regulation shall provide an opinion as regards the evaluation referred to in this paragraph.

The evaluation may be accompanied, if necessary, by legislative proposals.";

(25) in Article 96, the following third subparagraph is inserted:

"Article 11a shall apply from … [the date of entry into force of this amending Regulation]".

CHAPTER II

AMENDMENTS TO OTHER UNION INSTRUMENTS

Article 2

Amendments to Regulation (EC) No 767/2008

Regulation (EC) No 767/2008 is amended as follows:

(1) in Article 6, paragraph 2 is replaced by the following:

"2. Access to the VIS for consulting the data shall be reserved exclusively for the duly authorised staff of:

(a) the national authorities of each Member State and of the EU bodies which are competent for the purposes laid down in Articles 15 to 22, Articles 22g to 22m, and Article 45e;

(b) the ETIAS Central Unit and the ETIAS National Units, designated pursuant to Articles 7 and 8 of Regulation (EU) 2018/1240 of the European Parliament and of the Council*, for the purposes laid down in Articles 18c and 18d of this Regulation and in Regulation (EU) 2018/1240; and

(c) the national authorities of each Member State and of the EU bodies which are competent for the purposes laid down in Articles 20 and 21 of Regulation (EU) 2019/817.

That access shall be limited to the extent that the data are required for the performance of their tasks in accordance with those purposes, and proportionate to the objectives pursued."

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* Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).";

(2) the following articles are inserted:

"Article 18b

Interoperability with ETIAS in the meaning of Article 11 of Regulation (EU) 2018/1240

1. From the start of operations of ETIAS, as provided for in Article 88(1) of Regulation (EU) 2018/1240, the VIS shall be connected to the ESP to enable the automated processing referred to in that Article.

2. The automated processing referred to in Article 11 of Regulation (EU) 2018/1240 shall enable the verifications provided for in Article 20 of that Regulation and the subsequent verifications of Articles 22 and 26 of that Regulation.

   For the purpose of proceeding to the verifications point (i) of Article 20(2) of Regulation (EU) 2018/1240, the ETIAS Central System shall use the ESP to compare the data in ETIAS with the data in the VIS, in accordance with Article 11(8) of that Regulation, using the correspondences listed in the table in annex II.

Article 18c

Access to data in VIS by the ETIAS Central Unit

1. The ETIAS Central Unit, established within the European Border and Coast Guard Agency in accordance with Article 7 of Regulation (EU) 2018/1240, shall have, for the purpose of performing its tasks conferred on it by Regulation (EU) 2018/1240, the right to access and search relevant data in VIS in accordance with Article 11(8) of that Regulation.

2. Where a verification by the ETIAS Central Unit in accordance with Article 22 of Regulation (EU) 2018/1240 confirms the correspondence between data recorded in the ETIAS application file and data in the VIS or where doubts remain, the procedure set out in Article 26 of Regulation (EU) 2018/1240 applies.

Article 18d

Use of VIS for the manual processing by ETIAS National Units

1. Consultation of VIS by ETIAS National Units as referred to in Article 8(1) of Regulation (EU) 2018/1240 shall be done using the same alphanumerical data as those used for the automated processing referred to in Article 18b(2) of this Regulation.

2. The ETIAS National Units shall have temporary access to consult VIS, in a read-only format, for the purpose of examining applications for travel authorisation pursuant to Article 8(2) of that Regulation. The ETIAS National Units may consult the data referred to in Articles 9 to 14 of this Regulation.

3. Following an access pursuant to paragraph 1, duly authorised staff of the ETIAS National Units shall record the result of the assessment only in the ETIAS application files.";

(3) the following article is inserted:

"Article 34a

Keeping of logs for the purpose of interoperability with ETIAS

For the consultations listed in Article 18b of this Regulation, a log of each data processing operation carried out within VIS and ETIAS shall be kept in accordance with Article 34 of this Regulation and Article 69 of Regulation (EU) 2018/1240.";

(4) the annex is numbered as Annex I and the following annex is added:

“Annex II

Table of correspondences referred to in Article 18b

Data of Article 17(2) of Regulation 2018/1240 sent by ETIAS Central System	**The corresponding VIS data of Article 9(4) of this Regulation against which data in ETIAS are to be checked**
surname (family name)	surnames
surname at birth	surnames at birth (former family name(s))
first name(s) (given name(s))	first name(s)
date of birth	date of birth
place of birth	place of birth
country of birth	country of birth
sex	sex
current nationality	current nationality or nationalities and nationality at birth
other nationalities (if any)	current nationality or nationalities and nationality at birth
type of the travel document	type of the travel document
number of the travel document	number of the travel document
country of issue of the travel document	the country which issued the travel document

“

Article 3

Amendments to Regulation (EU) 2017/2226

Regulation (EU) 2017/2226 is amended as follows:

(1) in Article 6, paragraph 1, the following point is added:

"(k) support the objectives of ETIAS established by Regulation (EU) 2018/1240 of the European Parliament and of the Council. *

_____

* Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).";

(2) the following articles are inserted:

"*Article 8a*

Automated process with ETIAS

1. An automated process, using the secure communication channel of point (da) of Article 6(2) of Regulation (EU) 2018/1240, shall enable the EES to create or update the entry/exit record or the refusal of entry record of a visa exempt third country national in the EES in accordance with Articles 14, 17 and 18 of this Regulation.

Where an entry/exit record or a refusal of entry record of a visa exempt third country national is created, the automated process shall enable the Central System of the EES the following:

(a) to query and import from the ETIAS Central System the information referred to in Article 47(2) of Regulation (EU) 2018/1240, the application number and the date on which the validity period of an ETIAS travel authorisation ends;

(b) to update the entry/exit record in the EES in accordance with Article 17(2) of this Regulation**;**

(c) to update the refusal of entry record in the EES in accordance with point (b) of Article 18(1) of this Regulation.

2. An automated process, using the secure communication channel of Article 6(2)(da) of Regulation (EU) 2018/1240, shall enable the EES to process queries received from the ETIAS Central System and to send the corresponding answers in accordance with Articles 11ab and 41(8) of Regulation (EU) 2018/1240. Where necessary, the EES Central System shall record that a notification has to be sent to the ETIAS Central System as soon as an entry/exit record indicating that the applicant having requested revocation of the travel authorisation has left the territory of the Member States.

Article 8b

Interoperability with ETIAS in the meaning of Article 11 of Regulation (EU) 2018/1240

1. From the start of operations of ETIAS, as provided for in Article 88(1) of Regulation (EU) 2018/1240, the Central System of the EES shall be connected to the ESP to enable the automated processing referred to in that Article.

2. Without prejudice to Article 24 of Regulation (EU) 2018/1240, the automated processing referred to in Article 11 of Regulation (EU) 2018/1240 shall enable the verifications provided for in Article 20 of that Regulation and the subsequent verifications of Articles 22 and 26 of that Regulation.

For the purpose of proceeding to the verifications referred to in points (g) and (h) of Article 20(2) of Regulation (EU) 2018/1240, the ETIAS Central System shall use the ESP to compare the data in ETIAS with the data in the EES, in accordance with Article 11(8) of that Regulation, using the correspondences listed in the table in Annex III.

The verifications shall be without prejudice to the specific rules provided for in Article 24(3) of Regulation (EU) 2018/1240.";

(3) in Article 9, the following paragraph is inserted:

"2a. The duly authorised staff of the ETIAS National Units, designated pursuant to Article 8 of Regulation (EU) 2018/1240, shall have access to the EES to consult data in a read-only format.";

(4) the following article is inserted:

"Article 13a

Fall-back procedures in case of technical impossibility to access data by carriers

1. Where it is technically impossible to proceed with the query referred to in Article 13(3) because of a failure of any part of the EES, the carriers shall be exempted from the obligation to verify whether the third country national holding a short-stay visa issued for one or two entries have already used the number of entries authorised by their visa. Where such failure is detected by eu-LISA, the ETIAS Central Unit shall notify the carriers and the Member State. It shall also notify the carriers and the Member States when the failure is remedied. Where such failure is detected by the carriers, they may notify the ETIAS Central Unit. The ETIAS Central Unit shall inform the Member States without delay about the notification of the carriers.

2. Where for other reasons than a failure of any part of the EES it is technically impossible for a carrier to proceed with the query referred to in Article 13(3) for a prolonged period of time, that carrier shall inform the ETIAS Central Unit. The ETIAS Central Unit shall inform the Member States without delay about the notification of the carriers.

3. The details of the fall-back procedures shall be laid down in an implementing act adopted in accordance with the examination procedure referred to in Article 68(2).

4. The ETIAS Central Unit shall provide operational support to carriers in relation to paragraphs 1 and 2 of this Article. The ETIAS Central Unit shall establish procedures to provide such support in Standard Operational Procedures. The Commission is empowered to adopted, by means of implementing acts, further detailed rules relating to of the support to be provided and to the means to provide such support.";

(5) in Article 17, paragraph 2, the following second subparagraph is added:

"The following data shall also be entered in the entry/exit record:

(a) the ETIAS application number;

(b) the end of validity period of an ETIAS travel authorisation;

(c) in case of an ETIAS travel authorisation with limited territorial validity, the Member State(s) for which it is valid.";

(6) in Article 18, paragraph 1, point (b) is replaced by the following:

"(b) for visa-exempt third-country nationals, the alphanumeric data required pursuant to Article 17(1) and (2) of this Regulation";

(7) the following articles are inserted:

"Article 25a

Access to data from the EES by the ETIAS Central Unit

1. The ETIAS Central Unit, established within the European Border and Coast Guard Agency in accordance with Article 7 of Regulation (EU) 2018/1240, shall have, for the purpose of performing its tasks conferred on it by Regulation (EU) 2018/1240, the right to access and search data in the EES in accordance with Article 11(8) of that Regulation.

2. Where a verification by the ETIAS Central Unit pursuant to Article 22 of Regulation (EU) 2018/1240 confirms the correspondence between data recorded in the ETIAS application file and data in the EES or where doubts remain, the procedure set out in Article 26 of Regulation (EU) 2018/1240 applies.

Article 25b

Use of the EES for the manual processing by ETIAS National Units

1. Consultation of EES by ETIAS National Units referred to in Article 8(1) of Regulation (EU) 2018/1240 shall be done using the same alphanumerical data as those used for the automated processing referred to in Article 8b(2) of this Regulation.

2. The ETIAS National Units shall have access to and may consult the EES, in a read-only format, for the purpose of examining applications for travel authorisation, pursuant to Article 8(2) of that Regulation. The ETIAS National Units may consult the data referred to in Articles 16 to 18 of this Regulation, without prejudice to Article 24 of Regulation (EU) 2018/1240.

3. Following an access pursuant to paragraph 1, duly authorised staff of the ETIAS National Units shall record only the result of the assessment and shall record this result in the ETIAS application files.";

(8) Article 28 is replaced by the following:

"Article 28

Keeping of data retrieved from the EES

Data retrieved from the EES pursuant to Articles 24, 25, 26 and 27 may be kept in national files and data retrieved from the EES pursuant to Articles 25a and 25b may be kept in the ETIAS application files, only where necessary in an individual case, in accordance with the purpose for which they were retrieved and in accordance with relevant Union law, in particular on data protection, and for no longer than strictly necessary in that individual case.";

(9) in Article 46, paragraph 2, the following second subparagraph is added:

"For the consultations listed in Articles 8a, 8b and 25a of this Regulation, a log of each data processing operation carried out within the EES and ETIAS shall be kept in accordance with this Article and Article 69 of Regulation (EU) 2018/1240.";

(10) the following annex is added:

“Annex III

Table of correspondences referred to in Article 8b

Data of Article 17(2) of Regulation 2018/1240 sent by ETIAS Central System	**The corresponding EES data of point (a) of Article 17(1) of this Regulation against which the data in ETIAS are to be checked**
surname (family name)	surnames
surname at birth	surnames
first name(s) (given name(s))	first name or names (given names)
other names (alias(es), artistic name(s), usual name(s))	first name or names (given names)
date of birth	date of birth
sex	Sex
current nationality	nationality or nationalities
other nationalities (if any)	nationality or nationalities
type of the travel document	type of the travel document
number of the travel document	number of the travel document
country of issue of the travel document	the three letter code of the issuing country of the travel document

"

Article 4

Amendments to Regulation (EU) 2018/1860

In Regulation (EU) 2018/1860, Article 19 is replaced by the following:

"*Article 19*

Applicability of the provisions of Regulation (EU) 2018/1861

Insofar as not established in this Regulation, the entry, processing and updating of alerts, the provisions on responsibilities of the Member States and eu-LISA, the conditions concerning access and the review period for alerts, data processing, data protection, liability and monitoring and statistics, as laid down in Articles 6 to 19, Article 20(3) and (4), Articles 21, 23, 32, 33, 34(5), 36a, 36b, 36c and 38 to 60 of Regulation (EU) 2018/1861, shall apply to data entered and processed in SIS in accordance with this Regulation."

Article 5

Amendments to Regulation (EU) 2018/1861

Regulation (EU) 2018/1861 is amended as follows:

(1) in Chapter III, the following article is added:

"Article 18b

Keeping of logs for the purpose of the interoperability with ETIAS

Logs of each data processing operation carried out within SIS and ETIAS pursuant to Article 36a and 36b shall be kept in accordance with Article 18 of this Regulation and Article 69 of Regulation (EU) 2018/1240 of the European Parliament and of the Council*.

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* Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).";

(2) in Article 34, paragraph 1, the following point is added:

"(h) manual processing of ETIAS applications by the ETIAS National Unit, pursuant to Article 8 of Regulation (EU) 2018/1240.";

(3) the following articles are inserted:

"Article 36a

Access to SIS data by the ETIAS Central Unit

1. The ETIAS Central Unit, established within the European Border and Coast Guard Agency in accordance with Article 7 of Regulation (EU) 2018/1240, shall have, for the purpose of performing its tasks conferred on it by Regulation (EU) 2018/1240, the right to access and search relevant data entered in SIS in accordance with Article 11(8) of that Regulation. The provisions of Article 36(4) to (8) apply to this access and search.

2. Without prejudice to Article 24 of Regulation (EU) 2018/1240, where a verification by the ETIAS Central Unit pursuant to Article 22 of Regulation (EU) 2018/1240 confirms the correspondence of the data recorded in the ETIAS application file to an alert in SIS or where doubts remain, the procedure set out in Article 26 of Regulation (EU) 2018/1240 applies.

Article 36b

Interoperability with ETIAS

1. From the start of operations of ETIAS, as provided for in Article 88(1) of Regulation (EU) 2018/1240, the Central System of SIS shall be connected to the ESP to enable the automated processing referred to in that Article.

2. The automated processing referred to in Article 11 of Regulation (EU) 2018/1240 shall enable the verifications provided for in Article 20, point (c)(ii) of Article 24(6), Article 41 and point (b) of Article 54(1) and the subsequent verifications provided for in Articles 22 and 26 of that Regulation.

3. For the purpose of proceeding to the verifications of points (c) and (m)(ii) and (o) of Article 20(2) of Regulation (EU) 2018/1240, the ETIAS Central System shall use the ESP to compare the data referred to in Article 11(4) Regulation (EU) 2018/1240 to data in SIS, in accordance with Article 11(8) of that Regulation.

4. For the purpose of proceeding to the verifications of point (c)(ii) of Article 24(6) and point (b) of Article 54(1) of Regulation (EU) 2018/1240, the ETIAS Central System shall use the ESP to regularly verify in SIS whether an alert for refusal of entry and stay, which gave rise to the refusal, annulment or revocation of a travel authorisation, has been deleted.

5. Pursuant to Article 41(3) of Regulation (EU) 2018/1240, where a new alert for refusal of entry and stay is entered in SIS, the Central System shall transmit the data referred to in points (a), (b), (c), (d), (f), (g), (h), (i), (s), (t), (u) and (v) of Article 20(2) of this Regulation to the ETIAS Central System, using the ESP, in order to verify whether this new alert corresponds to a valid travel authorisation.

Article 6

Amendments to Regulation (EU) 2019/817

In Article 72, the following paragraph is inserted:

"1b. Without prejudice to paragraph 1 of this Article, for the purposes of the automated processing referred to in Article 20, Article 23, point (c)(ii) of Article 24(6), Article 41 and point (b) of Article 54(1) of Regulation (EU) 2018/1240, the ESP shall start operations, limited to those purposes, once the conditions laid down in Article 88 of Regulation (EU) 2018/1240 have been met.".

CHAPTER III

FINAL PROVISIONS

Article 7

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	*For the Council*
The President	*The President*

ANNEX II

REGULATION (EU) 2021/…

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

amending Regulations (EU) 2018/1862 and (EU) 2019/818 as regards the establishment of the conditions for accessing other EU information systems for the purposes of the European Travel Information and Authorisation System

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 point (a) of Article 87(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[1],

Whereas:

[1] Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ... .

(1) Regulation (EU) 2018/1240 of the European Parliament and of the Council[2] established the European Travel Information and Authorisation System ('ETIAS') for third-country nationals exempt from the requirement to be in possession of a visa when crossing the external borders. It laid down the conditions and procedures to issue or refuse a travel authorisation under that system.

(2) ETIAS enables consideration of whether the presence of those third-country nationals in the territory of the Member States would pose a security, illegal immigration or high epidemic risk.

(3) In order to enable the processing of the application files by the ETIAS Central System referred to in Regulation (EU) 2018/1240, it is necessary to establish the interoperability between the ETIAS Information System, other EU information systems and Europol data referred to in that Regulation.

(4) This Regulation lays down how this interoperability and the conditions for the consultation of data stored in other EU information systems and Europol data by the ETIAS automated process for the purposes of identifying hits are to be implemented. As a result, it is necessary to amend Regulations (EU) 2018/1862[3] and (EU) 2019/818[4] of the European Parliament and of the Council in order to connect the ETIAS Central System to the other EU information systems and to Europol data and to specify the data that will be sent to and from those EU information systems and Europol data.

(5) In accordance with Regulation (EU) 2018/1240, when the recast of Regulation (EU) No 603/2013 of the European Parliament and of the Council[5] will be adopted, the necessary consequential amendments will be adopted.

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2 Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

3 Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).

4 Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

5 Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No

(6) The European Search Portal (ESP), established by Regulation (EU) 2019/818 of the European Parliament and of the Council, will enable the data stored in ETIAS to be compared to the data stored in the other EU information systems concerned by means of a query.

(7) Technical modalities should be defined to enable ETIAS to regularly and automatically verify in other systems whether the conditions for the retention of application files, as laid down in Regulation (EU) 2018/1240, are still fulfilled.

(8) It is necessary, for the purposes of ensuring the full attainment of ETIAS objectives, as well as to further the Schengen Information System ('SIS') objectives, to include in the scope of the automated verifications new alert categories introduced by the recent revision of SIS, namely the alert on persons subject to inquiry checks and the alert on third-country nationals subject to a return decision.

(9) The return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in accordance with Directive 2008/115/EC of the European Parliament and of the Council[6], is an essential component of the comprehensive efforts to tackle irregular migration and represents an important reason of substantial public interest.

(10) ETIAS travel authorisation may be revoked following the registration in SIS of new alerts on refusal of entry and stay, or concerning a travel document reported as lost, stolen, misappropriated or invalidated. In order for ETIAS Central System to be automatically informed by SIS of such new alerts, an automated process should be established between SIS and ETIAS.

(11) The conditions, including access rights, under which the ETIAS Central Unit and ETIAS National Units may consult data stored in other EU information systems for the purposes of ETIAS should be safeguarded by clear and precise rules regarding the access by the ETIAS Central Unit and ETIAS National Units to the data stored in other EU information systems, the type of queries and categories of data, all of which should be limited to what is strictly necessary for the performance of their duties. In the same vein, the data stored in the ETIAS application file should only be visible to those Member States that are operating the underlying information systems in accordance with the modalities of their participation.

1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

[6] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

(12) According to Regulation (EU) 2018/1240, the European agency for the operational management of large-scale information systems in the area of freedom, security and justice ('eu-LISA'), established by Regulation (EU) 2018/1726 of the European Parliament and of the Council[7], should be responsible for the design and development phase of the ETIAS Information System.

(13) This Regulation is without prejudice to Directive 2004/38/EC of the European Parliament and of the Council[8].

(14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union (TEU) and to the Treaty on the Functioning of the European Union (TFEU), 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, Denmark shall, in accordance with Article 4 of that Protocol decide, within a period of six months after the Council has decided on this Regulation, whether it will implement it in its national law.

(15) Insofar as its provisions relate to SIS as governed by Regulation (EU) 2018/1862, Ireland is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen acquis integrated into the framework of the European Union, annexed to the TEU and to the TFEU, and Article 6(2) of Council Decision 2002/192/EC[9]. Furthermore, insofar as its provisions relate to Europol, Eurodac and to ECRIS-TCN, 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 TEU and the TFEU, 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.

(16) With regard to Cyprus and Croatia, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen acquis within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession and Article 4(2) of the 2011 Act of Accession. With respect to Croatia, the Regulation has to be read in conjunction with Council Decision (EU) 2017/733[10].

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7 Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

8 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

9 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* (OJ L 64, 7.3.2002, p. 20).

10 Council Decision (EU) 2017/733 of 25 April 2017 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Croatia (OJ L 108, 26.4.2017, p. 31).

(17) As regards Iceland and Norway, this Regulation constitutes a development of the provisions 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 latters' association with the implementation, application and development of the Schengen *acquis*[11] which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC[12].

(18) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[13], which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/149/JHA[14].

(19) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[15] which fall within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/349/EU[16].

(20) Regulations (EU) 2018/1862 and (EU) 2019/818 should therefore be amended accordingly.

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11 OJ L 176, 10.7.1999, p. 36.

12 Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application 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 (OJ L 176, 10.7.1999, p. 31).

13 OJ L 53, 27.2.2008, p. 52.

14 Council Decision 2008/149/JHA of 28 January 2008 on the conclusion, on behalf of the European Union, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 50).

15 OJ L 160, 18.6.2011, p. 21.

16 Council Decision 2011/349/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

(21) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 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.

(22) The European Data Protection Supervisor was consulted, in accordance with Article 41(2) of Regulation (EU) 2018/1725 of the European Parliament and the Council[17],

HAVE ADOPTED THIS REGULATION:

[17] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 1

Amendments to Regulation (EU) 2018/1862

Regulation (EU) 2018/1862 is amended as follows:

(1) in Chapter III, the following article is added:

"Article 18b
Keeping of logs for the purpose of the interoperability with ETIAS

Logs of each data processing operation carried out within SIS and ETIAS pursuant to Article 50b of this Regulation shall be kept in accordance with Article 18 of this Regulation and Article 69 of Regulation (EU) No 2018/1240 of the European Parliament and of the Council*.

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* Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).";

(2) in Article 44(1), the following point is added:

"(h) manual processing of ETIAS applications by the ETIAS National Unit, pursuant to Article 8 of Regulation (EU) 2018/1240.";

(3) the following article is inserted:

“Article 49a

Access to data in SIS by the ETIAS Central Unit

1. The ETIAS Central Unit, established within the European Border and Coast Guard Agency in accordance with Article 7 of Regulation (EU) 2018/1240, shall have, for the purpose of performing its tasks conferred on it by Regulation (EU) 2018/1240, the right to access and search relevant data entered in SIS in accordance with Article 11(8) of that Regulation. Article 50(4) to (8) of this Regulation shall apply to this access and search.

2. Where a verification by the ETIAS Central Unit pursuant to Article 22 and 23(2) of Regulation (EU) 2018/1240 confirms the correspondence of the data recorded in the ETIAS application files to an alert in SIS or where doubts remain, Articles 23, 24 and 26 of Regulation (EU) 2018/1240 shall apply.";

(4) the following article is inserted:

"Article 50b
Interoperability with ETIAS in the meaning of Article 11 of Regulation (EU) 2018/1240

1. From the start of operations of ETIAS, as provided for in Article 88(1) of Regulation (EU) 2018/1240, the Central System of SIS shall be connected to the ESP to enable the automated processing referred to in Article 11.

2. The automated processing referred to in Article 11 of Regulation (EU) 2018/1240 shall enable the verifications provided for in Articles 20, 23, Article 24(6)(c)(ii), Article 41 and Article 54(1)(b) and the subsequent verifications provided for in Articles 22, 23 and 26 of that Regulation.

3. For the purpose of proceeding to the verifications referred to in points (a), (d) and (m)(i) of Article 20(2) and Article 23(1) of Regulation (EU) 2018/1240, the ETIAS Central System shall use the ESP to compare the data referred to in Article 11(5) of Regulation (EU) 2018/1240 to data in SIS, in accordance with Article 11(8) of that Regulation.

4. For the purpose of proceeding to the verifications of point (c)(ii) of Article 24(6) and point (b) of Article 54(1) of Regulation (EU) 2018/1240, the ETIAS Central System shall use the ESP to regularly verify in SIS whether an alert on an identity document, referred to in points (k) and (l) of Article 38(2) of this Regulation, which gave rise to the refusal, annulment or revocation of a travel authorisation, has been deleted.

5. Pursuant to Article 41(3) of Regulation (EU) 2018/1240, where a new alert is entered in SIS on travel documents, reported stolen, misappropriated, lost or invalidated, the Central System shall transmit the information on this alert, using the automated processing and the ESP to the ETIAS Central System in order to verify whether this new alert corresponds to a valid travel authorisation.”.

Article 2

Amendments to Regulation (EU) 2019/818

Regulation (EU) 2019/818 is amended as follows:

In Article 68, the following paragraph is inserted:

"1a. Without prejudice to paragraph 1, for the purposes of the automated processing of Article 20, Article 23, point (c)(ii) of Article 24(6), Article 41 and point (b) of Article 54(1) of Regulation (EU) 2018/1240, the ESP shall start operations, limited to those purposes, once the conditions laid down in Article 88 of Regulation (EU) 2018/1240 have been met."

Article 3

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	*For the Council*
The President	*The President*

ANNEX III

REGULATION (EU) 2021/...

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Regulations (EU) 2019/816 and (EU) 2019/818 as regards the establishment of the conditions for accessing other EU information systems for the purposes of the European Travel Information and Authorisation System

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 point (d) of Article 82(1) 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[1],

Whereas:

[1] Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ... .

(1) Regulation (EU) 2018/1240 of the European Parliament and of the Council[2] established the European Travel Information and Authorisation System ('ETIAS') for third-country nationals exempt from the requirement to be in possession of a visa when crossing the external borders. It laid down the conditions and procedures to issue or refuse a travel authorisation under that system.

(2) ETIAS enables consideration of whether the presence of those third-country nationals in the territory of the Member States would pose a security, illegal immigration or high epidemic risk.

(3) In order to enable the processing of the application files by the ETIAS Central System referred to in Regulation (EU) 2018/1240, it is necessary to establish the interoperability between the ETIAS Information System, other EU information systems and Europol data referred to in that Regulation.

(4) This Regulation lays down how this interoperability and the conditions for the consultation of data stored in other EU information systems and Europol data by the ETIAS automated process for the purposes of identifying hits are to be implemented. As a result, it is necessary to amend Regulations (EU) 2019/816[3] and (EU) 2019/818[4] of the European Parliament and of the Council in order to connect the ETIAS Central System to the other EU information systems and to Europol data and to specify the data that will be sent to and from those EU information systems and Europol data.

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2 Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

3 Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).

4 Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85).

(5) In accordance with Regulation (EU) 2018/1240, when the recast of Regulation (EU) No 603/2013[5] of the European Parliament and of the Council will be adopted, the necessary consequential amendments will be adopted.

(6) The European Search Portal (ESP), established by Regulation (EU) 2019/818, will enable the data stored in ETIAS to be compared to the data stored in the other EU information systems concerned by means of a query.

(7) Technical modalities should be defined to enable ETIAS to regularly and automatically verify in other systems whether the conditions for the retention of application files, as laid down in Regulation (EU) 2018/1240, are still fulfilled.

(8) In accordance with Regulation (EU) 2019/816 and in line with the intention expressed in Regulation (EU) 2018/1240, ETIAS should be able to verify if correspondences exist between data in the ETIAS application files and the European Criminal Records Information System – Third Country Nationals ('ECRIS-TCN') data in the Common Identity Repository ('CIR') as regards which Member States hold conviction information on third-country nationals and stateless persons for a terrorist offence over the previous 25 years or any other serious criminal offence over the previous 15 years, as listed in the Annex to Regulation (EU) 2018/1240 where those criminal offences are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years.

(9) Member States already collect and process data of third country nationals and stateless persons for the purposes of the ECRIS-TCN Regulation. This Regulation does not impose any obligation on Member States to modify or extend the data of third country nationals and stateless persons already being collected under the ECRIS-TCN Regulation. For the purpose of the querying by ETIAS, only the flag and the code of the convicting Member State should be added.

(10) The conditions, including access rights, under which the ETIAS Central Unit and ETIAS National Units may consult data stored in other EU information systems for the purposes of ETIAS should be safeguarded by clear and precise rules regarding the access by the ETIAS Central Unit and ETIAS National Units to the data stored in other EU information systems, the type of queries and categories of data, all of which should be limited to what is strictly necessary for the performance of their duties. In the same vein, the data stored in the ETIAS application file should only be visible to those Member States that are operating the underlying information systems in accordance with the modalities of their participation.

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[5] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

(11) In order to support the ETIAS objective of assessing whether the applicant for a travel authorisation would pose a threat to public policy or public security, ETIAS should be able to verify if correspondences exist between data in the ETIAS application files and the ECRIS-TCN data in the CIR as regards which Member States hold conviction information on third-country nationals and stateless persons for a terrorist offence or any other criminal offence listed in the annex to Regulation (EU) 2018/1240 if they are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years.

(12) A hit indicated by the ECRIS-TCN system should not of itself be taken to mean that the third-country national concerned has been convicted in the Member States that are indicated. The existence of previous convictions should only be confirmed based on information received from the criminal records of the Member States concerned.

(13) According to Regulation (EU) 2018/1240, the European agency for the operational management of large-scale information systems in the area of freedom, security and justice ('eu-LISA'), established by Regulation (EU) 2018/1726 of the European Parliament and of the Council[6], should be responsible for the design and development phase of the ETIAS Information System.

(14) This Regulation is without prejudice to Directive 2004/38/EC of the European Parliament and of the Council[7].

(15) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(16) Ireland may notify the President of the Council its wish to take part in the adoption and application of this Regulation, 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 TEU and to the TFEU.

(17) In accordance with Articles 1 and 2 and Article 4a(1) 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 TEU and to the TFEU, 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.

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6 Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

7 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

(18) Regulations (EU) 2019/816 and (EU) 2019/818 should therefore be amended accordingly.

(19) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 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.

(20) The European Data Protection Supervisor was consulted, in accordance with Article 41(2) of Regulation (EU) 2018/1725 of the European Parliament and the Council[8],

HAVE ADOPTED THIS REGULATION:

[8] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 1
Amendments to Regulation (EU) 2019/816

Regulation 2019/816 is amended as follows:

(1) in Article 1, the following point is added:

"(e) the conditions under which data included in the ECRIS-TCN system may be used by the ETIAS Central Unit for the purpose of supporting the ETIAS objective of contributing to a high level of security by providing for a thorough security risk assessment of applicants, prior to their arrival at external border crossing points, in order to determine whether there are factual indications or reasonable grounds based on factual indications to conclude that the presence of the person on the territory of the Member States poses a security risk.";

(2) Article 2 is replaced by the following:

"Article 2
Scope

This Regulation applies to the processing of identity information of third country nationals who have been subject to convictions in the Member States for the purpose of identifying the Member States where such convictions were handed down. With the exception of point (b)(ii) of Article 5(1), the provisions of this Regulation that apply to third country nationals also apply to citizens of the Union who also hold a nationality of a third country and who have been subject to convictions in the Member States.

This Regulation:

(a) supports the VIS objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security, in accordance with Regulation (EC) No 767/2008*;

(b) supports the ETIAS objective of contributing to a high level of security;

(c) facilitates and assists in the correct identification of persons in accordance with this Regulation and with Regulation (EU) 2019/818**.

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* Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

** Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135, 22.5.2019, p. 85)";

(3) in Article 3, point 6 is replaced by the following:

"(6) 'competent authorities' means the central authorities, Eurojust, Europol, and the EPPO, VIS designated authorities as referred to in Article 9ca and Article 22b(11) of Regulation (EC) No 767/2008, and the ETIAS Central Unit established in accordance with Article 7 of Regulation (EU) 2018/1240 of the European Parliament and of the Council, which are competent to access or query ECRIS-TCN in accordance with this Regulation;";

(4) Article 5 is amended as follows:

(a) in paragraph 1, the first indent of point (a)(iii) is replaced as follows:

"- identity number, or the type and number of the person's identification documents, including travel documents, as well as the name of the issuing authority";

(b) in paragraph 1, the following point is added:

“(c) a flag indicating, for the purpose of Regulation (EC) No 767/2008 and of Regulation (EU) 2018/1240, that the third-country national concerned has been convicted in the past 25 years of a terrorist offence or in the past 15 years of any other criminal offence as listed in the Annex to Regulation (EU) 2018/1240 where those criminal offences are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, and in those cases the code of the convicting Member State(s).”;

(c) the following paragraph is added:

"7. Flags and the code of the convicting Member State or Member States as referred to in point (c) of paragraph 1 of this Article shall be accessible and searchable only by:

(a) the VIS Central System for the purpose of the verifications pursuant to Articles 7a of this Regulation in conjunction with point (e) of Article 9a(4) or point (e) of Article 22b(3) of Regulation (EC) No 767/2008;

(b) the ETIAS Central System for the purpose of the verifications pursuant to Article 7b of this Regulation in conjunction with point (n) of the second subparagraph of Article 20(2) of Regulation (EU) 2018/1240 where hits are identified following the automated processing referred to in Article 11(1) of that Regulation.

Without prejudice to the first subparagraph, flags and the code of the convicting Member State or Member States as referred to in point (c) of paragraph 1 shall not be visible to any authority other than the central authority of the convicting Member State that created the flagged record.";

(5) in Article 7, paragraph 7 is replaced by the following:

"7. In the event of a hit, the central system or the CIR shall automatically provide the competent authority with information on the Member States holding criminal record information on the third country national, along with the associated reference numbers referred to in Article 5(1) and any corresponding identity information. Such identity information shall only be used for the purpose of verifying the identity of the third country national concerned. The result of a search in the central system may only be used for the purpose of:

(a) making a request according to Article 6 of Framework Decision 2009/315/JHA;

(b) making a request referred to in Article 17(3) of this Regulation;

(c) assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security, in accordance with Regulation (EC) No 767/2008; or

(d) supporting the ETIAS objective of of contributing to a high level of security.";

(6) in Chapter II, the following article is added:

"Article 7b
Use of the ECRIS-TCN system for ETIAS verifications

1. The ETIAS Central Unit, established pursuant to Article 7 of Regulation (EU) 2018/1240, shall have, for the purpose of performing the tasks conferred on it by Regulation (EU) 2018/1240, the right to access and search ECRIS-TCN data in the CIR. However, it shall only have access in accordance with Article 11(8) of that Regulation to data records to which a flag has been added in accordance with point (c) of Article 5(1) of this Regulation.

   The data referred to in the first subparagraph may only be used for the purpose of verification by:

   (a) the ETIAS Central Unit pursuant to Article 22 of Regulation (EU) 2018/1240; or

   (b) the ETIAS National Units pursuant to Article 25a(2) of Regulation (EU) 2018/1240 for the purpose of consulting national criminal records; national criminal records shall be consulted prior to the assessment and decision referred to in Article 26 of Regulation (EU) 2018/1240 and, where applicable, prior to the assessment and opinion referred to in Article 28 of that Regulation.

2. The CIR shall be connected to the ESP to enable the automated processing referred to in Article 11 of Regulation (EU) 2018/1240.

3. Without prejudice to Article 24 of Regulation (EU) 2018/1240, the automated processing referred to in Article 11 of Regulation (EU) 2018/1240 shall enable the verifications provided for in Article 20 and the subsequent verifications of Articles 22 and 26 of that Regulation.

   For the purpose of proceeding to the verifications of point (n) of Article 20(2) of Regulation (EU) 2018/1240, the ETIAS Central System shall use the ESP to compare the data in ETIAS with the data flagged in ECRIS-TCN in the CIR, pursuant to point (c) of Article 5(1) of this Regulation and in accordance with Article 11(8) of Regulation 2018/1240, and using the correspondences listed in the table in Annex II.";

(7) in Article 8, the following paragraph is added:

"3. The flags referred to in point (c) of Article 5(1) shall be erased automatically upon the expiry of the retention period referred to in paragraph 1 of this Article or at the latest, 25 years after the creation of the flag, as far as convictions related to terrorist offences are concerned, and 15 years after the creation of the flag, as far as convictions related to other serious criminal offences are concerned.";

(8) in Article 24, paragraph 1 is replaced by the following:

"1. The data entered into the central system and the CIR shall only be processed for the purposes of:

(a) the identification of the Member States holding the criminal records information of third-country nationals;

(b) supporting the VIS objective of assessing whether the applicant for a visa, a long-stay visa or a residence permit would pose a threat to public policy or public security in accordance with Regulation (EC) No 767/2008;

(c) supporting the ETIAS objective of of contributing to a high level of security.

The data entered into the CIR shall also be processed in accordance with Regulation (EU) 2019/818 for facilitating and assisting in the correct identification of persons registered in the ECRIS-TCN in accordance with this Regulation.";

(9) the following article is inserted:

"*Article 31b*
Keeping of logs for the purpose of interoperability with ETIAS

For the consultations listed in Article 7b of this Regulation, a log of each ECRIS-TCN data processing operation carried out within the CIR and ETIAS shall be kept in accordance with Article 69 of Regulation (EU) No 2018/1240.";

(10) in Article 32(3), the second subparagraph is replaced by the following:

"Every month eu-LISA shall submit to the Commission statistics relating to the recording, storage and exchange of information extracted from criminal records through the ECRIS-TCN system and the ECRIS reference implementation, including on the data records which include a flag in accordance with point (c) of Article 5(1). eu-LISA shall ensure that it is not possible to identify individuals on the basis of those statistics. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects related to the implementation of this Regulation.";

(11) the following annex is added:

“Annex II

Table of correspondences referred to in Article 7b

Data of Article 17(2) of Regulation 2018/1240 sent by ETIAS Central System	***The corresponding ECRIS-TCN data of Article 5(1) of this Regulation in the CIR against which data in ETIAS are to be checked***
surname (family name)	surname (family name)
surname at birth	previous name(s)
first name(s) (given name(s))	first name(s) (given name(s))
other names (alias(es), artistic name(s), usual name(s))	pseudonym and/or alias name(s)
date of birth	date of birth
place of birth	place of birth (town and country)
country of birth	place of birth (town and country)
sex	gender
current nationality	nationality or nationalities
other nationalities (if any)	nationality or nationalities
type of the travel document	type of the person’s travel documents
number of the travel document	number of the person’s travel documents
country of issue of the travel document	name of the issuing authority**”**

Article 2
Amendments to Regulation (EU) 2019/818

Regulation (EU) 2019/818 is amended as follows:

(1) in Article 18, the following paragraph is inserted:

"1b. For the purpose of Article 20 of Regulation (EU) 2018/1240, the CIR shall also store, logically separated from the data referred to in paragraph 1 of this Article, the data referred to in point (c) of Article 5(1) of Regulation (EU) 2019/816. The data referred to in point (c) of Article 5(1) of Regulation (EU) 2019/816 shall only be accessible in the manner referred to in Article 5(7) of that Regulation.";

(2) in Article 68, the following paragraph is inserted:

"1b. Without prejudice to paragraph 1, for the purposes of the automated processing of Article 20, Article 23, point (c)(ii) of Article 24(6), Article 41 and point (b) of Article 54(1) of Regulation (EU) 2018/1240, the ESP shall start operations, limited to those purposes, once the conditions laid down in Article 88 of Regulation (EU) 2018/1240 have been met.".

Article 3

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	*For the Council*
The President	*The President*

Conselho da
União Europeia

Bruxelas, 28 de maio de 2021
(OR. en)

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REV 1 ADD 1

Dossiê interinstitucional:
2018/0152/A(COD)

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COMIX 70
CODEC 154
PARLNAT 119

NOTA JUSTIFICATIVA DO CONSELHO

Assunto:	Posição do Conselho em primeira leitura tendo em vista a adoção do REGULAMENTO DO PARLAMENTO EUROPEU E DO CONSELHO que altera os Regulamentos (CE) n.º 767/2008, (CE) n.º 810/2009, (UE) 2016/399, (UE) 2017/2226, (UE) 2018/1240, (UE) 2018/1860, (UE) 2018/1861, (UE) 2019/817 e (UE) 2019/1896 do Parlamento Europeu e do Conselho e que revoga as Decisões 2004/512/CE e 2008/633/JAI do Conselho, para efeitos de reforma do Sistema de Informação sobre Vistos – Nota justificativa do Conselho – Adotada pelo Conselho em 27 de maio de 2021

I. INTRODUÇÃO

1. Após uma avaliação exaustiva do Sistema de Informação sobre Vistos (VIS), a Comissão apresentou, em 16 de maio de 2018, uma proposta legislativa para alterar o Regulamento VIS[1] (a seguir designada "o Regulamento que altera o VIS").

2. Na reunião de 19 de dezembro de 2018, o Comité de Representantes Permanentes adotou um mandato para encetar negociações com o Parlamento Europeu.[2]

3. O Comité Económico e Social Europeu adotou o seu parecer em 19 de setembro de 2018[3].

4. A Autoridade Europeia para a Proteção de Dados emitiu o seu parecer em 12 de dezembro de 2018[4].

5. A pedido do Parlamento Europeu, a Agência dos Direitos Fundamentais da União Europeia emitiu um parecer em 30 de agosto de 2018[5].

6. Em 13 de março de 2019, o Parlamento Europeu adotou a sua posição em primeira leitura[6].

7. O Conselho e o Parlamento Europeu encetaram negociações em outubro de 2019 com vista a alcançar um acordo na fase da posição do Conselho em primeira leitura ("acordo em segunda leitura antecipada").

8. Durante as negociações, verificou-se que faltavam algumas disposições na proposta da Comissão – as chamadas "alterações decorrentes do VIS". Trata-se das alterações a introduzir nos atos jurídicos sobre os sistemas de informação e bases de dados da UE como consequência das consultas automáticas efetuadas pelo VIS a esses sistemas. A Comissão tinha proposto para o ETIAS alterações decorrentes análogas[7].

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1 8853/18.
2 15726/18.
3 CESE 2018/03954, JO C 440 de 6.12.2018, pp. 154-157.
4 Síntese do Parecer da Autoridade Europeia para a Proteção de Dados sobre a proposta de um novo regulamento relativo ao Sistema de Informação sobre Vistos, JO C 50 de 8.2.2019, pp. 4-8.
5 Parecer da Agência – 2/2018. https://fra.europa.eu/en/publication/2018/revised-visa-information-system-and-its-fundamental-rights-implications
6 T8-0174/2019, 7401/19.
7 Ver COM(2019) 3 final e COM(2019) 4 final.

9. Em virtude da geometria variável da participação dos Estados-Membros nas políticas da UE em matéria de liberdade, segurança e justiça, só foi possível, do ponto de vista jurídico, incluir no Regulamento que altera o VIS (que constitui o objeto da presente nota justificativa do Conselho) um conjunto de alterações decorrentes relativas à modificação dos instrumentos jurídicos no domínio do acervo de Schengen em matéria de fronteiras externas, sendo que outras disposições que não pertencem a esse acervo tiveram de ser inseridas num instrumento jurídico distinto.

10. Em 17 de junho de 2020, o Comité de Representantes Permanentes alterou o mandato do Conselho por forma a incluir as "alterações decorrentes do VIS"[8]. Tendo já adotado a sua posição em primeira leitura, a equipa de negociação do Parlamento Europeu indicou que definiria a sua posição sobre este novo conjunto de disposições no decurso das negociações interinstitucionais.

11. Após seis trílogos políticos e várias reuniões técnicas, as negociações foram concluídas com êxito a 8 de dezembro de 2020, tendo o Parlamento Europeu e o Conselho chegado a um compromisso sobre o texto de dois regulamentos:

– o Regulamento que altera os Regulamentos (CE) n.º 767/2008, (CE) n.º 810/2009, (UE) 2016/399, (UE) 2017/2226, (UE) 2018/1240, (UE) 2018/1860, (UE) 2018/1861, (UE) 2019/817 e (UE) 2019/1896 do Parlamento Europeu e do Conselho e que revoga as Decisões 2004/512/CE e 2008/633/JAI do Conselho, para efeitos de reforma do Sistema de Informação sobre Vistos (o "Regulamento que altera o VIS", objeto da presente nota justificativa do Conselho), e

– o Regulamento que altera os Regulamentos (UE) 603/2013, 2016/794, 2018/1862, 2019/816 e 2019/818 no que respeita ao estabelecimento das condições de acesso a outros sistemas de informação da UE para efeitos do VIS.

12. Em 22 de janeiro de 2021, o Comité de Representantes Permanentes analisou o texto de compromisso final tendo em vista um acordo.

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8 8787/20.

13. Em 27 de janeiro de 2021, a Comissão das Liberdades Civis, da Justiça e dos Assuntos Internos (Comissão LIBE) do Parlamento Europeu confirmou o acordo político e, em 1 de fevereiro, o presidente da Comissão LIBE enviou uma carta ao presidente do Comité de Representantes Permanentes a confirmar que, caso o Conselho aprovasse os dois regulamentos em primeira leitura, após revisão jurídico-linguística, o Parlamento aprovaria a posição do Conselho em segunda leitura.

14. Em 3 de fevereiro de 2021, o Comité de Representantes Permanentes confirmou o acordo político sobre o texto de compromisso dos regulamentos.

15. A Dinamarca não participa na adoção do Regulamento que altera o VIS e não fica por ele vinculada nem sujeita à sua aplicação. Uma vez que o presente regulamento desenvolve o acervo de Schengen, a Dinamarca decide no prazo de seis meses a contar da decisão do Conselho relativa ao presente regulamento, se procede à sua transposição para o seu direito interno.

16. A Irlanda não participa na adoção do Regulamento que altera o VIS e não fica por ele vinculada nem sujeita à sua aplicação, uma vez que o mesmo constitui um desenvolvimento das disposições do acervo de Schengen em que a Irlanda não participa.

17. No que diz respeito à Islândia, à Noruega, à Suíça e ao Listenstaine, o Regulamento que altera o VIS constitui um desenvolvimento das disposições do acervo de Schengen.

18. No que diz respeito a Chipre, à Bulgária, à Roménia e à Croácia, as disposições do Regulamento que altera o VIS constituem disposições baseadas no acervo de Schengen ou de algum modo com ele relacionadas, na aceção dos respetivos Atos de Adesão.

II. OBJETIVO

19. O VIS – estabelecido pela Decisão 2004/512/CE do Conselho (a Decisão VIS) e pelo Regulamento (CE) n.º 767/2008 – é o sistema de informação da UE para facilitar o procedimento de vistos de curta duração ("vistos Schengen") e ajudar as autoridades responsáveis em matéria de vistos, fronteiras, asilo e migração a verificarem os nacionais de países terceiros que precisam de visto para viajar para o espaço Schengen. O VIS liga os consulados dos Estados-Membros em todo o mundo e todos os seus pontos de passagem das fronteiras externas.

20. O regulamento que altera o VIS visa continuar a desenvolver o VIS de forma a dar uma melhor resposta aos novos desafios em matéria de políticas de vistos, fronteiras e segurança. Em especial, visa facilitar os procedimentos de pedido de visto; reforçar as verificações de antecedentes efetuadas antes da tomada de decisão sobre vistos de curta ou longa duração e sobre títulos de residência, bem como os controlos de identidade nos pontos de passagem das fronteiras externas e no território dos Estados-Membros; e reforçar a segurança interna do espaço Schengen, facilitando o intercâmbio de informações entre os Estados-Membros sobre nacionais de países terceiros que sejam titulares de vistos de longa duração e de títulos de residência.

III. ANÁLISE DA POSIÇÃO DO CONSELHO EM PRIMEIRA LEITURA

A. Considerações gerais

21. O Parlamento Europeu e o Conselho realizaram negociações tendo em vista chegar a um acordo com base numa posição do Conselho em primeira leitura, que o Parlamento Europeu pudesse aprovar sem alterações em segunda leitura. O texto da posição do Conselho em primeira leitura relativa ao Regulamento que altera o VIS reflete inteiramente o compromisso alcançado entre os dois colegisladores, assistidos pela Comissão Europeia.

B. Questões fundamentais

Consolidação das regras relacionadas com o VIS

22. Nos termos da posição do Conselho em primeira leitura, são revogadas a Decisão 2004/512/CE do Conselho que estabelece o Sistema de Informação sobre Vistos (VIS) e a Decisão 2008/633/JAI do Conselho relativa ao acesso ao VIS para fins de aplicação da lei.

23. Deste modo, todas as regras sobre o estabelecimento e utilização do VIS são consolidadas.

Âmbito de aplicação do VIS

24. A posição do Conselho em primeira leitura apoia a proposta da Comissão de incluir no VIS revisto, para além dos vistos de curta duração, os vistos de longa duração e os títulos de residência, que, muito embora se rejam principalmente por regras nacionais, permitem a livre circulação dentro do espaço Schengen.

25. Este alargamento do âmbito de aplicação do VIS permitirá que as autoridades dos Estados-Membros que não sejam a autoridade emissora verifiquem esses documentos e os respetivos titulares nas fronteiras ou no território dos Estados-Membros. Como tal, colmatará uma importante lacuna de informação para as fronteiras e a segurança e permitirá ao sistema responder melhor à evolução em matéria de segurança e aos desafios da migração, otimizando a gestão das fronteiras externas da UE.

Verificação de antecedentes

26. A posição do Conselho em primeira leitura baseia-se no conceito da proposta da Comissão de permitir que as autoridades responsáveis pela emissão de vistos realizem controlos automatizados noutras bases de dados que utilizam o quadro de interoperabilidade. Todavia vai ainda mais longe, diferenciando regras e procedimentos para a consulta de bases de dados sensíveis e não sensíveis.

27. De acordo com as regras em vigor, os consulados só têm de efetuar um controlo dos viajantes obrigados a visto no Sistema de Informação de Schengen (SIS) para determinar se um requerente de visto de curta duração está sujeito a uma proibição de entrada. Nos termos da posição do Conselho em primeira leitura, todos os pedidos registados no VIS – tanto de vistos de curta duração como de vistos de longa duração ou títulos de residência – serão automaticamente verificados em todos os outros sistemas de informação da UE em matéria de segurança e migração. Esta verificação cruzada, de caráter obrigatório, detetará os requerentes que utilizem identidades múltiplas e identificará qualquer pessoa que represente um risco em termos de segurança ou de não respeito das regras aplicáveis à migração, consoante o caso.

28. Para além das bases de dados relacionadas com as fronteiras e do SIS, as bases de dados consultadas pelo VIS incluem o sistema ECRIS-TCN, a base de dados TDAWN da Interpol (na condição de nenhuma informação ser revelada ao proprietário da indicação da Interpol), bem como as consultas no SIS de indicações para efeitos de regresso, que inicialmente não constavam da posição do Parlamento Europeu em primeira leitura, mas que acabaram por ser aceites pelo Parlamento. Quanto ao sistema ECRIS-TCN, a posição do Conselho em primeira leitura limita as consultas às condenações por crimes graves e terrorismo, e inclui ainda uma limitação temporal das condenações que serão tidas em conta: condenações nos 25 anos anteriores, no caso de infrações terroristas, e nos 15 anos anteriores, no caso de condenações por crimes graves. A ideia subjacente aos limites temporais (solicitados pelo Parlamento Europeu a título de compromisso para aceitar a consulta do sistema ECRIS-TCN) é ter um "intervalo temporal" uniforme para as respostas positivas no VIS em relação às condenações constantes dos registos criminais nacionais, cujo prazo de vigência não está harmonizado a nível da UE.

29. No que respeita às autoridades encarregadas da verificação das respostas positivas de natureza sensível, em vez do "ponto único de contacto" inicialmente defendido pelo Parlamento Europeu, a posição do Conselho em primeira leitura introduz o conceito de "autoridades designadas VIS". Ao "designar" (por oposição a "criar") esta autoridade, os Estados-Membros mantêm alguma margem de manobra: podem designar mais do que uma autoridade, incluindo os gabinetes SIRENE, contanto que estes obtenham recursos adicionais suficientes para levarem a cabo as novas tarefas.

30. A posição do Conselho em primeira leitura inclui regras especiais para as respostas positivas na lista de vigilância ETIAS, as quais, dada a sua natureza sensível, serão verificadas pelas unidades nacionais ETIAS.

Alterações decorrentes

31. Tal como explicado nos pontos 8 a 10 acima, durante as negociações verificou-se que faltavam algumas disposições na proposta da Comissão. Para estabelecer na íntegra as consultas automáticas efetuadas pelo VIS, teriam de ser introduzidas alterações nos atos jurídicos sobre os sistemas de informação e nas bases de dados da UE consultadas pelo VIS no que respeita ao tratamento automático de dados pessoais. Além disso, seria necessário ter em conta o novo panorama legislativo para a interoperabilidade, que evoluiu desde que a proposta VIS foi apresentada em maio de 2018. A Comissão tinha proposto para o ETIAS alterações decorrentes análogas[9].

32. A posição do Conselho em primeira leitura elimina esta lacuna e inclui alterações técnicas aos dois conjuntos de atos jurídicos a seguir indicados:

    a) Regulamentos "fronteiras de Schengen": VIS[10], SES[11], ETIAS[12], SIS Regresso[13], SIS Fronteiras[14] e Interoperabilidade Fronteiras[15] e

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9 Ver COM(2019) 3 final e COM(2019) 4 final.

10 Regulamento (CE) n.º 767/2008 do Parlamento Europeu e do Conselho, de 9 de julho de 2008, relativo ao Sistema de Informação sobre Vistos (VIS) e ao intercâmbio de dados entre os Estados-Membros sobre os vistos de curta duração (Regulamento VIS), JO L 218 de 13.8.2008, pp. 60-81.

11 Regulamento (UE) 2017/2226 do Parlamento Europeu e do Conselho, de 30 de novembro de 2017, que estabelece o Sistema de Entrada/Saída (SES) para registo dos dados das entradas e saídas e dos dados das recusas de entrada dos nacionais de países terceiros aquando da passagem das fronteiras externas dos Estados-Membros, que determina as condições de acesso ao SES para efeitos de aplicação da lei, e que altera a Convenção de Aplicação do Acordo de Schengen e os Regulamentos (CE) n.º 767/2008 e (UE) n.º 1077/2011, JO L 327 de 9.12.2017, pp. 20-82.

12 Regulamento (UE) 2018/1240 do Parlamento Europeu e do Conselho, de 12 de setembro de 2018, que cria um Sistema Europeu de Informação e Autorização de Viagem (ETIAS) e altera os Regulamentos (UE) n.º 1077/2011, (UE) n.º 515/2014, (UE) 2016/399, (UE) 2016/1624 e (UE) 2017/2226, JO L 236 de 19.9.2018, pp. 1-71.

13 Regulamento (UE) 2018/1860 do Parlamento Europeu e do Conselho, de 28 de novembro de 2018, relativo à utilização do Sistema de Informação de Schengen para efeitos de regresso dos nacionais de países terceiros em situação irregular, JO L 312 de 7.12.2018, pp. 1-13.

14 Regulamento (UE) 2018/1861 do Parlamento Europeu e do Conselho, de 28 de novembro de 2018, relativo ao estabelecimento, ao funcionamento e à utilização do Sistema de Informação de Schengen (SIS) no domínio dos controlos de fronteira, e que altera a Convenção de Aplicação do Acordo de Schengen e altera e revoga o Regulamento (CE) n.º 1987/2006, JO L 312 de 7.12.2018, pp. 14-55.

15 Regulamento (UE) 2019/817 do Parlamento Europeu e do Conselho, de 20 de maio de 2019, relativo à criação de um regime de interoperabilidade entre os sistemas de informação da UE no domínio das fronteiras e vistos e que altera os Regulamentos (CE) n.º 767/2008, (UE) 2016/399, (UE) 2017/2226, (UE) 2018/1240, (UE) 2018/1726 e (UE) 2018/1861 do Parlamento Europeu e do Conselho, e as Decisões 2004/512/CE e 2008/633/JAI do Conselho, JO L 135 de 22.5.2019, pp. 27-84.

b) "textos não Schengen e cooperação policial Schengen": Eurodac[16], Regulamento Europol[17], SIS Cooperação Policial[18], sistema ECRIS-TCN[19] e interoperabilidade em matéria de cooperação policial[20].

Em virtude da geometria variável na participação dos Estados-Membros nas políticas da UE em matéria de liberdade, segurança e justiça, o segundo conjunto de alterações decorrentes foi incluído num instrumento jurídico distinto que, todavia, seria aplicado conjuntamente com o Regulamento VIS, de forma harmoniosa, para permitir um funcionamento e uma utilização abrangentes do sistema.

Dados biométricos

33. Relativamente à questão dos dados biométricos, a posição do Conselho em primeira leitura resulta de intensas negociações com o Parlamento Europeu. O compromisso alcançado mantém os elementos essenciais da proposta da Comissão, acrescentando algumas salvaguardas apresentadas pelo Parlamento Europeu:

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16 Regulamento (UE) n.º 603/2013 do Parlamento Europeu e do Conselho, de 26 de junho de 2013, relativo à criação do sistema "Eurodac" de comparação de impressões digitais para efeitos da aplicação efetiva do Regulamento (UE) n.º 604/2013, que estabelece os critérios e mecanismos de determinação do Estado-Membro responsável pela análise de um pedido de proteção internacional apresentado num dos Estados-Membros por um nacional de um país terceiro ou um apátrida, e de pedidos de comparação com os dados Eurodac apresentados pelas autoridades responsáveis dos Estados-Membros e pela Europol para fins de aplicação da lei e que altera o Regulamento (UE) n.º 1077/2011 que cria uma Agência europeia para a gestão operacional de sistemas informáticos de grande escala no espaço de liberdade, segurança e justiça, JO L 180 de 29.6.2013, pp. 1-30.

17 Regulamento (UE) 2016/794 do Parlamento Europeu e do Conselho, de 11 de maio de 2016, que cria a Agência da União Europeia para a Cooperação Policial (Europol) e que substitui e revoga as Decisões 2009/371/JAI, 2009/934/JAI, 2009/935/JAI, 2009/936/JAI e 2009/968/JAI do Conselho, JO L 135 de 24.5.2016, pp. 53-114.

18 Regulamento (UE) 2018/1862 do Parlamento Europeu e do Conselho, de 28 de novembro de 2018, relativo ao estabelecimento, ao funcionamento e à utilização do Sistema de Informação de Schengen (SIS) no domínio da cooperação policial e da cooperação judiciária em matéria penal, e que altera e revoga a Decisão 2007/533/JAI do Conselho e revoga o Regulamento (CE) n.º 1986/2006 do Parlamento Europeu e do Conselho e a Decisão 2010/261/UE da Comissão, JO L 312 de 7.12.2018, pp. 56-106.

19 Regulamento (UE) 2019/816 do Parlamento Europeu e do Conselho, de 17 de abril de 2019, que cria um sistema centralizado para a determinação dos Estados-Membros que possuem informações sobre condenações de nacionais de países terceiros e de apátridas (ECRIS-TCN) tendo em vista completar o Sistema Europeu de Informação sobre Registos Criminais e que altera o Regulamento (UE) 2018/1726, JO L 135 de 22.5.2019, pp. 1-26.

20 Regulamento (UE) 2019/818 do Parlamento Europeu e do Conselho, de 20 de maio de 2019, relativo à criação de um regime de interoperabilidade entre os sistemas de informação da UE no domínio da cooperação policial e judiciária, asilo e migração, e que altera os Regulamentos (UE) 2018/1726, (UE) 2018/1862 e (UE) 2019/816, JO L 135 de 22.5.2019, pp. 85-135.

– A idade mínima para a recolha de impressões digitais no procedimento de vistos de curta duração é reduzida de 12 para 6 anos; do mesmo modo, as impressões digitais de crianças menores de seis anos não serão armazenadas no VIS para efeitos de vistos de longa duração e títulos de residência; a recolha de impressões digitais de crianças está sujeita a salvaguardas mais rigorosas, nomeadamente à limitação do período de conservação dos dados armazenados, e as finalidades para as quais esses dados podem ser utilizados deverão ser limitadas a situações do interesse superior da criança;

– O limite de idade máximo para a recolha de impressões digitais para vistos de curta duração é fixado em 75 anos, dada a deterioração da qualidade das impressões digitais em pessoas idosas;

– A imagem facial tirada ao vivo tornar-se-á a regra básica no procedimento de visto (inclusive para crianças menores de 6 anos, a fim de contribuir para a luta contra o tráfico de crianças). Os Estados-Membros poderão exigir, a título complementar, uma fotografia em papel para cada pedido. A imagem digitalizada da fotografia em papel só será incluída no VIS em casos excecionais, que não exijam uma imagem facial tirada ao vivo (chefes de Estado ou de Governo, membros de famílias reais, etc.), mas não será usada para fins de correspondência biométrica. Uma referência no sistema indicará se a imagem facial do requerente foi tirada ao vivo aquando da apresentação do pedido; em casos excecionais, a imagem facial será extraída do circuito microeletrónico (*chip*) incluído no documento de viagem eletrónico de leitura automática (eMRTD);

– os dados biométricos são copiados para pedidos de visto apresentados num prazo de 59 meses a contar do pedido de visto anterior, tal como é prática corrente;

– os dados biométricos de crianças podem ser verificados no território dos Estados-Membros;

– o acesso para fins de aplicação da lei a dados biométricos de crianças será permitido a partir dos 14 anos de idade, em vez dos 18, como inicialmente defendido pelo Parlamento Europeu. O acesso a dados de crianças abaixo desta idade será sempre possível para as proteger enquanto vítimas;

– Os dados biométricos de crianças com idade inferior a 12 anos serão apagados após a saída do espaço Schengen e a expiração do visto (foi adicionada uma notificação automática do SES para o VIS de modo a permitir o apagamento dos dados);

– as autoridades competentes em matéria de asilo terão acesso às impressões digitais de crianças sem documentos de identificação.

34. A posição do Conselho em primeira leitura aborda igualmente os direitos de acesso das autoridades responsáveis pelas fronteiras e das autoridades competentes para efetuar controlos no território, o acesso das autoridades competentes em matéria de asilo aos dados VIS tanto para vistos de curta duração como para os de longa duração e os títulos de residência, assim como os artigos relativos à identificação. No que diz respeito à pesquisa com imagem facial, o princípio geral é que este tipo de pesquisa seja regulado da mesma forma, quer para vistos de curta duração, quer para vistos de longa duração e títulos de residência. A posição do Conselho também aceitou o princípio da pesquisa com imagem facial para efeitos de identificação (a título de pesquisa complementar e não como único critério de pesquisa), bem como a utilização da imagem facial no contexto do asilo (nas mesmas condições).

35. A posição do Conselho em primeira leitura limita os direitos de acesso ao VIS ao estritamente necessário. Por exemplo, o acesso para fins de aplicação da lei aos dados de crianças e o acesso aos dados dos detentores, há dez ou mais anos consecutivos, de títulos de residência registados no VIS é limitado.

Indicadores de risco específicos

36. Além de consultas automáticas de outras bases de dados, o tratamento dos pedidos de visto beneficiará de indicadores de risco específicos. A posição do Conselho em primeira leitura concorda com a opinião do Parlamento Europeu segundo a qual estes indicadores – que apontam para um risco de segurança, de imigração irregular ou para um elevado risco de epidemia – devem ser aplicados como um algoritmo que permita a definição de perfis.

37. Os indicadores conterão regras de análise de dados, bem como valores específicos disponibilizados pelos Estados-Membros e estatísticas geradas a partir de outras bases de dados pertinentes sobre segurança e gestão das fronteiras. Isso melhorará as avaliações de risco e permitirá a aplicação do método de análise de dados. Os indicadores de risco não conterão quaisquer dados pessoais e basear-se-ão em estatísticas e informações disponibilizadas pelos Estados-Membros sobre ameaças, taxas anormais de recusas ou de estadas que ultrapassaram o período autorizado de certas categorias de nacionais de países terceiros, bem como sobre riscos para a saúde pública.

38. A posição do Conselho em primeira leitura transfere as disposições sobre os indicadores de risco específicos do Código de Vistos para o Regulamento VIS e propõe uma estrutura de governação totalmente harmonizada com a das regras de verificação ETIAS.

Acesso aos dados VIS para fins de aplicação da lei

39. A posição do Conselho em primeira leitura revoga a Decisão 2008/633/JAI do Conselho sobre o acesso aos dados VIS para fins de aplicação da lei e rege esta matéria no Regulamento VIS.

40. Um dos objetivos secundários do regulamento consiste em permitir às autoridades nacionais responsáveis pela aplicação e à Europol o acesso aos dados VIS, em condições estritas, para fins de aplicação da lei. De acordo com a posição do Conselho em primeira leitura, as autoridades designadas e a Europol terão um acesso mais estruturado ao VIS, inclusive a vistos e a títulos de residência, para prevenção, deteção ou investigação de infrações terroristas ou outras infrações penais graves, sob condições específicas e em conformidade com as regras de proteção de dados da UE e outras salvaguardas previstas no VIS.

41. Em consonância com a nova geração de sistemas de informação da UE, a posição do Conselho em primeira leitura não inclui a pesquisa prévia no Sistema Automático de Identificação Dactiloscópica ao abrigo da Decisão 2008/615/JAI (Decisão Prüm) como condição de acesso ao VIS, condição essa que fazia parte da posição do Parlamento Europeu em primeira leitura.

Contributo para a política de regresso da UE

42. De acordo com a posição do Conselho em primeira leitura, o VIS contribuirá para aumentar a eficácia da política de regresso da UE: serão incluídas no VIS cópias do documento de viagem do requerente, uma medida que facilitará a identificação e a readmissão de pessoas sujeitas a um procedimento de regresso que não possuam documentos de viagem. Além disso, a Frontex e, mais precisamente, as equipas da Frontex para o regresso terão acesso ao VIS.

Transportadores

43. Nos termos da posição do Conselho em primeira leitura, os transportadores terão acesso (limitado) aos dados VIS (resposta afirmativa ou negativa, "OK/NOT OK") através do portal dos transportadores, tal como já acontece com o ETIAS e o SES.

Comunicação de dados VIS a países terceiros ou organizações internacionais

44. Nos termos da posição do Conselho em primeira leitura, os dados VIS não podem ser transferidos para países terceiros ou organizações internacionais nem a estes disponibilizados, mas são possíveis derrogações, em condições muito estritas, para efeitos de regresso, reinstalação ou aplicação da lei.

Direitos fundamentais

45. A posição do Conselho em primeira leitura desenvolve o artigo sobre os princípios gerais a fim de reforçar a proteção dos direitos fundamentais no tratamento de dados pessoais no VIS, nomeadamente no que se refere ao princípio de não discriminação contra os requerentes. Introduz também o interesse superior da criança como princípio fundamental no que diz respeito a todos os procedimentos previstos no regulamento.

46. A posição do Conselho em primeira leitura harmoniza as disposições do VIS em matéria de proteção de dados com as normas estabelecidas no RGPD[21], e incorpora a abordagem da proteção de dados desde a conceção. As melhorias proporcionam as garantias e os mecanismos necessários para a proteção efetiva da privacidade e dos direitos fundamentais dos viajantes, em particular no que toca à sua vida privada e dados pessoais.

Melhoria de outros componentes técnicos do VIS

47. A posição do Conselho em primeira leitura integra o VIS Mail no VIS e melhora a sua funcionalidade. Também atribui à eu-LISA o armazenamento dos dados VIS no repositório central para a elaboração de relatórios e estatísticas criado ao abrigo do Regulamento Interoperabilidade, centraliza o procedimento de consulta e integra no VIS a lista de documentos de viagem reconhecidos.

48. A posição do Conselho em primeira leitura reforça as regras de qualidade dos dados e habilita a eu-LISA a desenvolver e manter mecanismos e procedimentos de controlo da qualidade dos dados.

49. O funcionamento do VIS é melhorado a fim de contribuir para assegurar uma disponibilidade ininterrupta.

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[21] Regulamento (UE) 2016/679 do Parlamento Europeu e do Conselho, de 27 de abril de 2016, relativo à proteção das pessoas singulares no que diz respeito ao tratamento de dados pessoais e à livre circulação desses dados e que revoga a Diretiva 95/46/CE (Regulamento Geral sobre a Proteção de Dados), JO L 119 de 4.5.2016, pp. 1-88.

Arquitetura do VIS

50. Embora a Comissão tenha proposto alterar a Decisão 2004/512/CE do Conselho que estabelece o VIS, a posição do Conselho em primeira leitura reflete a abordagem preconizada pelo Parlamento Europeu, a saber, a revogação dessa decisão e a integração do seu conteúdo e de certos elementos das decisões de execução da Comissão no Regulamento VIS.

51. Segundo a posição do Conselho em primeira leitura, a arquitetura VIS baseia-se num sistema centralizado. O serviço centralizado é duplicado em duas localizações diferentes, a principal e a que acolhe o sistema central de salvaguarda do VIS.

52. A posição do Conselho em primeira leitura melhora a arquitetura do VIS, tomando em conta o novo quadro de interoperabilidade. Compõem a arquitetura do VIS: o sistema central do VIS, as interfaces nacionais uniformes, o serviço Web, o portal dos transportadores e a infraestrutura de comunicação do VIS. Estes elementos partilham e reutilizam, na medida do que for tecnicamente possível, as componentes físicas ("hardware") e lógicas ("software"), respetivamente, do sistema central do SES, das interfaces nacionais uniformes do SES, do portal dos transportadores do ETIAS, do serviço Web do SES e da infraestrutura de comunicação do SES. A infraestrutura de comunicação apoia a disponibilidade ininterrupta do VIS e contribui para assegurá-la. A eu-LISA é responsável pela gestão técnica e operacional do VIS e dos seus elementos.

Acompanhamento, avaliação e apresentação de relatórios

53. A posição do Conselho em primeira leitura introduz um sistema completo de acompanhamento e apresentação de relatórios:

    a) De dois em dois anos, a eu-LISA apresentará um relatório sobre o *funcionamento técnico do VIS*, inclusivamente sobre a sua segurança, e que incluirá uma avaliação da utilização das imagens faciais para identificação de pessoas;

    b) Os Estados-Membros e a Europol elaborarão relatórios anuais sobre *a eficácia do acesso aos dados VIS para efeitos de aplicação da lei*;

c) Três anos após a entrada em funcionamento do VIS revisto e, posteriormente, de quatro anos em quatro anos, a Comissão apresentará uma *avaliação global do VIS*, que incluirá, nomeadamente:

– uma análise dos resultados alcançados relativamente aos objetivos fixados e aos custos incorridos,

– uma avaliação para determinar se os princípios de base continuam a ser válidos, bem como o seu impacto sobre os direitos fundamentais, e para apreciar a segurança do VIS e a utilização das disposições relativas à comunicação de dados VIS a países terceiros e organizações internacionais,

– uma análise pormenorizada dos dados fornecidos nos relatórios anuais quanto à eficácia do acesso aos dados VIS para fins de aplicação da lei, bem como

– uma avaliação para determinar se a consulta do ECRIS-TCN pelo VIS contribuiu ou não para apoiar o objetivo de avaliar se o requerente de um visto, de um visto de longa duração ou de um título de residência poderia constituir uma ameaça para a ordem pública ou a segurança pública.

54. A posição do Conselho em primeira leitura prevê igualmente a apresentação de relatórios sobre o *ponto da situação dos preparativos para a execução da reforma do VIS*: um ano após a data de entrada em vigor do regulamento de alteração e, posteriormente, todos os anos até à entrada em funcionamento, a Comissão apresentará um relatório ao Parlamento Europeu e ao Conselho sobre o ponto da situação dos preparativos com informações detalhadas sobre os custos incorridos e informações sobre os riscos que possam ter impacto sobre os custos globais do VIS a suportar pelo orçamento geral da União. Em caso de atrasos na plena execução do regulamento, a Comissão informará o Parlamento Europeu e o Conselho o mais rapidamente possível das causas dos atrasos e do seu impacto em termos de calendário e de custos.

Alterações de outros atos jurídicos

55. A posição do Conselho em primeira leitura altera vários atos jurídicos a fim de os adaptar à reforma do VIS: o Código de Vistos[22], o Código das Fronteiras Schengen[23], o Sistema de Entrada/Saída[24], o ETIAS[25], o SIS Regresso[26], o SIS Fronteiras[27], a Interoperabilidade no domínio das fronteiras e vistos[28] e o Regulamento GEFC[29].

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22 Regulamento (CE) n.º 810/2009 do Parlamento Europeu e do Conselho, de 13 de julho de 2009, que estabelece o Código Comunitário de Vistos (Código de Vistos), JO L 243 de 15.9.2009, pp. 1-58.

23 Regulamento (UE) 2016/399 do Parlamento Europeu e do Conselho, de 9 de março de 2016, que estabelece o código da União relativo ao regime de passagem de pessoas nas fronteiras (Código das Fronteiras Schengen), JO L 77 de 23.3.2016, pp. 1-52.

24 Regulamento (UE) 2017/2226 do Parlamento Europeu e do Conselho, de 30 de novembro de 2017, que estabelece o Sistema de Entrada/Saída (SES) para registo dos dados das entradas e saídas e dos dados das recusas de entrada dos nacionais de países terceiros aquando da passagem das fronteiras externas dos Estados-Membros, que determina as condições de acesso ao SES para efeitos de aplicação da lei, e que altera a Convenção de Aplicação do Acordo de Schengen e os Regulamentos (CE) n.º 767/2008 e (UE) n.º 1077/2011, JO L 327 de 9.12.2017, pp. 20-82.

25 Regulamento (UE) 2018/1240 do Parlamento Europeu e do Conselho, de 12 de setembro de 2018, que cria um Sistema Europeu de Informação e Autorização de Viagem (ETIAS) e altera os Regulamentos (UE) n.º 1077/2011, (UE) n.º 515/2014, (UE) 2016/399, (UE) 2016/1624 e (UE) 2017/2226, JO L 236 de 19.9.2018, pp. 1-71.

26 Regulamento (UE) 2018/1860 do Parlamento Europeu e do Conselho, de 28 de novembro de 2018, relativo à utilização do Sistema de Informação de Schengen para efeitos de regresso dos nacionais de países terceiros em situação irregular, JO L 312 de 7.12.2018, pp. 1-13.

27 Regulamento (UE) 2018/1861 do Parlamento Europeu e do Conselho, de 28 de novembro de 2018, relativo ao estabelecimento, ao funcionamento e à utilização do Sistema de Informação de Schengen (SIS) no domínio dos controlos de fronteira, e que altera a Convenção de Aplicação do Acordo de Schengen e altera e revoga o Regulamento (CE) n.º 1987/2006, JO L 312 de 7.12.2018, pp. 14-55.

28 Regulamento (UE) 2019/817 do Parlamento Europeu e do Conselho, de 20 de maio de 2019, relativo à criação de um regime de interoperabilidade entre os sistemas de informação da UE no domínio das fronteiras e vistos e que altera os Regulamentos (CE) n.º 767/2008, (UE) 2016/399, (UE) 2017/2226, (UE) 2018/1240, (UE) 2018/1726 e (UE) 2018/1861 do Parlamento Europeu e do Conselho, e as Decisões 2004/512/CE e 2008/633/JAI do Conselho, JO L 135 de 22.5.2019, pp. 27-84.

29 Regulamento (UE) 2019/1896 do Parlamento Europeu e do Conselho, de 13 de novembro de 2019, relativo à Guarda Europeia de Fronteiras e Costeira, que revoga os Regulamentos (UE) n.º 1052/2013 e (UE) 2016/1624, JO L 295 de 14.11.2019, pp. 1-131.

Prazo para o início da aplicação

56. A posição do Conselho em primeira leitura reflete um dos elementos centrais da posição do Parlamento Europeu em primeira leitura, a saber, um prazo para a aplicação do VIS revisto. Enquanto a posição do Parlamento Europeu indicava que a entrada em funcionamento do VIS teria lugar dois anos após a entrada em vigor, a posição do Conselho em primeira leitura estipula que, o mais tardar em 31 de dezembro de 2023, a Comissão adotará uma decisão que estabelece a data para o início de funcionamento do VIS. Este prazo é coerente com o calendário político definitivo (final de 2023) para a aplicação dos sistemas de gestão das fronteiras e da arquitetura de interoperabilidade, da qual o VIS é uma componente.

IV. CONCLUSÃO

57. A posição do Conselho em primeira leitura reflete inteiramente o compromisso alcançado nas negociações entre o Parlamento Europeu e o Conselho, mediadas pela Comissão. O Conselho considera que a sua posição em primeira leitura representa um pacote equilibrado e que, uma vez adotado, o regulamento que altera os Regulamentos (CE) n.º 767/2008, (CE) n.º 810/2009, (UE) 2016/399, (UE) 2017/2226, (UE) 2018/1240, (UE) 2018/1860, (UE) 2018/1861, (UE) 2019/817 e (UE) 2019/1896 do Parlamento Europeu e do Conselho e que revoga as Decisões 2004/512/CE e 2008/633/JAI do Conselho, para efeitos de reforma do Sistema de Informação sobre Vistos, melhorará a gestão das fronteiras e reforçará a segurança interna do espaço Schengen.

58. Este compromisso é confirmado pela carta enviada em 1 de fevereiro de 2021 pelo presidente da Comissão LIBE ao presidente do Comité de Representantes Permanentes. Nessa carta, o presidente da Comissão LIBE anunciava a intenção de recomendar aos membros da sua comissão e, posteriormente, ao plenário, que, aquando da segunda leitura do Parlamento, aceitassem sem alterações a posição do Conselho em primeira leitura, sob reserva de verificação do texto pelos juristas-linguistas de ambas as instituições.

Conselho da
União Europeia

Bruxelas, 28 de maio de 2021
(OR. en)

5951/1/21
REV 1 ADD 1

Dossiê interinstitucional:
2018/0152/B(COD)

VISA 26
FRONT 41
MIGR 26
IXIM 38
SIRIS 14
COMIX 71
CODEC 155
PARLNAT 121

NOTA JUSTIFICATIVA DO CONSELHO

Assunto:	Posição do Conselho em primeira leitura com vista à adoção do REGULAMENTO DO PARLAMENTO EUROPEU E DO CONSELHO que altera os Regulamentos (UE) 603/2013, (UE) 2016/794, (UE) 2018/1862, (UE) 2019/816 e (UE) 2019/818, no que respeita ao estabelecimento das condições de acesso a outros sistemas de informação da UE para efeitos do Sistema de Informação sobre Vistos – Nota justificativa do Conselho – Adotada pelo Conselho em 27 de maio de 2021

I. INTRODUÇÃO

1. Após uma avaliação exaustiva do Sistema de Informação sobre Vistos (VIS), a Comissão apresentou, em 16 de maio de 2018, uma proposta legislativa para alterar o Regulamento VIS[1] (a seguir designada "Regulamento que altera o VIS").

2. Na reunião de 19 de dezembro de 2018, o Comité de Representantes Permanentes adotou um mandato para encetar negociações com o Parlamento Europeu.[2]

3. O Comité Económico e Social Europeu adotou o seu parecer em 19 de setembro de 2018[3].

4. A Autoridade Europeia para a Proteção de Dados emitiu o seu parecer em 12 de dezembro de 2018[4].

5. A pedido do Parlamento Europeu, a Agência dos Direitos Fundamentais da União Europeia emitiu um parecer em 30 de agosto de 2018[5].

6. Em 13 de março de 2019, o Parlamento Europeu adotou a sua posição em primeira leitura[6].

7. O Conselho e o Parlamento Europeu encetaram negociações em outubro de 2019 com vista a alcançar um acordo na fase da posição do Conselho em primeira leitura ("acordo em segunda leitura antecipada").

8. Durante as negociações, verificou-se que faltavam algumas disposições na proposta da Comissão – as chamadas "alterações decorrentes do VIS". Trata-se das alterações a introduzir nos atos jurídicos sobre os sistemas de informação e bases de dados da UE como consequência das consultas automáticas efetuadas pelo VIS a esses sistemas. A Comissão tinha proposto alterações decorrentes semelhantes para o ETIAS[7].

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1 8853/18.
2 15726/18.
3 CESE 2018/03954, JO C 440 de 6.12.2018, pp. 154-157.
4 Síntese do Parecer da Autoridade Europeia para a Proteção de Dados sobre a proposta de um novo regulamento relativo ao Sistema de Informação sobre Vistos, JO C 50 de 8.2.2019, pp. 4-8.
5 Parecer da Agência – 2/2018. https://fra.europa.eu/en/publication/2018/revised-visa-information-system-and-its-fundamental-rights-implications
6 T8-0174/2019, 7401/19.
7 Ver COM(2019) 3 final e COM(2019) 4 final.

9. Em virtude da geometria variável na participação dos Estados-Membros nas políticas da UE em matéria de liberdade, segurança e justiça, só foi possível, do ponto de vista jurídico, incluir no Regulamento que altera o VIS um conjunto de alterações decorrentes relativas à modificação dos instrumentos jurídicos no domínio do acervo de Schengen em matéria de fronteiras externas, sendo que outras disposições que não pertencem a esse acervo tiveram de ser inseridas num instrumento jurídico distinto, designadamente o Regulamento sobre alterações derivadas do VIS (que constitui o objeto da presente nota justificativa do Conselho).

10. Em 17 de junho de 2020, o Comité de Representantes Permanentes alterou o mandato do Conselho por forma a incluir as "alterações decorrentes do VIS"[8]. Tendo já adotado a sua posição em primeira leitura, a equipa de negociação do Parlamento Europeu indicou que definiria a sua posição sobre este novo conjunto de disposições no decurso das negociações interinstitucionais.

11. Após seis trílogos políticos e várias reuniões técnicas, as negociações foram concluídas com êxito a 8 de dezembro de 2020, tendo o Parlamento Europeu e o Conselho chegado a um compromisso sobre o texto de dois regulamentos:

– o Regulamento que altera os Regulamentos (CE) n.º 767/2008, (CE) n.º 810/2009, (UE) 2016/399, (UE) 2017/2226, (UE) 2018/1240, (UE) 2018/1860, (UE) 2018/1861, (UE) 2019/817 e (UE) 2019/1896 do Parlamento Europeu e do Conselho e que revoga as Decisões 2004/512/CE e 2008/633/JAI do Conselho, para efeitos de reforma do Sistema de Informação sobre Vistos (a seguir designado "o Regulamento que altera o VIS"), e

– o Regulamento que altera os Regulamentos (UE) 603/2013, 2016/794, 2018/1862, 2019/816 e 2019/818 no que respeita ao estabelecimento das condições de acesso a outros sistemas de informação da UE para efeitos do VIS (a seguir designado "o Regulamento sobre alterações decorrentes do VIS", objeto da presente nota justificativa do Conselho).

12. Em 22 de janeiro de 2021, o Comité de Representantes Permanentes analisou o texto de compromisso final tendo em vista um acordo.

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8 8787/20.

13. Em 27 de janeiro de 2021, a Comissão das Liberdades Civis, da Justiça e dos Assuntos Internos (Comissão LIBE) do Parlamento Europeu confirmou o acordo político e, em 1 de fevereiro, o presidente da Comissão LIBE enviou uma carta ao presidente do Comité de Representantes Permanentes a confirmar que, caso o Conselho aprovasse os dois regulamentos em primeira leitura, após revisão jurídico-linguística, o Parlamento aprovaria a posição do Conselho em segunda leitura.

14. Em 3 de fevereiro de 2021, o Comité de Representantes Permanentes confirmou o acordo político sobre o texto de compromisso dos regulamentos.

15. A Dinamarca não participa na adoção do Regulamento sobre alterações decorrentes do VIS e não fica por ele vinculada nem sujeita à sua aplicação. Uma vez que o presente regulamento, na medida em que as suas disposições digam respeito ao SIS nos termos do Regulamento (UE) 2018/1862, desenvolve o acervo de Schengen, a Dinamarca decidirá, nos termos do artigo 4.º do Protocolo acima referido e no prazo de seis meses a contar da data de decisão do Conselho relativa ao presente regulamento, se procede à sua transposição para o seu direito interno.

16. Na medida em que as suas disposições digam respeito ao SIS nos termos do Regulamento (UE) 2018/1862, a Irlanda participa no Regulamento sobre alterações decorrentes do VIS. Na medida em que as suas disposições digam respeito à Europol, ao Eurodac e ao ECRIS-TCN, a Irlanda não participa na adoção do presente regulamento e não fica por ele vinculada nem sujeita à sua aplicação.

17. No que diz respeito à Islândia, à Noruega, à Suíça e ao Listenstaine, o Regulamento sobre alterações decorrentes do VIS constitui, na medida em que as suas disposições digam respeito ao SIS nos termos do Regulamento (UE) 2018/1862, um desenvolvimento das disposições do acervo de Schengen.

II. OBJETIVO

18. O VIS – estabelecido pela Decisão 2004/512/CE do Conselho (a Decisão VIS) e pelo Regulamento (CE) n.º 767/2008 – é o sistema de informação da UE para facilitar o procedimento de vistos de curta duração ("vistos Schengen") e ajudar as autoridades responsáveis em matéria de vistos, fronteiras, asilo e migração a verificarem os nacionais de países terceiros que precisam de visto para viajar para o espaço Schengen. O VIS liga os consulados dos Estados-Membros em todo o mundo e todos os seus pontos de passagem das fronteiras externas.

19. O regulamento que altera o VIS visa continuar a desenvolver o VIS de forma a dar uma melhor resposta aos novos desafios em matéria de políticas de vistos, fronteiras e segurança.

20. O Regulamento sobre alterações decorrentes do VIS estabelece as condições em que o VIS consulta os dados armazenados no Eurodac, no SIS e no sistema ECRIS-TCN, bem como os dados da Europol, para efeitos de identificação de respostas positivas no âmbito das consultas automatizadas especificadas no Regulamento que altera o VIS.

21. As condições de acesso a outros sistemas de informação e bases de dados da UE consultados pelo VIS não constavam da proposta da Comissão, sobretudo porque a apresentação da proposta antecedeu a adoção de vários atos jurídicos sobre outros sistemas de informação e bases de dados da UE e dos regulamentos relativos à interoperabilidade.

22. A posição do Conselho em primeira leitura elimina esta lacuna e toma em conta o novo quadro legislativo para a interoperabilidade, que tem vindo a evoluir desde a apresentação da proposta.

23. Enquanto as alterações técnicas aos regulamentos que fazem parte do acervo de Schengen relacionado com as fronteiras (VIS[9], SES[10], ETIAS[11], SIS Regresso[12], SIS Fronteiras[13] e Interoperabilidade Fronteiras[14]) estão incluídas no Regulamento que altera o VIS, a alteração

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9 Regulamento (CE) n.º 767/2008 do Parlamento Europeu e do Conselho, de 9 de julho de 2008, relativo ao Sistema de Informação sobre Vistos (VIS) e ao intercâmbio de dados entre os Estados-Membros sobre os vistos de curta duração (Regulamento VIS), JO L 218 de 13.8.2008, pp. 60-81.

10 Regulamento (UE) 2017/2226 do Parlamento Europeu e do Conselho, de 30 de novembro de 2017, que estabelece o Sistema de Entrada/Saída (SES) para registo dos dados das entradas e saídas e dos dados das recusas de entrada dos nacionais de países terceiros aquando da passagem das fronteiras externas dos Estados-Membros, que determina as condições de acesso ao SES para efeitos de aplicação da lei, e que altera a Convenção de Aplicação do Acordo de Schengen e os Regulamentos (CE) n.º 767/2008 e (UE) n.º 1077/2011, JO L 327 de 9.12.2017, pp. 20-82.

11 Regulamento (UE) 2018/1240 do Parlamento Europeu e do Conselho, de 12 de setembro de 2018, que cria um Sistema Europeu de Informação e Autorização de Viagem (ETIAS) e altera os Regulamentos (UE) n.º 1077/2011, (UE) n.º 515/2014, (UE) 2016/399, (UE) 2016/1624 e (UE) 2017/2226, JO L 236 de 19.9.2018, pp. 1-71.

12 Regulamento (UE) 2018/1860 do Parlamento Europeu e do Conselho, de 28 de novembro de 2018, relativo à utilização do Sistema de Informação de Schengen para efeitos de regresso dos nacionais de países terceiros em situação irregular, JO L 312 de 7.12.2018, pp. 1-13.

13 Regulamento (UE) 2018/1861 do Parlamento Europeu e do Conselho, de 28 de novembro de 2018, relativo ao estabelecimento, ao funcionamento e à utilização do Sistema de Informação de Schengen (SIS) no domínio dos controlos de fronteira, e que altera a Convenção de Aplicação do Acordo de Schengen e altera e revoga o Regulamento (CE) n.º 1987/2006, JO L 312 de 7.12.2018, pp. 14-55.

14 Regulamento (UE) 2019/817 do Parlamento Europeu e do Conselho, de 20 de maio de 2019, relativo à criação de um regime de interoperabilidade entre os sistemas de informação da UE

aos regulamentos que não fazem parte do acervo de Schengen ou que constituem textos em matéria de cooperação policial Schengen (Eurodac[15], Regulamento Europol,[16] SIS Cooperação Policial[17], sistema ECRIS-TCN[18] e interoperabilidade em matéria de cooperação policial[19]) estão incluídos neste instrumento jurídico distinto, em virtude da geometria variável na participação dos Estados-Membros nas políticas da UE no domínio da liberdade, segurança e justiça.

24. Contudo, os dois regulamentos foram negociados como um pacote e deverão ser aplicados conjuntamente, de forma harmoniosa, para permitir um funcionamento e uma utilização abrangentes do sistema VIS.

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no domínio das fronteiras e vistos e que altera os Regulamentos (CE) n.º 767/2008, (UE) 2016/399, (UE) 2017/2226, (UE) 2018/1240, (UE) 2018/1726 e (UE) 2018/1861 do Parlamento Europeu e do Conselho, e as Decisões 2004/512/CE e 2008/633/JAI do Conselho, JO L 135 de 22.5.2019, pp. 27-84.

15 Regulamento (UE) n.º 603/2013 do Parlamento Europeu e do Conselho, de 26 de junho de 2013, relativo à criação do sistema "Eurodac" de comparação de impressões digitais para efeitos da aplicação efetiva do Regulamento (UE) n.º 604/2013, que estabelece os critérios e mecanismos de determinação do Estado-Membro responsável pela análise de um pedido de proteção internacional apresentado num dos Estados-Membros por um nacional de um país terceiro ou um apátrida, e de pedidos de comparação com os dados Eurodac apresentados pelas autoridades responsáveis dos Estados-Membros e pela Europol para fins de aplicação da lei e que altera o Regulamento (UE) n.º 1077/2011 que cria uma Agência europeia para a gestão operacional de sistemas informáticos de grande escala no espaço de liberdade, segurança e justiça, JO L 180 de 29.6.2013, pp. 1-30.

16 Regulamento (UE) 2016/794 do Parlamento Europeu e do Conselho, de 11 de maio de 2016, que cria a Agência da União Europeia para a Cooperação Policial (Europol) e que substitui e revoga as Decisões 2009/371/JAI, 2009/934/JAI, 2009/935/JAI, 2009/936/JAI e 2009/968/JAI do Conselho, JO L 135 de 24.5.2016, pp. 53-114.

17 Regulamento (UE) 2018/1862 do Parlamento Europeu e do Conselho, de 28 de novembro de 2018, relativo ao estabelecimento, ao funcionamento e à utilização do Sistema de Informação de Schengen (SIS) no domínio da cooperação policial e da cooperação judiciária em matéria penal, e que altera e revoga a Decisão 2007/533/JAI do Conselho e revoga o Regulamento (CE) n.º 1986/2006 do Parlamento Europeu e do Conselho e a Decisão 2010/261/UE da Comissão, JO L 312 de 7.12.2018, pp. 56-106.

18 Regulamento (UE) 2019/816 do Parlamento Europeu e do Conselho, de 17 de abril de 2019, que cria um sistema centralizado para a determinação dos Estados-Membros que possuem informações sobre condenações de nacionais de países terceiros e de apátridas (ECRIS-TCN) tendo em vista completar o Sistema Europeu de Informação sobre Registos Criminais e que altera o Regulamento (UE) 2018/1726, JO L 135 de 22.5.2019, pp. 1-26.

19 Regulamento (UE) 2019/818 do Parlamento Europeu e do Conselho, de 20 de maio de 2019, relativo à criação de um regime de interoperabilidade entre os sistemas de informação da UE no domínio da cooperação policial e judiciária, asilo e migração, e que altera os Regulamentos (UE) 2018/1726, (UE) 2018/1862 e (UE) 2019/816, JO L 135 de 22.5.2019, pp. 85-135.

III. ANÁLISE DA POSIÇÃO DO CONSELHO EM PRIMEIRA LEITURA

A. Considerações gerais

25. O Parlamento Europeu e o Conselho realizaram negociações tendo em vista chegar a um acordo com base numa posição do Conselho em primeira leitura, que o Parlamento Europeu pudesse aprovar sem alterações em segunda leitura. O texto da posição do Conselho em primeira leitura relativa ao Regulamento sobre alterações decorrentes do VIS reflete inteiramente o compromisso alcançado entre os dois colegisladores, assistidos pela Comissão Europeia.

B. Questões fundamentais

Alterações do Regulamento (UE) 603/2013

26. A posição do Conselho em primeira leitura altera o Regulamento Eurodac a fim de:

- conceder acesso ao Eurodac às autoridades competentes responsáveis pelos vistos para consultar dados em formato só de leitura;
- ligar o Eurodac ao portal europeu de pesquisa criado pelo artigo 6.º do Regulamento (UE) 2019/818 de modo a permitir o tratamento automatizado pelo VIS; e
- conservar um registo de cada operação de tratamento de dados realizada no Eurodac e no VIS.

Alterações do Regulamento (UE) 2016/794

27. A posição do Conselho em primeira leitura altera o Regulamento Europol a fim de:

- permitir à Europol emitir parecer na sequência de uma consulta pelo VIS no âmbito do tratamento automatizado, e
- permitir que as autoridades designadas VIS, para efeitos do Regulamento VIS, disponham de acesso indireto aos dados da Europol com base num sistema de respostas positivas/negativas.

Alterações do Regulamento (UE) 2018/1862

28. A posição do Conselho em primeira leitura altera o Regulamento SIS Cooperação Policial a fim de:

– conservar registos de cada operação de tratamento de dados realizada no SIS e no VIS;

– conceder às autoridades nacionais competentes acesso aos dados introduzidos no SIS para efeitos de verificação manual das respostas positivas desencadeadas por consultas automáticas do VIS e de avaliação para determinar se um requerente de um visto, de um visto de longa duração ou de um título de residência poderia constituir uma ameaça para a ordem pública ou a segurança pública; e

– ligar o sistema central do SIS ao portal europeu de pesquisa criado pelo artigo 6.º do Regulamento (UE) 2019/818 de modo a permitir o tratamento automatizado pelo VIS.

Alterações do Regulamento (UE) 2019/816

29. A posição do Conselho em primeira leitura altera o Regulamento ECRIS-TCN a fim de:

– incluir no registo de dados de um nacional de um país terceiro condenado uma indicação especial que assinale, para efeitos do VIS, se o nacional de um país terceiro em causa foi condenado pela prática de uma infração terrorista ou de uma infração penal grave;

– indicar que esta indicação especial será automaticamente apagada 25 anos após a sua criação, no que se refere às condenações relacionadas com infrações terroristas, e 15 anos após a sua criação, no que se refere às condenações relacionadas com outras infrações penais graves;

– disponibilizar as indicações especiais e o código do(s) Estado(s)-Membro(s) de condenação de modo a que possam ser acedidos e pesquisados pelo sistema central do VIS para efeitos de verificação quando se identificarem respostas positivas na sequência de um tratamento automatizado efetuado pelo VIS;

– em caso de resposta positiva, permitir que o sistema central ou o CIR transmita automaticamente à autoridade competente informações sobre os Estados-Membros que possuam informações sobre o registo criminal do nacional de país terceiro;

– ligar o sistema ECRIS-TCN ao portal europeu de pesquisa criado pelo artigo 6.º do Regulamento (UE) 2019/818 de modo a permitir o tratamento automatizado pelo VIS;

– conceder às autoridades designadas VIS o direito de acesso aos dados ECRIS-TCN constantes do CIR para efeitos do exercício das atribuições que lhes são conferidas pelo Regulamento VIS; e

– conservar um registo de cada operação de tratamento de dados do ECRIS-TCN realizada no CIR e no VIS.

30. O Parlamento Europeu solicitou inicialmente a inclusão de uma disposição no Regulamento ECRIS-TCN que incumbisse a Comissão de avaliar, no prazo de um ano após a entrada em funcionamento do ECRIS-TCN, se a consulta do ECRIS-TCN pelo VIS se revelava necessária para apoiar o objetivo do VIS de avaliar se um requerente de um visto, de um visto de longa duração ou de um título de residência poderia constituir uma ameaça para a ordem pública ou a segurança pública nos termos do Regulamento (CE) n.º 767/2008. A posição do Conselho em primeira leitura prevê que a avaliação para determinar se a consulta do ECRIS-TCN pelo VIS contribuiu ou não para apoiar o objetivo acima referido seja incluída no relatório que a Comissão deve apresentar três anos após a entrada em funcionamento do VIS revisto.

Alterações do Regulamento (UE) 2019/818

31. A posição do Conselho em primeira leitura altera o Regulamento Interoperabilidade (Cooperação Policial) a fim de o adaptar aos objetivos do VIS revisto.

IV. CONCLUSÃO

32. A posição do Conselho em primeira leitura reflete inteiramente o compromisso alcançado nas negociações entre o Parlamento Europeu e o Conselho, mediadas pela Comissão. O Conselho considera que a sua posição em primeira leitura representa um pacote equilibrado e que, uma vez adotado, o regulamento que altera os Regulamentos (UE) 603/2013, 2016/794, 2018/1862, 2019/816 e 2019/818 no que respeita ao estabelecimento das condições de acesso a outros sistemas de informação da UE para efeitos do VIS viabilizará a ligação do VIS aos dados de outros sistemas de informação da UE e da Europol e, ao fazê-lo, permitirá que os sistemas se complementem mutuamente de forma a melhorar a gestão das fronteiras externas, contribuindo para prevenir e combater a imigração ilegal e garantir um elevado nível de segurança no espaço de liberdade, segurança e justiça da União, incluindo a manutenção da segurança pública e da ordem pública e a garantia de segurança nos territórios dos Estados-Membros.

33. Este compromisso é confirmado pela carta enviada em 1 de fevereiro de 2021 pelo presidente da Comissão LIBE ao presidente do Comité de Representantes Permanentes. Nessa carta, o presidente da Comissão LIBE anunciava a intenção de recomendar aos membros da sua comissão e, posteriormente, ao plenário, que, aquando da segunda leitura do Parlamento, aceitassem sem alterações a posição do Conselho em primeira leitura, sob reserva de verificação do texto pelos juristas-linguistas de ambas as instituições.

Conselho da
União Europeia

Bruxelas, 19 de abril de 2021
(OR. en)

7939/21

SCH-EVAL 47
DATAPROTECT 98
ENFOPOL 131
FRONT 142
MIGR 71
SIRIS 40
VISA 76
COMIX 210

RESULTADOS DOS TRABALHOS

de:	Secretariado-Geral do Conselho
para:	Delegações
n.º doc. ant.:	7579/21 + COR 1 (et)
Assunto:	Conclusões do Conselho sobre o funcionamento do mecanismo de avaliação e de monitorização de Schengen (Regulamento (UE) n.º 1053/2013 do Conselho)

Junto se envia, à atenção das delegações, as conclusões do Conselho sobre o funcionamento do mecanismo de avaliação e de monitorização de Schengen (Regulamento (UE) n.º 1053/2013 do Conselho), aprovado por procedimento escrito em 16 de abril de 2021.

ANEXO

Conclusões do Conselho sobre o funcionamento do mecanismo de avaliação e de monitorização de Schengen (Regulamento (UE) n.º 1053/2013 do Conselho)

O CONSELHO

SALIENTANDO que o artigo 70.º do TFUE prevê a criação de um mecanismo para realizar uma avaliação objetiva e imparcial das políticas da União no âmbito do seu título V "O espaço de liberdade, segurança e justiça" e que um mecanismo sólido e eficaz de avaliação e de monitorização de Schengen é um instrumento crucial para garantir a aplicação efetiva e eficaz do acervo de Schengen, um elevado nível de confiança mútua entre os Estados-Membros no espaço de livre circulação e, por conseguinte, o bom funcionamento do espaço Schengen;

RECORDANDO o Programa de Trabalho da Comissão 2021 intitulado "Uma União vital num mundo fragilizado", em especial o ponto 2.5 "Promoção do modo de vida europeu", e o seu anexo I, ponto 34, alínea b)[1], "Alteração do Regulamento que cria o mecanismo de avaliação Schengen";

ACOLHE FAVORAVELMENTE o Relatório da Comissão ao Conselho e ao Parlamento Europeu relativo ao funcionamento do mecanismo de avaliação e de monitorização de Schengen nos termos do artigo 22.º do Regulamento (UE) n.º 1053/2013 do Conselho – Primeiro programa plurianual de avaliação (2015-2019)[2];

CONGRATULA-SE com as consultas que a Comissão está atualmente a levar a cabo no âmbito da preparação da futura "Estratégia de Schengen" e da revisão do Regulamento (UE) n.º 1053/2013 do Conselho, conforme apropriado;

SAÚDA o lançamento do Fórum Schengen, que visa a construção de um espaço Schengen mais forte e mais resiliente;

[1] Doc. 12115/20 + ADD 1
[2] Doc. 13378/20 + ADD 1

RELEMBRA a responsabilidade conjunta que incumbe à Comissão e ao Conselho no âmbito do mecanismo de avaliação e de monitorização de Schengen, reiterando que a análise pelos pares que está na base deste mecanismo deve continuar a ser um dos seus elementos fundamentais;

SUBLINHA o papel crucial desempenhado pelo Conselho e pelos Estados-Membros na adoção e aplicação das recomendações, reafirmando a necessidade de trabalhar em conjunto com a Comissão, a fim de formular recomendações mais claras, mais estratégicas e direcionadas sobre as deficiências que afetam o funcionamento do espaço Schengen;

SALIENTA que deverá haver um maior esforço para garantir a rápida correção das deficiências identificadas durante o processo de avaliação, especialmente as que constituem um risco para o funcionamento do espaço Schengen, prestando especial atenção ao respeito pelos direitos fundamentais na aplicação do acervo de Schengen, inclusive através de debates regulares ao nível político adequado;

SALIENTA a necessidade de reforçar ainda mais o mecanismo de acompanhamento, a fim de assegurar a aplicação efetiva e atempada das recomendações, nomeadamente através do reforço do papel das instâncias competentes do Conselho na monitorização do acompanhamento, incluindo a conclusão dos planos de ação, bem como, se for caso disso, noutras fases do processo;

CONVIDA o Conselho e os Estados-Membros a abordarem regularmente, ao nível político adequado, as deficiências identificadas, o seu impacto no funcionamento global do espaço Schengen sem controlos nas fronteiras internas e as medidas tomadas para as corrigir;

CONVIDA a Comissão a apresentar, na sua anunciada proposta de revisão do mecanismo de avaliação e de monitorização de Schengen, iniciativas destinadas a racionalizar e clarificar, se necessário, o processo de avaliação, no que diz respeito, entre outros aspetos, aos calendários, à harmonização e priorização das recomendações com base no seu impacto na globalidade do espaço Schengen, ao encerramento do ciclo de avaliação, à melhoria da eficiência em geral, à redução dos encargos administrativos e ao reforço do apoio aos Estados-Membros na aplicação das recomendações, inclusive através do apoio das agências da UE diretamente envolvidas na aplicação do acervo de Schengen, em especial a Frontex, dentro dos limites dos respetivos mandatos;

CONVIDA a Comissão e os Estados-Membros a assegurarem um apoio financeiro adequado no âmbito do quadro financeiro e a reforçarem a priorização das ações com vista à aplicação das recomendações;

CONVIDA a Comissão a refletir, em consulta com os Estados-Membros, sobre uma reorganização das avaliações e uma reestruturação dos relatórios com base em critérios pertinentes, no intuito de melhorar a eficiência do funcionamento do espaço Schengen na sua globalidade;

CONVIDA a Comissão e os Estados-Membros a ponderarem os meios adequados para garantir a disponibilidade de peritos altamente qualificados para as visitas no local (por exemplo, criando uma reserva de peritos qualificados, assegurando o equilíbrio geográfico das equipas de visitas no local, bem como documentos de apoio de elevada qualidade, e ministrando formação inicial e contínua adequada em todos os domínios de avaliação, em estreita cooperação com a Frontex e outras agências, serviços e organismos pertinentes);

CONVIDA a Comissão a assegurar, na sua proposta anunciada, que o mecanismo de avaliação e de monitorização de Schengen continue a ser um mecanismo flexível, adaptável à evolução das circunstâncias e ao desenvolvimento do acervo de Schengen, como, por exemplo, a implementação da nova arquitetura informática e do quadro de interoperabilidade neste domínio, e ao aumento das atividades operacionais da Frontex e de outras agências pertinentes da UE na aplicação do acervo, a fim de dar resposta aos novos desafios e de se adaptar às novas realidades;

CONVIDA a Comissão a refletir adequadamente, no quadro do mecanismo de avaliação e de monitorização de Schengen, as sinergias com a avaliação da vulnerabilidade realizada pela Frontex, que constitui, juntamente com este mecanismo, o sistema de controlo da qualidade da gestão europeia integrada das fronteiras. É necessário evitar a duplicação entre estes dois mecanismos.

2021
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B) Uma Europa segura que aposta numa abordagem preventiva |
Cooperação Policial

Council of the European Union

Brussels, 28 June 2021
(OR. en)

10084/21

Interinstitutional File: 2020/0349(COD)

LIMITE

SIRIS 74
ENFOPOL 239
COPEN 298
SCHENGEN 66
IXIM 137
CODEC 984
IA 123

'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	COM(2020) 796 final
No. prev. doc.:	5388/11/21 REV 11
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation – Mandate for negotiations with the European Parliament

I. INTRODUCTION

1. The proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation[1], was presented by the Commission on 9 December 2020. The proposal is based on Article 88 of the Treaty on the Functioning of the European Union and is subject to the ordinary legislative procedure. Upon presentation, it was accompanied by an Impact Assessment[2].

[1] 13908/20 + COR 1.
[2] 13908/20 ADD 1 + ADD 2 + ADD 3 (+ COR).

2. At the same time, the Commission presented a related proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters as regards the entry of alerts by Europol[1]. That proposal is still under negotiation and is not part of the mandate to be approved according to this note.

3. The objective of the main proposal is to strengthen the mandate of Europol in a number of areas where the Member States indicated strong operational needs – for instance to improve Europol's cooperation with private parties and with third countries, to clarify the possibility for Europol to process large and complex datasets, or to strengthen the role of Europol in the area of research and innovation. The proposal also aims at strengthening Europol's cooperation with the European Public Prosecutor's Office (EPPO), aligning Europol's data protection regime with Regulation (EU) 2018/1725, expanding the possibility for Europol to request the initiation of a criminal investigation in a Member State, and enabling Europol to make third-country data available to frontline officers through the Schengen Information System (SIS).

4. In accordance with Article 3 of Protocol (No 21) to the Treaties on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, Ireland is taking part in the adoption and application of the proposed measure. In application of Protocol (No 22) to the Treaties on the Position of Denmark, Denmark is not taking part in the adoption of the proposed measure.

5. The European Parliament (EP) appointed Mr Javier ZARZALEJOS (EPP, ES) as rapporteur. On 26 May 2021, Mr ZARZALEJOS presented his draft report to the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the EP, with a time limit for amendments until 4 June 2021.

6. The European Economic and Social Committee adopted an opinion on the proposal on 9 June 2021[2].

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1 13882/20.
2 SOC/673.

II. WORK IN THE COUNCIL

7. Given the importance of addressing urgent operational needs by an amendment to the Europol regulation, the Presidency dealt with this file as a matter of priority and invested significant resources into an intense and in-depth discussion at LEWP level. Between January and early June 2021, the different parts of the proposal have been discussed in 11 meetings of the Law Enforcement Working Party (LEWP): on 11 and 25 January, 8 and 22 February, 8 March, 12, 16 and 26 April, 7 and 18 May and 1 June 2021.

8. On 8 June 2021, the Presidency presented a progress report[1] during the Justice and Home Affairs Council, outlining the work accomplished, as well as the main parameters of the compromise solutions agreed between the Member States on each of the nine thematic blocs around which the discussions had been structured in the LEWP.

9. Since a number of issues were still outstanding at that moment, the Presidency organised another three meetings of the LEWP on 14, 21 and 24 June 2021.

10. The latest compromise text resulting from the meeting on 24 June 2021[2] was subsequently consulted with the delegations in an informal silence procedure which indicated a very broad support of a qualified majority of the Member States, on the understanding that the two changes requested in the framework of that informal silence procedure should be acceptable for the delegations and are therefore included directly in the final compromise text set out in the Annex to this note[3].

III. CONCLUSION

11. In view of the broad support to the compromise text expressed by delegations, the Presidency considers that the text constitutes a good basis for entering into negotiations with the European Parliament regarding the main proposal to amend the Europol Regulation.

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1 9158/21.
2 5388/11/21 REV 11.
3 Changes compared to 5388/11/21 REV 11 are in Article 20a and in Article 61(2).

12. The Permanent Representatives' Committee will find in the Annex to this note the full Presidency's compromise text. Changes compared to the Commission proposal are marked with **bold underlined** for additions and ~~double strikethrough~~ for deletions.

13. Against this background, the Permanent Representatives' Committee is invited to agree to mandate the Presidency to start negotiations with the European Parliament on the basis of the compromise text set out in the Annex to this note.

ANNEX

2020/0349 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation

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 88 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 European Union Agency for Law Enforcement Cooperation (Europol) was established by Regulation (EU) 2016/794 of the European Parliament and of the Council[8] to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

[8] Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

(2) Europe faces a security landscape in flux, with evolving and increasingly complex security threats. Criminals and terrorists exploit the advantages that the digital transformation and new technologies bring about, including the inter-connectivity and blurring of the boundaries between the physical and digital world. The COVID-19 crisis has added to this, as criminals have quickly seized opportunities to exploit the crisis by adapting their modes of operation or developing new criminal activities. Terrorism remains a significant threat to the freedom and way of life of the Union and its citizens.

(3) These threats spread across borders, cutting across a variety of crimes that they facilitate, and manifest themselves in poly-criminal organised crime groups that engage in a wide range of criminal activities. As action at national level alone does not suffice to address these transnational security challenges, Member States' law enforcement authorities have increasingly made use of the support and expertise that Europol offers to counter serious crime and terrorism. Since Regulation (EU) 2016/794 became applicable, the operational importance of Europol's tasks has changed substantially. The new threat environment also changes the support Member States need and expect from Europol to keep citizens safe.

(4) As Europe faces increasing threats from organised crime groups and terrorist attacks, an effective law enforcement response must include the availability of well-trained interoperable special intervention units specialised in the control of crisis situations. In the Union, the law enforcement units of the Member State cooperate on the basis of Council Decision 2008/617.[9] Europol should be able to provide support to these special intervention units~~, including~~ by providing ~~operational~~, technical and financial support.

[9] Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations (OJ L 210, 6.8.2008).

(5) In recent years large scale cyber attacks targeted public and private entities alike across many jurisdictions in the Union and beyond, affecting various sectors including transport, health and financial services. Cybercrime and cybersecurity cannot be separated in an interconnected environment. The prevention, investigation and prosecution of such activities is supported by coordination and cooperation between relevant actors, including the European Union Agency for Cybersecurity ('ENISA'), competent authorities for the security of network and information systems ('NIS authorities') as defined by Directive (EU) 2016/1148[10], law enforcement authorities and private parties. In order to ensure the effective cooperation between all relevant actors at Union and national level on cyber attacks and security threats, Europol should cooperate with the ENISA through the exchange of information and by providing analytical support.

(6) High-risk criminals play a leading role in criminal networks and pose a high risk of serious crime to the Union's internal security. To combat high-risk organised crime groups and their leading members, Europol should be able to support Member States in focusing their investigative response on identifying these persons, their criminal activities and the members of their criminal networks.

(7) The threats posed by serious crime require a coordinated, coherent, multi-disciplinary and multi-agency response. Europol should be able to facilitate and support such intelligence-led security initiatives driven by Member States to identify, prioritize and address serious crime threats, such as the European Multidisciplinary Platform Against Criminal Threats. Europol should be able to provide administrative, logistical, financial and operational support to such activities, supporting the identifi**ed**~~eation of cross-cutting~~ priorities ~~and the implementation of horizontal strategic goals~~ in countering serious crime.

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10 Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1–30).

(8) The Schengen Information System (SIS), established in the field of police cooperation and judicial cooperation in criminal matters by Regulation (EU) 2018/1862 of the European Parliament and of the Council[11][12], is an essential tool for maintaining a high level of security within the area of freedom, security and justice. Europol, as a hub for information exchange in the Union, receives and holds valuable information from third countries and international organisations on persons suspected to be involved in crimes falling within the scope of Europol's mandate. ~~Following consultation with the Member States, Europol should be able to enter data on these persons in the SIS in order to make it available directly and in real-time to SIS end-users~~ **In the framework of its mandate and its task of supporting the Member States in preventing and combating serious crime and terrorism, Europol should support the Member States in processing third-country data and data from international organisations by proposing the possible entry by Member States of a new category of information alerts in the interest of the Union into the SIS, in order to make it available to the end-users of the SIS. To that end, a periodic reporting mechanism should be put in place in order to ensure that Member States and Europol are informed on the data inserted in the SIS. The modalities for Member States' cooperation for the processing of data and the insertion of alerts into the SIS, notably as concerns the fight against terrorism, should be subject to continuous coordination amongst the Member States. Criteria on the basis of which Europol would issue proposals for the entry of alerts into the Schengen Information System should be further specified by the Management Board.**

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11 Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56–106).

12 Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56–106).

(9) Europol has an important role to play in support of the evaluation and monitoring mechanism to verify the application of the Schengen *acquis* as established by Council Regulation (EU) No 1053/2013. Given the need to reinforce the Union's internal security, Europol should contribute with its expertise, analysis, reports and other relevant information to the ~~**entire**~~ evaluation and monitoring **mechanism**~~**process, from programming to on-site visits and the follow-up. Europol should also assist in developing and updating the evaluation and monitoring tools**~~.

(10) Risk assessments are an essential element of foresight to anticipate new trends and to address new threats in serious crime and terrorism. To support the Commission and the Member States in carrying out effective risk assessments, Europol should provide threats assessment analysis based on the information it holds on criminal phenomena and trends, without prejudice to the EU law provisions on customs risk management.

(11) In order to help EU funding for security research to develop its full potential and address the needs of law enforcement, Europol should assist the Commission in identifying key research themes, drawing up and implementing the Union framework programmes for research and innovation that are relevant to Europol's objectives. When Europol assists the Commission in identifying key research themes, drawing up and implementing a Union framework programme, it should not receive funding from that programme in accordance with the conflict of interest principle. **It is therefore necessary to provide for adequate and reliable funding of the research and innovation efforts at Europol so that it can assist the Member States and the Commission in that area.**

~~(12) It is possible for the Union and the Members States to adopt restrictive measures relating to foreign direct investment on the grounds of security or public order. To that end, Regulation (EU) 2019/452 of the European Parliament and of the Council[13] establishes a framework for the screening of foreign direct investments into the Union that provides Member States and the Commission with the means to address risks to security or public order in a comprehensive manner. As part of the assessment of expected implications for security or public order, Europol should support the screening of specific cases of foreign direct investments into the Union that concern undertakings providing technologies used or being developed by Europol or by Member States for the prevention and investigation of crimes.~~

(13) Europol provides specialised expertise for countering serious crime and terrorism. Upon request by a Member State, Europol staff should be able to provide operational support to that Member State's law enforcement authorities on the ground in operations and investigations, in particular by facilitating cross-border information exchange and providing forensic and technical support in operations and investigations, including in the context of joint investigation teams. Upon request by a Member State, Europol staff should be entitled to be present when investigative measures are taken in that Member State ~~and assist in the taking of these investigative measures~~. Europol staff should not have the power to execute investigative measures.

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13 Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I , 21.3.2019, p. 1–14).

(14) ~~One of Europol's objectives is to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combatting forms of crime which affect a common interest covered by a Union policy. To strengthen that support, Europol should be able to request the competent authorities of a Member State to initiate, conduct or coordinate a criminal investigation of a crime, which affects a common interest covered by a Union policy, even where the crime concerned is not of a cross-border nature. Europol should inform Eurojust of such requests.~~

(15) Publishing the identity and certain personal data of suspects or convicted individuals, who are wanted based on a Member State's judicial decision, increases the chances of locating and arresting such individuals. To support Member States in this task, Europol should be able to publish on its website information on Europe's most wanted fugitives for criminal offences in respect of which Europol is competent, and facilitate the provision of information by the public **to the Member States** on these individuals.

(15a) When receiving personal data, Europol may be faced with three situations. First, Europol may receive personal data that falls into the categories of data subjects set out in Annex II of this Regulation. Second, Europol may receive investigative data that national authorities are authorised to process in a criminal investigation in accordance with procedural requirements and safeguards applicable under their national law, for which they request Europol's support for a specific criminal investigation, and that does not fall into the categories of data subjects set out in Annex II of this Regulation. In that case, Europol should be able to process that investigative data for as long as it supports the specific criminal investigation. Third, and without the request for support for a specific criminal investigation, Europol may receive personal data that might not fall into the categories of data subjects set out in Annex II of this Regulation. In that case, Europol should be able to verify if that personal data corresponds to one of those categories of data subjects. In all three situations, Europol may process the personal data to support Member States in countering serious crime and terrorism. Where applicable and as far as possible, Europol should make a clear distinction between the operational personal data of different categories of data subjects.

(16) **While respecting the principle of data minimisation**~~To ensure that processing of personal data by Europol is limited to the categories of data subjects whose data may be processed under this Regulation~~, Europol should be able to verify if personal data received in the context of preventing and countering crimes falling within the scope of Europol's objectives corresponds to one of th**e**~~ese~~ categories of data subjects **set out in Annex II of this Regulation**. To that end, Europol should be able to carry out a pre-analysis of personal data received with the sole purpose of determining whether such data falls into those categories of data subjects. To this end, Europol should be able to filter the data by checking it against data already held by Europol. Such pre-analysis should take place prior to Europol's data processing for cross-checking, strategic analysis, operational analysis or exchange of information. If the pre-analysis indicates that personal data does not fall into the categories of data subjects whose data may be processed under this Regulation, Europol should delete that data.

(17) Data collected in criminal investigations have been increasing in size and have become more complex. Member States submit large and complex datasets to Europol, requesting Europol's operational analysis to detect links to other crimes and criminals in other Member States and outside the Union. Member States cannot detect such cross-border links through their own analysis of the data. Europol should be able to support Member States' criminal investigations by processing large and complex datasets to detect such cross-border links where the strict requirements set out in this Regulation are fulfilled. Where necessary to support effectively a specific criminal investigation in a Member State, Europol should be able to process ~~those~~ **such investigative** data ~~sets~~ that national authorities ~~have acquired~~ **are authorised to process** in ~~the context of~~ that criminal investigation in accordance with procedural requirements and safeguards applicable under their national ~~criminal~~ law and subsequently submitted to Europol. **This should include personal data where a Member State has not been able to ascertain whether that data falls into the categories of data subjects set out in Annex II of this Regulation.** Where a Member State provides Europol with ~~an~~ investigative **data** ~~case file~~ requesting Europol's support for a specific criminal investigation, Europol should be able to process ~~all~~ **that** data ~~contained in that file~~ for as long as it supports that specific criminal investigationEuropol should also be able to process personal data that is necessary for its support to a specific criminal investigation in a Member State if that data originates from a third country, provided that the third country is subject to a Commission decision finding that the country ensures an adequate level of data protection ('adequacy decision'), or, in the absence of an adequacy decision, an international agreement concluded by the Union pursuant to Article 218 TFEU, or a cooperation agreement allowing for the exchange of personal data concluded between Europol and the third country prior to the entry into force of Regulation (EU) 2016/794, and provided that the third county acquired the data in the context of a criminal investigation in accordance with procedural requirements and safeguards applicable under its national criminal law.

(17a) Europol should also be able to process investigative data that the European Public Prosecutor's Office ('EPPO') is authorised to process in a criminal investigation in accordance with procedural requirements and safeguards applicable under Union law and national law and which was submitted by EPPO within its competences to Europol for support.

(18) To ensure that any data processing is necessary and proportionate, Member States should ensure compliance with national and Union law when they submit ~~an~~ investigative ~~case file~~ **data** to Europol. **Member States should inform Europol when their authorisation to process data in the specific criminal investigation in accordance with procedural requirements and safeguards under the applicable national law has ceased to exist.** Europol should verify whether, in order to support a specific criminal investigation, it is necessary and proportionate to process personal data that may not fall into the categories of data subjects whose data may generally be processed under Annex II of Regulation (EU) 2016/794. Europol should document that assessment. Europol should store such data with functional separation from other data and should only process it where necessary for its support to the specific criminal investigation, such as in case of a new lead.

(19) To ensure that a Member State can use Europol's analytical reports as part of judicial proceedings following a criminal investigation, Europol should be able to store the related investigative ~~case file~~ **data** upon request of that Member State for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process. Europol should store such data separately and only for as long as the judicial proceedings related to that criminal investigation are on-going in the Member State. There is a need to ensure access of competent judicial authorities as well as the rights of defence, in particular the right of suspects or accused persons or their lawyers of access to the materials of the case.

(20) Cross-border cases of serious crime or terrorism require close collaboration between the law enforcement authorities of the Member States concerned. Europol provides tools to support such cooperation in investigations, notably through the exchange of information. To further enhance such cooperation in specific investigations by way of joint operational analysis, Member States should be able to allow other Member States to access directly the information they provided to Europol, without prejudice to any restrictions they put on access to that information. Any processing of personal data by Member States in joint operational analysis should take place in accordance with the rules and safeguards set out in this Regulation.

(21) Europol provides operational support to the criminal investigations of the competent authorities of the Member States, especially by providing operational and forensic analysis. Member States should be able to make the results of these activities available to their relevant other authorities, including prosecutors and criminal courts, throughout the whole lifecycle of criminal proceedings]. To that end, Europol staff should be enabled to give evidence, which came to their knowledge in the performance of their duties or the exercise of their activities, in criminal proceedings, without prejudice to the applicable use restrictions and national criminal procedural law.

(22) Europol and the European Public Prosecutor's Office ('EPPO') established by Council Regulation (EU) 2017/1939[14], should put necessary arrangements in place to optimise their operational cooperation, taking due account of their respective tasks and mandates. Europol should work closely with the EPPO and actively support the investigations ~~and prosecutions~~ of the EPPO upon its request, including by providing analytical support and ~~exchanging~~ relevant information, as well as cooperate with it, from the moment a suspected offence is reported to the EPPO until the moment it determines whether to prosecute or otherwise dispose of the case. Europol should, without undue delay, report to the EPPO any criminal conduct in respect of which the EPPO could exercise its competence. To enhance operational cooperation between Europol and the EPPO, Europol should enable the EPPO to have access~~, on the basis of a hit/no hit system,~~ to data available at Europol, in accordance with the safeguards and data protection guarantees provided for in this Regulation, **including any restrictions indicated by the entity which provided the information to Europol**. The rules on the transmission to Union bodies set out in this Regulation should apply to Europol's cooperation with the EPPO. Europol should also be able to support criminal investigations by the EPPO by way of analysis of large and complex datasets.

[14] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1–71).

(23) Europol should cooperate closely with the European Anti-Fraud Office (OLAF) to detect fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, Europol should transmit to OLAF without delay any information in respect of which OLAF could exercise its competence. The rules on the transmission to Union bodies set out in this Regulation should apply to Europol's cooperation with OLAF.

(24) Serious crime and terrorism often have links beyond the territory of the Union. Europol can exchange personal data with third countries while safeguarding the protection of privacy and fundamental rights and freedoms of the data subjects. To reinforce cooperation with third countries in preventing and countering crimes falling within the scope of Europol's objectives, the Executive Director of Europol should be allowed to authorise **a** categor**y**~~ies~~ of transfers of personal data to third countries ~~in specific situations and~~ on a case-by-case basis, where such ~~a group of~~ transfers relate~~d~~ to ~~a~~ **the same** specific situation, **consist of the same categories of personal data and the same categories of data subjects and** are necessary and meet all the requirements of this Regulation. **This should cover situations where the transfer of personal data is necessary in order to protect the vital interests of the data subject or of another person; necessary to safeguard legitimate interests of the data subject; essential for the prevention of an immediate and serious threat to the public security of a Member State or a third country; necessary in individual cases for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal sanctions; or necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or prosecution of a specific criminal offence or the execution of a specific criminal sanction.**

(24a) Transfers not based on the abovementioned authorisation by the Executive Director, an adequacy decision, an international agreement or a cooperation agreement should be allowed only where appropriate safeguards have been provided in a legally binding instrument which ensures the protection of personal data or where Europol has assessed all the circumstances surrounding the data transfer and, on the basis of that assessment, considers that appropriate safeguards with regard to the protection of personal data exist. Such legally binding instruments could, for example, be legally binding bilateral agreements which have been concluded by the Member States and implemented in their legal order and which could be enforced by their data subjects, ensuring compliance with data protection requirements and the rights of the data subjects, including the right to obtain effective administrative or judicial redress. Europol should be able to take into account bilateral agreements concluded between Member States and third countries which allow for the exchange of personal data when carrying out the assessment of all the circumstances surrounding the data transfer. Europol should be able to also take into account the fact that the transfer of personal data will be subject to confidentiality obligations and the principle of specificity, ensuring that the data will not be processed for other purposes than for the purposes of the transfer. In addition, Europol should take into account that the personal data will not be used to request, hand down or execute a death penalty or any form of cruel and inhuman treatment. While those conditions could be considered to be appropriate safeguards allowing the transfer of data, Europol should be able to require additional safeguards.

(25) To support Member States in cooperating with private parties ~~providing cross-border services~~ where those private parties hold information relevant for preventing and combatting crime, Europol should be able to receive, and in specific circumstances, exchange personal data with private parties.

(26) Criminals increasingly use cross-border services of private parties to communicate and carry out illegal activities. Sex offenders abuse children and share pictures and videos world-wide using online platforms on the internet. Terrorists abuse cross-border services by online service providers to recruit volunteers, plan and coordinate attacks, and disseminate propaganda. Cyber criminals profit from the digitalisation of our societies using phishing and social engineering to commit other types of cybercrime such as online scams, ransomware attacks or payment fraud. As a result from the increased use of online services by criminals, private parties hold increasing amounts of personal data that may be relevant for criminal investigations.

(27) Given the borderless nature of the internet, these services can often be provided from anywhere in the world. As a result, victims, perpetrators, and the digital infrastructure in which the personal data is stored and the service provider providing the service may all be subject to different national jurisdictions, within the Union and beyond. Private parties may therefore hold data sets relevant for law enforcement which contain personal data with links to multiple jurisdictions as well as personal data which cannot easily be attributed to any specific jurisdiction. National authorities find it difficult to effectively analyse such multi-jurisdictional or non-attributable data sets through national solutions. When private parties decide to lawfully and voluntarily share the data with law enforcement authorities, they do currently not have a single point of contact with which they can share such data sets at Union-level. Moreover, private parties face difficulties when receiving multiple requests from law enforcement authorities of different countries.

(28) To ensure that private parties have a point of contact at Union level to lawfully share multi-jurisdictional data sets or data sets that could not be easily attributed so far to one or several specific jurisdictions, Europol should be able to receive personal data directly from private parties.

(29) To ensure that Member States receive quickly the relevant information necessary to initiate investigations to prevent and combat serious crime and terrorism, Europol should be able to process and analyse such data sets in order to identify the relevant Member States and forward to the national law enforcement authorities concerned the information and analysis necessary to investigate these crimes under their respective jurisdictions.

(30) To ensure that it can identify all relevant national law enforcement authorities concerned, Europol should be able to inform private parties when the information received from them is insufficient to enable Europol to identify the law enforcement authorities concerned. This would enable private parties which have shared information with Europol to decide whether it is in their interest to share additional information with Europol and whether they can lawfully do so. To this end, Europol can inform private parties of missing information, as far as this is strictly necessary for the identification of the relevant law enforcement authorities. Special safeguards should apply to such transfers in particular when the private party concerned is not established within the Union or in a third country with which Europol has a cooperation agreement allowing for the exchange of personal data, or with which the Union has concluded an international agreement pursuant to Article 218 TFEU providing for appropriate safeguards, or which is the subject of an adequacy decision by the Commission, finding that the third country in question ensures an adequate level of data protection.

(31) Member States, third countries, international organisation**s**, including the International Criminal Police Organisation (Interpol), or private parties may share multi-jurisdictional data sets or data sets that cannot be attributed to one or several specific jurisdictions with Europol, where those data sets contain links to personal data held by private parties. Where it is necessary to obtain additional information from such private parties to identify all relevant Member States concerned, Europol should be able to ask Member States, via their national units, to request private parties which are established or have a legal representative in their territory to share personal data with Europol in accordance with those Member States' applicable laws. **Member States should assess Europol's request and decide in accordance with their national laws whether or not to accede to it. Data processing by private parties should remain subject to their obligations under the applicable rules, notably with regard to data protection, when processing such requests from competent law enforcement authorities. Private parties should provide the data to the competent law enforcement authorities which have issued the request for further transmission to Europol.** In many cases, these Member States may not be able to establish a link to their jurisdiction other than the fact that the private party holding the relevant data is established under their jurisdiction. Irrespective of their jurisdiction with regard the specific criminal activity subject to the request, Member States should therefore ensure that their competent national authorities can obtain personal data from private parties for the purpose of supplying Europol with the information necessary for it to fulfil its objectives, in full compliance with procedural guarantees under their national laws.

(32) To ensure that Europol does not keep the data **received directly from private parties** longer than necessary to identify the Member States concerned, time limits for the storage of personal data by Europol should apply. Once Europol has exhausted all means at its disposal to identify all Member States concerned, and cannot reasonably expect to identify further Member States concerned, the storage of this personal data is no longer necessary and proportionate for identifying the Member States concerned. Europol should erase the personal data within four months after the last transmission **to a national unit or transfer to a contact point of a third country or an authority of a third country** has taken place, unless a national unit, contact point or authority concerned resubmits the personal data as their data to Europol within this period. If the resubmitted personal data has been part of a larger set of personal data, Europol should only keep the personal data if and in so far as it has been resubmitted by a national unit, contact point or authority concerned. **Transmissions should relate to Europol disclosing personal data to national units, private parties or other recipients established in the Union, while transfers should relate to Europol disclosing personal data to private parties, public authorities or bodies established in third countries or to international organisations, in accordance with the applicable rules.**

(33) Any cooperation of Europol with private parties should neither duplicate nor interfere with the activities of the Financial Intelligence Units ('FIUs'), and should only concern information that is not already to be provided to FIUs in accordance with Directive 2015/849 of the European Parliament and of the Council[15]. Europol should continue to cooperate with FIUs in particular via the national units.

[15] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

(34) Europol should be able to provide the necessary support for national law enforcement authorities to interact with private parties, in particular by providing the necessary infrastructure for such interaction, for example, when national authorities refer terrorist content online to online service providers or exchange information with private parties in the context of cyber attacks. **Europol should ensure by technical means that any such infrastructure is strictly limited to providing a channel for such interactions between the law enforcement authorities and a private party, and that it provides for all necessary safeguards against access by a private party to any other information in Europol's systems, which is not related to the exchange with that private party. Where Member States use the Europol infrastructure for exchanges of personal data with private parties on crimes falling within the scope of the objectives of Europol, they may grant Europol access to such exchanges. Member States may also use the Europol infrastructure for exchanges of personal data falling outside the scope of the objectives of Europol. In that case Europol should not have access to such exchanges.**

(35) Terrorist attacks trigger the large scale dissemination of terrorist content via online platforms depicting harm to life or physical integrity, or calling for imminent harm to life or physical integrity. To ensure that Member States can effectively prevent the dissemination of such content in the context of such crisis situations stemming from ongoing or recent real-world events, Europol should be able to exchange personal data with private parties, including hashes, IP addresses or URLs related to such content, necessary in order to support Member States in preventing the dissemination of such content, in particular where this content aims at or has the effect of seriously intimidating a population, and where there is an anticipated potential for exponential multiplication and virality across multiple online service providers. **Nothing in this Regulation should be understood as precluding the Member States from using removal orders as laid down in Regulation 2021/… on addressing the dissemination of terrorist content online as an instrument to address terrorist content online, or making use of the coordinative and cooperative role of Europol in ac-cordance with Art. 14 of that Regulation when member states issue such a removal order.**

(35a) In order to avoid duplication of effort and possible interferences with investigations and to minimise the burden to the hosting service providers affected, Europol should assist, exchange information and cooperate with the competent authorities with regard to transmissions and transfers of personal data to private parties to prevent the dissemination of online content related to terrorism or violent extremism.

(36) Regulation (EU) 2018/1725 of the European Parliament and of the Council[16][17] sets out rules on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies but it did not apply to Europol. To ensure uniform and consistent protection of natural persons with regard to the processing of personal data, Regulation (EU) 2018/1725 should be made applicable le to Europol in accordance with Article 2(2) of that Regulation, and should be complemented by specific provisions for the specific processing operations that Europol should perform to accomplish its tasks.

(36a) The processing of photographs should not be systematically considered as processing of special categories of personal data, since photographs are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person.

(36b) The prior consultation mechanism is an important safeguard for new types of processing operations. This should not apply to specific individual operational activities, such as operational analysis projects, but to the use of new IT systems for the processing of personal data and any substantial changes thereto that would involve a high risk to the rights and freedoms of data subjects. The time-period for provididng the written advice by the EDPS on such consultations should not be subject to suspensions. In case of processing activities of substantial significance for Europol's

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16 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

17 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

performance of tasks, which are particularly urgent, Europol may initiate processing already after the prior consultation has been launched, even if the time limit for providing written advice by the EDPS has not yet expired. Substantial significance for Europol's performance of tasks leading to such urgency may arise, among others, when processing is necessary to prevent an immediate and serious threat to the public security of a Member State or third country, to prevent an imminent danger of perpetration of a crime, including terrorism, or to protect vital interests of a person. The Data Protection officer of Europol should be involved in assessing the urgency and necessity of such processing before the time limit for the EDPS to respond to prior consultation expires. The Data Protection Officer should oversee the processing in question.

(37) Given the challenges that the use of new technologies by criminals pose to the Union's security, law enforcement authorities are required to strengthen their technological capacities. To that end, Europol should support Member States in the use of emerging technologies in preventing and countering crimes falling within the scope of Europol's objectives, **also in cooperation with relevant networks of Member States' practitioners. Europol should also work with other EU agencies in the area of justice and home affairs to drive innovation and foster synergies within their respective mandates, and support related forms of cooperation such as secretarial support to the 'EU Innovation Hub for Internal Security' as a collaborative network of innovation labs.** To explore new approaches and develop common technological solutions for Member States to prevent and counter crimes falling within the scope of Europol's objectives, Europol should be able to conduct research and innovation activities regarding matters covered by this Regulation, including with the processing of personal data where necessary and whilst ensuring full respect for fundamental rights. The provisions on the development of new tools by Europol should not constitute a legal basis for their deployment at Union or national level.

(38) Europol should play a key role in assisting Member States to develop new technological solutions based on artificial intelligence, which would benefit national law enforcement authorities throughout the Union. Europol should play a key role in promoting ethical, trustworthy and human centric artificial intelligence subject to robust safeguards in terms of security, safety and fundamental rights.

(39) Europol should inform the European Data Protection Supervisor prior to the launch of its research and innovation projects that involve the processing of personal data. **It should inform or consult its Management Board, depending on specific criteria that should be set out in relevant guidelines. Europol should not process data for research and innovation without the consent of the Member State, Union body, third country or international organisation that submitted the data to Europol, unless that Member State, Union body, third country or international organisation has granted its prior authorisation to such processing for the purpose of research and innovation.** For each project, Europol should carry out, prior to the processing, an assessment of the impact of the envisaged processing operations on the protection of personal data and all other fundamental rights, including of any bias in the outcome. This should include an assessment of the appropriateness**, necessity and proportionality** of the personal data to be processed for the specific purpose of the project**, including the requirement of data minimisation**. Such an assessment would facilitate the supervisory role of the European Data Protection Supervisor, including the exercise of its corrective powers under this Regulation which might also lead to a ban on processing. **Preference should be given to using synthetic, pseudonymized and/or anonymized personal data.** The development of new tools by Europol should be without prejudice to the legal basis, including grounds for processing the personal data concerned, that would subsequently be required for their deployment at Union or national level.

(40) Providing Europol with additional tools and capabilities requires reinforcing the democratic oversight and accountability of Europol. Joint parliamentary scrutiny constitutes an important element of political monitoring of Europol's activities. To enable effective political monitoring of the way Europol applies additional tools and capabilities, Europol should provide the Joint Parliamentary Scrutiny Group **and the Member States** with annual information on the use of these tools and capabilities and the result thereof.

(41) Europol's services provide added value to Member States and third countries. This includes Member States that do not take part in measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union. Member States and third countries may contribute to Europol's budget based on separate agreements. Europol should therefore be able to receive contributions from Member States and third countries on the basis of financial agreements within the scope of its objectives and tasks.

(42) Since the objective of this Regulation, namely to support and strengthen action by the Member States' law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, cannot be sufficiently achieved by the Member States but can rather, due to the cross-border nature of serious crime and terrorism and the need for a coordinated response to related security threats, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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 that objective.

(43) ~~[~~In accordance with Article 3 of the 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 the Treaty on the Functioning of the European Union, Ireland has notified its 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, 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 Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(45) The European Data Protection Supervisor was consulted, in accordance with Article 41(2) of Regulation (EU) 2018/1725 of the European Parliament and the Council, and has delivered an opinion on [...].

(46) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data and the right to privacy as protected by Articles 8 and 7 of the Charter, as well as by Article 16 TFEU. Given the importance of the processing of personal data for the work of law enforcement in general, and for the support provided by Europol in particular, this Regulation includes effective safeguards to ensure full compliance with fundamental rights as enshrined in the Charter of Fundamental Rights. Any processing of personal data under this Regulation is limited to what is strictly necessary and proportionate, and subject to clear conditions, strict requirements and effective supervision by the EDPS.

(47) Regulation (EU) 2016/794 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2016/794 is amended as follows:

(1) Article 2 is amended as follows:

(a) points (h) to (k) and points (m), (n) and (o) are deleted;

(b) point (p) is replaced by the following:

"(p) 'administrative personal data' means all personal data processed by Europol apart from operational **personal** data;";

(c) the following point (q) is added:

"(q) 'investigative **data** ~~case file~~' means **data** ~~a dataset or multiple datasets~~ that a Member State, the EPPO or a third country ~~acquired~~ **is authorised to process** in ~~the context of~~ an on-going criminal investigation **related to one or more Member States**, in accordance with procedural requirements and safeguards under ~~the~~ applicable **Union law or** national ~~criminal~~ law, ~~and~~ **that it** submitted to Europol in support of that criminal investigation **and that contains personal data outside the categories of data subjects listed in Annex II**"

(c bis) the following point (r) is added:

"(r) 'online crisis situation' means the dissemination of online content that is linked to or suspected as being carried out in the context of terrorism or violent extremism stemming from an ongoing or recent real- world event, which depicts harm to life or physical integrity or calls for imminent harm to life or physical integrity, and where the online content aims at or has the effect of seriously intimidating a population, and where there is an anticipated potential for exponential multiplication and virality across multiple online service providers."

(c ter) the following point (s) is added:

"(s) 'category of transfers of personal data' means a group of transfers of personal data which all relate to the same specific situation, and which consist of the same categories of personal data and the same categories of data subjects."

(2) Article 4 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (h) is replaced by the following:

"(h) support Member States' cross-border information exchange activities, operations and investigations, as well as joint investigation teams~~, and special intervention units,~~ including by providing operational, technical and financial support;

(h bis) support Member States' special intervention units as referred to in Council Decision 2008/617/JHA by providing administrative and financial support.";

(ii) point (j) is replaced by the following:

"(j) cooperate with the Union bodies established on the basis of Title V of the TFEU and with OLAF and ENISA, in particular through exchanges of information and by providing them with analytical support in the areas that fall within their competence;";

(iii) point (m) is replaced by the following:

"(m) support Member States' actions in preventing and combating forms of crime listed in Annex I which are facilitated, promoted or committed using the internet, including, in cooperation with Member States **and upon their request**, the ~~coordination of~~ **assistance to** ~~law enforcement~~ **competent** authorities' response to cyberattacks **of suspected criminal origin**, the ~~taking down of~~ **coordination of removal orders for** terrorist content online **by Member States authorities in accordance with Art. 14 of Regulation 2021/… [the TCO-Regulation]**, and the making of referrals of internet content, by which such forms of crime are facilitated, promoted or committed, to the online service providers concerned for their voluntary consideration of the compatibility of the referred internet content with their own terms and conditions;";

(iv) the following points (q) to (r) are added:

"(q) support Member States in identifying persons whose involvement in **serious** crimes falling within the scope of Europol's mandate, as listed in Annex I, constitute a high risk for security, and facilitate joint, coordinated and prioritised investigations **regarding those persons**;

(r) ~~enter data into the Schengen Information System, in accordance with Regulation (EU) 2018/1862 of the European Parliament and of the Council, following consultation with the Member States in accordance with Article 7 of this Regulation, and under authorisation by the Europol Executive Director, on the suspected involvement of a third country national in an offence in respect of which Europol is competent and of which it is aware on the basis of information received from third countries or international organisations within the meaning of Article 17(1)(b)~~ **Support Member States in processing data transmitted by third countries or international organisations to Europol on persons involved in terrorism or in serious and organised crime and propose the possible entry by the Member States, at their discretion and subject to their verification and analysis, of information alerts in the interest of the Union into the Schengen Information System, in accordance with Regulation (EU) 2018/1862 of the European Parliament and the Council. A periodic reporting mechanism shall be put in place in order to inform other Member States and Europol on the outcome of the verification and analysis and on whether or not the data has been inserted in the SIS, within a period of 12 months from the communication by Europol of its information to the Member States; The Management Board shall further specify the criteria on the basis of which Europol issues proposals for possible entry of alerts into the Schengen Information System. Member States shall inform Europol of any information alert issued and of any hit on such information alerts, and may inform, through Europol, the third country or international organisation from which the information leading to the alert originates on hits on such alerts, in accordance with the procedure set out in Regulation (EU) 2018/1862 of the European Parliament and the Council.**;

(t) proactively monitor and contribute to research and innovation activities relevant to achieve the objectives set out in Article 3, support related activities of Member States, ~~**and**~~ implement its research and innovation activities regarding matters covered by this Regulation, including **in** the development, training, testing and validation of algorithms for the development of tools, **and disseminate the results of these activities to the Member States in accordance with Article 67, and contribute to the coordination of activities of Union agencies established on the basis of Title V of the TFEU in the field of research and innovation within their mandates in close cooperation with Member States**.

(u) support, **upon their request,** Member States' actions in preventing the dissemination of online content **in an online crisis situation, in particular by providing private parties with the information necessary to identify relevant online content**. ~~**Related to terrorism or violent extremism in crisis situations, which stems from an ongoing or recent real- world event, depicts harm to life or physical integrity or calls for imminent harm to life or physical integrity, and aims at or has the effect of seriously intimidating a population, and where there is an anticipated potential for exponential multiplication and virality across multiple online service providers**~~.

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* Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).";

(b) in paragraph 2, the second sentence is replaced by the following:

"Europol shall also assist in the operational implementation of those priorities, notably in the European Multidisciplinary Platform Against Criminal Threats, including by facilitating and providing administrative, logistical, financial and operational support to Member States-led operational and strategic activities.";

(c) in paragraph 3, the following sentence is added:

"Europol shall also provide threats assessment analysis **based on the information it holds on criminal phenomena and trends to** support~~ing~~ supporting the Commission and the Member States in carrying out risk assessments.";

(d) the following paragraphs 4a and 4b are inserted:

"4a. Europol shall assist **the Member States and** the Commission in identifying key research themes~~,~~. **Europol shall assist the Commission in** drawing up and implementing the Union framework programmes for research and innovation activities that are relevant to achieve the objectives set out in Article 3. When Europol assists the Commission in identifying key research themes, drawing up and implementing a Union framework programme, the Agency shall not receive funding from that programme. **Europol may engage with relevant projects of such Union framework programmes in accordance with Article 4(1)(t).**

~~4b. Europol shall support the screening of specific cases of foreign direct investments into the Union under Regulation (EU) 2019/452 of the European Parliament and of the Council* that concern undertakings providing technologies used or being developed by Europol or by Member States for the prevention and investigation of crimes covered by Article 3 on the expected implications for security.~~

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* Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I , 21.3.2019, p. 1)."

(e) ~~in~~ paragraph 5 **is amended as follows**~~, the following sentence is added~~:

"Europol shall not apply coercive measures in carrying out its tasks. Europol staff may **provide operational support to ~~assist~~** the competent authorities of the Member States **during investigative measures**, at their request and in accordance with their national law, in **particular by facilitating cross-border information exchange, providing forensic and technical support and being present when investigative measures are taken ~~the taking of investigative measures~~**. **Europol staff shall not have the power to execute investigative measures.**"

(3) in Article 6, paragraph 1 is replaced by the following:

"1. In specific cases where Europol considers that a criminal investigation should be initiated into a crime falling within the scope of its objectives, it shall request the competent authorities of the ~~Member State or~~ Member States concerned via the national units to initiate, conduct or coordinate such a criminal investigation."

(4) In Article 7, paragraph 8 is replaced by the following:

"8. Member States shall ensure that their financial intelligence units established pursuant to Directive (EU) 2015/849 ~~2005/60/EC~~ of the European Parliament and of the Council are **entitled to reply to duly justified requests made by** Europol in accordance with Article 12 of Directive (EU) 2019/1153 of the European Parliament and the Council, in particular via their national unit **or, if provided for by the national law of that Member State, by direct contacts between the financial intelligence unit and Europol**, regarding financial information and analyses, within the limits of their mandate and competence **and subject to national procedural safeguards**.

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* Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

** Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122)."

(4 bis) In Article 16(5), a new point (o bis) is added:

"(o *bis*) informing the Management Board regarding the memoranda of understanding signed with private parties;"

(5) Article 18 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) point (d) is replaced by the following wording:

"(d) facilitating the exchange of information between Member States, Europol, other Union bodies, third countries, international organisations and private parties;"

(ii), the following points (e) and (f) are added:

"(e) research and innovation regarding matters covered by this Regulation for the development, training, testing and validation of algorithms ~~**for the development of tools**~~ **and for other research and innovation activities relevant to achieve the objectives set out in Article 3**;

(f) supporting Member States**, upon their request,** in informing the public about suspects or convicted individuals who are wanted based on a national judicial decision relating to a criminal offence in respect of which Europol is competent, and facilitate the provision of information by the public on these individuals."

(b) the following paragraph 3a is inserted:

"3a. **If necessary to reach the objectives of Europol's research and innovation projects,** ~~P~~processing of personal data for the purpose of research and innovation as referred to in point (e) of paragraph 2 shall be performed **only** by means of Europol's research and innovation projects with clearly defined objectives, duration and scope of the personal data processing involved, in respect of which the additional specific safeguards set out in Article 33a shall apply."

(c) paragraph 5 is replaced by the following:

"5. Without prejudice to Article 8(4) and Article 18a, categories of personal data and categories of data subjects whose data may be collected and processed for each purpose referred to in **points (a) to (d) and (f) of** paragraph 2 are listed in Annex II. **In accordance with Article 73 of Regulation (EU) 2018/1725, Europol shall, where applicable and as far as possible, make a clear distinction between the operational personal data of these different categories of data subjects.**"

(d) the following paragraph 5a is inserted:

"5a. Prior to the processing of data under paragraph 2 of this Article, **and where necessary for the purpose of determining whether personal data complies with the requirements of paragraph 5 of this Article,** Europol may temporarily process personal data received pursuant to Article 17(1) and (2) for ~~the~~ **that** purpose ~~of determining whether such data comply with the requirements of paragraph 5 of this Article~~, including by checking the data against all data that Europol already processes in accordance with paragraph 5.

The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the **provision and** processing of such data.

Europol may only process personal data pursuant to this paragraph for a maximum period of ~~one year~~ **18 months**, or in justified cases for a longer period with the prior authorisation of the EDPS, where necessary for the purpose of this Article. **Such personal data shall be functionally separated from other data.** Where the result of the processing indicates that personal data do not comply with the requirements of paragraph 5 of this Article, Europol shall delete that data and inform the provider of the data accordingly **where relevant**."

(e) Paragraph 6 is amended as follows:

"6. Europol may temporarily process data for the purpose of determining whether such data are relevant to its tasks and, if so, for which of the purposes referred to in paragraph 2. The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data, in particular with respect to access to and use of the data, as well as time limits for the storage and deletion of the data, which may not exceed six months, having due regard to the principles referred to in **Regulation (EU) 2018/1725**~~Article 28~~."

(6) The following Article 18a is inserted:

"Article 18a

Information processing in support of a criminal investigation

1. Where necessary for the support of a specific criminal investigation **within the scope of Europol's objectives as set out in Article 3**, Europol may process personal data outside the categories of data subjects listed in Annex II where:

(a) a Member State or the EPPO provides ~~an~~ investigative **data** ~~case file~~ to Europol pursuant to point (a) **or point (b)** of Article 17(1) for the purpose of operational analysis in support of that specific criminal investigation within the mandate of Europol pursuant to point (c) of Article 18(2), **or in exceptional and duly justified cases, upon request by ~~a~~ that Member State, for cross-checking pursuant to point (a) of Article 18(2)**; and

(b) Europol assesses that it is not possible to carry out the operational analysis **or cross-checking** ~~of the investigative case file~~ **in support of the specific criminal investigation** without processing personal data that does not comply with the requirements of Article 18(5). This assessment shall be recorded.

1a. The Member State providing the investigative data to Europol shall inform Europol when its authorisation to process that data in the specific criminal investigation in accordance with procedural requirements and safeguards under its applicable national law has ceased to exist. When the EPPO provides investigative data to Europol, the EPPO shall inform Europol when its authorisation to process that data in the specific criminal investigation in accordance with procedural requirements and safeguards under the applicable Union law and national law has ceased to exist.

2. Europol may process ~~personal data contained in an~~ investigative **data** ~~case file~~ **in accordance with Article 18(2)** for as long as it supports the on-going specific criminal investigation for which the investigative **data** ~~case file~~ was provided by a Member State or the EPPO in accordance with paragraph 1, and only for the purpose of supporting that investigation.

The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the **provision and** processing of such data.

Without prejudice to the processing of personal data under Article 18(5a), personal data outside the categories of data subjects listed in Annex II shall be functionally separated from other data and may only be ~~accessed~~ **processed** where necessary **and proportionate** for the support of the **ongoing** specific criminal investigation for which they were provided, **including for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process**.

3. Upon request of the Member State or the EPPO that provided ~~an~~ investigative **data** ~~case file~~ to Europol pursuant to paragraph 1, Europol may store that investigative **data** ~~case file~~ and the outcome of its **processing** ~~operational analysis~~ beyond the storage period set out in paragraph 2, for the sole purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process, and only for as long as the judicial proceedings ~~related to~~ **concerning** that criminal investigation are on-going in that Member State **or by the EPPO**.

That Member State **or the EPPO, or, with their agreement, another Member State in which judicial proceedings are ongoing with respect to a related criminal investigation,** may also request Europol to store the investigative ~~case file~~ **data** and the outcome of its operational analysis beyond the storage period set out in paragraph 2 for the **sole** purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process, and only for as long as judicial proceedings ~~following~~ **concerning** a related criminal investigation are on-going in **that** ~~an~~other Member State.

The Management Board, acting on a proposal from the Executive Director and after consulting the EDPS, shall further specify the conditions relating to the processing of such data. Such personal data shall be functionally separated from other data and may only be accessed where necessary for the purpose of ensuring the veracity, reliability and traceability of the criminal intelligence process.

4. Paragraphs 1 to 3 shall also apply where Europol receives personal data from a third country with which there is an agreement concluded either on the basis of Article 23 of Decision 2009/371/JHA in accordance with point (c) of Article 25(1) of this Regulation or on the basis of Article 218 TFEU in accordance with point (b) of Article 25(1) of this Regulation, ~~or~~ which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation, **or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation,** and such third country provides ~~an~~ investigative **data** ~~case file~~ to Europol for operational analysis that ~~supports~~ **contributes to** the specific criminal investigation **in one or several** ~~a~~ Member State**s** or in Member States that Europol supports. ~~**Where a third country provides an investigative case file to Europol, the EDPS shall be informed. Europol shall verify that the amount of personal data is not manifestly disproportionate in relation to the specific investigation in a Member State that Europol supports, and that there are no objective elements indicating that the case file has been obtained by the third country in manifest violation of fundamental rights**~~ **Any transfer of data shall take place in accordance with paragraphs 5, 8 and 9 of Article 23**. Where Europol~~**, or the EDPS,**~~ reaches the conclusion that there ~~are preliminary~~ **is any** indication~~s~~ that such data is disproportionate or collected in **obvious** violation of fundamental rights, Europol shall not process it. Data processed pursuant to this paragraph may only be accessed by Europol where necessary for the support of the specific criminal investigation in a Member State or in Member States. It shall be shared only within the Union.";

(6 bis) In Article 19, paragraphs 1 and 2 are amended as follows:

"1. A Member State, a Union body, a third country or an international organisation providing information to Europol shall determine the purpose or purposes for which it is to be processed, as referred to in Article 18. If it has not done so, Europol, in agreement with the provider of the information concerned, shall process the information in order to determine the relevance of such information as well as the purpose or purposes for which it is to be further processed. Europol may process information for a purpose different from that for which information has been provided only if authorised so to do by the provider of the information. **Information provided for the purposes referred to in points (a) to (d) of Article 18(2) may also be processed by Europol for the purpose of Article 18(2)(e) in accordance with the procedures laid down in Article 33a.**

2. Member States, Union bodies, third countries and international organisations may indicate, at the moment of providing information to Europol, any restriction on access thereto or the use to be made thereof, in general or specific terms, including as regards its transfer, **transmission,** erasure or destruction. Where the need for such restrictions becomes apparent after the information has been provided, they shall inform Europol accordingly. Europol shall comply with such restrictions."

(7) Article 20 is amended as follows:

(a) the following paragraph 2a is inserted:

"2a. In the framework of ~~conducting dedicated~~ operational analysis projects as referred to in Article 18(3), Member States may determine information to be made directly accessible by Europol to selected other Member States for ~~the purpose of enhanced collaboration~~ **joint operational analysis** in specific investigations, without prejudice to any restrictions of Article 19(2) **and following procedures to be set out in the guidelines referred to in Article 18(7)**.";

(b) in paragraph 3, the introductory phrase is replaced by the following:

"3. In accordance with national law, the information referred to in paragraphs 1, ~~and~~ 2 and 2a shall be accessed and further processed by Member States only for the purpose of preventing**, detecting, investigating and prosecuting** ~~and combating, and for judicial proceedings related to~~:";

~~**(c) the following paragraph 5 is added:**~~

~~**"5. When national law allows for Europol staff to provide evidence which came to their knowledge in the performance of their duties or the exercise of their activities, only Europol staff authorised by the Executive Director to do so shall be able to give such evidence in judicial proceedings in the Member States.";**~~

(8) The following Article 20a is inserted:

"Article 20a

Relations with the European Public Prosecutor's Office

1. Europol shall establish and maintain a close relationship with the European Public Prosecutor's Office (EPPO). In the framework of that relationship, Europol and the EPPO shall act within their respective mandate and competences. To that end, they shall conclude a working arrangement setting out the modalities of their cooperation.

2. **Upon request by the EPPO in accordance with Article 102 of Regulation (EU) 2017/1939,** Europol shall ~~**actively**~~ support the investigations ~~**and prosecutions**~~ of the EPPO and cooperate with it, ~~in particular through exchanges of~~ **by providing** information and ~~by providing~~ analytical support.

3. **In order to provide information to the EPPO under paragraph 2**, Europol shall take all appropriate measures to enable the EPPO to have indirect access **to data related to offences within ~~its~~ the EPPO's mandate,** ~~to information~~ provided for the purposes of points (a), (b) and (c) of Article 18(2) ~~on the basis of a hit/no hit system~~, **without prejudice to any restrictions indicated in accordance with Article 19(2) by the Member State, Union body, third country or international organisation which provided the information in question.** ~~Article 21 shall apply mutatis mutandis with the exception of its paragraph 2~~.

4. Europol shall without undue delay report to the EPPO any criminal conduct in respect of which the EPPO could exercise its competence **in accordance with Article 22, Article 25(2) and (3) of Regulation (EU) 2017/1939 and without prejudice to any restrictions indicated in accordance with Article 19(2) of this Regulation by the Member State, Union body, third country or international organisation providing the information in question. Europol shall notify the Member States concerned without delay**."

(9) In Article 21, the following paragraph 8 is added:

"8. If during information-processing activities in respect of an individual investigation or specific project Europol identifies information relevant to possible illegal activity affecting the financial interest of the Union, Europol shall on its own initiative without undue delay provide OLAF with that information **without prejudice to any restrictions indicated by the Member States in accordance with Article 19(2). Europol shall notify the Member States concerned without delay**."

(9 bis) In Article 23, paragraph 7 is replaced by the following:

"7. Onward transfers of personal data held by Europol by Member States, Union bodies, third countries**, ~~and~~** international organisations **and private parties** shall be prohibited, unless Europol has given its prior explicit authorisation."

(9 bis) The title of Section 2 is amended as follows:

TRANSMISSION, ***TRANSFER AND EXCHANGE OF PERSONAL DATA***

(10) Article 24 is replaced by the following:

"Article 24

Transmission of operational personal data to Union institutions, bodies, offices and agencies

1. Subject to any further restrictions pursuant to this Regulation, in particular pursuant to Article 19(2) and (3) and without prejudice to Article 67, Europol shall only transmit operational personal data to another Union institution, body, office or agency if the data are necessary for the legitimate performance of tasks of the other Union institution, body, office or agency.

~~**2. Where the operational personal data are transmitted following a request from another Union institution, body, office or agency, both the controller and the recipient shall bear the responsibility for the lawfulness of that transmission.**~~

Europol shall verify the competence of the other Union institution, body, office or agency . If doubts arise as to this necessity of the transmission of the personal data, Europol shall seek further information from the recipient.

The recipient Union institution, body, office or agency shall ensure that the necessity of the transmission of the operational personal data can be subsequently verified.

3. The recipient Union institution, body, office or agency shall process the operational personal data only for the purposes for which they were transmitted."

(11) Article 25 is amended as follows:

(-a) In paragraph 1, the introductory phrase and point (a) are replaced by the following:

"1. Subject to any possible restrictions pursuant to Article 19(2) or (3) and without prejudice to Article 67, Europol may transfer personal data to a~~n~~ **competent** authority of a third country or to an international organisation, insofar as such transfer is necessary for the performance of Europol's tasks, on the basis of one of the following:

(a) a decision of the Commission adopted in accordance with Article 36 of Directive (EU) 2016/680, finding that the third country or a territory or a processing sector within that third country or the international organisation in question ensures an adequate level of protection ('adequacy decision') **or in the absence of such a decision, appropriate safeguards have been provided for or exist in accordance with paragraph 4a of this Article, or in the absence of both an adequacy decision and of such appropriate safeguards, a derogation applies pursuant to paragraph 5 or 6 of this Article**;"

(-a *bis*) A new paragraph 4a. is inserted

"4a. In the absence of an adequacy decision, the Management Board may authorise Europol to transfer operational personal data to a competent authority of a third country or to an international organisation where:

(a) appropriate safeguards with regard to the protection of operational personal data are provided for in a legally binding instrument; or

(b) Europol has assessed all the circumstances surrounding the transfer of operational personal data and has concluded that appropriate safeguards exist with regard to the protection of operational personal data."

(a) In paragraph 5, the introductory phrase is replaced by the following:

"By way of derogation from paragraph 1, the Executive Director may authorise the transfer or **a** category~~ies~~ of transfers of personal data to **a competent authority of** a third country~~ies~~ or **to an** international organisation~~s~~ on a case-by-case basis if the transfer is:";

(a bis) In paragraph 5, point (b) is amended as follows:

"(b) necessary to safeguard legitimate interests of the data subject ~~**where the law of the Member State transferring the personal data so provides**~~;"

(b) **Paragraph 8 is replaced by the following**:

"8. **Europol shall inform the EDPS about categories of transfers under point (b) of paragraph 4a.** Where a transfer is based on paragraph **4a or** 5, such a transfer shall be documented and the documentation shall be made available to the EDPS on request. The documentation shall include a record of the date and time of the transfer, and information about the receiving competent authority, about the justification for the transfer and about the operational personal data transferred."

(12) Article 26 is amended as follows:

(-a) In paragraph 1, point (c) is amended as follows:

"(c) an authority of a third country or an international organisation which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation**,** ~~**or**~~ with which the Union has concluded an international agreement pursuant to Article 218 TFEU **or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation**."

(a) paragraph 2 is replaced by the following:

"2. Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 in order to identify all national units concerned, as referred to in point (a) of paragraph 1. Europol shall forward the personal data and any relevant results from the processing of that data necessary for the purpose of establishing jurisdiction immediately to the national units concerned. Europol may forward the personal data and relevant results from the processing of that data necessary for the purpose of establishing jurisdiction in accordance with Article 25 to contact points and authorities concerned as referred to in points (b) and (c) of paragraph 1. ~~Once~~ **If Europol cannot identify any national units concerned, or has already** ~~Europol has identified and~~ forwarded the relevant personal data to all the **identified** respective national units concerned**,** ~~**, or**~~ **and** it is not possible to identify further national units concerned, it shall erase the data, unless the national unit, contact point or authority concerned resubmits the personal data to Europol in accordance with Article 19(1) within four months after the transfer takes place. **Criteria as to whether the national unit of the Member State of establishment of the relevant private party constitutes a national unit concerned shall be set out in the guidelines referred to in Article 18(7).**"

(a bis) the following paragraph 2a is added:

"2a. Any cooperation of Europol with private parties shall neither duplicate nor interfere with the activities of Member States' financial intelligence units established pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council, and shall not concern information that is to be provided to financial intelligence units for the purposes of that Directive."

(b) paragraph 4 is replaced by the following:

"4. If Europol receives personal data from a private party in a third country, Europol may forward those data only to a Member State, or to a third country concerned with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded ~~or~~ which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation **or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation**. Where the conditions set out under paragraphs 5 and 6 of Article 25 are fulfilled, Europol may transfer the result of its analysis and verification of such data ~~with~~ **to** the third country concerned."

(c) paragraphs 5 and 6 are replaced by the following:

"5. Europol may transmit or transfer personal data to private parties on a case-by-case basis, where it is strictly necessary, and subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, in the following cases:

(a) the transmission or transfer is undoubtedly in the interests of the data subject, ~~and either the data subject has given his or her consent~~; or

(b) the transmission or transfer is absolutely necessary in the interests of preventing the imminent perpetration of a crime, including terrorism, for which Europol is competent; or

(c) the transmission or transfer of personal data which are publicly available is strictly necessary for the performance of the task set out in point (m) of Article 4(1) and the following conditions are met:

(i) the transmission or transfer concerns an individual and specific case;

(ii) no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transmission or transfer in the case at hand; or

(d) the transmission or transfer of personal data is strictly necessary for Europol to inform that private party that the information received is insufficient to enable Europol to identify the national units concerned, and the following conditions are met:

(i) the transmission or transfer follows a receipt of personal data directly from a private party in accordance with paragraph 2 of this Article;

(ii) the missing information, which Europol may refer to in these notifications, has a clear link with the information previously shared by that private party;

(iii) the missing information, which Europol may refer to in these notifications, is strictly limited to what is necessary for Europol to identify the national units concerned.

6. With regard to points (a), (b) and (d) of paragraph 5 of this Article, if the private party concerned is not established within the Union or in a country with which Europol has a cooperation agreement allowing for the exchange of personal data, with which the Union has concluded an international agreement pursuant to Article 218 TFEU, ~~or~~ which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation **or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation**, the transfer shall only be authorised by the Executive Director if the transfer is:

(a) necessary in order to protect the vital interests of the data subject or another person; or

(b) necessary in order to safeguard legitimate interests of the data subject; or

(c) essential for the prevention of an immediate and serious threat to public security of a Member State or a third country; or

(d) necessary in individual cases for the purposes of the prevention, investigation, detection or prosecution of criminal offences for which Europol is competent; or

(e) necessary in individual cases for the establishment, exercise or defence of legal claims relating to the prevention, investigation, detection or prosecution of a specific criminal offence for which Europol is competent.

Personal data shall not be transferred if the Executive Director determines that fundamental rights and freedoms of the data subject concerned override the public interest in the transfer referred to in points (d) and (e).

Transfers shall not be systematic, massive or structural."

(d) the following paragraphs 6a and 6b are inserted:

"6a. Europol may request Member States, via their national units, to obtain personal data from private parties, which are established or have a legal representative in their territory, ~~under their applicable laws~~ **subject to their national laws**, for the purpose of sharing it with Europol, on the condition that the requested personal data is strictly limited to what is necessary for Europol with a view to identifying the national units concerned.

Irrespective of their jurisdiction over the specific crime in relation to which Europol seeks to identify the national units concerned, Member States shall ensure that their competent national authorities can lawfully process such requests in accordance with their national laws for the purpose of supplying Europol with the information necessary for it to fulfil its objectives.

6b. Europol's infrastructure may be used for exchanges between the competent authorities of Member States and private parties in accordance with the respective Member States' national laws, **and those exchanges may also cover crimes falling outside the scope of the objectives of Europol**. **In cases where Member States use this infrastructure for exchanges of personal data on crimes falling within the scope of Europols objectives, they may grant Europol access to such data.** In cases where Member States use this infrastructure for exchanges of personal data on crimes falling outside the scope of the objectives of Europol, Europol shall not have access to that data."

(e) paragraphs 9 and 10 are deleted;

(d) a new paragraph 11 is inserted:

"11. Europol shall draw up an annual report to the Management Board on the personal data exchanged with private parties pursuant Articles 26 and 26a on the basis of quantitative and qualitative evaluation criteria defined by the Management Board, including specific examples of cases demonstrating why these requests were necessary for Europol to fulfil its objectives and tasks. The report shall take into account the obligations of discretion and confidentiality and the examples shall be anonymized insofar as personal data is concerned. The annual report shall be sent to the European Parliament, the Council, the Commission and national parliaments."

(13) the following Article 26a is inserted:

"Article 26a

Exchanges of personal data with private parties in online crisis situations

1. Europol may receive personal data directly from private parties and process those personal data in accordance with Article 18 to prevent the dissemination of online content related to terrorism or violent extremism in **online** crisis situations as set out in point (u) of Article 4(1).

2. If Europol receives personal data from a private party in a third country, Europol may forward those data only to a Member State, or to a third country concerned with which an agreement on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU has been concluded**,** ~~**or**~~ which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation **or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation**. Where the conditions set out under paragraphs 5 and 6 of Article 25 are fulfilled, Europol may transfer the result of its analysis and verification of such data ~~**with**~~ **to** the third country concerned.

3. Europol may transmit or transfer personal data to private parties, on a case-by-case basis, subject to any possible restrictions stipulated pursuant to Article 19(2) or (3) and without prejudice to Article 67, where the transmission or transfer of such data is strictly necessary for preventing the dissemination of online content related to terrorism or violent extremism as set out in point (u) of Article 4(1), and no fundamental rights and freedoms of the data subjects concerned override the public interest necessitating the transmission or transfer in the case at hand.

4. If the private party concerned is not established within the Union or in a country with which Europol has a cooperation agreement allowing for the exchange of personal data, with which the Union has concluded an international agreement pursuant to Article 218 TFEU**,** ~~or~~ which is the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation **or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation**, the transfer shall be authorised by the Executive Director.

4a. Europol shall assist, exchange information and cooperate with the competent authorities with regard to the transmission or transfer of personal data to private parties under paragraphs 3 or 4 of this Article, in particular to avoid duplication of effort, enhance coordination and avoid interference with investigations in different Member States.

5. Europol may request Member States, via their national units, to obtain personal data from private parties, which are established or have a legal representative in their territory, under their ~~applicable~~ **national** laws, for the purpose of sharing it with Europol, on the condition that the requested personal data is strictly limited to what is necessary for Europol for preventing the dissemination of online content related to terrorism or violent extremism as set out in point (u) of Article 4(1). Irrespective of their jurisdiction with regard to the dissemination of the content in relation to which Europol requests the personal data, Member States shall ensure that the competent national authorities can lawfully process such requests in accordance with their national laws for the purpose of supplying Europol with the information necessary for it to fulfil its objectives.

6. Europol shall ensure that detailed records of all transfers of personal data and the grounds for such transfers are recorded in accordance with this Regulation and communicated upon request to the EDPS pursuant to Article 40.

7. If the personal data received or to be transferred affect the interests of a Member State, Europol shall immediately inform the national unit of the Member State concerned."

(13 bis) In Article 27, paragraphs 1 and 2 are amended as follows:

"1. Insofar as is necessary in order for Europol to perform its tasks, Europol may receive and process information originating from private persons. Personal data originating from private persons may only be processed by Europol on condition that they are received via:

(a) a national unit in accordance with national law;

(b) the contact point of a third country or an international organisation with which Europol has concluded, before 1 May 2017, a cooperation agreement allowing for the exchange of personal data in accordance with Article 23 of Decision 2009/371/JHA; or

(c) an authority of a third country or an international organisation which is the subject of an adequacy decision as referred to in point (a) of Article 25(1)**,** ~~or~~ with which the Union has concluded an international agreement pursuant to Article 218 TFEU **or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation**.

2. If Europol receives information, including personal data, from a private person residing in a third country with which there is no international agreement concluded either on the basis of Article 23 of Decision 2009/371/JHA or on the basis of Article 218 TFEU, ~~or~~ which is not the subject of an adequacy decision as referred to in point (a) of Article 25(1) of this Regulation **or in the case of which appropriate safeguards with regard to the protection of operational personal data exist or are provided for in a legally binding instrument in accordance with Article 25(4a) of this Regulation**, Europol may only forward that information to a Member State or to a third country concerned with which such an international agreement has been concluded."

(13 ter)The title of Chapter VI is amended as follows:

DATA PROTECTION ~~SAFEGUARDS~~

(14) the following Article 27a is inserted:

"Article 27a

Processing of personal data by Europol

1. This Regulation, Article 3 and Chapter IX of Regulation (EU) 2018/1725 of the European Parliament and of the Council* shall apply to the processing of operational personal data by Europol.

Regulation (EU) 2018/1725, with the exception of its Chapter IX, shall apply to the processing of administrative personal data by Europol.

2. References to 'applicable data protection rules' in this Regulation shall be understood as references to the provisions on data protection set out in this Regulation and in Regulation (EU) 2018/1725.

3. References to 'personal data' in this Regulation shall be understood as references to 'operational personal data', unless indicated otherwise.

4. **The Management Board shall adopt rules to** ~~Europol shall~~ determine the time limits for the storage of administrative personal data ~~in its rules of procedure~~.

_____

* Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39)."

(15) Article 28 is deleted;

(16) Article 30 is amended as follows:

(a) in paragraph 2, the first sentence is replaced by the following:

"2. Processing of personal data, by automated or other means, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership and processing of genetic data and biometric data for the purpose of uniquely identifying a natural person or data concerning a person's health or sex life or sexual orientation shall be allowed only where strictly necessary and proportionate for preventing or combating crime that falls within Europol's objectives and if those data**, except biometric data,** supplement other personal data processed by Europol.";

(b) ~~in~~ paragraph 3~~, the first sentence~~ is replaced by the following:

"Only Europol shall have direct access to personal data as referred to in paragraphs 1 and 2, except **where necessary** for the cases outlined in Article **20(1) and** 20(2a), **or for a research and innovation project involving specifically authorised staff of Member States' competent authorities and Union agencies established on the basis of Title V of the TFEU in accordance with Article 33a(1)(c).** The Executive Director shall duly authorise a limited number of Europol officials**, and where relevant also Member State officials,** to have such access if it is necessary for the performance of their tasks"

(c) paragraph 4 is deleted;

(d) paragraph 5 is replaced by the following:

"5. Personal data as referred to in paragraphs 1 and 2 shall not be transmitted to Member States, Union bodies, or transferred to third countries and international organisations unless such transmission or transfer is strictly necessary and proportionate in individual cases concerning crimes that falls within Europol's objectives and in accordance with Chapter V.";

(17) Article 32 is replaced by the following:

"Article 32

Security of processing

Europol and Member States shall establish mechanisms to ensure that security measures referred to in Article 91 of Regulation (EU) 2018/1725 **regarding Europol and in Article 29 of Directive (EU) 2016/680 regarding the Member States** are addressed across information system boundaries.";

(18) Article 33 is deleted;

(19) the following Article 33a is inserted:

"Article 33a

Processing of personal data for research and innovation

1. For the processing of personal data performed by means of Europol's research and innovation projects as referred to in point (e) of Article 18(2), the following additional safeguards shall apply:

(a) any project shall be subject to prior authorisation by the Executive Director, based on a description of the envisaged processing activity setting out the necessity to process personal data, such as for exploring and testing innovative ~~new~~ **technological** solutions and ensuring accuracy of the project results, a description of the personal data to be processed, a description of the retention period and conditions for access to the personal data, a data protection impact assessment of the risks to all rights and freedoms of data subjects, including of any bias in the outcome, and the measures envisaged to address those risks;

(b) (b) ~~the Management Board and~~ the EDPS shall be informed prior to the launch of the project; **the Management Board shall be either consulted or informed prior to the launch of the project, in accordance with criteria laid down in the guidelines referred to in article 18(7);** (c) any personal data to be processed in the context of the project shall be temporarily copied to a separate, isolated and protected data processing environment within Europol for the sole purpose of carrying out that project and only **specifically** authorised staff of Europol **and, subject to technical security measures, specifically authorised staff of Member States' competent authorities and Union agencies established on the basis of Title V of the TFEU,** shall have access to that data;

(c) (d) any personal data processed in the context of the project shall not be transmitted, transferred or otherwise accessed by other parties;

(d) (e) any processing of personal data in the context of the project shall not lead to measures or decisions affecting the data subjects;

(e) (f) any personal data processed in the context of the project shall be ~~**deleted**~~ **erased** once the project is concluded or the personal data has reached the end of its retention period in accordance with Article 31;

(f) (g) the logs of the processing of personal data in the context of the project shall be kept for the duration of the project and ~~**1**~~**2** year**s** after the project is concluded, solely for the purpose of and only as long as necessary for verifying the accuracy of the outcome of the data processing.

~~**2. Preference should be given to using synthetic, pseudonymized and/or anonymized personal data.**~~

3. Europol shall keep a complete and detailed description of the process and rationale behind the training, testing and validation of algorithms to ensure transparency and for verification of the accuracy of the results.";

4. If the data to be processed for a research and innovation project have been provided by a Member State, a Union body, a third country or an international organisation, Europol shall seek consent from that Member State, Union body, third country or international organisation, unless the Member State, Union body, third country or international organisation has granted its prior authorisation to such processing for the purpose of Article 18(2)(e), either in general terms or subject to specific conditions. Such consent may be withdrawn at any time.

(20) Article 34 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. In the event of a personal data breach, Europol shall without undue delay notify the competent authorities of the Member States concerned, of that breach, in accordance with the conditions laid down in Article 7(5), as well as the provider of the data concerned unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons.";

(b) paragraph 3 is deleted;

(21) Article 35 is amended as follows:

(a) paragraphs 1 and 2 are deleted;

(b) in paragraph 3, the first sentence is replaced by the following:

“Without prejudice to Article 93 of Regulation 2018/1725, if Europol does not have the contact details of the data subject concerned, it shall request the provider of the data to communicate the personal data breach to the data subject concerned and to inform Europol about the decision taken.“;

(b) paragraphs 4 and 5 are deleted.”;

(22) Article 36 is amended as follows:

(a) paragraphs 1 and 2 are deleted;

(b) paragraph 3 is replaced by the following:

“3. Any data subject wishing to exercise the right of access referred to in Article 80 of Regulation (EU) 2018/1725 to personal data that relate to the data subject may make a request to that effect~~,~~ **~~without incurring excessive costs,~~** to the authority appointed for that purpose in the Member State of his or her choice, or to Europol. Where the request is made to the Member State authority, that authority shall refer the request to Europol without delay, and in any case within one month of receipt.”;

(c) paragraphs 6 and 7 are deleted(1)

(23) Article 37 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. Any data subject wishing to exercise the right to rectification or erasure of personal data or of restriction of processing referred to in Article 82 of Regulation (EU) 2018/1725 of personal data that relate to him or her may make a request to that effect, through the authority appointed for that purpose in the Member State of his or her choice, or to Europol. Where the request is made to the Member State authority, that authority shall refer the request to Europol without delay and in any case within one month of receipt.”;

(b) paragraph 2 is deleted;

(c) in paragraph 3, the first sentence is replaced by the following:

“Without prejudice to Article 82(3) of Regulation 2018/1725, Europol shall restrict rather than erase personal data ~~**as referred to in paragraph 2**~~ if there are reasonable grounds to believe that erasure could affect the legitimate interests of the data subject.”;

(c bis) paragraphs 4 and 5are amended as follows:

"4. If personal data as referred to in paragraphs 1~~**,2**~~ and 3 held by Europol have been provided to it by third countries, international organisations or Union bodies, have been directly provided by private parties or have been retrieved by Europol from publicly available sources or result from Europol's own analyses, Europol shall rectify, erase or restrict such data and, where appropriate, inform the providers of the data.

5. If personal data as referred to in paragraphs 1~~**,2**~~ and 3 held by Europol have been provided to Europol by Member States, the Member States concerned shall rectify, erase or restrict such data in collaboration with Europol, within their respective competences."

(d) paragraphs 8 and 9 are deleted.”;

(24) the following Article 37a is inserted:

"*Article 37a*

Right to restriction of processing

Where the processing of personal data has been restricted under Article 82(3) of Regulation (EU) 2018/1725, such personal data shall only be processed for the protection of the rights of the data subject or **when it is necessary to protect the vital interest of** another ~~natural or legal~~ person or for the purposes laid down in Article 82(3) of that Regulation.";

(25) Article 38 is amended as follows:

(-a) the first phrase in paragraph 2 is amended as follows:

"2. The responsibility for the quality of personal data ~~**as referred to in point (d) of Article 28(1)**~~ shall lie with:"

(a) paragraph 4 is replaced by the following:

"4. Responsibility for compliance with Regulation (EU) 2018/1725 in relation to administrative personal data and for compliance with this Regulation and with Article 3 and Chapter IX of Regulation (EU) 2018/1725 in relation to operational personal data shall lie with Europol.";

(b) in paragraph 7 the third sentence is replaced by the following:

"The security of such exchanges shall be ensured in accordance with Article 91 of Regulation (EU) 2018/1725";

(26) Article 39 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Without prejudice to Article 90 of Regulation (EU) 2018/1725, **prior consultation shall not apply to specific individual operational activities.** ~~any new type of processing operations to be carried out shall be subject to prior consultation of the EDPS where special categories of data as referred to in Article 30(2) of this Regulation are to be processed.~~";

(b) paragraphs 2 and 3 are **replaced by the following** ~~deleted~~;

"2. Europol may initiate processing operations which are subject to prior consultation pursuant to Article 90(1) of Regulation (EU) 2018/1725 unless the EDPS has provided reasoned written advice pursuant to Article 90(4) of Regulation (EU) 2018/1725 within the time periods stipulated therein.

3. If the envisaged processing has substantial significance for Europol's performance of tasks and is particularly urgent, Europol may initiate processing after the consultation has started but before the time period stipulated in Article 90(4) of Regulation (EU) 2018/1725 has expired. In this case, Europol shall inform the EDPS prior to the start of processing activities. Written advice of the EDPS pursuant to Article 90(4) of Regulation (EU) 2018/1725 shall be taken into account in retrospect, and the way the processing is carried out shall be adjusted where applicable. The Data Protection officer of Europol shall be involved in assessing the urgency of such processing before the time limit for the EDPS to respond to prior consultation expires. The Data Protection Officer should oversee the processing in question."

(27) The following Article 39a in inserted:

"*Article 39a*

Records of categories of processing activities

1. Europol shall maintain a record of all categories of processing activities under its responsibility. That record shall contain the following information:

(a) Europol's contact details and the name and the contact details of its Data Protection Officer;

(b) the purposes of the processing;

(c) the description of the categories of data subjects and of the categories of operational personal data;

(d) the categories of recipients to whom the operational personal data have been or will be disclosed including recipients in third countries or international organisations;

(e) where applicable, transfers of operational personal data to a third country, an international organisation, or private party including the identification of that third country, international organisation or private party;

(f) where possible, the envisaged time limits for erasure of the different categories of data;

(g) where possible, a general description of the technical and organisational security measures referred to in Article 91 of Regulation (EU) 2018/1725~~.~~**;**

(h) where applicable, the use of profiling.

2. The records referred to in paragraph 1 shall be in writing, including in electronic form.

3. Europol shall make the records referred to in paragraph 1 available to the EDPS on request.";

(28) Article 40 is amended as follows:

(a) the title is replaced by the following:

"Logging"

(b) paragraph 1 is replaced by the following:

"1. In line with Article 88 of Regulation (EU) 2018/1725, Europol shall keep logs of its processing operations. There shall be no possibility of modifying the logs.";

(c) in paragraph 2, the first sentence is replaced by the following:

"Without prejudice to Article 88 of Regulation (EU) 2018/1725, the logs prepared pursuant to paragraph 1, if required for a specific investigation related to compliance with data protection rules, shall be communicated to the national unit concerned.";

(29) Article 41 is replaced by the following:

"Article 41

Designation of the Data Protection Officer

1. The Management Board shall appoint a Data Protection Officer, who shall be a member of the staff specifically appointed for this purpose. In the performance of his or her duties, he or she shall act independently and may not receive any instructions.

2. The Data Protection Officer shall be selected on the basis of his or her personal and professional qualities and, in particular, the expert knowledge of data protection **law** and practices and the ability to fulfil his or her tasks under this Regulation **and Regulation (EU) 2018/1725**.

3. The selection of the Data Protection Officer shall not be liable to result in a conflict of interests between his or her duty as Data Protection Officer and any other official duties he or she may have, in particular in relation to the application of this Regulation.

4. The Data Protection Officer shall be designated for a term of four years and shall be eligible for reappointment. The Data Protection Officer may be dismissed from his or her post by the ~~Executive~~ **Management** Board only with the agreement of the EDPS, if he or she no longer fulfils the conditions required for the performance of his or her duties

5. After his or her designation, the Data Protection Officer shall be registered with the European Data Protection Supervisor by the Management Board

6. Europol shall publish the contact details of the Data Protection Officer and communicate them to the EDPS.";

(30) the following Articles 41a and 41b are inserted:

"Article 41a

Position of the Data Protection Officer

1. Europol shall ensure that the Data Protection Officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data.

2. Europol shall support the Data Protection Officer in performing the tasks referred to in Article 41c by providing the resources and staff necessary to carry out those tasks and by providing access to personal data and processing operations, and to maintain his or her expert knowledge. The related staff may be supplemented by an assistant DPO in the area of operational and administrative processing of personal data.

3. Europol shall ensure that the Data Protection Officer does not receive any instructions regarding the exercise of those tasks. The Data Protection Officer shall report directly to the Management Board. The Data Protection Officer shall not be dismissed or penalised by the Management Board for performing his or her tasks.

4. Data subjects may contact the Data Protection Officer with regard to all issues related to processing of their personal data and to the exercise of their rights under this Regulation and under Regulation (EU) 2018/1725. No one shall suffer prejudice on account of a matter brought to the attention of the Data Protection Officer alleging that a breach of this Regulation or Regulation (EU) 2018/1725 has taken place.

5. The Management Board shall adopt further implementing rules concerning the Data Protection Officer. Those implementing rules shall in particular concern the selection procedure for the position of the Data Protection Officer, his or her dismissal, tasks, duties and powers, and safeguards for the independence of the Data Protection Officer.

6. The Data Protection Officer and his or her staff shall be bound by the obligation of confidentiality in accordance with Article 67(1).

Article 41b

Tasks of the Data Protection Officer

1. The Data Protection Officer shall, in particular, have the following tasks with regard to processing of personal data:

(a) ensuring in an independent manner the compliance of Europol with the data protection provisions of this Regulation and Regulation (EU) 2018/1725 and with the relevant data protection provisions in Europol's **internal** rules ~~of procedure~~; this includes monitoring compliance with this Regulation, with Regulation (EU) 2018/1725, with other Union or national data protection provisions and with the policies of Europol in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and related audits.;

b) informing and advising Europol and staff who process personal data of their obligations pursuant to this Regulation, to Regulation (EU) 2018/1725 and to other Union or national data protection provisions;

c) providing advice where requested as regards the data protection impact assessment and monitoring its performance pursuant to Article 89 of Regulation (EU) 2018/1725;

d) keeping a register of personal data breaches and providing advice where requested as regards the necessity of a notification or communication of a personal data breach pursuant to Articles 92 and 93 of Regulation (EU) 2018/1725;

(e) ensuring that a record of the transfer and receipt of personal data is kept in accordance with this Regulation;

(f) ensuring that data subjects are informed of their rights under this Regulation and Regulation (EU) 2018/1725 at their request;

(g) cooperating with Europol staff responsible for procedures, training and advice on data processing;

(h) cooperating with the EDPS;

(i) cooperating with the national competent authorities, in particular with the appointed Data Protection Officers of the competent authorities of the Members States and national supervisory authorities regarding data protection matters in the law enforcement area;

(j) acting as the contact point for the European Data Protection Supervisor on issues relating to processing, including the prior consultation under Articles 39 and 90 of Regulation (EU) 2018/1725, and consulting, where appropriate, with regard to any other matter;

(k) preparing an annual report and communicating that report to the Management Board and to the EDPS;

2. The Data Protection Officer shall carry out the functions provided for by Regulation (EU) 2018/1725 with regard to administrative personal data.

3. In the performance of his or her tasks, the Data Protection Officer and the staff members of Europol assisting the Data Protection Officer in the performance of his or her duties shall have access to all the data processed by Europol and to all Europol premises.

4. If the Data Protection Officer considers that the provisions of this Regulation, of Regulation (EU) 2018/1725 related to the processing of administrative personal data or the provisions of this Regulation or of Article 3 and of Chapter IX of Regulation (EU) 2018/1725 concerning the processing of operational personal data have not been complied with, he or she shall inform the Executive Director and shall require him or her to resolve the non-compliance within a specified time.

If the Executive Director does not resolve the non-compliance of the processing within the time specified, the Data Protection Officer shall inform the Management Board. The Management Board shall reply within a specified time limit agreed with the Data Protection Officer. If the Management Board does not resolve the non-compliance within the time specified, the Data Protection Officer shall refer the matter to the EDPS.";

(31) In Article 42, paragraphs 1 and 2 are replaced by the following:

"1. For the purpose of exercising their supervisory function the national supervisory authority **referred to in Article 41 of Directive (EU) 2016/680** shall have access, at the national unit or at the liaison officers' premises, to data submitted by its Member State to Europol in accordance with the relevant national procedures and to logs as referred to in Article 40.

2. National supervisory authorities shall have access to the offices and documents of their respective liaison officers at Europol.";".

(32) Article 43 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

“The EDPS shall be responsible for monitoring and ensuring the application of the provisions of this Regulation and Regulation (EU) 2018/1725 relating to the protection of fundamental rights and freedoms of natural persons with regard to the processing of personal data by Europol, and for advising Europol and data subjects on all matters concerning the processing of personal data.”;

(b) paragraph 5 is replaced by the following:

“5. The EDPS shall draw up an annual report on his or her supervisory activities in relation to Europol. That report shall be part of the annual report of the EDPS referred to in Article 60 of Regulation (EU) 2018/1725. The national supervisory authorities shall be invited to make observations on this report before it becomes part of the annual report. The EDPS shall take utmost account of the observations made by national supervisory authorities and, in any case, shall refer to them in the annual report.

The report shall include statistical information regarding complaints, inquiries, and investigations, as well as regarding transfers of personal data to third countries and international organisations, cases of prior consultation, and the use of the powers laid down in paragraph 3.”;

(33) in Article 44, paragraph 2 is replaced by the following:

“2. In the cases referred to in paragraph 1, coordinated supervision shall be ensured in accordance with Article 62 of Regulation (EU) 2018/1725. The EDPS shall use the expertise and experience of the national supervisory authorities in carrying out his or her duties as set out in Article 43(2). In carrying out joint inspections together with the EDPS, members and staff of national supervisory authorities shall, taking due account of the principles of subsidiarity and proportionality, have powers equivalent to those laid down in Article 43(4) and be bound by an obligation equivalent to that laid down in Article 43(6).”;

(33 bis): in Article 44, paragraph 4 is replaced by the following:

"4. In cases relating to data originating from one or more Member States, including the cases referred to in Article 47(2), the EDPS shall consult the national supervisory authorities concerned. The EDPS shall not decide on further action to be taken before those national supervisory authorities have informed the EDPS of their position, within a deadline specified by him or her which shall not be shorter than one month and not longer than three months. The EDPS shall take the utmost account of the respective positions of the national supervisory authorities concerned. In cases where the EDPS intends not to follow the position of a national supervisory authority, he or she shall inform that authority, provide a justification and submit the matter ~~for discussion~~ to the **European Data Protection Board** ~~Cooperation Board established by Article 45(1)~~."

(34) Articles 45 and 46 are deleted;

(35) Article 47 is amended as follows:

(a) paragraph 1 is replaced by the following:

" 1. Any data subject shall have the right to lodge a complaint with the EDPS if he or she considers that the processing by Europol of personal data relating to him or her does not comply with this Regulation or Regulation (EU) 2018/ 1725.";[*we have to replace the whole paragraph]*["1. or Regulation (EU) 2018/ 1725."

(b) in paragraph 2, the first sentence is replaced by the following:

"Where a complaint relates to a decision as referred to in Article 36, 37 or 37a of this Regulation or Article 80, 81 or 82 of Regulation (EU) 2018/1725, the EDPS shall consult the national supervisory authorities of the Member State that provided the data or of the Member State directly concerned.";";

(c) the following paragraph 5 is added:

"5. The EDPS shall inform the data subject of the progress and outcome of the complaint, as well as the possibility of a judicial remedy pursuant to Article 48.";

(36) Article 50 is amended as follows:

(a) the title is replaced by:

"Right to compensation";

(b) paragraph 1 is deleted;

(c) paragraph 2 is replaced by the following:

"2. Any dispute between Europol and Member States over the ultimate responsibility for compensation awarded to a person who has suffered material or non-material damage in accordance with Article 65 of Regulation (EU) 2018/1725 and national laws transposing Article 56 of Directive (EU) 2016/680 shall be referred to the Management Board, which shall decide by a majority of two-thirds of its members, without prejudice to the right to challenge that decision in accordance with Article 263 TFEU.";."

(37) Article 51 is amended as follows:

(a) in paragraph 3, the following points (f) to (i) are are added:

"(f) annual information **pursuant to Article 26(11)**~~about the number of cases in which Europol issued follow-up requests to private parties or own-initiative requests to Member States of establishment for the transmission of personal data in accordance with~~ **on the personal data exchanged with private parties pursuant to** Article 26 **and Article 26a**, including specific examples of cases demonstrating why these requests were necessary for Europol to fulfil its objectives and tasks; **examples shall be anonymized insofar as personal data is concerned;**

(g) annual information about the number of cases where it was necessary for Europol to process personal data outside the categories of data subjects listed in Annex II in order to support Member States in a specific criminal investigation in accordance with Article 18a, including examples of such cases demonstrating why this data processing was necessary; **examples shall be anonymized insofar as personal data is concerned;**

(h) annual information about the number of cases in which Europol issued alerts in the Schengen Information System in accordance with Article 4(1)(r), and the number of 'hits' these alerts generated, including specific examples of cases demonstrating why these alerts were necessary for Europol to fulfil its objectives and tasks; **examples shall be anonymized insofar as personal data is concerned;**

(i) annual information about the number of **research and innovation** ~~pilot~~ projects ~~in which Europol processed personal data to train, test and validate algorithms for the development of tools, including AI-based tools, for law enforcement~~ **undertaken** in accordance with Article 33a, including information on the purposes of these projects and the law enforcement needs they seek to address.";

(38) in Article 57, paragraph 4 is replaced by the following:

"4. Europol may benefit from Union funding in the form of contribution agreements or grant agreements in accordance with its financial rules referred to in Article 61 and with the provisions of the relevant instruments supporting the policies of the Union. ~~Contributions may be received from countries with whom Europol or the Union has an agreement providing for financial contributions to Europol within the scope of Europol's objectives and tasks. The amount of the contribution shall be determined in the respective agreement.~~";

(39) Article 61 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. The financial rules applicable to Europol shall be adopted by the Management Board after consultation with the Commission. They shall not depart from Commission Delegated Regulation (EU) No 2019/715 unless such a departure is specifically required for the operation of Europol and the Commission has given its prior consent."

(b) paragraphs 2 and 3 are replaced by the following:

"2. Europol may award grants related to the fulfilment of its objectives and tasks as referred to in Articles 3 and 4.";

3. Europol may award grants without a call for proposals to Member States for performance of activities falling within Europol's objectives and tasks.";

(c) the following paragraph 3a is inserted:

"3a. Where duly justified for operational purposes, financial support may cover the full investment costs of equipment, infrastructure or other assets. **The Management Board may specify the criteria under which financial support may cover the full costs in the financial rules in accordance with paragraph 1**";

~~(40) Article 67 is replaced as follows:~~

~~"*Article 67*~~

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

~~1. The Europol shall adopt its own security rules that shall be based on the principles and rules laid down in the Commission's security rules for protecting European Union classified information (EUCI) and sensitive non-classified information including, inter alia, provisions for the exchange of such information with third countries, and processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443 (44) and (EU, Euratom) 2015/444 (45). Any administrative arrangement on the exchange of classified information with the relevant authorities of a third country or, in the absence of such arrangement, any exceptional ad-hoc release of EUCI to those authorities, shall be subject to the Commission's prior approval.~~

~~2. The Management Board shall adopt the Europol's security rules following approval by the Commission. When assessing the proposed security rules, the Commission shall ensure that they are compatible with Decisions (EU, Euratom) 2015/443 and (EU, Euratom) 2015/444.~~"

(41) in Article 68, the following paragraph 3 is added:

"3. The Commission shall, by [three years after entry into force of this Regulation], submit a report to the European Parliament and to the Council, assessing the operational ~~benefits~~ **impact** of the implementation of the competences provided for in Article 18(2)(e) and (5a), Article 18a, Article 26 and Article 26a with regard to Europol's objectives. The report shall cover the impact of those competences on fundamental rights and freedoms as enshrined in the Charter of Fundamental Rights.".

Article 2

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	*For the Council*
The President	*The President*

Conselho da
União Europeia

Bruxelas, 7 de junho de 2021
(OR. en)

9546/21

ENFOPOL 219
JAI 682
COVID-19 249
CRIMORG 55
CYBER 170

RESULTADOS DOS TRABALHOS

de:	Secretariado-Geral do Conselho
data:	7 de junho de 2021
para:	Delegações
n.º doc. ant.:	8651/21
Assunto:	Conclusões do Conselho sobre o impacto da pandemia de COVID-19 na segurança interna: ameaças, tendências, resiliência e ensinamentos retirados para a aplicação da lei na UE – *Conclusões do Conselho* (7 de junho de 2021)

Junto se enviam, à atenção das delegações, as Conclusões do Conselho sobre o impacto da pandemia de COVID-19 na segurança interna: ameaças, tendências, resiliência e ensinamentos retirados para a aplicação da lei na UE, aprovadas pelo Conselho (Justiça e Assuntos Internos) na sua 3799.ª reunião realizada a 7 de junho de 2021.

ANEXO

CONCLUSÕES DO CONSELHO
sobre o impacto da pandemia de COVID-19 na segurança interna:
ameaças, tendências, resiliência e ensinamentos retirados para a aplicação da lei na UE

TENDO PRESENTE os esforços envidados a nível da União Europeia e dos Estados-Membros para assegurar um elevado nível de proteção dos cidadãos da UE e, neste contexto, assegurar a continuidade das atividades de aplicação da lei e uma ação coordenada contra as ameaças emergentes;

RECONHECENDO os riscos e as ameaças imprevisíveis e os desafios que esta crise colocou no panorama da segurança interna;

CONSIDERANDO a importância e os benefícios dos ensinamentos retirados e partilhados entre os Estados-Membros e as instituições e agências da UE;

RECONHECENDO que a crise atual e crises disruptivas semelhantes no futuro podem gerar problemas de segurança sistémicos, revelar vulnerabilidades e exigir uma cooperação reforçada;

IDENTIFICANDO a necessidade de prevenir e combater a proliferação de movimentos negacionistas que propagam informações erradas sobre a COVID-19 e discurso de ódio, em particular nas redes sociais;

RECORDANDO que uma cooperação transfronteiras mais resiliente, operacional e eficaz, e o intercâmbio atempado de informações são essenciais numa situação de crise, e que os mecanismos de cooperação de emergência em matéria de aplicação da lei devem ser acionados rapidamente, a fim de aumentar o nível de preparação e assegurar uma resposta imediata;

REGISTANDO que a partilha de conhecimentos e informações conducentes à deteção de ameaças e tendências em matéria de criminalidade nos grupos de criminalidade organizada é crucial para a tomada de decisões informadas e estratégicas sobre a forma de abordar e antecipar a futura evolução das redes criminosas;

Além disso, SALIENTANDO que a necessidade de partilhar informações operacionais e sensíveis numa situação de crise – a fim de assegurar a continuidade dos trabalhos em curso sobre as investigações/processos transfronteiras – reforçou o empenho no desenvolvimento de soluções de comunicação seguras que possam substituir os contactos físicos;

Para o efeito, FOCANDO-SE numa melhor utilização dos meios de cooperação existentes e COM BASE nas estruturas estabelecidas.

O CONSELHO,

a fim de assegurar a proteção

INSTA os Estados-Membros a coordenarem o intercâmbio de informações transfronteiras, as operações conjuntas de aplicação da lei, as boas práticas e conhecimentos especializados entre países vizinhos e a nível da UE, e a securizarem as entidades críticas em situações de crise, em conformidade com os quadros jurídicos nacionais;

INCENTIVA os Estados-Membros a identificarem soluções práticas para evitar obstáculos à cooperação transfronteiras estratégica, operacional e tática em matéria de aplicação da lei, em particular quando as viagens entre Estados-Membros estão limitadas devido às medidas impostas;

INCENTIVA A EUROPOL a apoiar os Estados-Membros, através do intercâmbio de informações, em conformidade com o seu mandato, em operações transfronteiras de prevenção do terrorismo e da criminalidade organizada em situações de crise que afetem a segurança interna da UE;

SUBLINHA A NECESSIDADE de prevenir a infiltração de redes criminosas na execução do *Next Generation EU*. Por conseguinte, é essencial o intercâmbio atempado de informações – em especial sobre inquéritos antifraude em curso, riscos, ameaças, métodos e padrões de fraude – entre as agências competentes da UE, em particular a Europol, o OLAF e a Procuradoria Europeia, e os Estados-Membros.

Com vista a uma melhor preparação

RECOMENDA aos Estados-Membros que cooperem entre si, se necessário, através da partilha de apoio técnico, como, por exemplo, peritos em matéria de aplicação da lei, e equipamento e sistemas de comunicação em situações de crise;

INCENTIVA a CEPOL e os Estados-Membros, se necessário com o apoio financeiro da UE, a desenvolverem formação e exercícios práticos baseados em cenários entre os serviços de execução da lei e entre estes e outras partes interessadas, como a proteção civil, os serviços de emergência médica e as autoridades locais, a fim de assegurar a preparação e a resiliência para futuras pandemias e outras crises;

SALIENTA A NECESSIDADE de a Comissão apoiar o Grupo Nuclear da Europol para as Comunicações Seguras e o Laboratório da Inovação – incumbidos de executar o roteiro sobre novas soluções de comunicações seguras, tal como aprovado pelo COSI[1] – a fim de criar um instrumento comum, resiliente, interoperável e seguro para as ferramentas de comunicação e videoconferência (vídeo, áudio e mensagens instantâneas) no quadro da cooperação policial europeia. Estes instrumentos de comunicação seguros poderiam ser utilizados para planear e coordenar operações conjuntas, bem como para trocar informações confidenciais e sensíveis durante situações de crise entre os serviços de execução da lei dos Estados-Membros e entre estes e as agências e entidades competentes da UE;

CONGRATULA-SE com a elaboração pela Europol de relatórios analíticos sobre as tendências da criminalidade e as avaliações das ameaças e dos riscos durante a atual pandemia, apoiando os Estados-Membros na cooperação transfronteiras e na prevenção da criminalidade transnacional. INSTA a Europol a considerar que se trata de uma boa prática a ter em conta em futuras crises.

[1] 12860/1/20 REV 1

Com vista a uma melhor prevenção

RECOMENDA aos Estados-Membros que desenvolvam e promovam campanhas de informação e sensibilização para os seus cidadãos, tirando partido dos seus próprios conhecimentos especializados, bem como dos da Rede Europeia de Prevenção da Criminalidade (REPC), da Europol e das redes de aplicação da lei, a fim de prevenir o impacto das atividades de cibercriminalidade, bem como a desinformação e o discurso de ódio; deve ser prestada especial atenção à forma de proteger as crianças em linha e atenuar o risco de estas se tornarem vítimas de organizações criminosas;

INCENTIVA os Estados-Membros a partilharem boas práticas no âmbito da REPC e de outras redes pertinentes sobre estratégias nacionais e locais que melhorem os canais de denúncia para as vítimas de crimes, como a violência doméstica e os abusos sexuais, a fim de facilitar os contactos com os serviços de execução da lei e outras partes interessadas durante o confinamento e situações de crise. Esta cooperação poderia também contribuir para aprofundar as parcerias e melhorar a interação entre os serviços de execução da lei, a sociedade civil e as vítimas da criminalidade;

INCENTIVA a Comissão, em estreita cooperação no quadro do Mecanismo Integrado da UE de Resposta Política a Situações de Crise e das agências da UE em causa (como a Europol), a apoiar os Estados-Membros na prevenção de crises que afetem um ou mais Estados-Membros, adotando uma abordagem resiliente e flexível;

INSTA a Comissão a apoiar a melhoria dos atuais mecanismos e instâncias de cooperação e coordenação, ou seja, a Plataforma de Peritos da Europol (EPE) v-Room, a promover a cooperação estratégica e operacional, e a proceder ao intercâmbio de boas práticas em resposta a crises graves como a atual pandemia.

Conselho da
União Europeia

Bruxelas, 7 de junho de 2021
(OR. en)

9545/21

ENFOPOL 218
JAI 681
CT 77
PROCIV 68

RESULTADOS DOS TRABALHOS

de:	Secretariado-Geral do Conselho
data:	7 de junho de 2021
para:	Delegações
n.º doc. ant.:	8663/21 + COR 1
Assunto:	Conclusões do Conselho sobre a proteção dos espaços públicos – *Conclusões do Conselho* (7 de junho de 2021)

Junto se enviam, à atenção das delegações, as Conclusões do Conselho sobre a proteção dos espaços públicos, aprovadas pelo Conselho (Justiça e Assuntos Internos) na sua 3799.ª reunião realizada a 7 de junho de 2021.

ANEXO

Conclusões do Conselho sobre a proteção dos espaços públicos

1. OBSERVANDO que a resiliência deve começar pela proteção dos valores democráticos, das instituições e dos modos de vida europeus e deve incluir toda a sociedade;

2. SUBLINHANDO que a União Europeia tem por objetivo proporcionar aos cidadãos um elevado nível de vida num espaço de liberdade, segurança e justiça, mediante a realização de ações em comum entre os Estados-Membros no domínio da cooperação policial, conforme estipulado no Título V do Tratado sobre o Funcionamento da União Europeia (TFUE);

3. SALIENTANDO que os recentes atentados terroristas cometidos em espaços públicos em toda a UE sublinharam a necessidade de intensificar os esforços para reforçar a proteção desses espaços;

4. TENDO EM CONTA a evolução do cenário de ameaças e a necessidade de prevenir e proteger as comunidades locais contra atentados terroristas que pretendam causar instabilidade e medo nas nossas sociedades abertas;

5. SUBLINHANDO que o aumento do terrorismo desencadeado pelo extremismo violento, independentemente da sua motivação ideológica, é uma preocupação crescente no que diz respeito aos espaços públicos e, nomeadamente, aos locais de culto;

6. RECONHECENDO que os espaços públicos são, pela sua natureza, considerados vulneráveis a atos hostis e ilícitos que visam comprometer a segurança e a liberdade de circulação que define a União e beneficia os seus cidadãos;

7. OBSERVANDO que, devido ao desenvolvimento da nossa economia digital e à utilização generalizada da Internet, das redes sem fios e das comunicações telefónicas móveis, a proteção dos espaços públicos tem também uma dimensão de cibersegurança;

8. RECONHECENDO que o terrorismo e o extremismo violento, devido à sua propaganda e à cobertura de que são objeto, tanto nos principais órgãos de comunicação social como nas redes sociais, amplificam o sentimento de insegurança e contribuem para a difusão de conteúdos terroristas em linha, comprometendo os valores fundamentais do espaço de liberdade, segurança e justiça da União Europeia;

9. RECONHECENDO que alguns espaços públicos e eventos importantes, como, por exemplo, locais de culto, estações ferroviárias, parques públicos, zonas comerciais, locais turísticos, universidades e escolas, eventos desportivos e culturais importantes, ajuntamentos de pessoas e manifestações, exigem uma proteção adequada, devido à sua natureza, vulnerabilidade e importância social, bem como à potencial ameaça de atentado e ao impacto que este poderá ter;

10. RECORDANDO que alguns dos *modi operandi* utilizados nos atentados terroristas cometidos na Europa e noutros contextos internacionais incluem não só a utilização de armas de fogo e explosivos, mas também de armas de baixa tecnologia facilmente disponíveis, como armas brancas e veículos, em especial veículos de aluguer ou roubados, a fim de causar diretamente danos e pôr em perigo a vida dos cidadãos;

11. REGISTANDO que a proteção dos espaços públicos se deve basear numa abordagem holística e horizontal, que ligue as estratégias da UE às estratégias nacionais e locais pertinentes, bem como às parcerias público-privadas;

12. CONGRATULANDO-SE com a Agenda da UE em matéria de Luta contra o Terrorismo, adotada pela Comissão em 9 de dezembro de 2020, que identifica as principais ações em curso ou a empreender a nível da UE para reforçar a proteção dos espaços públicos;

13. CONSIDERANDO que os serviços de aplicação da lei desempenham um papel fundamental na prevenção dos atentados terroristas, bem como na segurança e proteção dos espaços públicos, nomeadamente através da cooperação e de parcerias com outras partes interessadas, como os municípios locais, as universidades, os operadores privados e as comunidades locais;

14. SUBLINHANDO a importância da cooperação e coordenação transfronteiras tanto para reforçar as capacidades dos serviços de aplicação da lei como para identificar as boas práticas que os operadores de espaços públicos podem implementar, tais como medidas de segurança tomadas durante eventos desportivos importantes, nas infraestruturas de transportes públicos, em zonas públicas dos aeroportos internacionais e nos locais turísticos;

15. RECONHECENDO a importância das novas tecnologias na proteção dos espaços públicos, nomeadamente no que diz respeito à deteção de ameaças e à análise de grandes conjuntos de dados, garantindo simultaneamente os direitos e liberdades fundamentais dos cidadãos.

O CONSELHO

16. INCENTIVA a COMISSÃO a prosseguir os esforços empreendidos no sentido de lançar e financiar iniciativas como o Fórum da UE sobre a proteção dos espaços públicos, programas de formação e projetos no âmbito do Fundo para a Segurança Interna e do Horizonte Europa, e a prosseguir a execução de programas baseados numa análise interpares voluntária, e CONVIDA a COMISSÃO a explorar novas possibilidades de apoio a projetos e iniciativas destinados a reforçar a proteção dos espaços públicos e a resiliência das comunidades, nomeadamente através das ações propostas no Plano de Ação de 2017 para apoiar a proteção dos espaços públicos, e as prioridades identificadas na Agenda da UE em matéria de Luta contra o Terrorismo de 2020;

17. SUBLINHA a importância da resiliência, do desenvolvimento de soluções de proteção e do reforço da cooperação e da assistência entre os serviços de aplicação da lei dos ESTADOS-MEMBROS, no âmbito do quadro jurídico aplicável, com o apoio da EUROPOL e da rede ATLAS na resposta a atentados terroristas e emergências complexas, com vista a fazer face a situações de crise, através da partilha de equipamento, de tecnologia e de unidades especiais de polícia, bem como da disponibilização de apoio técnico e de conhecimentos especializados. Em consonância com este objetivo, SUGERE o reforço da capacidade das equipas de primeira intervenção para detetar comportamentos e objetos suspeitos em situações de crise;

18. INCENTIVA OS ESTADOS-MEMBROS a apoiarem a elaboração e a aplicação de conceitos de segurança desde a conceção nos espaços públicos;

19. RECOMENDA que a CEPOL e as redes de aplicação da lei, nomeadamente as que participam no fórum de profissionais da UE sobre a proteção dos espaços públicos (REPC, ATLAS, AIRPOL, RAILPOL, AQUAPOL, ENLETS, Rede de Risco Elevado para a Segurança da UE), tenham em conta os objetivos estratégicos relacionados com a proteção dos espaços públicos nos seus programas de formação e de trabalho, a fim de reforçar a coerência e as sinergias;

20. SALIENTA a importância da investigação e do desenvolvimento a nível dos ESTADOS-MEMBROS e da UE, incluindo as futuras iniciativas do polo europeu de inovação para a segurança interna, a fim de desenvolver instrumentos para a proteção dos espaços públicos;

21. INSTA a EUROPOL, em conformidade com o seu mandato jurídico e tendo em conta os mecanismos de definição de prioridades entre os ESTADOS-MEMBROS e o laboratório para a inovação, a continuar a explorar tecnologias digitais e contramedidas a implementar contra os atentados terroristas em espaços públicos, em benefício dos ESTADOS-MEMBROS e de todos os cidadãos europeus. Esta investigação poderá centrar-se no desenvolvimento de técnicas de deteção de explosivos, na proteção contra aeronaves não tripuladas, na cibercriminalidade grave e na inteligência artificial no tratamento de grandes conjuntos de dados, no pleno respeito dos respetivos regulamentos e normas em matéria de proteção de dados. Para além da partilha rápida e útil de informações operacionais com os ESTADOS-MEMBROS, os resultados devem ser continuamente partilhados sob a forma de relatórios anuais e de manuais sobre a proteção dos espaços públicos com informações atualizadas e recomendações dirigidas aos serviços de aplicação da lei dos ESTADOS-MEMBROS;

22. Recomenda que a EUROPOL, a ENISA, a eu-LISA e outros intervenientes relevantes da UE, no âmbito dos respetivos mandatos, prestem apoio aos ESTADOS-MEMBROS no que diz respeito à prevenção da cibercriminalidade grave e à sabotagem de sistemas de iluminação pública, comunicações móveis, sistemas de videovigilância em sistemas públicos e outros que possam afetar a segurança dos espaços públicos;

23. SALIENTA a importância da investigação e do desenvolvimento no laboratório de inovação da Europol e noutras agências da UE para reforçar a proteção e desenvolver contramedidas contra as aeronaves não tripuladas e a sua utilização combinada com armas de fogo e explosivos, e CONVIDA OS ESTADOS-MEMBROS a apoiarem o Programa europeu lançado pela Comissão para o ensaio de tecnologias contra os sistemas de aeronaves não tripuladas, e a partilharem boas práticas;

24. RECOMENDA que a CEPOL continue a apoiar os programas de formação dos serviços de aplicação da lei da UE em matéria de segurança e proteção dos espaços públicos e dos alvos fáceis, de proteção das infraestruturas críticas, de segurança de eventos importantes, de deteção de comportamentos, de ameaças internas, de deteção de substâncias químicas, biológicas, radiológicas e nucleares (QBRN)/explosivos, de contramedidas e de proteção contra aeronaves não tripuladas e os atiradores ativos;

25. SALIENTA a necessidade de os ESTADOS-MEMBROS envidarem esforços no sentido de, sempre que possível, implementarem e/ou reforçarem estratégias nacionais, regionais e locais destinadas a aumentar a resiliência das comunidades locais e dos espaços públicos;

26. INCENTIVA OS ESTADOS-MEMBROS a desenvolverem e promoverem projetos relativos à proteção de espaços públicos e de locais de grande aglomeração de pessoas e a neles participarem ativamente, criando sinergias entre as partes interessadas a nível nacional e internacional, como as autoridades regionais/locais, os serviços de aplicação da lei, as empresas de segurança privadas, as empresas privadas e outras, com o objetivo de cooperar e partilhar conhecimentos que contribuam para reduzir os riscos e melhorar a utilização de tecnologias inteligentes e seguras para proteger os espaços públicos;

27. SALIENTA a importância de uma comunicação operacional e interoperável à escala da UE que seja segura, para que os serviços de aplicação da lei e outros profissionais da segurança possam garantir uma proteção adequada e responder de forma apropriada em caso de cooperação transfronteiras no domínio dos espaços públicos e de eventos importantes, e CONVIDA OS ESTADOS-MEMBROS a continuarem a apoiar as iniciativas da UE destinadas a melhorar os sistemas existentes e os sistemas de comunicação interoperáveis à escala da UE para a segurança pública, nomeadamente o projeto BroadWay do programa Horizonte 2020;

28. RECOMENDA que os ESTADOS-MEMBROS examinem os respetivos quadros jurídicos nacionais com vista a restringir o porte não legítimo de armas brancas em espaços públicos e eventos importantes, e ponderem a possibilidade de implementar medidas de proteção específicas para os locais de culto, e CONVIDA a COMISSÃO a analisar as opções existentes e eventuais iniciativas futuras para reforçar a proteção a nível da UE;

29. INCENTIVA OS ESTADOS-MEMBROS a continuarem a estudar e a analisar as orientações e os instrumentos de segurança destinados aos operadores de veículos de aluguer, a fim de prevenir e atenuar o risco de atentados com veículos em espaços públicos, e CONVIDA a COMISSÃO a explorar opções para prevenir e atenuar o impacto dos atentados com veículos a nível da UE;

30. CONVIDA OS ESTADOS-MEMBROS a examinarem a sua legislação nacional e a sua regulamentação local, a fim de garantir que estas contenham disposições claras no que diz respeito aos requisitos administrativos e às responsabilidades de quem planifica e gere a segurança dos espaços públicos, e REGISTA o objetivo da COMISSÃO de explorar opções para o estabelecimento de obrigações mínimas para os operadores de espaços públicos;

31. RECOMENDA aos ESTADOS-MEMBROS que continuem a planear e a organizar exercícios práticos e formação conjunta entre as autoridades locais, as autoridades responsáveis pela aplicação da lei, a proteção civil, os serviços de emergência médica, as empresas privadas, as empresas de segurança privadas e outras partes interessadas, a fim de melhorar a preparação e a resposta das autoridades de aplicação da lei e das equipas de primeira intervenção;

32. SALIENTA que os ESTADOS-MEMBROS devem fornecer os instrumentos adequados, incluindo as orientações existentes a nível da UE, para que as autoridades locais realizem uma avaliação rigorosa dos riscos e da vulnerabilidade, bem como orientações sobre as medidas de proteção e as redes da UE, e fóruns nacionais para a partilha de conhecimentos e de boas práticas entre essas autoridades;

33. APELA aos ESTADOS-MEMBROS para que sensibilizem os municípios para as iniciativas e instâncias da UE existentes que facilitam a partilha de boas práticas e apoiam projetos conduzidos a nível local, e CONVIDA a COMISSÃO a lançar o compromisso da UE relativo à segurança e à resiliência urbanas anunciado na Agenda da UE em matéria de luta contra o terrorismo de 2020;

34. INCENTIVA os ESTADOS-MEMBROS a integrarem técnicas de Prevenção da Criminalidade através da Conceção do Espaço a nível local e através de parcerias e projetos público-privados, enquanto mecanismo de proteção dos espaços públicos, a saber, a prevenção do atropelamento com veículos, explosões, substâncias QBRN, engenhos incendiários improvisados, atiradores ativos e outros *modi operandi* em espaços como estações ferroviárias e metropolitanas, zonas públicas dos aeroportos internacionais, locais de culto, zonas comerciais, atrações turísticas (por exemplo, monumentos e museus), universidades e escolas, assim como outros que a avaliação de risco possa sugerir.

Conselho da
União Europeia

Bruxelas, 7 de junho de 2021
(OR. en)

9544/21

ENFOPOL 217
JAI 680
SPORT 42
CT 76

RESULTADOS DOS TRABALHOS

de:	Secretariado-Geral do Conselho
data:	7 de junho de 2021
para:	Delegações
n.º doc. ant.:	8648/21 + COR 1
Assunto:	Conclusões do Conselho sobre a violência relacionada com o desporto – *Conclusões do Conselho* (7 de junho de 2021)

Junto se enviam, à atenção das delegações, as Conclusões do Conselho sobre a violência relacionada com o desporto, aprovadas pelo Conselho (Justiça e Assuntos Internos) na sua 3799.ª reunião realizada a 7 de junho de 2021.

ANEXO

CONCLUSÕES DO CONSELHO
SOBRE A VIOLÊNCIA RELACIONADA COM O DESPORTO

1. SUBLINHANDO que a União Europeia tem por objetivo, entre outros, facultar aos cidadãos um elevado nível de segurança num espaço de liberdade, segurança e justiça, mediante a realização de ações em comum entre os Estados-Membros no domínio da cooperação policial, conforme prevê o Título V do Tratado sobre o Funcionamento da União Europeia[1], continuando simultaneamente a respeitar os direitos e liberdades fundamentais,

2. RECONHECENDO que a nova Estratégia da UE para a União da Segurança 2021-2025 salienta a necessidade de combater o terrorismo e prevenir a radicalização, bem como de impedir a criminalidade organizada e lutar contra a cibercriminalidade,

3. TENDO PRESENTES as prioridades estratégicas e os princípios orientadores da cooperação transfronteiras em matéria de aplicação da lei constantes da Agenda Estratégica para 2019-2024, da comunicação da Comissão sobre a nova Estratégia da UE para a União da Segurança 2021-2025, das conclusões do Conselho sobre a segurança interna e a Parceria Europeia de Polícia, aprovadas em dezembro de 2020, da Decisão Prüm (2008/615/JAI) e do Manual de Futebol da UE de 2016[2],

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[1] Convenção de Prüm (10900/05); e também a Resolução do Conselho relativa a um manual com recomendações para a cooperação policial internacional e medidas de prevenção e luta contra a violência e os distúrbios associados aos jogos de futebol com dimensão internacional em que, pelo menos, um Estado-Membro se encontre envolvido (12795/16 – JO C 444 de 29.11.2016, p. 1-36); Resolução do Conselho relativa a um manual com recomendações para a prevenção e gestão da violência e dos distúrbios associados aos jogos de futebol com dimensão internacional em que pelo menos um Estado-Membro se encontre envolvido, através da adoção de boas práticas sobre a relação entre a polícia e os adeptos (12792/16); Resolução do Conselho relativa às despesas de acolhimento e destacamento de delegações policiais visitantes por ocasião de jogos de futebol (e outras manifestações desportivas) de dimensão internacional em que pelo menos um Estado-Membro se encontre envolvido (12791/16); Resolução do Conselho relativa à utilização, pelos Estados-Membros, da proibição de acesso aos recintos onde se desenrolam desafios de futebol de dimensão internacional (2003/C 281/01); Decisão do Conselho relativa à segurança por ocasião de jogos de futebol com dimensão internacional (2002/348/JAI, alterada pela Decisão do Conselho 2007/412/JAI).

[2] Resolução do Conselho relativa a um manual atualizado com recomendações para a cooperação policial internacional e medidas de prevenção e controlo da violência e dos distúrbios associados aos jogos de futebol com dimensão internacional em que pelo menos um Estado-Membro se encontre envolvido ("Manual de Futebol da UE" – 2016/C 444/01).

4. RECORDANDO que o desporto, em particular os grandes eventos desportivos, refletem prosperidade, promovem a partilha de experiências e valores e estão diretamente relacionados com o bem-estar e o desenvolvimento da sociedade europeia e dos seus cidadãos,

5. RECONHECENDO a relevância dos eventos desportivos no contexto social, económico, cultural e político e SALIENTANDO o impacto da COVID-19 nas economias e nas iniciativas sociais e culturais dos Estados-Membros, bem como na cooperação policial internacional e nos serviços de execução da lei, que terão de adaptar as suas estratégias de segurança a este novo ambiente a nível europeu, nacional e regional,

6. SALIENTANDO a importância dos eventos desportivos em termos de ajuntamentos de pessoas que reúnem muitos adeptos de diferentes países, cuja segurança e saúde devem ser uma prioridade para todos,

7. RECORDANDO que a União Europeia acolhe, de forma frequente e recorrente, vários grandes eventos desportivos com dimensão internacional, entre eles a Liga dos Campeões da UEFA e o Campeonato Europeu de Futebol da UEFA, que têm grande popularidade e importância no contexto do desporto mundial,

8. SALIENTANDO que o novo modelo escolhido pela UEFA para o próximo campeonato europeu (EURO) da UEFA (junho-julho de 2021) representa um desafio único em matéria de segurança, uma vez que a competição se realizará em onze cidades europeias em simultâneo,

9. RECONHECENDO o importante papel desempenhado pela Europol no apoio aos Estados-Membros e às suas respetivas autoridades competentes na promoção da cooperação entre os serviços de execução da lei,

O CONSELHO:

10. SALIENTA que os organizadores de grandes eventos, sejam eles políticos, culturais ou desportivos, que decorrerem durante a pandemia de COVID-19, devem continuar a adotar medidas e procedimentos para impedir a propagação do vírus entre todos os intervenientes envolvidos: o grande público, as equipas, os árbitros, os gestores e coordenadores de eventos, os agentes responsáveis pela aplicação da lei, a proteção civil, o pessoal médico e de emergência, o pessoal responsável pela segurança privada, os profissionais dos meios de comunicação social e outro pessoal,

11. DESTACA a importância do intercâmbio de informações e da cooperação policial internacional para assegurar que o EURO 2020 da UEFA será uma competição segura, nomeadamente através das plataformas digitais, em especial porque os jogos programados se realizarão num grande número de cidades europeias,

12. SALIENTA que, a fim de assegurar uma cooperação internacional eficaz, os Estados-Membros que recebem a assistência de observadores policiais enviados por outros Estados-Membros devem indicar, na medida do possível, a dimensão e a composição pretendidas para esses destacamentos policiais, bem como os procedimentos aplicáveis, o que não deve impedir qualquer ajustamento posterior decorrente de uma avaliação do risco dinâmico,

13. RECONHECE que o acompanhamento das deslocações de adeptos de risco (ou seja, potencialmente problemáticos) nos Estados-Membros pode ser vital para prevenir a perturbação da ordem pública e a atividade criminosa conexa, não obstante a ausência do grande público nos recintos desportivos. Por conseguinte, Conselho INCENTIVA uma cooperação internacional eficaz por meio do destacamento de *observadores policiais especializados, bem como de outros oficiais de ligação no Centro de Cooperação Policial Internacional*, ainda que um evento desportivo se realize sem a presença do grande público,

14. RECONHECE que, tendo em conta vários incidentes de violência relacionada com o desporto que ocorreram recentemente e que envolveram adeptos de risco em vários países europeus, é crucial fazer face a este problema, não só no contexto dos estádios desportivos e outros recintos desportivos, mas também no contexto de outras atividades relacionadas com este fenómeno. Assim, a fim de prevenir e mitigar incidentes potencialmente perigosos, o Conselho CONSIDERA pertinente fazer face a este problema adotando uma abordagem holística. O âmbito das medidas preventivas deve ser alargado de forma a abranger outros locais, que não os recintos desportivos, que atraem um número significativo de adeptos e que, portanto, podem representar um risco de segurança. As medidas preventivas da polícia em locais como transportes públicos, aeroportos, hotéis, centros de treino, locais utilizados por equipas e árbitros, zonas de diversão noturna e outros espaços públicos são cruciais para a segurança global dos grandes eventos desportivos,

15. SALIENTA a importância de haver uma estreita cooperação entre todas as partes interessadas pertinentes no quadro dos eventos desportivos internacionais, mais concretamente entre os responsáveis diretos pela segurança, pelos serviços e pela gestão dos grandes eventos desportivos,

16. SALIENTA a importância de se elaborar um relatório e uma avaliação finais do torneio, que devem ser distribuídos pelas partes interessadas pertinentes através dos pontos nacionais de informações sobre futebol (PNIF) e da plataforma de peritos da Europol criada para este fim. O relatório deve centrar-se nas questões de segurança pública e de aplicação da lei e também promover um debate sobre as vulnerabilidades e dificuldades identificadas em matéria de segurança, incluindo as relacionadas com a COVID-19,

17. SALIENTA a importância de proteger os espaços públicos durante os grandes eventos desportivos, bem como de assegurar a proteção dos espaços privados abertos ao público, nomeadamente através da aplicação de conceitos relacionados com o princípio da "segurança desde a conceção", bem como da utilização de sistemas de vigilância e deteção que incorporem a inteligência artificial, respeitando simultaneamente os direitos e as liberdades fundamentais e estando em conformidade com a legislação nacional,

18. APELA aos Estados-Membros para que continuem a monitorizar os conteúdos em linha através dos seus serviços de execução da lei, tendo em vista prevenir e atenuar a difusão de mensagens de incitamento à violência, ao extremismo, à radicalização e à xenofobia,

19. SALIENTA a necessidade de os Estados-Membros incrementarem as avaliações do risco dos adeptos de risco, principalmente dos adeptos com ideologias extremistas, a fim de identificar, prevenir e limitar eventuais atividades hostis e criminosas durante eventos desportivos internacionais. Por conseguinte, o Conselho CONSIDERA que a cooperação entre os observadores policiais e a investigação criminal, bem como a polícia de prevenção/proximidade, devem ser reforçadas, a fim de promover a partilha de informações pertinentes,

20. DESTACA a importância de reforçar a cooperação entre os serviços e redes de execução da lei da UE e os grupos de peritos do Conselho da Europa, a fim de prevenir a violência relacionada com o desporto e combater o racismo, a xenofobia e o extremismo entre os adeptos,

21. No quadro da cooperação policial transfronteiras, COMPROMETE-SE a apoiar e reforçar os grupos de peritos dotados dos conhecimentos especializados pertinentes em matéria de polícia na União Europeia, no contexto da violência relacionada com o desporto e do extremismo, mas também em todo o mundo, no que diz respeito a grandes eventos desportivos, em colaboração com a INTERPOL,

22. CONVIDA a rede de PNIF, apoiada pela Europol, a elaborar e a apresentar um relatório anual sobre as avaliações da ameaça e de violência associadas a eventos relacionados com o desporto,

23. SALIENTA a importância do papel dos PNIF[3] enquanto pontos de contacto centrais diretos para o intercâmbio de informações policiais e para facilitar a cooperação policial internacional no âmbito de jogos de futebol com dimensão internacional. RECORDA aos Estados-Membros que devem assegurar que os seus PNIF dispõem dos recursos suficientes para levar a cabo as tarefas que lhes são atribuídas,

24. Uma vez que, de acordo com os profissionais, é necessário atualizar a Decisão 348/2002/JAI do Conselho de forma a refletir as atuais boas práticas e abordagens policiais, CONVIDA a Comissão a colaborar estreitamente com a rede de PNIF e a explorar a possibilidade de vir a apresentar uma proposta legislativa adequada.

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[3] A Comissão Europeia apoia a rede de PNIF através do projeto "Rede NFIP: Policiamento de Eventos e Cooperação Internacional no EURO 2020" (decisão de subvenção: EAC-2018-0474).

Council of the European Union

Brussels, 17 June 2021
(OR. en)

8510/2/21
REV 2

LIMITE

ENFOPOL 171
JAI 503
CRIMORG 43
IXIM 80
COSI 86

NOTE

From:	Presidency
To:	Delegations
Subject:	Implementation of the National Firearms Focal Points (NFFPs) in the EU Member States - draft Council Conclusions

Delegations will find in the annex a draft Council Conclusions on the implementation of the National Firearms Focal Points (NFFPs) in the EU Member States, as prepared by the Presidency for a discussion during the informal videoconference of the members of the Law Enforcement Working Party on 21 June 2021.

Following the discussions, the Presidency believes that the document should be approved in the form of Council Conclusions, in order to achieve an adequate level of commitment regarding the creation of fully staffed NFFPs with appropriate competences.

That said, the Presidency took due note of the remarks made by delegations during the meetings or in their subsequent written comments, especially as regards the fact that the competences suggested for the NFFPs may not be integrated within one single administration or entity in every Member State. The amended text below strives to acknowledge this fact.

ANNEX

Draft

Council Conclusions on the implementation of the National Firearms Focal Points (NFFPs) in the EU Member States.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union, and in particular Article 3(2).

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 67 - 89 thereof,

Whereas:

1. Pursuant to Article 3 TEU, the Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

2. Since 2013, the fight against firearms trafficking has been one of the priorities of the EU policy cycle for organised and serious international crime, during the cycle 2014-2017 and the current 2018-2021. The confirmation of the firearms trafficking as an EMPACT priority for the next cycle 2022-2025 reflects the importance of this threat for the Member States.

3. The EU Strategy against illicit Firearms, Small Arms & Light Weapons and their Ammunition "Securing Arms, Protecting Citizens",[1] states under the chapter 'Compliance through monitoring and enforcement - operational cooperation' that *'the EU will improve cross-border cooperation between judicial and law-enforcement authorities, encourage the relevant Member State authorities, including customs authorities, to establish national focal points on firearms, produce better analysis of all information available in the area of illicit firearms and ensure full participation in the exchange of information with Europol in the area of firearms trafficking*.' This Strategy was endorsed by the Council.[2]

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1 JOIN(2018) 17 final, 1.6.2018.

2 Council conclusions of 19 November 2018 (13581/18).

4. In 2018, the Law Enforcement Working Party endorsed the EFE/EMPACT "Best practice guidance for the creation of National Firearms Focal Points"[3] with specific guidance on tasks, access to databases, staffing levels, locations and functions.

5. In the 2020-25 EU Action Plan on firearms trafficking[4], the European Commission urges Member States and south-east Europe partners to complete the establishment of fully staffed and trained Firearms Focal Points in each jurisdiction, as recommended by the minimum requirements in the Best practice guidance for the creation of NFFPs and input of national experts. Such focal points should also be systematically associated to the implementation of the UN Programme of Action on Small Arms and Light Weapons and of the International Tracing Instrument. In order to facilitate EU-level and international cooperation, the Commission will publish a scoreboard of those focal points, clearly setting out their contact details and competences and guidelines for databases and (semi) automated data exchange among NFFPs.

6. In December 2020, a list of contact points of NFFPs was added to the updated manual on law enforcement information exchange, in the framework of the Working Party on Information Exchange and Data Protection[5], where the users could check, among others, the contact details and the functions of the NFFPs.

7. The main tasks of the NFFPs is to gather analyses and improve the information flow regarding the criminal use of firearms and their illicit trafficking into and within the Member States and across the EU, at a strategic and operational level by means of a co-ordinated collection and sharing of information to enhance the intelligence picture and to better inform law enforcement agencies;

8. The European Commission will issue guidelines for the data to be collected, the type of databases and data exchange format to be used.

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3 Note 8586/18: networks and expert groups related to LEWP - EFE.

4 https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-security/20200724_com-2020-608-commission-communication_en.pdf

5 Doc. 5825/20 ADD 1 REV1

Mindful of differing national resources and organisational structures hereby encourages the Member States:

1. To designate the appropriate entities at national level, to fulfil the tasks reflected in the EFE/EMPACT best guidance recommendations, to provide a comprehensive approach to the integral control of firearms. The tasks of NFFPs can be fulfilled by the designated entity named in Manual on Law Enforcement Information Exchange;

2. To integrate these entities within the corresponding national administrations, according to the national competences on integral control of firearms, so as to create a structure that can fulfil the role of the NFFPs, without prejudice to the possibility of attributing different tasks to more than one entity. It is highly recommended that these entities operate on the guidelines for NFFPs regarding data collected, type of databases and data exchange format used;

3. To work towards providing the NFFPs with the necessary legal competences to fulfil their tasks, especially in relation with:

    - Establishing a Repository for firearms-related intelligence, both criminal and ballistic,
    - Establishing a Repository for all lost, stolen and recovered firearms;
    - Tracing of all seized firearms, when possible, from manufacturer to the last legal owner,
    - Analysing of seized firearms tracing data to identify the type, make, model, calibre and country of manufacture of a firearm,
    - Analysing of seized firearms to identify the type, make, model, calibre and country of manufacture, serial number (if the firearm has one), special features of reworked firearms and modifications,
    - Providing data, statistics, information, assessments and reports for use within the Member States,
    - Functioning as a technical point of contact with UNODC,

- Fulfilling the requirements of the United Nations Illicit Flows Questionnaire (UN-IAQF),

- Promoting international cooperation.

4. Where appropriate, to ensure that the NFFPs carry out the collection of all information regarding seizures of illegal firearms in the Members State and their ensuing traceability

5. To designate the NFFPs as focal points at national level for the illicit arms flows questionnaire of the United Nations, in order to fulfil the indicator 16.4.2 for the Sustainable Development Goals, which reads "Proportion of seized, found or surrendered arms whose illicit origin or context has been traced or established by a competent authority in line with international instruments."[6]

6. To systematically associate such NFFPs to the implementation of the UN Programme of Action on Small Arms and Light Weapons and especially as focal points for the implementation of the International Tracing Instrument.

7. Where appropriate, to ensure that the NFFPs carry out the collection of all information on ballistic analysis, when it becomes technically feasible.

Hereby invites the Member States to make full use of the support provided through the EU Internal Security Fund for the development of national capacities with respect to NFFPs.

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[6] https://www.unodc.org/unodc/en/data-and-analysis/statistics/crime/iafq.html#:~:text=United%20Nations%20Illicit%20Arms%20Flows%20Questionnaire%20(UN%2DIAFQ)&text=2%2C%20which%20reads%20%22Proportion%20of,in%20line%20with%20international%20instruments%22.

Council of the European Union

Brussels, 31 May 2021
(OR. en)

7957/1/21
REV 1

LIMITE

ENFOPOL 134
JAI 408

NOTE

From:	Presidency
To:	Delegations
Subject:	European Firearms Experts (EFE) – Terms of Co-operation

Delegations will find in the Annex the Terms of Reference, as prepared by the European Firearms Experts Group (EFE) in order to formalise its structures and procedures **and revised on the basis of remarks raised during the LEWP meeting of 26 April 2021**.

The Presidency invites the delegations to approve the document, as set out in the Annex to this note, during the informal videoconference of the members of the Law Enforcement Working Party on 1 June 2021.

ANNEX

European Firearms Experts (EFE)

Terms of Cooperation

I. General Statement~~,~~ and Objectives ~~of EFE~~

The European Firearms Experts (EFE) is as a group, a multilateral organisation on the European level under the umbrella of the Law Enforcement Working Party (LEWP). It is voluntary and open to all partners on the police and law enforcement level with similar goals and tasks, which are defined as follows:

- Supporting the LEWP in combating illegal trafficking of weapons and weapons crime.
- Strengthening International police co-operation in the field of weapons, especially in the field of illegal trafficking of weapons.
- Exchange of experiences.
- **Support** ~~Co-ordination~~ of the implementation of ~~police~~ **LEA** operations on a multilateral stage.
- Research and analyses.
- Support for enquiries among members.

II. Organisational Structure ~~of EFE~~

The organisational structure of the EFE should guarantee an efficient and flexible workflow within the group.

Presidency

- Past, present and upcoming Presidency in accordance with the structure of the Council of the European Union. Tasks: Representation of the EFE to external partners. (Joint) Chairmanship of meetings. Close co-ordination of content with the EFE Chair.

EFE Chair

- Chair: 3 years period. Re-election is possible. Work with the Presidency. General responsibility for the co-ordination of members and workflow. Planning and chairing the Plenary meeting and the Steering Group meeting. Representation of EFE to the LEWP and to external partners in close co-ordination of content with the Vice Chair and the Steering Group. Responsibility for the setting-up and work of a functional office (EFE Secretariat).

- Vice Chair: 2, with 2 years period to guarantee continuity. Re-election is possible. Support for the Chair.

- If the Chairperson is unable to be present at a meeting or any part thereof, the Chairperson shall designate one of the Vice-Chairpersons to act as Chairperson. If the Chairperson and the Vice-chairpersons are unable to exercise their duties, the representative of the EU presidency will act as temporary Chairperson until the election of a new chair or vice-chair, or the return of the Chairperson or Vice-Chairperson.

- EFE Secretariat: Assistance of the Chair. Technical preparation of the meetings. Communication. Administration and organisation.

Steering Group

- Former, current and upcoming EU Presidencies.
- EFE-Chair and Vice-Chair.
- Drivers (Chair of Working Groups).
- Active members on voluntary basis.

Working Groups

- Substantial work of the EFE, coordinated and chaired by Drivers

Plenary Meeting

- All EU Member States and Associated Countries (accepted as members by EFE)
- Observers (invited third countries and organisations with similar scopes of duty).

~~*EFE Voting rights limited to one vote per EU Member State.~~

III. Meetings and Tasks

The meeting structure should bring the members together and reflect the goals of the EFE.

Plenary Meeting

- Once a year.
- Report of the Chair.
- Installation, report and finalisation of Working Groups.
- Presentation of operative cases and analyses.
- Special reports on related topics.
- Decision on the Chair and the Vice Chair.
- Decision on substantial issues.

Steering Group Meetings

- Twice per year: one in April followed by Plenary Meeting and one on its own in October.
- Agreement on the Plenary Meeting (agenda, content, timetable).
- Information exchange with the Drivers.
- Decisions on urgent issues.
- Release of the reports to the LEWP.
- Approbation of external relations and the mandate of the chair.
- Proposal of the Chair and the Vice Chair.

Working Groups

- Close to the Plenary Meeting or convoked by the Drivers, if required.
- Operational, analytical or any other content which fulfils the goals of the EFE.

IV. Decisions

Decisions are taken by the majority vote. Only one vote for each Member State. Members may request that abstentions are documented in writing. General understanding of deadlines: No response means 'agreement with proposal'.

EU-MENA HIGH LEVEL CONFERENCE ON ENHANCING POLICE COOPERATION

Lisbon, 31 May 2021

CONCLUSIONS

Threats that come from serious and organized crime and terrorism have considerable repercussions on the security landscape of both the European Union (EU) and the Middle East and North Africa (MENA) regions, embodying major challenges and risks to security and stability to our societies. The Mediterranean does not separate us, it unites us, constituting an element of geographical continuity.
The security challenges in both regions derive from several threats that have specifics characteristics and natures arising from the geopolitical situation of each country and each region. In the face of these multiform and multidimensional threats, we must acknowledge the origin/cause and the basis of sustaining transnational organized crime that affects the region, so that we can more effectively halt its advances and all the negative impact they have on our societies, generating multidimensional feelings of insecurity.

It is of most growing importance the nexus between the external and internal aspects of security and the protection of borders, as well as the transnational/cross-border nature of crime. The strengthening of solid strategic partnerships, especially with key neighbouring countries, must today be an operational component seen as fundamental in the policies and strategies of the Member States and their Law Enforcement Authorities. Today, in a technologically invasive world, borders have become more easily penetrable, so the threat whereabouts has widened, making each region a platform for access to trafficking and criminal organizations that exploit all vulnerabilities. We need to intervene throughout a more integrated and more collaborative approach, including a strong prioritization of the dimension international police cooperation.

Despite the differences of national structure and systems, there are, however, examples of effective efforts of the countries to cooperate in the pursuit of law enforcement and national and regional security objectives. INTERPOL, the ARAB INTERIOR MINISTERS' COUNCIL, EUROPOL, CEPOL and FRONTEX have been working and developing examples of how cooperative projects can be established, managed and sustained.

Bearing in mind that there is no single solution and that each case is unique, we also know that there are no quick solutions to complex issues. So, it is necessary to identify problems and analyses and priories common needs, with a real and objective perspective. Looking at vulnerabilities and overcome them in order to create real cooperation partnerships. A key premise are common and solutions-oriented approaches, in view to projects that, due to their ability to be structured and designed with an aggregating base and uniform methodologies, lead to more solid cooperation. Likewise, maximizing use of existing international police cooperation structures, including INTERPOL offices across both regions, was recognized as an important element to this end.

For this matter, a reference should be made to the project coordinate by CEPOL, the EUROMED POLICE, which aims to contribute to strengthening the institutional capacity to protect citizens against serious and organized transnational crime, by promoting dialogue and collaboration between national Law Enforcement Authorities in the partner countries of the MENA region, as well as between those countries, the EU Member States and the EU agencies, with the collaboration of international organizations, such as AFRIPOL and the ARAB INTERIOR MINISTERS' COUNCIL / ARAB LEAGUE.
Similarly, as an example, we point out the INTERPOL project, funded by the EU, SHARAKA, which aims to increase the capacity and joint efforts of the police forces and services of the MENA countries to combat terrorism and dismantle associated criminal networks.

These projects, like many others, are an evidence that police cooperation between the two regions is a possible reality, and the combination of efforts between the different actors can contributes even more to its success and reinforcement. We realize that there is an increasing need for cooperation in a very operational way and oriented towards concrete and effective results, that can lead to the establishment of a structured and long-term cooperation. And at its base is the building of bonds of trust (*confidence building*), thus promoting and enabling the foundation of *regional networking*.
More than anything, these and other projects serve as lessons learned and praxis from how we can and should work together, as it is jointly that we can find adaptable and stable solutions. Because working together leads to commitment, responsibility and, above all, trust. Without trust, a real exchange and sharing of information can´t be achieved. However, and equally important, without secure channels of communication, this sharing can also be compromised.

It is important to develop partnerships based on tailor-made approaches as a means to enhance trust and underpin the will to cooperate and work together in criminal and counter-terrorism investigations. EUROPOL's proposal contains this central premise, through the development of individual POLICING PARTNERSHIPS that respond to the specific needs

and requirements of partners from MENA countries willing to engage with Europol and establish operational cooperation based on a spirit of true partnership, respect and mutual understanding.

Likewise, bilateral cooperation and partnerships are also complementary in this integrated approach and help in the will to ensure that national differences don´t affect the work progress and in the provision of adequate instruments for sharing experiences and good practices between countries of both regions.

Based on all these premises, the **Conference on Strengthening Police Cooperation between the countries of Europe and those of the Middle East and North Africa**, intended to debate together, in a very open and transparent way, the issues related to police cooperation between countries and neighbouring partners. Focusing in matters such as the prevention and fight against organized crime, information exchange and criminal analysis, improve existing communication channels, it was concluded that the strengthening of the capacity to respond to common security challenges must be a common priority. Differences do not always separate us, but they can, if well perceived and valued, complement and build visions and approaches that are more demanding and more complete of the regional realities (because they are more well-informed about local realities).

The Conference also made it possible, through reference to concrete projects, in progress or under development, based on common methodologies and approaches, to share examples of good practices of what can effectively be worked on in operational approach between different countries, international organizations and European Agencies and those whose joint efforts can complement the existing bilateral cooperation.

The challenge issued is to pursue the work together, tackling increasingly and complex threats, reducing vulnerabilities to effective police cooperation. It is priority to create bonds for better and mutual knowledge. Our current challenges require work and a willingness to cooperate.
Hence, the Portuguese presidency recognize the importance of organizing in 2022 a new meeting to enable the status play of the ongoing cooperation projects which could be the basis for a common strategy for a more resilient cooperation.

Council of the European Union

Brussels, 21 April 2021
(OR. en)

7956/21

LIMITE

ENFOPOL 133
JAI 418
CT 50
PROCIV 38

NOTE

From:	Presidency
To:	Delegations
Subject:	Conclusions of the Seminar "Security and Protection of Public Spaces and Critical Infrastructures" 17th and 18th March 2021 (Lisbon, Portugal)

Today we face unpredictable threats, coming from different actors and trends, in a world with an increasing speed of technology development that can have a disruptive impact on our lives, on our society.

Taking into consideration their characteristics and specificities, public spaces and critical infrastructures have become an attractive target for terrorist or non-terrorist and criminal attacks, and these kinds of attack in our cities are, above all, attacks on Europe.

Law enforcement agencies must be a step ahead and try to reduce vulnerabilities and reduce the impact on places that must remain accessible to all of us and are so important for the proper functioning of our society, such as hospitals, transport hubs, tourist attractions, or electric power or database systems.

But this is not an easy task. It demands investments and a multifaceted approach, in order to integrate all phases of a strategy that combines a planning process, risk management and risk assessments, awareness-raising and, most importantly, good training, cooperation, and sharing of information, good practices and experience.

Therefore, it is crucial to act and create a framework of resilience, with operational and organisational measures for swift action and a better law enforcement response.

The security and protection of public spaces and critical infrastructures is a priority in the EU Security Union Strategy[1], which calls for a resilient approach in the face of current and future risk scenarios in a Europe whose multifaceted space transposes increasingly close interdependencies between different actors and sectors.

The purpose of this seminar was to continue the debate and the work already undertaken on the security and protection of public spaces and critical infrastructures among experts, law enforcement agencies, the Council of the EU, the European Commission, EU agencies and international networks.

Conclusions on Security and Protection of Public Spaces

(17 March)

It was highlighted that the EU had already taken the lead and promoted several initiatives at this level, such as the 2020 EU Counter-Terrorism Agenda and the EU Security Union Strategy for the period 2020 to 2025, recognising the importance of security and protection of public spaces and critical infrastructures and the interrelation between these two areas.

The Commission continues efforts to launch and fund initiatives such as the EU Forum for the Protection of Public Spaces, training programmes and projects under the Internal Security Fund, and to continue implementing programmes based on volunteer peer expert review, as well as to explore further opportunities to support projects and initiatives to enhance the protection of public spaces and community resilience, in particular through the actions put forward in the 2018 Action Plan to Support the Protection of Public Spaces and the priorities identified in the 2020 EU Counter-Terrorism Agenda.

1 COM(2020) 605 final, 24.7.2020.

Participants underlined the importance of resilience and the need to develop security standards and protective solutions and to reinforce cooperation and assistance among Member States' law enforcement agencies, with the support of Europol and the ATLAS network, when responding to terrorist attacks and complex emergencies, with a view to dealing with crisis situations by sharing equipment, technology (i.e. video surveillance systems, explosives detection, face recognition and alarm software, communications systems), special police units, and providing technical support and expertise.

Law enforcement networks (such as Europol, CEPOL and Frontex) must align their training and work programmes with the strategic objectives related to the protection of public spaces and soft targets, protection of critical infrastructures, major event security, behaviour detection, insider threats, CBRN/explosives detection, countermeasures and protection against unmanned aerial systems (UASs) and response to active shooters.

Participants emphasised the importance of CCTV systems in public spaces for prevention, protection and rapid response by law enforcement agencies during terrorist attacks, as well as the importance of artificial intelligence for early warnings and risk assessment.

It was also underlined that the Europol Innovation Lab can support law enforcement agencies' research and development projects, in particular on technological countermeasures to put in place against terrorist attacks in public spaces, for the benefit of Member States and all European citizens. The focus of this research should be on developing explosives detection techniques, protection against UASs and the combined use thereof with firearms and explosives, CCTV systems, artificial intelligence, and safeguarding the respective data protection regulations and standards.

Member States should implement and/or enhance national, regional and local strategies for increased resilience of local communities and public spaces, in partnership with local authorities, law enforcement agencies, private security firms, private businesses and others, with the aim of cooperating and sharing knowledge that contributes to reducing risks and improving the use of smart and safe technologies to protect public spaces.

It was recognised that low-tech terrorism increases the opportunities, increases vulnerabilities and feelings of uncertainty, and creates additional difficulties for the response of law enforcement agencies.

It was advised that Member States restrict non-legitimate carrying of bladed weapons in public spaces and at major events, and develop specific protection measures with regard to places of worship.

Also, concerning the availability and accessibility of weapons, some Member States drew attention to emerging and disruptive technology such as 3D printers.

Additionally, and acknowledging that explosives precursors have been used in many of the recent terrorist attacks in the EU, participants stressed the importance of Commission efforts and of the actions already taken at Member State level, including legislation to protect citizens from the threat posed by explosives precursors.

The protection of public spaces also has a cybersecurity dimension. The Europol Innovation Lab, the EU Innovation Hub, eu-LISA and other relevant EU actors can provide support to Member States with regard to the prevention of serious cybercrimes and sabotage of public lighting systems, public transport, mobile communications, video surveillance systems in public areas and other digital networks in our cities.

Also, Member States could plan and organise practical exercises and joint training between local authorities, law enforcement, civil protection, medical emergency services, private businesses, private security firms and other stakeholders in order to improve the preparedness and response of law enforcement and the first response community.

It was highlighted that Member States could incorporate crime prevention through environmental design (CPTED) techniques at local level and through public-private partnerships and projects, as a mechanism for the protection of public spaces, namely to prevent vehicle ramming, explosions, CBRN, improvised incendiary devices, active shooters and other *modi operandi* in spaces such as railway and underground railway stations, public areas of international airports, places of worship, business areas, tourist attractions (e.g. monuments and museums), universities and schools and other spaces which risk assessments may identify.

Conclusions on Security, Protection and Resilience of Critical Infrastructures

(18 March)

It was stressed that EU citizens rely on key infrastructures to benefit from essential services such as hospitals, transport, energy and communications in their daily lives, to travel, to work and to exercise their democratic rights.

One of the priorities set out in the EU Strategic Agenda 2019-2024 is '*increasing the EU's resilience against both natural and man-made disasters*', in order to protect citizens and freedoms. That is why resilience must be pursued by protecting Europe's democratic values, institutions and way of life, engaging the whole of society, including governments at all levels, relevant business sectors and individuals in all Member States. Moreover, the evolving and complex risk and threat landscape, involving natural hazards (in many cases exacerbated by climate change), state-sponsored hybrid actions, terrorism, insider threats, pandemics and accidents (such as industrial accidents), must be taken into consideration.

Participants underlined the increasingly interconnected and cross-border nature of operations using critical infrastructure. Protective measures relating to individual assets alone are insufficient to prevent all disruptions from taking place – whether physical or digital – both in individual Member States and potentially across the entire EU. In this connection, it is important to recognise the linkages between EU and Member States' national critical infrastructures and those of EU neighbourhood countries, and that the effects of the risks and threats to the latter infrastructures can jeopardise the effective and efficient operations of the former.

It was noted that the COVID-19 pandemic has also reshaped our perception of safety and security threats and corresponding policies. Participants highlighted the need to guarantee security in both the physical and digital environments, underlined the importance of open strategic autonomy for our supply chains in terms of critical products, services, infrastructures and technologies, and reaffirmed the need to engage every sector and every individual in a common effort to ensure that the EU is more prepared and resilient in the first place and has better tools to respond when needed.

The urgent need to rethink the structures of coordination and cooperation and to increase interoperability in the light of the growing interdependence of various actors was clear to all Member States.

The impact assessment report published in December 2020, accompanying the proposal for a Directive of the European Parliament and of the Council on the resilience of critical entities, underlined that the European Union aims to provide citizens with a high standard of living within an area of freedom, security and justice, by developing common action among the Member States in the field of police cooperation, as laid down under Title V of the Treaty on the Functioning of the European Union.

Also, with the shift from critical infrastructure protection (CIP) to critical entities resilience (CER), all actors are required to analyse various threats and plan how to respond, and therefore it is essential to share lessons learned and increase coordination and procedures.

Participants emphasised the intertwined nexus between internal security and EU external action, which calls for linked answers from Justice and Home Affairs and the Common Security and Defence Policy (CSDP). Also, and acknowledging that the EU endeavours to fulfil a role as a global security actor, it was pointed out that the EU can also take advantage of CSDP missions with a full spectrum capacity toolbox, high degree of autonomy and sustainability, in a wide array of crisis environments, pursuing common interests outside EU borders.

Participants recalled the statement in the current Counter-Terrorism Agenda that in order to effectively protect Europeans it is necessary to continue to reduce vulnerabilities. In this connection, the resilience of critical entities should be based on a holistic and horizontal approach, connecting EU and relevant national and local strategies, as well as public-private partnerships. There is a need to improve measures to ensure the resilience of critical entities, namely their ability to mitigate, absorb and recover from incidents which have the potential to disrupt operations.

Participants welcomed the decision mentioned in the Counter-Terrorism Agenda to set up advisory missions to support host Member States and operators of critical entities of particular European significance in enhancing their resilience to disruptions, including anticipating possible terrorist actions. For this, the Commission is tasked with adopting a set of measures aimed at enhancing the resilience of operators in the face of both physical and digital risks, but it was stressed that all Member State authorities play a fundamental role in the field of prevention and response to risks and threats to critical entities, namely through local authorities, academia and private partners networking.

Participants also underlined the importance of cross-border cooperation and coordination in enhancing operational capacity, through exchange of information and good practices, common baseline training curricula and drill exercises.

Finally, participants recognised the importance of new technologies in protecting critical entities, namely with regard to threat detection and analysis of large data sets, while safeguarding citizens' rights and freedoms.

Council of the European Union

Brussels, 23 April 2021
(OR. en)

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LIMITE

ENFOPOL 140
JAI 428
COSI 68
CRIMORG 34

NOTE

From:	Presidency
To:	Delegations
Subject:	Seminar "Firearms and Explosives – Transversal dimension" – Conclusions

1. INTRODUCTION

The fight against illicit trafficking in firearms is one of the priorities defended at European level, by several institutions, which has made coordinated efforts to increase control over arms and increase the security of European citizens.

In this fight, the actions developed with the sponsorship of the European Commission, the coordination of EUROPOL and the execution of operational actions through EMPACT FIREARMS were highlighted, due to the assumption that it is the right platform for bringing together all efforts related to this aspect of fighting organised and violent crime.

Other organisations contribute to this effort, including FRONTEX, CEPOL, UNODC and even EFE.

However, the whole effort would not be enough without the participation of the Member States and Portugal, holding the Council Presidency, decided to join this effort and proposed to organise a seminar for the presentation and discussion of subjects and themes related to this priority.

On the other hand, and no less important, the theme of explosives and pyrotechnics is going through an important moment, added to which the pandemic situation has brought new challenges, not only for economic operators, but also for the administrations that control and supervise the activities involved, from manufacture to use, to implement mechanisms to ensure that these products do not enter the illegal circuit and serve to commit crimes.

Thus, the application of the Recovery and Resilience Plans to these sectors, as well as the recent entry into force of the Regulation (EU) on explosive precursors, were carefully analysed.

The seminar was held by videoconference on the WEBEX platform on 14 April 2021.

The Minister of Internal Administration, Dr Eduardo Cabrita, opened the seminar, with an initial communication, and the General Secretary of the same Ministry, Dr Marcelo Mendonça de Carvalho, was present for the closing session and delivered a speech to all participants.

This event was jointly organised by the General Secretariat of Internal Administration at the Ministry and by the Public Security Police.

2. MAIN OBJECTIVE

The main objective of this Seminar was to create a space for multidisciplinary debate in the context of combating illicit trafficking in firearms and the future challenges that arise in terms of control and supervision of activities related to manufacturing, trade, storage, transportation and use of explosive products, pyrotechnic articles and explosive precursors.

One of the main aims of the Seminar was the consolidation of recent approved legislation and action plans, such as the EU COM Action Plan (2020-2025) to combat arms trafficking, the new 3rd Policy Cycle of EMPACT (2022- 2025), the Handbook on Firearms for Border Guards and Customs, the Global Firearms Programme of UNODC and the Recovery and Resilience Plans in the area of explosives and pyrotechnics.

3. SPECIFIC OBJECTIVES

The seminar was organised in three panels and had as specific objectives:

a. 1st Panel - The new cycle of combating firearms trafficking (2021-2025)

This panel intended to address the strategic dimension of the plans to be adopted in the coming years, by different organisations, in a transversal perspective.

In this sense, strategic approaches from the European perspective were presented through the European Commission, EUROPOL, EMPACT Firearms, FRONTEX, UNODC and LEWP.

b. 2nd Panel - New challenges for the safety of explosive products

This panel intended to take a technical approach on the processes that characterise the threat to the security of explosive products, namely in transport, common training of operators and administrative control, as tools for preventing crime and terrorism.

In this panel some of the important forums and tools were presented, especially by AdCo Explosives Chair, the intracommunity system to control explosives authorisations (SEPYLT) and the Portuguese system to control transportation of explosives by road. The issue of explosives training was also analysed.

c. 3rd Panel - Pyrotechnics in the face of the new post-pandemic reality

This panel proposed to discuss the future of the pyrotechnics sector in the face of the new post-pandemic reality, by presenting the objectives for the Recovery and Resilience Plans, especially taking into account the transversal dimension of trafficking in this type of articles and their use in contexts where it is illegal, such as during sporting events.

In this sense the AdCo Pyrotechnics Chair and EUROPOL gave the participants an overview of the situation at European level and of the issue of the use of pyrotechnics in football stadiums.

4. MAIN CONCLUSIONS

After the seminar and taking into consideration all the presentations delivered by the speakers and the questions and comments made by all participants, we can highlight as our main conclusions the following:

a. The EUCOM action plan must be implemented in all its priorities, mainly due to the problems presented, e.g.: illicit firearms are mostly shotguns, pistols and rifles (respectively 30 %, 22 % and 15 % of weapons seized). Between 2009 and 2018, 23 mass-shooting incidents occurred in the EU and 341 people were killed. In 2015, firearms were used in 57 terrorist incidents. In 2017, firearms were used in 41% of all terrorist attacks (from 38 % in 2016);

b. The origins of the problem are: the existing legal loopholes / inconsistencies (including remaining legislative discrepancies between Member States); patchy and inconsistent data; many players at national level, resulting in an incomplete picture of the threat; insufficient exchanges of information; and an uneven criminal law framework;

c. The main threats of illicit trafficking of firearms were pointed out by Europol, and can be summarised as: conversion of Flobert weapons; dark-web activities; 3D printing / semi-finished / self-made weapons; fake/forged/stolen/lost ID documents for purchasing weapons; postal / fast parcel services; trafficking through vessels; blank firing weapons; legislative discrepancies between EU MS; Western Balkans and conflict areas; hand grenades and composed Glock pistols;

d. From Europol's perspective, we need more cooperation and exchange of information so that intelligence can be more effective in the future;

e. The EMPACT Firearms Driver highlighted the main objectives, structure and operational actions of this priority and the need for more involvement of MS. EMPACT, as stated above, must in the next policy cycle be the real and true platform that brings together at European level all the efforts related to this aspect of fighting organised and violent crime, in coordination with other relevant actors;

f. The Frontex mandate to tackle illicit firearms trafficking is expected to address not only migrant smuggling and trafficking in human beings but also serious crime that adversely affects the security of the EU's external borders. This may include, for instance, smuggling of stolen vehicles, drugs, tobacco products or firearms and their essential components. Frontex's mandate to tackle illicit firearms trafficking was addressed in EBCG Regulation 2019/1896 of the European Parliament and of the Council of 13 November 2019. Illicit firearms trafficking falls under the definition of cross-border crime specified under Article 2 of the Regulation (definition 12) as: "serious crime with a cross-border dimension that is committed or attempted at, along or in the proximity of the external borders";

g. In relation to the Handbook on Firearms for Border Guards and Customs, which are at the final stages of production, Frontex stated that the project was being developed by Frontex with the support of the EU COM (DG HOME and DG TAXUD), EFE, Poland, Romania, Slovenia, UNODC and other stakeholders in order to improve the detection of illicit firearms trafficked across the EU's external land borders. The handbook is intended to support, bridge and raise cooperation and awareness of Border Guard and Customs officers at the EU external land borders with respect to various aspects of firearms transportation (both legal and illegal), in particular as regards recognition of firearms and their parts, methods of concealment, risk indicators and modus operandi applied by criminals as well as the most effective approach in terms of border control measures, including technical equipment used for detection of illicit firearms. The product will be finalised and distributed in the second quarter of 2021. Translation into EU languages is envisaged. An international version of the handbook is to be distributed to international partners, LEAs of non-EU countries. Product will be tailored and translated for the WB region;

h. From the UNODC perspective there is a need for development of adequate policy and legislative frameworks compliant with the Firearms Protocol, mainly by support for and ratification of UNTOC & Firearms Protocol; legislative assistance and legal drafting support; implementation of Joint Roadmaps and support for participation of parties in a new review mechanism;

i. The conclusions of the seminar organised by Portugal concerning the security of public spaces and the relation with weapons were presented and can be summarised as follows: Member States must restrict non-legitimate carrying of bladed weapons in public spaces and at major events, and develop specific protection measures for places of worship; concerning the availability and accessibility to weapons, some Member States called attention to emergent and disruptive technologies such as 3D printers; acknowledging that explosives precursors have been used in many of the recent terrorist attacks in the EU, the importance of Commission efforts and of the actions already taken at Member States level, including legislation to protect citizens from the threat posed by explosives precursors, was stressed;

j. In terms of explosives control, to ensure the free movement of explosives it is necessary to harmonise the laws relating to making explosives available on the market. Economic operators should be responsible for the compliance of explosives with the Directive in relation to their roles in the supply chain, so as to ensure a high level of protection of public interests, such as the health and safety of persons and public security and to guarantee fair competition on the Union market. As provided for in that Directive, it is necessary to ensure that undertakings in the explosives sector possess a system for keeping track of explosives in order to be able to identify those holding the explosives at any time. Unique identification of explosives is essential if accurate and complete records of explosives are to be kept at all stages of the supply chain. This should allow the identification and traceability of an explosive from its production site and its placing on the market to its final user and use, with a view to preventing misuse and theft and to assisting law enforcement authorities in the tracing of the origin of lost or stolen explosives. An efficient traceability system also facilitates market surveillance authorities' task of tracing economic operators who have made non-compliant explosives available on the market. When keeping the information required under the Directive for the identification of economic operators, economic operators should not be required to update such information in respect of other economic operators who have either supplied them with an explosive or to whom they have supplied an explosive;

k. Concerning pyrotechnics devises, reference was made during the seminar to the existence of a wide variety of products, grouped into 8 categories - Fireworks F1, F2, F3 and F4 -Theatrical effects T1 and T2 - Others P1 and P2; but categories F4, T2 and P2 may only be used by professional users. Member States may have their own restrictions on categories F2, F3, T1 and P1. For that reason and in terms of market surveillance there is a need to guarantee the safety of consumers and to ensure fair competition for all economic operators;

l. The main concerns regarding misuse of such devices were identified as the trend for pyrotechnic articles being illegally distributed from web shops at European level, and used against police forces, in ATM robberies and in attacks with powerful flash bangers;

m. EUCOM has commissioned two studies on F4 flash bangers, in 2016 and in 2018. The conclusion reached was that annual production in the EU amounts to 1 136 000 units and annual legal use and export to 951 000 units. Thus, the quantity unaccounted for annually is 185 000 units that were trafficked. A second conclusion was that the vast majority of online shops do not check the eligibility of buyers and there is a significant black market enterprise for organised crime groups;

n. Europol stated that trafficking of pyrotechnics was starting to resemble international drug trafficking. The main reasons are: more structured and poly-criminal (importing of drugs and production of cannabis); large scale, OCGs involved in importing tons; legal business structures such as companies or other entities are used to facilitate; increase in violence between rival OCGs, including ‘rip deals’; use of encrypted platforms such as Encrochat and Sky ECC; use of legal and illegal storage places in several EU countries; use of intermediaries in different EU MS and distribution of fake cat. F4 pyrotechnics (Cobra) or illicitly manufactured pyrotechnics;

o. As terrorist threats and trends in 2020, Europol considered the following relevant: similar threat and terrorist dynamics as in 2019; the number of explosives-related jihadist attacks (foiled, failed and completed) in the EU decreased; TATP use decreased; increase in the use of other improvised explosives and readily available commercial articles (pyrotechnics, cartridges, reloading powders, etc.); increased number of IEDs in the form of pipe bombs and pressure-cooker bombs (Inspire magazine types); LEAs foiled all of the planned bombing attacks in time; lockdown; online propaganda – a decrease in bomb-making instructions, and virus and pandemic narratives in line with each ideological agenda;

p. From the Europol perspective, we need more cooperation and exchange of information so that intelligence can be more effective in the future.

C) Aprender com o passado na preparação do futuro – Reforçar a resiliência das nossas sociedades | Gestão de catástrofes e proteção civil

I

(Atos legislativos)

REGULAMENTOS

REGULAMENTO (UE) 2021/836 DO PARLAMENTO EUROPEU E DO CONSELHO

de 20 de maio de 2021

que altera a Decisão n.º 1313/2013/UE relativa a um Mecanismo de Proteção Civil da União Europeia

(Texto relevante para efeitos do EEE)

O PARLAMENTO EUROPEU E O CONSELHO DA UNIÃO EUROPEIA,

Tendo em conta o Tratado sobre o Funcionamento da União Europeia, nomeadamente os artigos 196.º e 322.º, n.º 1, alínea a),

Tendo em conta a proposta da Comissão Europeia,

Após transmissão do projeto de ato legislativo aos parlamentos nacionais,

Tendo em conta o parecer do Tribunal de Contas ([1]),

Tendo em conta o parecer do Comité Económico e Social Europeu ([2]),

Tendo em conta o parecer do Comité das Regiões ([3]),

Deliberando de acordo com o processo legislativo ordinário ([4]),

Considerando o seguinte:

(1) O Mecanismo de Proteção Civil da União Europeia («Mecanismo da União»), que se rege pela Decisão n.º 1313/2013/UE do Parlamento Europeu e do Conselho ([5]) reforça a cooperação entre a União e os Estados-Membros e facilita a coordenação no domínio da proteção civil a fim melhorar a resposta da União a catástrofes naturais e de origem humana.

(2) Embora a principal responsabilidade pela prevenção, preparação e resposta a catástrofes naturais e de origem humana caiba aos Estados-Membros, o Mecanismo da União e, em particular, o rescEU, promovem a solidariedade entre Estados-Membros, nos termos do artigo 3.º, n.º 3, do Tratado da União Europeia. Para o efeito, o Mecanismo da União reforça, por um lado, a resposta coletiva da União a catástrofes naturais ou de origem humana mediante a criação de uma reserva de capacidades que complementa as capacidades existentes nos Estados-Membros quando as capacidades disponíveis a nível nacional não sejam suficientes, permitindo assim uma preparação e uma resposta mais eficazes, e, por outro, a melhoria da prevenção e da preparação para catástrofes. São necessárias dotações financeiras suficientes para a criação, mobilização e funcionamento das capacidades do rescEU e para que seja possível continuar a desenvolver a Reserva Europeia de Proteção Civil e cobrir os custos adicionais decorrentes das subvenções para a adaptação e do funcionamento das capacidades afetadas à Reserva Europeia de Proteção Civil.

([1]) JO C 385 de 13.11.2020, p. 1.
([2]) JO C 10 de 11.1.2021, p. 66.
([3]) JO C 440 de 18.12.2020, p. 150.
([4]) Posição do Parlamento Europeu de 27 de abril de 2021 (ainda não publicada no Jornal Oficial) e decisão do Conselho de 10 de maio de 2021.
([5]) Decisão n.º 1313/2013/UE do Parlamento Europeu e do Conselho, de 17 de dezembro de 2013, relativa a um Mecanismo de Proteção Civil da União Europeia (JO L 347 de 20.12.2013, p. 924).

(3) A experiência sem precedentes da pandemia de COVID-19 demonstrou que a União e os Estados-Membros necessitam de se preparar melhor para responder a situações de emergências de grande escala que afetem vários Estados-Membros em simultâneo, e que o regime jurídico existente em matéria de saúde e proteção civil deverá ser reforçado. A pandemia de COVID-19 colocou igualmente em evidência até que ponto podem ser devastadoras as consequências de catástrofes para a saúde humana, o ambiente, a sociedade e a economia. Durante a pandemia de COVID-19, a União pôde, com base nas disposições existentes da Decisão n.º 1313/2013/UE, adotar rapidamente disposições de execução para alargar as capacidades do rescEU de modo a incluir a constituição de reservas de contramedidas médicas, incluindo vacinas e tratamentos, equipamento médico de cuidados intensivos, equipamento de proteção individual e material de laboratório, com vista à preparação e resposta a uma ameaça transfronteiriça grave para a saúde. A fim de aumentar a eficácia das ações de preparação e resposta, a adoção de novas disposições que reforcem o atual regime jurídico, incluindo a possibilidade de acesso direto pela Comissão, em condições específicas, às capacidades necessárias do rescEU, poderá reduzir ainda mais o tempo de mobilização no futuro. É igualmente importante que as operações do rescEU sejam adequadamente coordenadas com as autoridades nacionais de proteção civil.

(4) Os membros do Conselho Europeu, na sua declaração conjunta de 26 de março de 2020, e o Parlamento Europeu, na sua resolução de 17 de abril de 2020 sobre a ação coordenada da UE para combater a pandemia de COVID-19 e as suas consequências ([6]), convidaram a Comissão a apresentar propostas para um sistema de gestão de crises no território da União mais ambicioso e abrangente.

(5) As alterações climáticas estão a conduzir a um aumento da frequência, da intensidade e da complexidade das catástrofes naturais na União e a nível mundial e, por conseguinte, é necessário um elevado grau de solidariedade entre países. As catástrofes naturais, como os incêndios florestais, podem conduzir à perda de vidas, meios de subsistência e biodiversidade, provocam a libertação de quantidades elevadas de emissões de carbono e provocam a diminuição da capacidade de absorção de carbono do planeta, o que agrava ainda mais as alterações climáticas. Por conseguinte, é essencial reforçar a prevenção, a preparação e a resposta a catástrofes e que o Mecanismo da União inclua capacidades suficientes, nomeadamente durante o período transitório do rescEU, para agir sempre que ocorram incêndios florestais e outras catástrofes naturais relacionadas com o clima.

(6) A União continua empenhada numa proteção civil sensível às questões de género, incluindo para a resolução de vulnerabilidades específicas, e no intercâmbio de boas práticas relativamente a questões de género que surjam durante e imediatamente após as catástrofes, incluindo o apoio prestado às vítimas de violência com base no género.

(7) Com base nos princípios da solidariedade e da cobertura universal de serviços de saúde de qualidade e no papel central da União na aceleração dos progressos em matéria de desafios mundiais no domínio da saúde, o Mecanismo da União deverá contribuir para melhorar a capacidade de prevenção, preparação e resposta também no que diz respeito às emergências médicas.

(8) Os Estados-Membros são incentivados a assegurar, em pleno respeito pelas suas estruturas nacionais, que as equipas de primeira intervenção estejam devidamente equipadas e preparadas para responder a catástrofes.

(9) A fim de reforçar a cooperação em resposta a catástrofes, os procedimentos administrativos deverão ser simplificados, sempre que possível, de modo a garantir uma intervenção rápida.

(10) A fim de assegurar uma melhor preparação para fazer face a catástrofes que afetem vários Estados-Membros no futuro, são necessárias medidas urgentes para reforçar o Mecanismo da União. O reforço do Mecanismo da União deverá complementar políticas e fundos da União e não substituir a integração da resiliência em face de catástrofes nessas políticas e nesses fundos.

(11) Os dados sobre as perdas causadas por catástrofes são cruciais para uma avaliação sólida dos riscos, para a elaboração de cenários de potenciais catástrofes com base em dados concretos e para a aplicação de medidas eficazes de gestão dos riscos. Por conseguinte, os Estados-Membros deverão continuar a envidar esforços para melhorar a recolha de dados sobre perdas causadas por catástrofes, em consonância com os compromissos já assumidos no âmbito de acordos internacionais, tais como o Quadro de Sendai para a Redução dos Riscos de Catástrofe 2015-2030, o Acordo de Paris adotado no âmbito da Convenção-Quadro das Nações Unidas sobre Alterações Climáticas ([7]) e a Agenda 2030 das Nações Unidas para o Desenvolvimento Sustentável.

([6]) Ainda não publicada no Jornal Oficial.
([7]) JO L 282 de 19.10.2016, p. 4.

(12) Para melhorar a resiliência e o planeamento em matéria de prevenção, preparação e resposta a catástrofes, a União deverá continuar a defender o investimento na prevenção de catástrofes a nível transfronteiriço e intersetorial e a adotar abordagens abrangentes de gestão de riscos, que apoiem a prevenção e a preparação, tendo em conta uma abordagem multirriscos, uma abordagem ecossistémica e os impactos prováveis das alterações climáticas, em estreita cooperação com as comunidades científicas pertinentes, os principais operadores económicos, as autoridades regionais e locais e as organizações não governamentais ativas neste domínio, sem prejuízo dos mecanismos de coordenação estabelecidos na União e das competências dos Estados-Membros. Para o efeito, a Comissão deverá trabalhar em conjunto com os Estados-Membros para definir e desenvolver os objetivos da União em matéria de resiliência a catástrofes no domínio da proteção civil, como base de referência comum e não vinculativa para apoiar ações de prevenção e preparação para a ocorrência de catástrofes de elevado impacto que causem, ou sejam suscetíveis de causar, efeitos transnacionais em diversos países (isto é, efeitos em vários países, independentemente de partilharem, ou não, fronteiras). Os objetivos da União em matéria de resiliência a catástrofes deverão ter em conta as consequências sociais imediatas das catástrofes e a necessidade de assegurar que funções essenciais para a sociedade são preservadas.

(13) As avaliações de risco e as análises regulares dos cenários de catástrofe a nível nacional e, se for o caso, a nível subnacional, são cruciais para a deteção de lacunas na prevenção e preparação e para o reforço da resiliência, nomeadamente através da utilização de fundos da União. Essas avaliações de risco e análises de cenários de catástrofe deverão centrar-se nos riscos específicos da região em causa e, sempre que pertinente, deverão abranger a cooperação transfronteiriça.

(14) No desenvolvimento dos objetivos da União em matéria de resiliência a catástrofes para apoiar as ações de prevenção e preparação, deve ser concedida especial atenção às consequências das catástrofes para os grupos vulneráveis.

(15) O papel das autoridades regionais e locais na prevenção e gestão de catástrofes reveste-se de grande importância e, se for o caso, as suas capacidades de resposta são integradas nas atividades executadas ao abrigo da Decisão n.º 1313/2013/UE, de modo a minimizar as sobreposições e promover a interoperabilidade. Por conseguinte, é igualmente necessária uma cooperação transfronteiriça contínua a nível local e regional, com vista ao desenvolvimento de sistemas comuns de alerta para uma intervenção rápida antes da ativação do Mecanismo da União. Do mesmo modo, e tendo em conta as estruturas nacionais, é importante reconhecer a necessidade de prestar assistência à formação técnica das comunidades locais, a fim de reforçar as suas capacidades para dar uma primeira resposta, se for caso disso. É igualmente importante manter o público informado sobre as primeiras medidas de resposta.

(16) O Mecanismo da União deverá continuar a explorar sinergias com o regime da União em matéria de resiliência das entidades críticas.

(17) O Centro de Coordenação de Resposta de Emergência (CCRE) deverá ser reforçado, uma vez que se trata de um centro operacional que funciona a nível da União, 24 horas por dia e sete dias por semana, com capacidade para acompanhar e apoiar operações em vários tipos de situações de emergência, em tempo real dentro e fora da União. Esse reforço deverá incluir uma melhor coordenação do CCRE com as autoridades nacionais de proteção civil dos Estados-Membros, bem como com outros organismos competentes da União. A ação do CCRE é apoiada por conhecimentos científicos especializados, incluindo os disponibilizados pelo Centro Comum de Investigação da Comissão Europeia.

(18) O Mecanismo da União deverá utilizar as infraestruturas espaciais da União, como o Programa Europeu de Observação da Terra (Copernicus), o Galileo, o Conhecimento da Situação no Espaço e o GOVSATCOM, que fornecem instrumentos importantes a nível da União para fazer face a situações de emergência internas e externas. O serviço de gestão de emergências do Copernicus presta apoio ao CCRE nas diferentes fases de uma situação de emergência, tanto no alerta precoce e na prevenção, como na resposta a catástrofes e na recuperação. O GOVSATCOM destina-se a proporcionar uma capacidade de comunicação por satélite segura, especificamente adaptada às necessidades dos utilizadores governamentais na gestão de situações de emergência. O Galileo é a primeira infraestrutura mundial de navegação e localização por satélite especificamente concebida para fins civis na Europa e em todo o mundo e pode ser utilizada noutros domínios, como a gestão de situações de emergência, incluindo atividades de alerta precoce. Os serviços competentes do Galileo incluem um serviço de emergência que transmite, através de sinais emissores, alertas relativos a catástrofes naturais ou de origem humana em determinadas zonas. Dado o seu potencial para salvar vidas e facilitar a coordenação de ações de emergência, os Estados-Membros deverão ser encorajados a utilizar o Galileo. Sempre que decidam utilizá-lo, a fim de validar o sistema, os Estados-Membros deverão identificar quais as autoridades nacionais competentes para utilizar o Galileo e informar a Comissão a esse respeito.

(19) Durante a pandemia de COVID-19, a falta de recursos logísticos e de transporte suficientes foi identificada como um dos principais obstáculos à prestação ou receção de assistência pelos Estados-Membros. Por conseguinte, os recursos logísticos e de transporte deverão ser definidos como capacidades do rescEU. A fim de assegurar condições uniformes para a execução da Decisão n.º 1313/2013/UE, deverão ser atribuídas competências de execução à Comissão que lhe permitam definir os recursos logísticos e de transporte como capacidades do rescEU, e que lhe permitam alugar, tomar em locação ou contratar tais capacidades na medida do necessário para colmatar as lacunas no domínio dos transportes e da logística. Essas competências deverão ser exercidas nos termos do Regulamento (UE) n.º 182/2011 do Parlamento Europeu e do Conselho ([8]). Além disso, de modo a dispor de capacidade operacional para responder rapidamente a uma catástrofe de grande escala que cause, ou seja suscetível de causar, efeitos transnacionais em diversos países ou a um acontecimento com pouca probabilidade de ocorrência mas grande impacto, em casos de urgência devidamente justificados e em consulta com os Estados-Membros, em conformidade com o procedimento de urgência mediante a adoção de atos de execução imediatamente aplicáveis, a União também deverá ter a possibilidade de adquirir, alugar, tomar em locação ou contratar meios materiais e serviços de apoio necessários definidos como capacidades do rescEU, caso esses meios e serviços não possam ser imediatamente disponibilizados pelos Estados-Membros. Tal permitiria à União reagir sem demora a situações de emergência passíveis de ter um impacto considerável nas vidas, saúde, ambiente, propriedade ou património cultural, afetando vários Estados-Membros ao mesmo tempo. Os referidos meios materiais excluem módulos, equipas e categorias de peritos e destinam-se a prestar assistência aos Estados-Membros assoberbados com situações de catástrofe.

(20) A fim de tirar o melhor partido da experiência adquirida até à data com redes logísticas de confiança geridas por organizações internacionais pertinentes no interior da União, como os centros de resposta humanitária das Nações Unidas, a Comissão deverá ter em conta essas redes quando adquirir, alugar, tomar em locação ou contratar capacidades da rescEU. As agências competentes da União deverão ser devidamente associadas e consultadas em relação a questões abrangidas pelo Mecanismo da União que se enquadrem na sua competência. É particularmente importante que a Agência Europeia de Medicamentos e o Centro Europeu de Prevenção e Controlo das Doenças sejam consultados, sempre que adequado, sobre a definição, a gestão e a distribuição das capacidades destinadas à resposta a emergências médicas.

(21) Deverá ser possível recorrer às capacidades do rescEU adquiridas, alugadas, tomadas em locação ou contratadas pelos Estados-Membros para fins nacionais, mas apenas quando não estiverem a ser utilizadas nem sejam necessárias em operações de resposta no âmbito do Mecanismo da União.

(22) A União tem interesse em responder, se necessário, a situações de emergência em países terceiro. Embora as capacidades do rescEU tenham sido criadas principalmente para utilização como rede de segurança no território da União, em casos devidamente justificados e tendo em conta princípios humanitários, deverá ser possível mobilizar as capacidades do rescEU fora da UE. A decisão de mobilização deverá ser tomada em conformidade com as disposições em vigor sobre as decisões de mobilização das capacidades do rescEU.

(23) O Mecanismo da União deverá assegurar uma distribuição geográfica adequada das reservas, incluindo no que respeita a contramedidas médicas essenciais e equipamento de proteção individual, nomeadamente as utilizadas para dar resposta a acontecimentos com pouca probabilidade de ocorrência mas grande impacto, em sinergia e em complementaridade com o Programa UE pela Saúde criado ao abrigo do Regulamento (UE) 2021/522 do Parlamento Europeu e do Conselho ([9]), o Instrumento de Apoio de Emergência criado ao abrigo do Regulamento (UE) 2016/369 do Conselho ([10]), o Instrumento de Recuperação e Resiliência criado ao abrigo do Regulamento (UE) 2021/241 do Parlamento Europeu e do Conselho ([11]), e outras políticas, programas e fundos da União e, se necessário, deverá complementar a constituição de reservas nacionais a nível da União.

(24) A pandemia de COVID-19 demonstrou a importância fundamental da reunião e partilha sistemática dos conhecimentos pertinentes em todas as fases do ciclo de gestão dos riscos de catástrofe. Essa constatação e a experiência adquirida até à data no processo de desenvolvimento da Rede Europeia de Conhecimentos sobre Proteção Civil indicam que é necessário aperfeiçoar o seu papel enquanto unidade de processamento no âmbito do Mecanismo da União.

([8]) Regulamento (UE) n.º 182/2011 do Parlamento Europeu e do Conselho, de 16 de fevereiro de 2011, que estabelece as regras e os princípios gerais relativos aos mecanismos de controlo pelos Estados-Membros do exercício das competências de execução pela Comissão (JO L 55 de 28.2.2011, p. 13).

([9]) Regulamento (UE) 2021/522 do Parlamento Europeu e do Conselho, de 24 de março de 2021, relativo à criação de um programa de ação da União no domínio da saúde («Programa UE pela Saúde») para o período 2021-2027 e que revoga o Regulamento (UE) n.º 282/2014 (JO L 107 de 26.3.2021, p. 1).

([10]) Regulamento (UE) 2016/369 do Conselho, de 15 de março de 2016, relativo à prestação de apoio de emergência na União (JO L 70 de 16.3.2016, p. 1).

([11]) Regulamento (UE) 2021/241 do Parlamento Europeu e do Conselho, de 12 de fevereiro de 2021, que cria o Mecanismo de Recuperação e Resiliência (JO L 57 de 18.2.2021, p. 17).

(25) A obtenção dos recursos logísticos e de transporte necessários é essencial para permitir à União dar resposta a qualquer tipo de situação de emergência dentro e fora da União. É imperativo assegurar em tempo útil o transporte e a prestação de assistência e ajuda, não só no território da União, mas também para fora da União e a partir do exterior. Por conseguinte, os países afetados devem poder solicitar assistência que consista apenas nos recursos logísticos e de transporte.

(26) A Decisão n.º 1313/2013/UE estabelece uma dotação financeira para o Mecanismo da União que constitui o montante de referência privilegiado, na aceção do ponto 17 do Acordo Interinstitucional, de 2 de dezembro de 2013, entre o Parlamento Europeu, o Conselho e a Comissão, sobre a disciplina orçamental, a cooperação em matéria orçamental e a boa gestão financeira ([12]), destinado a cobrir as despesas do programa até ao final do período orçamental 2014-2020. Essa dotação financeira deverá ser atualizada a partir da data de 1 de janeiro de 2021, data de início da aplicação do Regulamento (UE, Euratom) 2020/2093 do Conselho ([13]), de modo a refletir os novos números neste previstos.

(27) Em conformidade com o Regulamento (UE) 2020/2094 do Conselho ([14]), que cria um Instrumento de Recuperação da União Europeia, e dentro dos limites dos recursos afetados nesse regulamento, as medidas de recuperação e resiliência adotadas no âmbito do Mecanismo da União deverão ser executadas para fazer face ao impacto sem precedentes da crise provocada pela pandemia de COVID-19. Essas medidas deverão, em particular, incluir medidas destinadas a aumentar o nível de preparação da União e permitir uma resposta rápida e eficaz da União em caso de situações graves de emergência, incluindo medidas como o armazenamento de produtos e equipamentos médicos essenciais e a aquisição das infraestruturas necessárias para uma resposta rápida. Esses recursos adicionais deverão ser utilizados de forma a garantir o cumprimento dos prazos previstos no Regulamento (UE) 2020/2094.

(28) Tendo em conta a importância da luta contra as alterações climáticas, em consonância com os compromissos da União de aplicar o Acordo de Paris e de realizar os Objetivos de Desenvolvimento Sustentável das Nações Unidas, as ações levadas a cabo ao abrigo da Decisão n.º 1313/2013/UE deverão contribuir para a realização do objetivo de consagrar, pelo menos, 30 % do montante total das despesas do orçamento da União Europeia e do Instrumento Europeu de Recuperação ao apoio aos objetivos climáticos, bem como da ambição de consagrar 7,5 % em 2024, e 10 % em 2026 e em 2027, do orçamento a despesas em matéria de biodiversidade, tendo em conta as sobreposições existentes entre os objetivos climáticos e os objetivos de biodiversidade.

(29) Uma vez que a mobilização das capacidades do rescEU para operações de resposta no âmbito do Mecanismo da União, assegurando às pessoas em situações de emergência uma resposta rápida e eficaz, proporciona um valor acrescentado significativo para a União, deverão ser estabelecidas obrigações de visibilidade adicionais a fim de prestar informações aos cidadãos da União e aos meios de comunicação social, bem como para dar proeminência à União. As autoridades nacionais deverão receber da Comissão, para intervenções específicas, orientações em matéria de comunicação, a fim de assegurar que o papel da União seja devidamente publicitado.

(30) Tendo em conta a recente experiência operacional, os custos do desenvolvimento de todas as capacidades do rescEU deverão ser integralmente financiados pelo orçamento da União, de modo a reforçar o Mecanismo da União e, em particular, a simplificar o processo de rápida implementação do rescEU.

(31) A fim de apoiar os Estados-Membros a também prestar assistência fora da União, a Reserva Europeia de Proteção Civil deverá continuar a ser reforçada através do cofinanciamento ao mesmo nível dos custos operacionais das capacidades afetadas, independentemente do facto de serem destacadas dentro ou fora da União.

(32) A fim de assegurar flexibilidade no apoio aos Estados-Membros quanto a recursos logísticos e de transporte, em especial em caso de catástrofes de grande escala, deverá ser possível financiar integralmente, a partir do orçamento da União, o transporte de mercadorias, meios logísticos e serviços mobilizados como capacidades do rescEU no interior da União ou a partir de países terceiros para a União.

([12]) JO C 373 de 20.12.2013, p. 1.

([13]) Regulamento (UE, Euratom) 2020/2093 do Conselho, de 17 de dezembro de 2020, que estabelece o quadro financeiro plurianual para o período de 2021 a 2027 (JO L 433 I de 22.12.2020, p. 11).

([14]) Regulamento (UE) 2020/2094 do Conselho, de 14 de dezembro de 2020, que cria um Instrumento de Recuperação da União Europeia para apoiar a recuperação na sequência da crise da COVID-19 (JO L 433 I de 22.12.2020, p. 23).

(33) O Mecanismo da União deverá também prestar a assistência de transporte necessária em catástrofes ambientais, mediante a aplicação do princípio do «poluidor-pagador», sob a responsabilidade das autoridades nacionais competentes, nos termos do artigo 191.º, n.º 2, do Tratado sobre o Funcionamento da União Europeia (TFUE) e em conformidade com a Diretiva 2004/35/CE do Parlamento Europeu e do Conselho ([15]).

(34) A fim de aumentar a flexibilidade e de otimizar a execução orçamental, o presente regulamento deverá prever a gestão indireta como método de execução do orçamento a utilizar sempre que tal se justifique pela natureza e pelo teor da ação em causa.

(35) Nos termos do artigo 193.º, n.º 2, do Regulamento (UE, Euratom) 2018/1046 do Parlamento Europeu e do Conselho ([16]) (o «Regulamento Financeiro»), pode ser concedida uma subvenção a ações já iniciadas, desde que o requerente possa demonstrar a necessidade do arranque da ação antes da assinatura da convenção de subvenção. Todavia, os custos incorridos antes da data de apresentação do pedido de subvenção não são elegíveis, salvo em casos excecionais devidamente justificados. A fim de evitar qualquer interrupção do apoio da União que possa prejudicar os interesses da União, deverá ser possível estabelecer na decisão de financiamento, para um período limitado no início do quadro financeiro plurianual para 2021-2027, e só em casos devidamente justificados, que os custos incorridos no que respeita a ações apoiadas ao abrigo da Decisão n.º 1313/2013/UE que já se tenham iniciado, sejam considerados elegíveis desde 1 de janeiro de 2021, ainda que esses custos tenham sido incorridos antes da apresentação do pedido de subvenção.

(36) A fim de promover a previsibilidade e a eficácia a longo prazo, na execução da Decisão n.º 1313/2013/UE, a Comissão deverá adotar programas de trabalho anuais ou plurianuais que indiquem as dotações previstas. Tal deverá ajudar a União a dispor de maior flexibilidade na execução orçamental, reforçando deste modo as ações de prevenção e preparação. Além disso, os planos de futuras dotações deverão ser apresentados e debatidos anualmente no comité que assiste a Comissão nos termos do Regulamento (UE) n.º 182/2011.

(37) A Comissão informa sobre a execução do orçamento do Mecanismo da União em conformidade com o Regulamento Financeiro.

(38) Aplicam-se à Decisão n.º 1313/2013/UE as regras financeiras horizontais adotadas pelo Parlamento Europeu e pelo Conselho com base no artigo 322.º do TFUE. Estas regras são definidas no Regulamento Financeiro e determinam, em particular, o procedimento para estabelecer e executar o orçamento por meio de subvenções, contratos públicos, prémios e execução indireta, e preveem o controlo da responsabilidade dos intervenientes financeiros. As regras adotadas com base no artigo 322.º do TFUE incluem também um regime geral de condicionalidade para proteção do orçamento da União.

(39) Embora as medidas de prevenção e preparação sejam essenciais para reforçar a resiliência da União em caso de catástrofes naturais ou de origem humana, a ocorrência, o momento e a magnitude das catástrofes são, por natureza, imprevisíveis. Tal como demonstrado na recente crise de COVID-19, os recursos financeiros necessários para assegurar uma resposta adequada podem variar significativamente de ano para ano e deverão ser disponibilizados imediatamente. Conciliar o princípio orçamental da previsibilidade com a necessidade de reagir rapidamente a novas necessidades implica, pois, a necessidade de adaptar a execução financeira dos programas de trabalho. Por conseguinte, para além da transição de dotações autorizadas ao abrigo do disposto no artigo 12.º, n.º 4, do Regulamento Financeiro, é adequado autorizar a transição de dotações não utilizadas, limitada ao ano seguinte e exclusivamente destinada a ações de resposta.

([15]) Diretiva 2004/35/CE do Parlamento Europeu e do Conselho, de 21 de abril de 2004, relativa à responsabilidade ambiental em termos de prevenção e reparação de danos ambientais (JO L 143 de 30.4.2004, p. 56).

([16]) Regulamento (UE, Euratom) 2018/1046 do Parlamento Europeu e do Conselho, de 18 de julho de 2018, relativo às disposições financeiras aplicáveis ao orçamento geral da União, que altera os Regulamentos (UE) n.º 1296/2013, (UE) n.º 1301/2013, (UE) n.º 1303/2013, (UE) n.º 1304/2013, (UE) n.º 1309/2013, (UE) n.º 1316/2013, (UE) n.º 223/2014 e (UE) n.º 283/2014, e a Decisão n.º 541/2014/UE, e revoga o Regulamento (UE, Euratom) n.º 966/2012 (JO L 193 de 30.7.2018, p. 1).

(40) Nos termos do Regulamento Financeiro, do Regulamento (UE, Euratom) n.º 883/2013 do Parlamento Europeu e do Conselho ([17]) e dos Regulamentos (CE, Euratom) n.º 2988/95 ([18]), (Euratom, CE) n.º 2185/96 ([19]) e (UE) 2017/1939 ([20]) do Conselho, os interesses financeiros da União devem ser protegidos através de medidas proporcionadas, incluindo medidas relacionadas com a prevenção, deteção, a correção e a investigação de irregularidades, nomeadamente de fraudes, com a recuperação de fundos perdidos, pagos indevidamente ou utilizados incorretamente e, se for caso disso, com a aplicação de sanções administrativas. Em especial, de acordo com os Regulamentos (Euratom, CE) n.º 2185/96 e (UE, Euratom) n.º 883/2013, o Organismo Europeu de Luta Antifraude (OLAF) tem o poder de efetuar inquéritos administrativos, incluindo inspeções e verificações no local, a fim de verificar a eventual existência de fraude, de corrupção ou de quaisquer outras atividades ilegais lesivas dos interesses financeiros da União. A Procuradoria Europeia está habilitada, nos termos do Regulamento (UE) 2017/1939, a investigar e instaurar ações relativamente a infrações lesivas dos interesses financeiros da União, tal como previsto na Diretiva (UE) 2017/1371 do Parlamento Europeu e do Conselho ([21]). Nos termos do Regulamento Financeiro, as pessoas ou entidades que recebam fundos da União devem cooperar plenamente na proteção dos interesses financeiros da União, conceder os direitos e o acesso necessários à Comissão, ao OLAF, ao Tribunal de Contas e, no caso dos Estados-Membros que participam numa cooperação reforçada ao abrigo do Regulamento (UE) 2017/1939, à Procuradoria Europeia, e assegurar que terceiros envolvidos na execução dos fundos da União concedam direitos equivalentes. Por este motivo, os acordos com países terceiros e territórios e com organizações internacionais, bem como qualquer contrato ou acordo decorrentes da execução da Decisão n.º 1313/2013/UE, deverão conter disposições que confiram expressamente à Comissão, ao Tribunal de Contas, à Procuradoria Europeia e ao OLAF poderes para realizar as auditorias, verificações no local e inspeções, em conformidade com as respetivas competências, e assegurar que quaisquer terceiros envolvidos na execução dos fundos da União concedem direitos equivalentes.

(41) Os países terceiros membros do Espaço Económico Europeu (EEE) podem participar em programas da União no quadro da cooperação estabelecida ao abrigo do Acordo sobre o Espaço Económico Europeu ([22]), que prevê a execução dos programas com base numa decisão ao abrigo do referido Acordo. Os países terceiros também podem participar com base noutros instrumentos jurídicos. Deverá ser introduzida na Decisão n.º 1313/2013/UE uma disposição específica que imponha aos países terceiros a obrigação de conceder os direitos e o acesso necessários para que o gestor orçamental competente, o OLAF e o Tribunal de Contas exerçam integralmente as respetivas competências.

(42) Durante a pandemia de COVID-19, foram disponibilizadas dotações financeiras adicionais para financiar ações no âmbito do Mecanismo da União, a fim de assegurar o funcionamento das capacidades do rescEU e permitir ao Mecanismo da União responder eficazmente às necessidades dos cidadãos da União. É importante proporcionar à União a flexibilidade necessária para poder reagir eficazmente a catástrofes de natureza imprevisível, mantendo, ao mesmo tempo, uma certa previsibilidade na realização dos objetivos estabelecidos na Decisão n.º 1313/2013/UE. É importante alcançar o equilíbrio necessário na realização desses objetivos. A fim de atualizar as percentagens estabelecidas no anexo I de acordo com as prioridades do Mecanismo da União, o poder de adotar atos nos termos do artigo 290.º do TFUE deverá ser delegado na Comissão. É particularmente importante que a Comissão proceda às consultas adequadas durante os trabalhos preparatórios, inclusive ao nível de peritos, e que essas consultas sejam conduzidas de acordo com os princípios estabelecidos no Acordo Interinstitucional, de 13 de abril de 2016, sobre legislar melhor ([23]). Em particular, a fim de assegurar a igualdade de participação na preparação dos atos delegados, o Parlamento Europeu e o Conselho recebem todos os documentos ao mesmo tempo que os peritos dos Estados-Membros, e os respetivos peritos têm sistematicamente acesso às reuniões dos grupos de peritos da Comissão que tratem da preparação dos atos delegados.

(43) Por conseguinte, a Decisão n.º 1313/2013/UE deverá ser alterada em conformidade.

([17]) Regulamento (UE, Euratom) n.º 883/2013 do Parlamento Europeu e do Conselho, de 11 de setembro de 2013, relativo aos inquéritos efetuados pelo Organismo Europeu de Luta Antifraude (OLAF) e que revoga o Regulamento (CE) n.º 1073/1999 do Parlamento Europeu e do Conselho e o Regulamento (Euratom) n.º 1074/1999 do Conselho (JO L 248 de 18.9.2013, p. 1).

([18]) Regulamento (CE, Euratom) n.º 2988/95 do Conselho, de 18 de dezembro de 1995, relativo à proteção dos interesses financeiros das Comunidades Europeias (JO L 312 de 23.12.1995, p. 1).

([19]) Regulamento (Euratom, CE) n.º 2185/96 do Conselho, de 11 de novembro de 1996, relativo às inspeções e verificações no local efetuadas pela Comissão para proteger os interesses financeiros das Comunidades Europeias contra a fraude e outras irregularidades (JO L 292 de 15.11.1996, p. 2).

([20]) Regulamento (UE) 2017/1939 do Conselho, de 12 de outubro de 2017, que dá execução a uma cooperação reforçada para a instituição da Procuradoria Europeia (JO L 283 de 31.10.2017, p. 1).

([21]) Diretiva (UE) 2017/1371 do Parlamento Europeu e do Conselho, de 5 de julho de 2017, relativa à luta contra a fraude lesiva dos interesses financeiros da União através do direito penal (JO L 198 de 28.7.2017, p. 29).

([22]) JO L 1 de 3.1.1994, p. 3.

([23]) JO L 123 de 12.5.2016, p. 1

(44) A fim de assegurar a continuidade do apoio prestado no domínio de intervenção pertinente e de permitir a execução desde o início do quadro financeiro plurianual para 2021-2027, o presente regulamento deverá entrar em vigor com caráter de urgência e ser aplicável, com efeitos retroativos, desde 1 de janeiro de 2021,

ADOTARAM O PRESENTE REGULAMENTO:

Artigo 1.º

A Decisão n.º 1313/2013/UE é alterada do seguinte modo:

1) No artigo 1.º, os n.ºs 2 e 3 passam a ter a seguinte redação:

«2. A proteção assegurada pelo Mecanismo da União cobre, em primeiro lugar, as pessoas, mas também o ambiente e os bens, nomeadamente o património cultural, contra todos os tipos de catástrofes naturais ou de origem humana, incluindo as consequências de atos de terrorismo, as catástrofes tecnológicas, radiológicas ou ambientais, a poluição marinha, a instabilidade hidrogeológica e as emergências de saúde graves, que ocorram dentro ou fora da União. No caso das consequências de atos de terrorismo ou de catástrofes radiológicas, o Mecanismo da União pode abranger apenas as ações de preparação e resposta.

3. O Mecanismo da União promove a solidariedade entre os Estados-Membros através da coordenação e da cooperação práticas, sem prejuízo da responsabilidade que incumbe em primeiro lugar aos Estados-Membros de protegerem as pessoas, o ambiente e os bens, incluindo o património cultural, contra as catástrofes no seu território, assim como de dotarem os seus sistemas de gestão de catástrofes das capacidades suficientes para prevenirem e enfrentarem adequadamente e de forma coerente as catástrofes cuja dimensão e natureza sejam razoavelmente previsíveis e para as quais seja possível estar preparado.»;

2) O artigo 3.º é alterado do seguinte modo:

a) No n.º 1, a alínea c) passa a ter a seguinte redação:

«c) Contribuir para a rapidez e a eficácia da resposta em caso de ocorrência ou de iminência de ocorrência de catástrofes, nomeadamente tomando medidas destinadas a atenuar as consequências imediatas de catástrofes e incentivando os Estados-Membros a trabalhar no sentido de eliminar os obstáculos burocráticos;»;

b) No n.º 2, a alínea b) passa a ter a seguinte redação:

«b) Os progressos realizados em termos de aumento do grau de preparação para catástrofes, medidos em função do número de capacidades de resposta integradas na Reserva Europeia de Proteção Civil relativamente aos objetivos de capacidade referidos no artigo 11.º, ao número de módulos registados no Sistema Comum de Comunicação e de Informação de Emergência (SCCIE) e ao número de capacidades do rescEU criadas para prestar assistência em situações prementes;»;

3) No artigo 4.º, é inserido o seguinte ponto:

«4-A. "Objetivos da União em matéria de resiliência às catástrofes": objetivos não vinculativos estabelecidos no domínio da proteção civil para apoiar ações de prevenção e de preparação com o objetivo de melhorar a capacidade de resistência da União e dos seus Estados-Membros em face dos efeitos de uma catástrofe que cause, ou seja suscetível de causar, efeitos transnacionais em diversos países;»;

4) No artigo 5.º, o n.º 1 é alterado do seguinte modo:

a) A alínea c) passa a ter a seguinte redação:

«c) Elabora e atualiza periodicamente um inventário e um recenseamento intersetoriais dos riscos de catástrofes naturais e de origem humana, incluindo riscos de catástrofes que causem, ou sejam suscetíveis de causar, efeitos transnacionais em diversos países, a que a União possa estar exposta, de acordo com uma abordagem coerente nos diferentes domínios de ação que possam visar ou afetar a prevenção de catástrofes e tendo na devida consideração o impacto provável das alterações climáticas;»;

b) A alínea g) passa a ter a seguinte redação:

«g) Apresenta regularmente relatórios ao Parlamento Europeu e ao Conselho sobre a execução do artigo 6.º, nos prazos fixados no n.º 1, alínea d), do referido artigo»;

5) O artigo 6.º é alterado do seguinte modo:

a) O n.º 1 é alterado do seguinte modo:

i) a alínea c) passa a ter a seguinte redação:

«c) Continuam a elaborar e a aperfeiçoar os planos de gestão dos riscos de catástrofe a nível nacional ou ao nível subnacional adequado, incluindo no que diz respeito à colaboração transfronteiriça, tendo em conta, quando estabelecidos, os objetivos da União em matéria de resiliência a catástrofes referidos no n.º 5, e os riscos relacionados com catástrofes que causem, ou sejam suscetíveis de causar, efeitos transnacionais em diversos países;»,

ii) as alíneas d) e e) passam a ter a seguinte redação:

«d) Fornecem à Comissão uma síntese dos elementos relevantes das avaliações a que se referem as alíneas a) e b), centrando-se nos riscos mais importantes. No que respeita aos riscos mais importantes com impactos transfronteiriços, aos riscos relacionados com catástrofes que causem, ou sejam suscetíveis de causar, efeitos transnacionais em diversos países e, sempre que adequado, aos riscos com pouca probabilidade de ocorrência mas grande impacto, os Estados-Membros definem medidas prioritárias de prevenção e preparação. A referida síntese é apresentada à Comissão até 31 de dezembro de 2020 e, em seguida, de três em três anos, bem como sempre que haja alterações importantes;

e) Participam, numa base voluntária, em avaliações realizadas pelos pares das avaliações da capacidade de gestão do risco;

f) Em consonância com os compromissos internacionais, melhoram a recolha de dados relativos a perdas causadas por catástrofes a nível nacional ou ao nível subnacional adequado, para assegurar a elaboração de cenários baseados em dados concretos, tal como referido no artigo 10.º, n.º 1, bem como a identificação de lacunas nas capacidades de resposta a catástrofes.»;

b) É aditado o seguinte número:

«5. A Comissão, em cooperação com os Estados-Membros, define e desenvolve os objetivos da União em matéria de resiliência a catástrofes no domínio da proteção civil e adota recomendações a fim de os definir como base de referência comum e não vinculativa, para apoiar ações de prevenção e preparação no caso de catástrofes que causem, ou sejam suscetíveis de causar efeitos transnacionais em diversos países. Esses objetivos devem basear-se em cenários atuais e prospetivos, incluindo o impacto das alterações climáticas no risco de catástrofes, dados sobre ocorrências anteriores e análises de impacto transetorial, com especial atenção aos grupos vulneráveis. Ao elaborar os objetivos da União em matéria de resiliência a catástrofes, a Comissão deve ter em conta as catástrofes recorrentes que afetam os Estados-Membros e deve sugerir que os Estados-Membros tomem medidas específicas, incluindo quaisquer medidas que devam ser aplicadas, através da utilização dos fundos da União, para reforçar a resiliência a tais catástrofes.»;

6) Os artigos 7.º e 8.º passam a ter a seguinte redação:

«*Artigo 7.º*

Centro de Coordenação de Resposta de Emergência

1. É criado um Centro de Coordenação de Resposta de Emergência (CCRE). O CCRE assegura uma capacidade operacional 24 horas por dia e 7 dias por semana ao serviço dos Estados-Membros e da Comissão para prosseguir os objetivos do Mecanismo da União.

O CCRE deve, nomeadamente, coordenar, acompanhar e apoiar em tempo real a resposta a situações de emergência a nível da União. O CCRE deve colaborar estreitamente com as autoridades de proteção civil e os organismos competentes da União para promover uma abordagem transetorial da gestão de catástrofes.

2. O CCRE deve ter acesso a capacidades operacionais, analíticas, de vigilância, de gestão da informação e de comunicação para fazer face a uma vasta gama de situações de emergência dentro e fora da União.

Artigo 8.º

Ações gerais de preparação da Comissão

1. A Comissão realiza as seguintes ações de preparação:

a) Gerir o CCRE;

b) Gerir o SCCIE para permitir a comunicação e o intercâmbio de informações entre o CCRE e os pontos de contacto dos Estados-Membros;

c) Colaborar com os Estados-Membros:

i) para desenvolver sistemas transnacionais de deteção e alerta precoce de interesse para a União, a fim de atenuar os efeitos imediatos das catástrofes,

ii) para melhorar a integração dos sistemas transnacionais existentes de deteção e alerta precoce, com base numa abordagem multirriscos, com vista a minimizar o tempo necessário para responder a catástrofes,

iii) para manter e aprofundar o conhecimento da situação e a capacidade de análise,

iv) para acompanhar catástrofes e, se pertinente, o impacto das alterações climáticas, e prestar aconselhamento baseado nos conhecimentos científicos sobre os mesmos,

v) para transformar as informações científicas em informações operacionais,

vi) para criar, manter e desenvolver parcerias científicas europeias que abranjam os riscos naturais e de origem humana, o que, por sua vez, deverá promover a ligação entre os sistemas nacionais de alerta e de alerta precoce e a articulação destes com o CCRE e o SCCIE,

vii) para apoiar os esforços dos Estados-Membros e das organizações internacionais mandatadas com conhecimentos científicos, tecnologias inovadoras e conhecimentos especializados quando os Estados-Membros e essas organizações continuarem a desenvolver os seus sistemas de alerta precoce, nomeadamente através da Rede Europeia de Conhecimentos sobre Proteção Civil referida no artigo 13.º;

d) Estabelecer e gerir a capacidade de mobilização e envio de equipas de peritos responsáveis por:

i) avaliar as necessidades que possam eventualmente ser supridas através do Mecanismo da União no Estado-Membro ou no país terceiro que solicita assistência,

ii) facilitar, se necessário, a coordenação no terreno das intervenções de assistência em resposta a catástrofes e assegurar a ligação com as autoridades competentes do Estado-Membro ou do país terceiro que solicita assistência, e

iii) apoiar o Estado-Membro ou o país terceiro que solicita assistência com conhecimentos especializados sobre ações de prevenção, preparação e resposta;

e) Constituir e manter a capacidade de prestação de apoio logístico às equipas de peritos referidas na alínea d);

f) Criar e manter uma rede de peritos dos Estados-Membros com formação adequada que possam estar disponíveis a curto prazo para prestar assistência ao CCRE nas atividades de monitorização, informação e facilitação da coordenação;

g) Facilitar a coordenação do pré-posicionamento das capacidades de resposta dos Estados-Membros a situações de catástrofe no território da União;

h) Apoiar os esforços para melhorar a interoperabilidade dos módulos e de outras capacidades de resposta, tendo em consideração as melhores práticas a nível dos Estados-Membros e a nível internacional;

i) Tomar, no âmbito da respetiva esfera de competências, as medidas necessárias para facilitar o apoio do país anfitrião, nomeadamente elaborando e atualizando, em colaboração com os Estados-Membros, as orientações relativas ao apoio do país anfitrião, com base na experiência operacional;

j) Apoiar a criação de programas de avaliação voluntária pelos pares das estratégias de preparação dos Estados-Membros, com base em critérios predefinidos, que permitam formular recomendações para reforçar o grau de preparação da União;

k) Em estreita consulta com os Estados-Membros, tomar outras medidas de preparação complementares e de apoio necessárias para alcançar o objetivo especificado no artigo 3.º, n.º 1, alínea b); e

l) Apoiar os Estados-Membros, a seu pedido, relativamente a catástrofes que ocorram nos seus territórios, oferecendo-lhes a possibilidade de recorrer a parcerias científicas europeias para a realização de análises científicas específicas. As análises resultantes podem ser partilhadas através do SCCIE, com o acordo dos Estados-Membros afetados.

2. A pedido de um Estado-Membro, de um país terceiro, das Nações Unidas ou das suas agências, a Comissão pode prestar consultoria sobre medidas de preparação através do envio de equipas de peritos.»;

7) Ao artigo 9.º é aditado o seguinte número:

«10. Quando os serviços de emergência forem prestados pelo Galileo, o Copernicus, o GOVSATCOM ou outros componentes do Programa Espacial criado pelo Regulamento (UE) 2021/696 do Parlamento Europeu e do Conselho (*), cada Estado-Membro pode decidir utilizá-los.

Sempre que um Estado-Membro decidir utilizar os serviços de emergência prestados pelo Galileo referidos no primeiro parágrafo, deve identificar as autoridades nacionais competentes para utilizar esses serviços de emergência e comunicá-lo à Comissão.

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(*) Regulamento (UE) 2021/696 do Parlamento Europeu e do Conselho, de 28 de abril de 2021, que cria o programa espacial da União e a Agência da União Europeia para o Programa Espacial e que revoga os Regulamentos (UE) n.º 912/2010, (UE) n.º 1285/2013 e (UE) n.º 377/2014 e a Decisão n.º 541/2014/UE (JO L 170 de 12.5.2021, p. 69).»;

8) O artigo 10.º passa a ter a seguinte redação:

«*Artigo 10.º*

Elaboração de cenários e planeamento da gestão de catástrofes

1. A Comissão e os Estados-Membros colaboram no sentido de melhorar o planeamento da gestão transetorial dos riscos de catástrofe a nível da União, no caso de catástrofes naturais e de origem humana que causem, ou sejam suscetíveis de causar, efeitos transnacionais em diversos países, incluindo os efeitos adversos das alterações climáticas. Esse planeamento inclui a elaboração de cenários, a nível da União, de prevenção, preparação e resposta a catástrofes, tendo em conta o trabalho realizado no tocante aos objetivos da União em matéria de resiliência a catástrofes a que se refere o artigo 6.º, n.º 5, e o trabalho da Rede Europeia de Conhecimentos sobre Proteção Civil a que se refere o artigo 13.º, e tendo por base:

i) as avaliações de riscos a que se refere o artigo 6.º, n.º 1, alínea a);

ii) o inventário dos riscos a que se refere o artigo 5.º, n.º 1, alínea c);

iii) a avaliação, pelos Estados-Membros, da capacidade de gestão do risco a que se refere o artigo 6.º, n.º 1, alínea b);

iv) os dados disponíveis sobre perdas por catástrofes referidos no artigo 6.º, n.º 1, alínea f);

v) o intercâmbio voluntário de informações existentes sobre o planeamento da gestão do risco de catástrofes a nível nacional ou ao nível subnacional adequado;

vi) o recenseamento dos recursos; e

vii) a elaboração de planos de mobilização das capacidades de resposta.

2. No planeamento das operações de resposta a crises humanitárias fora da União, a Comissão e os Estados-Membros identificam e promovem as sinergias entre a assistência da proteção civil e o financiamento da ajuda humanitária prestada pela União e pelos Estados-Membros.»;

9) No artigo 11.º, o n.º 2 passa a ter a seguinte redação:

«2. Com base nos riscos identificados, na generalidade das capacidades e lacunas e em qualquer elaboração de cenários existente referida no artigo 10.º, n.º 1, a Comissão, através de atos de execução, define os tipos e especifica o volume das principais capacidades de resposta necessárias à Reserva Europeia de Proteção Civil («objetivos de capacidade»). Os referidos atos de execução são adotados pelo procedimento de exame a que se refere o artigo 33.º, n.º 2.

A Comissão, em cooperação com os Estados-Membros, acompanha os progressos registados em termos de consecução dos objetivos de capacidade estabelecidos nos atos de execução referidos no primeiro parágrafo do presente número, e identifica as lacunas potencialmente significativas em termos de capacidade de resposta existentes a nível da Reserva Europeia de Proteção Civil. Caso tenham sido identificadas lacunas potencialmente significativas, a Comissão verifica se os Estados-Membros que não integram a Reserva Europeia de Proteção Civil dispõem das capacidades necessárias. A Comissão exorta os Estados-Membros a colmatarem as lacunas significativas de capacidade de resposta existentes na Reserva Europeia de Proteção Civil. A Comissão pode prestar-lhes apoio, no que a isso diz respeito, nos termos do artigo 20.º, do artigo 21.º, n.º 1, alínea i), e do artigo 21.º, n.º 2.»;

10) No artigo 12.º, os n.ºs 2 e 3 passam a ter a seguinte redação:

«2. A Comissão define, através de atos de execução, as capacidades que integram o rescEU com base, nomeadamente, em qualquer elaboração de cenários existente referida no artigo 10.º, n.º 1, tendo em conta os riscos identificados e emergentes, as capacidades e lacunas gerais a nível da União, em especial nos domínios do combate aéreo dos incêndios florestais, de acidentes químicos, biológicos, radiológicos e nucleares, da resposta médica de urgência, bem como dos transportes e da logística. Os referidos atos de execução são adotados pelo procedimento de exame a que se refere o artigo 33.º, n.º 2. A Comissão atualiza regularmente as informações sobre o tipo e o número de capacidades do rescEU e disponibiliza essas informações diretamente ao Parlamento Europeu e ao Conselho.

3. As capacidades do rescEU são adquiridas, alugadas, tomadas em locação ou contratadas pelos Estados-Membros.

3-A. As capacidades do rescEU, definidas por meio de atos de execução adotados em conformidade com o procedimento de exame a que se refere o artigo 33.º, n.º 2, podem ser alugadas, tomadas em locação ou contratadas pela Comissão, na medida do necessário para colmatar as lacunas no domínio dos transportes e da logística.

3-B. Em casos de urgência devidamente justificados, a Comissão pode adquirir, alugar, tomar em locação ou contratar capacidades, determinadas por meio de atos de execução adotados em conformidade com o procedimento de urgência a que se refere o artigo 33.º, n.º 3. Esses atos de execução devem:

i) determinar o tipo e a quantidade necessários de meios materiais e quaisquer serviços de apoio necessários, já definidos como capacidades do rescEU, e/ou

ii) definir os meios materiais adicionais e os serviços de apoio necessários como capacidades do rescEU e determinar o tipo e a quantidade necessários dessas capacidades.

3-C. As normas financeiras da União aplicam-se sempre que a Comissão adquira, arrende, tome em locação ou contrate capacidades do rescEU. Sempre que as capacidades do rescEU forem adquiridas, arrendadas, tomadas em locação ou contratadas pelos Estados-Membros, a Comissão pode conceder subvenções diretas aos Estados-Membros sem abertura de concurso. A Comissão e os Estados-Membros que o desejem podem aplicar o procedimento de contratação conjunta, nos termos do artigo 165.º do Regulamento (UE, Euratom) 2018/1046 do Parlamento Europeu e do Conselho (*) ("Regulamento Financeiro"), com vista à aquisição de capacidades do rescEU.

As capacidades do rescEU serão baseadas nos Estados-Membros que as adquiram, aluguem, tomem em locação ou contratem.

(*) Regulamento (UE, Euratom) 2018/1046 do Parlamento Europeu e do Conselho, de 18 de julho de 2018, relativo às disposições financeiras aplicáveis ao orçamento geral da União, que altera os Regulamentos (UE) n.º 1296/2013, (UE) n.º 1301/2013, (UE) n.º 1303/2013, (UE) n.º 1304/2013, (UE) n.º 1309/2013, (UE) n.º 1316/2013, (UE) n.º 223/2014 e (UE) n.º 283/2014, e a Decisão n.º 541/2014/UE, e revoga o Regulamento (UE, Euratom) n.º 966/2012 (JO L 193 de 30.7.2018, p. 1).»;

11) O artigo 13.º passa a ter a seguinte redação:

«*Artigo 13.º*

Rede Europeia de Conhecimentos sobre Proteção Civil

1. A Comissão cria uma Rede Europeia de Conhecimentos sobre Proteção Civil ("Rede") para reunir, tratar e divulgar conhecimentos e informações importantes para o Mecanismo da União, com base numa abordagem multirriscos e incluindo intervenientes relevantes no domínio da proteção civil e da gestão de catástrofes, centros de excelência, universidades e investigadores.

A Comissão, através da Rede, tem em devida conta os conhecimentos especializados disponíveis a nível dos Estados-Membros, da União, de outras organizações e entidades internacionais, de países terceiros e de organizações ativas no terreno.

A Comissão e os Estados-Membros promovem uma participação equilibrada em termos de género na criação e no funcionamento da Rede.

A Comissão, através da Rede, apoia a coerência dos processos de planeamento e de tomada de decisão, facilitando o intercâmbio contínuo de conhecimentos e informações entre todos os domínios de atividade no âmbito do Mecanismo da União.

Para o efeito, a Comissão, através da Rede, assegura, nomeadamente:

a) A criação e a gestão de um programa de formação e de exercícios em matéria de prevenção, preparação e resposta a catástrofes para o pessoal dos serviços de proteção civil e dos serviços de gestão de catástrofes. O programa deve centrar-se no intercâmbio de boas práticas no domínio da proteção civil e da gestão de catástrofes e incentivar esse intercâmbio, nomeadamente em relação a catástrofes provocadas pelas alterações climáticas, e compreender ações de formação conjuntas e um sistema de intercâmbio de conhecimentos especializados no domínio da gestão de catástrofes, incluindo o intercâmbio de profissionais e voluntários experientes, bem como o destacamento de peritos dos Estados-Membros.

O programa de formação e de exercícios visa reforçar a coordenação, a compatibilidade e a complementaridade das capacidades referidas nos artigos 9.º, 11.º e 12.º, e aumentar a competência dos peritos a que se refere o artigo 8.º, n.º 1, alíneas d) e f);

b) A criação e a gestão de um programa sobre as lições aprendidas com as intervenções da proteção civil levadas a cabo no âmbito do Mecanismo da União, incluindo os aspetos de todo o ciclo da gestão de catástrofes, a fim de obter uma base alargada para os processos de aprendizagem e o desenvolvimento de conhecimentos. Este programa compreende:

   i) a monitorização, a análise e a avaliação de todas as intervenções relevantes da proteção civil no âmbito do Mecanismo da União,

   ii) a promoção da aplicação das lições aprendidas, de modo a obter uma base sólida, assente na experiência, para o desenvolvimento de atividades inseridas no ciclo da gestão de catástrofes, e

   iii) o desenvolvimento de métodos e instrumentos para a recolha, análise, promoção e aplicação das lições aprendidas.

   O programa contempla também, se se justificar, as lições aprendidas com as intervenções no exterior da União no que respeita à exploração de ligações e sinergias entre a assistência disponibilizada no âmbito do Mecanismo da União e a resposta humanitária;

c) O estímulo à investigação e à inovação e o incentivo à introdução e à utilização de novas abordagens ou de novas tecnologias relevantes, ou ambas, para efeitos do Mecanismo da União;

d) A criação e a manutenção de uma plataforma em linha ao serviço da Rede para apoiar e facilitar a execução das diferentes tarefas referidas nas alíneas a), b) e c).

2. Na execução das tarefas previstas no n.º 1, a Comissão tem especialmente em conta as necessidades e os interesses dos Estados-Membros confrontados com riscos de catástrofes de natureza semelhante, bem como a necessidade de reforçar a proteção da biodiversidade e do património cultural.

3. A Comissão reforça a cooperação no domínio da formação e promove a partilha de conhecimentos e de experiências entre a Rede e as organizações internacionais e os países terceiros, em especial com o intuito de contribuir para o cumprimento dos compromissos internacionais, nomeadamente os assumidos no âmbito do Quadro de Sendai para a Redução dos Riscos de Catástrofe 2015-2030.»;

12) No artigo 14.º, n.º 1, o primeiro parágrafo passa a ter a seguinte redação:

«1. Em caso de ocorrência ou iminência de ocorrência, no território da União, de uma catástrofe que cause, ou seja suscetível de causar, efeitos transnacionais em diversos países ou que afete, ou seja suscetível de afetar, outros Estados-Membros, o Estado-Membro em que a catástrofe tiver ocorrido ou seja suscetível de ocorrer notifica sem demora os Estados-Membros que por ela possam ser afetados, bem como a Comissão, caso os seus efeitos possam ser significativos.»;

13) No artigo 15.º, o n.º 3, alínea b), passa a ter a seguinte redação:

«b) Reunir e analisar informações validadas sobre a situação, em colaboração com o Estado-Membro afetado, com o objetivo de gerar um conhecimento comum da situação e da correspondente resposta, e comunicá-las diretamente aos Estados-Membros;»;

14) No artigo 17.º, os n.ºs 1 e 2 passam a ter a seguinte redação:

«1. A Comissão pode selecionar, designar e enviar uma equipa de peritos composta por peritos disponibilizados pelos Estados-Membros:

a) Nos termos do artigo 5.º, n.º 2, se para o efeito lhe for apresentado um pedido de aconselhamento sobre medidas de prevenção;

b) Nos termos do artigo 8.º, n.º 2, se para tal lhe for apresentado um pedido de aconselhamento sobre medidas de preparação;

c) Nos termos do artigo 15.º, n.º 5, se ocorrer uma catástrofe no território da União;

d) Nos termos do artigo 16.º, n.º 3, se ocorrer uma catástrofe fora da União.

Podem ser integrados na equipa peritos da Comissão e de outros serviços da União a fim de apoiar a equipa e facilitar os contactos com o CCRE. Podem ser integrados na equipa peritos destacados por agências das Nações Unidas ou outras organizações internacionais a fim de reforçar a cooperação e facilitar a realização de avaliações conjuntas.

Caso a eficácia operacional assim o exija, a Comissão, em estreita cooperação com os Estados-Membros, pode facilitar a participação de peritos adicionais, através do destacamento dos mesmos, e a assistência técnica e científica adicional, e recorrer a conhecimentos científicos, médicos e setoriais especializados de emergência.

2. O procedimento de seleção e designação de peritos é o seguinte:

a) Os Estados-Membros designam peritos que, sob a sua responsabilidade, podem ser mobilizados como membros de equipas de peritos;

b) A Comissão seleciona os peritos e o líder destas equipas com base nas respetivas qualificações e experiência, nomeadamente o nível de formação no quadro do Mecanismo da União, a experiência anteriormente adquirida em missões no âmbito do Mecanismo da União e outras missões internacionais de socorro; a seleção deve obedecer também a outros critérios, nomeadamente as competências linguísticas, de modo a garantir que a equipa no seu conjunto dispõe das competências necessárias à situação em questão;

c) A Comissão designa os peritos e líderes das equipas para determinada missão de comum acordo com os Estados-Membros que os nomearem.

A Comissão informa os Estados-Membros sobre a assistência especializada adicional prestada em conformidade com o n.º 1.»;

15) O artigo 18.º passa a ter a seguinte redação:

«*Artigo 18.º*

Transporte e equipamento

1. Em caso de catástrofe, que ocorra dentro ou fora da União, a Comissão pode apoiar os Estados-Membros na obtenção de acesso a equipamento ou recursos logísticos e de transporte do seguinte modo:

a) Comunicando e partilhando informações sobre o equipamento e os recursos logísticos e de transporte que os Estados-Membros possam disponibilizar, tendo em vista facilitar a colocação em comum desse equipamento ou desses recursos logísticos e de transporte;

b) Desenvolvendo material cartográfico para a rápida mobilização e utilização dos recursos, tendo especialmente em conta as particularidades das regiões transfronteiriças em face dos riscos transnacionais em diversos países;

c) Apoiando os Estados-Membros na identificação dos recursos logísticos e de transporte que possam ser facultados por outras fontes, inclusive pelo setor comercial, e facilitando o seu acesso a esses recursos; ou

d) Apoiando os Estados-Membros na identificação de equipamento que possa ser facultado por outras fontes, inclusive pelo setor comercial.

2. A Comissão pode complementar os recursos logísticos e de transporte fornecidos pelos Estados-Membros através da disponibilização dos recursos adicionais necessários para garantir uma resposta rápida a situações de catástrofe.

3. A assistência solicitada por um Estado-Membro ou por um país terceiro só pode consistir em recursos logísticos e de transporte destinados a responder a catástrofes com material ou equipamento de socorro adquirido num país terceiro pelo Estado-Membro ou país terceiro requerente.»;

16) O artigo 19.º é alterado do seguinte modo:

a) É inserido o seguinte número:

«1-A. A dotação financeira para a execução do Mecanismo da União para o período compreendido entre 1 de janeiro de 2021 e 31 de dezembro de 2027 é de 1 263 000 000 EUR, a preços correntes.»

b) O n.º 2 passa a ter a seguinte redação:

«2. As dotações resultantes de reembolsos efetuados pelos beneficiários relativamente a ações de resposta a catástrofes constituem receitas afetadas na aceção do artigo 21.º, n.º 5, do Regulamento Financeiro.»;

c) O n.º 3 passa a ter a seguinte redação:

«3. A dotação financeira referida nos n.ºs 1 e 1-A do presente artigo e no artigo 19.º-A pode igualmente cobrir despesas relacionadas com atividades preparatórias, de monitorização, controlo, auditoria e avaliação, necessárias para a gestão do Mecanismo da União e a consecução dos seus objetivos.

Tais despesas podem cobrir, designadamente, estudos, reuniões de peritos, ações de informação e comunicação, incluindo a comunicação institucional das prioridades políticas da União, na medida em que estejam relacionadas com os objetivos gerais do Mecanismo da União, as despesas ligadas a redes informáticas de tratamento e intercâmbio da informação (incluindo a sua interligação com sistemas existentes ou futuros destinados a promover o intercâmbio de dados transetoriais e equipamento conexo), juntamente com todas as outras despesas de assistência técnica e administrativa em que a Comissão incorra para a gestão do programa.»;

d) O n.º 4 passa a ter a seguinte redação:

«4. A dotação financeira referida no n.º 1-A do presente artigo e o montante referido no artigo 19.º-A, n.º 1, são atribuídas, ao longo do período de 2021-2027, de acordo com as percentagens e os princípios estabelecidos no anexo I.»;

e) O n.º 5 passa a ter a seguinte redação:

«5. A Comissão reaprecia a repartição estabelecida no anexo I à luz do resultado da avaliação a que se refere o artigo 34.º, n.º 3.»;

f) O n.º 6 passa a ter a seguinte redação:

«6. Sempre que necessário para dar resposta a catástrofes por motivos imperativos de urgência, ou à luz de acontecimentos imprevistos que afetem a execução orçamental ou a criação de capacidades do rescEU, são atribuídos à Comissão poderes para adotar atos delegados nos termos do artigo 30.º, a fim de alterar o anexo I, dentro das dotações orçamentais disponíveis e em conformidade com o procedimento previsto no artigo 31.º.»;

17) É aditado o seguinte artigo:

«*Artigo 19.º-A*

Recursos do Instrumento de Recuperação da União Europeia

1. As medidas a que se refere o artigo 1.º, n.º 2, alíneas d) e e), do Regulamento (UE) 2020/2094 do Conselho (*) devem ser executadas ao abrigo da presente decisão através de um montante máximo de 2 056 480 000 EUR a preços correntes, como referido no artigo 2.º, n.º 2, alínea a), subalínea iii), do mesmo regulamento, a preços de 2018, sem prejuízo do disposto no artigo 3.º, n.ºs 3, 4, 7 e 9 do mesmo regulamento.

2. O montante a que se refere o n.º 1 do presente artigo constitui receitas afetadas externas nos termos do artigo 3.º, n.º 1, do Regulamento (UE) 2020/2094.

3. As medidas referidas no n.º 1 do presente artigo podem beneficiar de assistência financeira em conformidade com as condições estabelecidas na presente decisão e são executadas no pleno respeito dos objetivos enunciados no Regulamento (UE) 2020/2094.

4. Sem prejuízo das condições de elegibilidade das ações a favor de países terceiros estabelecidas na presente decisão, a assistência financeira referida no presente artigo só pode ser concedida a um país terceiro se for executada no pleno respeito dos objetivos enunciados no Regulamento (UE) 2020/2094, independentemente de o país terceiro participar, ou não, no Mecanismo da União.

(*) Regulamento (UE) 2020/2094 do Conselho, de 14 de dezembro de 2020, que cria um Instrumento de Recuperação da União Europeia para apoiar a recuperação na sequência da crise da COVID-19 (JO L 433 I de 22.12.2020, p. 23).»;

18) O artigo 20.º-A passa a ter a seguinte redação:

«*Artigo 20.º-A*

Visibilidade e distinções

1. Os destinatários do financiamento da União, bem como os da assistência prestada, evidenciam a origem dos fundos e asseguram a notoriedade do financiamento da União, em especial ao promoverem as ações e os respetivos resultados, mediante a prestação de informação coerente, eficaz e proporcionada, dirigidas a diversos públicos, incluindo os meios de comunicação social e o público em geral.

O financiamento ou a assistência disponibilizados no âmbito da presente decisão devem ter a visibilidade adequada, em consonância com as orientações específicas emitidas pela Comissão para intervenções concretas. Os Estados-Membros devem, nomeadamente, assegurar que a comunicação pública de operações financiadas ao abrigo do Mecanismo da União:

a) Inclui referências adequadas ao Mecanismo da União;

b) Assinala visualmente as capacidades financiadas ou cofinanciadas pelo Mecanismo da União;

c) Executa as ações com o emblema da União;

d) Comunica de forma proativa informações detalhadas sobre o apoio da União aos meios de comunicação social nacionais e às partes interessadas, bem como através dos seus próprios canais de comunicação; e

e) Apoia as ações de comunicação da Comissão sobre as operações.

Sempre que as capacidades do rescEU forem utilizadas para fins nacionais, tal como referido no artigo 12.º, n.º 5, os Estados-Membros devem, pelos mesmos meios a que se refere o primeiro parágrafo do presente número, reconhecer a origem dessas capacidades e assegurar a visibilidade do financiamento da União utilizado para adquirir essas capacidades.

2. A Comissão realiza ações de informação e de comunicação sobre a presente decisão, sobre as ações levadas a cabo ao abrigo da presente decisão e sobre os resultados obtidos, e apoia os Estados-Membros nas suas ações de comunicação. Os recursos financeiros afetados à presente decisão contribuem igualmente para a comunicação institucional das prioridades políticas da União, na medida em que estas estejam relacionadas com os objetivos a que se refere o artigo 3.º, n.º 1.

3. A Comissão atribui medalhas a fim de reconhecer e homenagear a dedicação de longa data e os contributos extraordinários para o Mecanismo da União.»;

19) O artigo 21.º é alterado do seguinte modo:

a) No n.º 1, a alínea g) passa a ter a seguinte redação:

«g) Planeamento da gestão do risco de catástrofes, nos termos do artigo 10.º.»;

b) O n.º 3 passa a ter a seguinte redação:

«3. A assistência financeira à ação referida no n.º 1, alínea j), cobre todos os custos necessários para assegurar a disponibilidade e a faculdade de mobilização das capacidades do rescEU no âmbito do Mecanismo da União em conformidade com o segundo parágrafo do presente número. As categorias de custos elegíveis necessárias para assegurar a disponibilidade e a mobilização das capacidades do rescEU são as estabelecidas no anexo I-A.

A Comissão fica habilitada a adotar atos delegados, nos termos do artigo 30.º, a fim de alterar o anexo I-A relativo às categorias de custos elegíveis.

3-A. A assistência financeira referida no presente artigo pode ser executada por meio de programas de trabalho plurianuais. No caso das ações com duração superior a um ano, as autorizações orçamentais podem ser repartidas em prestações anuais.»;

c) O n.º 4 é suprimido;

20) No artigo 22.º, a alínea b) passa a ter a seguinte redação:

«b) Em caso de catástrofe, o apoio aos Estados-Membros na facilitação do acesso a equipamento e recursos logísticos e de transporte, nos termos do artigo 23.º; e»;

21) O artigo 23.º passa a ter a seguinte redação:

«*Artigo 23.º*

Ações elegíveis relacionadas com o equipamento e as operações

1. As seguintes ações podem beneficiar de assistência financeira, a fim de possibilitar o acesso ao equipamento e a recursos logísticos e de transporte no quadro do Mecanismo da União:

a) Comunicação e partilha de informações sobre o equipamento e os recursos logísticos e de transporte que os Estados-Membros decidam disponibilizar, tendo em vista facilitar a colocação em comum desse equipamento ou desses recursos logísticos e de transporte;

b) Apoio aos Estados-Membros na identificação dos recursos logísticos e de transporte que possam ser facultados por outras fontes, inclusive pelo setor comercial, e facilitação do seu acesso a esses recursos;

c) Apoio aos Estados-Membros na identificação do equipamento que possa ser facultado por outras fontes, inclusive pelo setor comercial;

d) Financiamento dos recursos logísticos e de transporte necessários para assegurar uma resposta rápida em face de situações de catástrofe. Estas ações podem beneficiar de assistência financeira unicamente se estiverem preenchidos os seguintes critérios:

   i) ter sido apresentado um pedido de assistência ao abrigo do Mecanismo da União, nos termos dos artigos 15.º e 16.º,

   ii) os recursos logísticos e de transporte suplementares serem necessários para garantir a eficácia da resposta a situações de catástrofe no âmbito do Mecanismo da União,

   iii) a assistência corresponder às necessidades identificadas pelo CCRE e ser prestada de acordo com as recomendações do CCRE relativas às especificações técnicas, à qualidade, à calendarização e às modalidades de entrega,

   iv) a assistência ter sido aceite por um país requerente, diretamente ou por intermédio das Nações Unidas ou das suas agências, ou por uma organização internacional relevante, no quadro do Mecanismo da União, e

   v) a assistência ser complementar, no caso de catástrofes em países terceiros, da resposta humanitária global da União.

1-A. O montante do apoio financeiro da União para o transporte de capacidades não previamente afetadas à Reserva Europeia de Proteção Civil e mobilizadas em caso de catástrofe ou catástrofe iminente dentro ou fora da União, bem como para qualquer outro apoio de transporte necessário para fazer face a uma catástrofe, não pode exceder 75 % do custo elegível total.

2. O montante da assistência financeira da União a capacidades previamente afetadas à Reserva Europeia de Proteção Civil não pode exceder 75 % dos custos de funcionamento das capacidades, incluindo o transporte, em caso de catástrofe ou catástrofe iminente dentro ou fora do território da União.

4. O apoio financeiro da União para recursos logísticos e de transporte pode cobrir um máximo de 100 % dos custos elegíveis totais especificados nas alíneas a) a d), se disso houver necessidade para que a agregação dos meios de assistência dos Estados-Membros seja operacionalmente eficaz e se os custos estiverem associados a uma das seguintes atividades:

a) Aluguer de curta duração de espaço para armazenar temporariamente os meios de assistência dos Estados-Membros, a fim de facilitar a coordenação do respetivo transporte;

b) Transporte do Estado-Membro que disponibiliza a assistência para o Estado-Membro que facilita o respetivo transporte coordenado;

c) Reembalagem dos meios de assistência dos Estados-Membros para permitir o máximo aproveitamento das capacidades de transporte disponíveis ou para cumprir determinadas exigências operacionais; ou

d) Transporte, trânsito e armazenagem locais de meios de assistência agregados para assegurar a sua entrega coordenada no destino final no país requerente.

4-A. Se as capacidades do rescEU forem utilizadas para fins nacionais nos termos do artigo 12.º, n.º 5, todos os custos, incluindo os custos de manutenção e reparação, são cobertos pelo Estado-Membro que utiliza as capacidades.

4-B. Em caso de mobilização das capacidades do rescEU ao abrigo do Mecanismo da União, o apoio financeiro da União cobre 75 % dos custos operacionais.

Em derrogação do disposto no primeiro parágrafo, o apoio financeiro da União cobre 100 % dos custos operacionais das capacidades do rescEU necessárias para catástrofes com pouca probabilidade de ocorrência mas grande impacto, quando essas capacidades forem mobilizadas ao abrigo do Mecanismo da União.

4-C. Em caso de mobilização fora da União, como referido no artigo 12.º, n.º 10, o apoio financeiro da União cobre 100 % dos custos operacionais.

4-D. Quando o apoio financeiro da União a que se refere o presente artigo não cobre 100 % dos custos, o montante remanescente dos custos é suportado pelo requerente da assistência, salvo acordo em contrário com o Estado-Membro que disponibiliza a assistência ou com o Estado-Membro no qual as capacidades do rescEU estão baseadas.

4-E. A assistência financeira da União pode cobrir 100 % de quaisquer custos diretos necessários à mobilização das capacidades do rescEU, relativos ao transporte de carga, a meios logísticos e a serviços, no território da União e a partir de países terceiros para a União.

5. No caso de colocação em comum de operações de transporte que impliquem vários Estados-Membros, um destes pode tomar a iniciativa de solicitar o apoio financeiro da União para a operação na sua globalidade.

6. Quando um Estado-Membro solicita à Comissão que contrate serviços de transporte, esta solicita o reembolso parcial dos custos de acordo com as taxas de financiamento estabelecidas nos n.ºs 1-A, 2 e 4.

6-A. Sem prejuízo do disposto nos n.ºs 1-A e 2, o apoio financeiro da União para o transporte da assistência necessário nas catástrofes ambientais em que se aplique o princípio do «poluidor-pagador», pode cobrir até 100 % dos custos elegíveis totais. Aplicam-se as seguintes condições:

a) O apoio financeiro da União para o transporte de assistência é solicitado pelo Estado-Membro afetado ou pelo Estado-Membro que presta assistência com base numa avaliação das necessidades devidamente justificada;

b) O Estado-Membro afetado ou o Estado-Membro que presta assistência, consoante o caso, toma todas as medidas necessárias para exigir e obter uma indemnização do poluidor, em conformidade com todas as disposições legais internacionais, da União ou nacionais aplicáveis;

c) Ao receber a indemnização do poluidor, o Estado-Membro afetado ou o Estado-Membro que presta assistência, consoante o caso, reembolsa imediatamente a União.

Em caso de catástrofe ambiental a que se refere o primeiro parágrafo, que não afete um Estado-Membro, o Estado-Membro que presta assistência empreende as ações referidas nas alíneas a), b) e c).

7. As despesas a seguir enunciadas podem beneficiar da assistência financeira da União para os recursos logísticos e de transporte previstos no presente artigo: todos os custos associados ao encaminhamento dos recursos logísticos e de transporte, incluindo os custos de todos os serviços, taxas, custos logísticos e de manipulação, despesas de combustível e eventuais despesas de alojamento, e ainda outros custos indiretos como impostos, direitos em geral e custos de trânsito.

8. Os custos de transporte podem consistir em custos por unidade, montantes fixos ou taxas fixas determinados por categoria de custo.»;

22) O artigo 25.º passa a ter a seguinte redação:

«*Artigo 25.º*

Tipos de intervenção financeira e procedimentos de execução

1. A Comissão executa o apoio financeiro da União nos termos do Regulamento Financeiro.

2. A Comissão executa o apoio financeiro da União em regime de gestão direta, em conformidade com o Regulamento Financeiro ou, quando tal se justifique pela natureza ou pelo teor da ação em causa, em regime de gestão indireta com os organismos referidos no artigo 62.º, n.º 1, alínea c), subalíneas ii), iv), v) e vi) do referido regulamento.

3. O apoio financeiro ao abrigo da presente decisão pode assumir qualquer uma das formas previstas no Regulamento Financeiro, nomeadamente subvenções, contratos públicos ou contribuições para fundos fiduciários.

4. Nos termos do artigo 193.º, n.º 2, segundo parágrafo, alínea a), do Regulamento Financeiro, tendo em conta o atraso na entrada em vigor do Regulamento (UE) 2021/836 do Parlamento Europeu e do Conselho (*) e a fim de assegurar a continuidade, em casos devidamente justificados previstos na decisão de financiamento e por um período limitado, os custos incorridos no que respeita às ações apoiadas ao abrigo da presente decisão podem ser considerados elegíveis desde 1 de janeiro de 2021, ainda que esses custos tenham sido incorridos antes da apresentação do pedido de subvenção.

5. Para efeitos de aplicação da presente decisão, a Comissão adota, por meio de atos de execução, programas de trabalho anuais ou plurianuais. Os referidos atos de execução são adotados pelo procedimento de exame a que se refere o artigo 33.º, n.º 2. Os programas de trabalho anuais ou plurianuais definem os objetivos a cumprir, os resultados esperados, o método de execução e o respetivo montante total. Incluem igualmente uma descrição das ações a financiar, a indicação do montante afetado a cada ação e um calendário indicativo de execução. No que respeita à assistência financeira referida no artigo 28.º, n.º 2, os programas de trabalho anuais ou plurianuais apresentam uma descrição das ações previstas para os países neles referidos.

Para as medidas abrangidas pela resposta a catástrofes previstas no capítulo IV, que não podem ser tomadas antecipadamente, não são exigidos programas de trabalho anuais ou plurianuais.

6. Para efeitos de transparência e previsibilidade, a execução orçamental e os planos de futuras dotações são apresentados e debatidos anualmente no Comité a que se refere o artigo 33.º. O Parlamento Europeu deve ser informado.

7. Para além do disposto no artigo 12.º, n.º 4, do Regulamento Financeiro, as dotações de autorização e de pagamento que não tenham sido utilizadas até ao final do exercício para o qual foram inscritas no orçamento anual transitam automaticamente e podem ser autorizadas e pagas até 31 de dezembro do ano seguinte. As dotações transitadas devem ser utilizadas exclusivamente para ações de resposta. As dotações transitadas devem ser as primeiras dotações a ser utilizadas no exercício seguinte.

(*) Regulamento (UE) 2021/836 do Parlamento Europeu e do Conselho, de 20 de maio de 2021, que altera que altera a Decisão n.º 1313/2013/UE relativa a um Mecanismo de Proteção Civil da União Europeia (JO L 185 de 26.5.2021, p. 1).»;

23) O artigo 27.º passa a ter a seguinte redação:

«Artigo 27.º

Proteção dos interesses financeiros da União Europeia

Caso um país terceiro participe no Mecanismo da União por força de uma decisão adotada ao abrigo de um acordo internacional ou com base em qualquer outro instrumento jurídico, o país terceiro concede os direitos e o acesso necessários para que o gestor orçamental competente, o OLAF e o Tribunal de Contas exerçam integralmente as respetivas competências. No caso do OLAF, tais direitos incluem o direito de efetuar inquéritos, incluindo inspeções e verificações no local, tal como previsto no Regulamento (UE, Euratom) n.º 883/2013 do Parlamento Europeu e do Conselho (*).

(*) Regulamento (UE, Euratom) n.º 883/2013 do Parlamento Europeu e do Conselho, de 11 de setembro de 2013, relativo aos inquéritos efetuados pelo Organismo Europeu de Luta Antifraude (OLAF) e que revoga o Regulamento (CE) n.º 1073/1999 do Parlamento Europeu e do Conselho e o Regulamento (Euratom) n.º 1074/1999 do Conselho (JO L 248 de 18.9.2013, p. 1).»;

24) O artigo 30.º é alterado do seguinte modo:

a) O n.º 2 passa a ter a seguinte redação:

«2. O poder de adotar atos delegados referido no artigo 19.º, n.º 6, e no artigo 21.º, n.º 3, segundo parágrafo, é conferido à Comissão até 31 de dezembro de 2027.»;

b) O n.º 3 é suprimido;

c) O n.º 4 passa a ter a seguinte redação:

«4. A delegação de poderes referida no artigo 19.º, n.º 6, e no artigo 21.º, n.º 3, segundo parágrafo, pode ser revogada em qualquer momento pelo Parlamento Europeu ou pelo Conselho. A decisão de revogação põe termo à delegação dos poderes nela especificados. A decisão de revogação produz efeitos a partir do dia seguinte ao da sua publicação no *Jornal Oficial da União Europeia* ou de uma data posterior nela especificada. A decisão de revogação não afeta os atos delegados já em vigor.»;

d) O n.º 7 passa a ter a seguinte redação:

«7. Os atos delegados adotados nos termos do artigo 19.º, n.º 6, ou do artigo 21.º, n.º 3, segundo parágrafo, só entram em vigor se não tiverem sido formuladas objeções pelo Parlamento Europeu ou pelo Conselho no prazo de dois meses a contar da notificação do ato ao Parlamento Europeu e ao Conselho, ou se, antes do termo desse prazo, o Parlamento Europeu e o Conselho tiverem informado a Comissão de que não têm objeções a formular. O referido prazo é prorrogável por dois meses por iniciativa do Parlamento Europeu ou do Conselho.»;

25) No artigo 32.º, n.º 1, a alínea i) passa a ter a seguinte redação:

«i) A organização do apoio aos recursos logísticos e de transporte, nos termos dos artigos 18.º e 23.º;»;

26) Ao artigo 33.º é aditado o seguinte número:

«3. Caso se remeta para o presente número, aplica-se o artigo 8.º do Regulamento (UE) n.º 182/2011, em conjugação com o artigo 5.º do mesmo regulamento.»;

27) No artigo 34.º, os n.ºs 2 e 3 passam a ter a seguinte redação:

«2. De dois em dois anos, a Comissão apresenta ao Parlamento Europeu e ao Conselho um relatório sobre as operações e os progressos realizados no âmbito do artigo 6.º, n.º 5, e dos artigos 11.º e 12.º. O relatório deve conter informações sobre os progressos realizados em termos de consecução dos objetivos da União em matéria de resiliência a catástrofes e de capacidades e sobre as lacunas ainda existentes, tal como referido no artigo 11.º, n.º 2, tendo em conta a criação de capacidades do rescEU em conformidade com o artigo 12.º. O relatório deve igualmente traçar uma panorâmica da evolução orçamental e dos custos relativos às capacidades de resposta e apresentar uma avaliação da necessidade de reforço dessas capacidades.

3. Até 31 de dezembro de 2023 e, posteriormente, de cinco em cinco anos, a Comissão procede à avaliação da execução da presente decisão e apresenta ao Parlamento Europeu e ao Conselho uma comunicação sobre a eficácia, a eficiência em termos de custos e a prossecução da execução da presente decisão, em especial no que se refere ao artigo 6.º, n.º 4, às capacidades do rescEU e ao grau de coordenação e de sinergias alcançados com outras políticas, programas e fundos da União, incluindo em situações de emergência médica. Essa comunicação é acompanhada, se for caso disso, de propostas de alteração da presente decisão.»;

28) O anexo I da Decisão n.º 1313/2013/UE é substituído pelo texto que consta do anexo ao presente regulamento;

29) O título do anexo I-A passa a ter a seguinte redação:

«Categorias de custos elegíveis a que se refere o artigo 21.º, n.º 3».

Artigo 2.º

Entrada em vigor

O presente regulamento entra em vigor no dia da sua publicação no *Jornal Oficial da União Europeia*.

O presente regulamento é aplicável desde 1 de janeiro de 2021.

O presente regulamento é obrigatório em todos os seus elementos e diretamente aplicável em todos os Estados-Membros.

Feito em Bruxelas, em 20 de maio de 2021.

Pelo Parlamento Europeu	*Pelo Conselho*
O Presidente	*A Presidente*
D. M. SASSOLI	A. P. ZACARIAS

ANEXO

«*ANEXO I*

Percentagens de repartição do enquadramento financeiro para execução do Mecanismo da União referido no artigo 19.º, n.º 1-A, e do montante referido no artigo 19.º-A, para o período de 2021 a 2027

Prevenção: 5 % +/- 4 pontos percentuais

Preparação: 85 % +/- 10 pontos percentuais

Resposta: 10 % +/- 9 pontos percentuais

Princípios

Na execução da presente decisão, o objetivo da União de contribuir para os objetivos gerais em matéria de clima e para a ambição de integração da ação em matéria de biodiversidade nas políticas da União deve ser devidamente tido em conta, na medida em que a imprevisibilidade e as circunstâncias específicas da preparação e da resposta a catástrofes o permitam.».

2021
PORTUGAL.EU

D) Os meios para responder aos desafios

Conselho da
União Europeia

Bruxelas, 15 de junho de 2021
(OR. en)

6486/2/21
REV 2 ADD 1

Dossiê interinstitucional:
2018/0248(COD)

JAI 197
FRONT 70
ASIM 14
MIGR 45
CADREFIN 90
CODEC 258
PARLNAT 136

NOTA JUSTIFICATIVA DO CONSELHO

Assunto:	Posição do Conselho em primeira leitura com vista à adoção do REGULAMENTO DO PARLAMENTO EUROPEU E DO CONSELHO que cria o Fundo para o Asilo, a Migração e a Integração – Nota justificativa do Conselho – Adotada pelo Conselho em 14 de junho de 2021

I. INTRODUÇÃO

1. A 13 de junho de 2018, a Comissão apresentou uma proposta de regulamento do Parlamento Europeu e do Conselho que cria o Fundo para o Asilo e a Migração[1] (a seguir designado por "FAM" ou "Fundo"), ao abrigo da rubrica 4 ("Migração e Gestão das Fronteiras") do Quadro Financeiro Plurianual (QFP) 2021-2027.

2. O Parlamento Europeu (PE) adotou a sua posição em primeira leitura[2] na sessão plenária de 13 de março de 2019.

3. Em 7 de junho de 2019, o Conselho definiu uma orientação geral parcial[3] que serviu de mandato parcial para encetar negociações com o Parlamento Europeu no contexto do processo legislativo ordinário.

4. Em 18 de dezembro de 2019, foi apresentado ao Comité de Representantes Permanentes (2.ª Parte) (a seguir designado "Comité") um relatório intercalar[4] sobre as negociações em curso com o Parlamento Europeu. O relatório intercalar incluía uma proposta de compromisso da Presidência sobre os critérios de atribuição de financiamento (anexo I), que tinha obtido o apoio necessário na pendência das orientações do EUCO sobre a questão das sociedades insulares e o resultado das negociações sobre o QFP para 2021-2027.

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1 10153/18 + ADD 1
2 7404/19
3 10148/19
4 14616/19

5. O Comité chegou também a acordo quanto à atualização das disposições relevantes para o SECA do mandato conferido à Presidência, em 24 de julho de 2020, com vista a encetar negociações com o Parlamento Europeu sobre essas disposições.

6. Na sequência das orientações políticas sobre o QFP e do pacote de recuperação fornecidos pelo Conselho Europeu nas suas conclusões[5] de 21 de julho de 2020, o Conselho definiu uma orientação geral sobre toda a proposta em 12 de outubro de 2020[6].

7. As negociações interinstitucionais tiveram início em 9 de outubro de 2019, com base no mandato parcial concedido em 7 de junho de 2019. No total, realizaram-se seis reuniões do trílogo, em 9 de outubro e em 11 de novembro de 2019, em 7 de outubro, em 12 e em 25 de novembro e em 9 de dezembro de 2020, para debater as questões políticas e dar orientações para os debates técnicos. Estas reuniões foram apoiadas por vinte e uma reuniões técnicas. Além disso, foram realizadas em paralelo várias reuniões técnicas sobre questões horizontais para debater disposições de natureza horizontal nos três Fundos para os Assuntos Internos (FAM, IGFV e FSI).

8. Na última reunião do trílogo, foi alcançado um acordo provisório sobre as principais questões políticas entre a então Presidência alemã e a relatora do PE. Este acordo provisório foi apresentado ao Comité em 16 de dezembro de 2020 através de um relatório intercalar[7], tendo o Comité aprovado os progressos realizados nessa base.

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5 00010/20
6 11888/20
7 13861/20

9. Foram retomados em janeiro outros trabalhos técnicos sobre os considerandos, as disposições relativas à retroatividade, os anexos e os alinhamentos técnicos, e o Comité analisou o texto de compromisso final em 24 de fevereiro de 2021[8].

10. Em 1 de março de 2021, a Comissão das Liberdades Cívicas, da Justiça e dos Assuntos Internos do Parlamento Europeu ("Comissão LIBE") aprovou o texto de compromisso final. Nesta base, o presidente da Comissão LIBE enviou uma carta à Presidência confirmando que, se o texto consolidado, tal como consta do anexo a essa carta, e sob reserva de revisões linguísticas, for formalmente transmitido ao Parlamento Europeu como posição do Conselho em primeira leitura, recomendaria aos membros da Comissão LIBE e, subsequentemente, ao plenário do PE que aceitassem a posição do Conselho em primeira leitura sem alterações na segunda leitura do PE.

11. Posteriormente, o Comité confirmou o acordo político com vista a uma segunda leitura com o Parlamento Europeu em 10 de março de 2021[9].

12. No decurso dos seus trabalhos, o Conselho teve em linha de conta o parecer adotado pelo Comité Económico e Social Europeu em 17 de outubro de 2018 e o parecer adotado pelo Comité das Regiões em 9 de outubro de 2018.

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[8] 6111/21
[9] 6687/21

II. OBJETIVO

13. Durante os intensos fluxos migratórios, em 2015-2016, o apoio financeiro e técnico concedido pela UE aos seus Estados-Membros permitiu-lhes gerir melhor os desafios no domínio do asilo, migração e fronteiras externas. O orçamento da UE é, além disso, essencial para o financiamento de medidas comuns tendo em vista o controlo e vigilância eficazes das fronteiras externas da União, a fim de compensar a supressão dos controlos nas fronteiras internas. Além disso, em outubro de 2017, o Conselho Europeu reafirmou a necessidade de adotar uma abordagem global para a gestão da migração com o objetivo de restabelecer o controlo das fronteiras externas, reduzir o número de entradas e de mortes no mar, e que se deveria basear na utilização flexível e coordenada de todos os instrumentos disponíveis da União e dos Estados-Membros.

14. Neste contexto, na sua proposta de 2 de maio de 2018 relativa ao quadro financeiro plurianual 2021-2027, a Comissão propôs um reforço significativo do orçamento global da União para a gestão da migração e das fronteiras externas. Esta proposta cria o Fundo para o Asilo e a Migração, que prestará apoio à gestão eficaz da migração pelos Estados-Membros.

III. ANÁLISE DA POSIÇÃO DO CONSELHO EM PRIMEIRA LEITURA

A) Considerações gerais

15. Com base na proposta da Comissão, o Parlamento Europeu e o Conselho conduziram negociações para chegarem a acordo na fase da posição do Conselho em primeira leitura ("segunda leitura antecipada"). O texto do projeto de posição do Conselho reflete plenamente o acordo político alcançado entre os colegisladores, facilitado pela Comissão.

B) Questões-chave de caráter político

16. As principais questões de caráter político do acordo, refletidas na posição do Conselho em primeira leitura, são as seguintes:

Objetivos do Fundo

17. Na sua proposta, a Comissão propôs uma simplificação dos objetivos específicos, que incluiu a supressão do objetivo específico em matéria de solidariedade, uma vez que este é um princípio fundamental do Fundo que orienta todo o apoio. No seu mandato de negociação, o Conselho apoiou a abordagem da Comissão.

18. Ambos os colegisladores concordaram que a solidariedade é um objetivo importante do Fundo. A título de compromisso, o acordo político reintroduz o objetivo específico de solidariedade e da partilha equitativa de responsabilidades (artigo 3.º), alinhando assim os objetivos do novo fundo FAMI com o atual Fundo.

Flexibilidade e percentagens mínimas

19. À luz da experiência adquirida com a crise migratória em 2015, a Comissão sublinhou a necessidade de um FAM flexível e adaptável. Em princípio, ambos os colegisladores concordam com a necessidade de flexibilidade. O Parlamento Europeu insistiu que deve ser dada resposta a todos os objetivos do Fundo até um determinado nível, sem comprometer a flexibilidade global. No âmbito de um pacote de compromisso global, os colegisladores chegaram a acordo sobre percentagens mínimas para a afetação de fundos aos objetivos específicos do Fundo.

20. Mais especificamente, foi acordado que os Estados-Membros devem afetar um mínimo de 15 % dos recursos afetados aos respetivos programas a cada um dos objetivos específicos relativos ao Sistema Europeu Comum de Asilo (SECA) e à migração legal, integração e inclusão social (artigo 16.º).

21. Foi igualmente acordado que 20 % dos recursos da dotação inicial para o instrumento temático serão afetados ao objetivo específico de solidariedade e da partilha equitativa de responsabilidades e que 5 % dos mesmos recursos se destinam aos órgãos de poder local e regional que aplicam medidas de integração (artigo 11.º).

Âmbito de aplicação do apoio

22. Na sua proposta, a Comissão propôs uma abordagem flexível do âmbito do apoio do Fundo, incentivando, mas sem restringir, as ações elegíveis enumeradas no anexo III. O mandato do Conselho apelou a uma maior flexibilidade, ao passo que o Parlamento Europeu insistiu em que o âmbito de aplicação do Fundo se limitasse às ações constantes do anexo III. O apoio a outras ações só teria sido possível na sequência da alteração do anexo através de um ato delegado.

23. A título de compromisso, o acordo político retomou a abordagem inicial da Comissão para efeitos dos programas elaborados pelos Estados-Membros (artigo 5.º). No entanto, o apoio do instrumento temático será limitado às ações constantes do anexo III, com exceção do apoio ao abrigo da ajuda de emergência (artigo 11.º). A Comissão também foi habilitada a alterar o anexo III através de atos delegados (artigo 5.º).

Critérios para a atribuição de financiamento aos programas dos Estados-Membros

24. O acordo político alcançado sobre os critérios para a atribuição de financiamento aos programas dos Estados-Membros, incluindo a linha de base para a apresentação de relatórios, baseia-se, em grande medida, no mandato do Conselho.

25. A título de compromisso, a repartição ponderada dos subcritérios relativos à migração irregular foi ligeiramente revista para refletir o compromisso alcançado entre os colegisladores, mais especificamente, a percentagem de 70 % proporcionalmente ao número total de nacionais de países terceiros que tenham sido objeto de uma decisão de regresso, e uma percentagem de 30 % proporcionalmente ao número total dos que saíram efetivamente do território (anexo I).

Dimensão externa

26. Os colegisladores tinham pontos de vista divergentes sobre esta matéria. No entanto, e num espírito de compromisso, o acordo político alcançado entre os colegisladores reconhece a necessidade de abordar a dimensão externa sob certas condições, respeitando simultaneamente as prioridades políticas dos colegisladores.

27. Mais especificamente, o Fundo pode apoiar ações em países terceiros ou com estes relacionadas que contribuam para os objetivos do Fundo e desde que não sejam orientadas para o desenvolvimento, sejam coordenadas com outras ações da União e sejam coerentes com as prioridades da União e a política externa da União (artigo 5.º).

28. As ações específicas relativas à cooperação com países terceiros e ao apoio à reintegração foram incluídas no anexo III, permitindo assim o apoio a essas ações também através do instrumento temático (ver ponto 23 supra).

29. Além disso, o Fundo prevê a associação de países terceiros, sob reserva de salvaguardas e de acordos específicos (artigo 7.º).

Reinstalação, admissão por motivos humanitários e transferência

30. No que diz respeito às admissões através da reinstalação (artigo 19.º) e à transferência de requerentes ou beneficiários de proteção internacional entre Estados-Membros (artigo 20.º), o acordo político prevê montantes mais elevados do que o mandato do Conselho. Foi igualmente incluída uma abordagem simplificada.

31. No entanto, a título de compromisso, está previsto um montante ligeiramente inferior ao mandato do Conselho para admissões por motivos humanitários (artigo 19.º).

IV. CONCLUSÃO

32. A posição do Conselho em primeira leitura sobre o Regulamento que cria o Fundo para o Asilo, a Migração e a Integração reflete plenamente o acordo político alcançado nas negociações entre o Conselho e o Parlamento Europeu, mediadas pela Comissão.

Conselho da
União Europeia

Bruxelas, 15 de junho de 2021
(OR. en)

6487/2/21
REV 2 ADD 1

Dossiê interinstitucional:
2018/0249(COD)

JAI 198
FRONT 71
VISA 35
SIRIS 18
CADREFIN 91
COMIX 112
CODEC 259
PARLNAT 138

NOTA JUSTIFICATIVA DO CONSELHO

Assunto:	Posição do Conselho em primeira leitura com vista à adoção do REGULAMENTO DO PARLAMENTO EUROPEU E DO CONSELHO que cria, no âmbito do Fundo de Gestão Integrada das Fronteiras, o Instrumento de Apoio Financeiro à Gestão das Fronteiras e à Política de Vistos – Nota justificativa do Conselho – Adotada pelo Conselho em 14 de junho de 2021

I. INTRODUÇÃO

1. Em 13 de junho de 2018, a Comissão apresentou uma proposta de regulamento do Parlamento Europeu e do Conselho que cria, no âmbito do Fundo de Gestão Integrada das Fronteiras, o Instrumento de Apoio Financeiro à Gestão das Fronteiras e dos vistos[1] (a seguir designado por "IGFV" ou "Instrumento"), ao abrigo da rubrica 4 ("Migração e Gestão das Fronteiras") do Quadro Financeiro Plurianual (QFP) 2021-2027.

2. O Parlamento Europeu adotou a sua posição em primeira leitura[2] na sessão plenária de 13 de março de 2019.

3. O Comité Económico e Social Europeu adotou o seu parecer em 17 de outubro de 2018[3].

4. O Comité das Regiões não emitiu parecer sobre este Instrumento.

5. Em 7 de junho de 2019, o Conselho adotou uma orientação geral parcial[4] que serviu de mandato inicial para as negociações com o Parlamento Europeu. Em 12 de outubro de 2020, o Conselho adotou uma orientação geral completa[5] sobre a proposta mencionada anteriormente.

6. Os colegisladores encetaram negociações no segundo semestre de 2019. No trílogo de 10 de dezembro de 2020, os colegisladores chegaram a um acordo provisório, que foi apresentado na reunião do Comité de Representantes Permanentes de 16 de dezembro de 2020[6]. Os trabalhos para ultimar os considerandos, a terminologia, as disposições relativas à retroatividade para assegurar a continuidade do financiamento e os indicadores prosseguiram em 2021.

7. O Comité de Representantes Permanentes analisou o texto de compromisso final[7] na perspetiva de chegar a acordo na reunião de 24 de fevereiro de 2021.

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1 Doc. 10151/18 + ADD 1, ADD 1 COR 1
2 Doc. 7403/19.
3 Doc. 13606/18.
4 Doc. 10141/19.
5 Doc. 11943/20.
6 Doc. 13863/20.
7 Doc. 6105/21.

8. Em 1 de março de 2021, a Comissão das Liberdades Cívicas, da Justiça e dos Assuntos Internos (LIBE) do Parlamento Europeu confirmou o acordo político. O presidente da Comissão LIBE enviou uma carta ao presidente do Comité de Representantes Permanentes a confirmar que, caso o Conselho aprovasse o texto em primeira leitura, após revisão jurídico-linguística, o Parlamento aprovaria a posição do Conselho em segunda leitura.

9. O Comité de Representantes Permanentes confirmou o acordo político[8] na sua reunião de 10 de março de 2021.

II. OBJETIVO

10. O objetivo estratégico do Instrumento é assegurar uma gestão europeia integrada das fronteiras que seja rigorosa e efetiva nas fronteiras externas, salvaguardando simultaneamente a livre circulação das pessoas e os direitos fundamentais, contribuindo assim para garantir um elevado nível de segurança na União.

11. O Instrumento contribuirá para a realização dos seguintes objetivos específicos:
i) apoiar a efetiva gestão europeia integrada das fronteiras nas fronteiras externas, a fim de facilitar a passagem lícita das fronteiras, prevenir e detetar a imigração ilegal e a criminalidade transfronteiras e gerir eficazmente os fluxos migratórios; ii) apoiar a política comum de vistos, a fim de assegurar uma abordagem harmonizada no que respeita à emissão de vistos e de facilitar as viagens legítimas, contribuindo simultaneamente para prevenir os riscos migratórios e de segurança.

III. ANÁLISE DA POSIÇÃO DO CONSELHO EM PRIMEIRA LEITURA

12. O Parlamento Europeu e o Conselho realizaram negociações com vista à obtenção de um acordo na fase da posição do Conselho em primeira leitura ("acordo no início da segunda leitura").

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[8] Doc. 6690/21.

13. O texto da posição do Conselho em primeira leitura reflete o compromisso alcançado nas negociações entre o Parlamento Europeu e o Conselho, mediadas pela Comissão. Os principais elementos do compromisso resumem-se em seguida.

14. Equipamento polivalente. Os colegisladores concordaram que os equipamentos adquiridos com base numa contribuição financeira do Instrumento permanecerão disponíveis para serem utilizados noutros domínios, inclusive para fins aduaneiros, para operações marítimas ou para alcançar os objetivos dos dois outros fundos no domínio dos assuntos internos (FAMI e FSI), na condição de essa utilização não exceder 30 % do período total de utilização do equipamento.

15. Nível mínimo de despesa para a política de vistos. Os colegisladores acordaram em fixar uma percentagem vinculativa de, pelo menos, 10 % nos programas dos Estados-Membros para cobrir as despesas no âmbito deste objetivo específico. A referida percentagem vinculativa não se aplicará ao instrumento temático. Os Estados-Membros só poderão atribuir menos do que a percentagem mínima se os seus programas incluírem uma explicação pormenorizada.

16. Ações em países terceiros ou com estes relacionadas. Os colegisladores concordaram que o Instrumento terá o grau de flexibilidade necessário para ações que apoiam os seus objetivos, quer sejam realizadas dentro ou fora das fronteiras da União. As referidas ações terão de ser realizadas em sinergia e coerência com outras ações fora da União apoiadas por outros instrumentos da União.

17. Papel das agências da União. Os conhecimentos e as competências das agências pertinentes da União, em especial a Agência Europeia da Guarda de Fronteiras e Costeira, a Agência da União Europeia para a Gestão Operacional de Sistemas Informáticos de Grande Escala no Espaço de Liberdade, Segurança e Justiça (eu-LISA) e a Agência dos Direitos Fundamentais da UE, serão tidos em conta, no que respeita às suas esferas de competência, para efeitos do desenvolvimento dos programas dos Estados-Membros. As agências podem também ser consultados pela Comissão sobre as ações incluídas no apoio operacional relativamente às quais as agências disponham de conhecimentos especializados específicos e em relação às tarefas de acompanhamento e avaliação.

18. Disposições relativas aos direitos fundamentais. As disposições relativas aos direitos fundamentais foram simplificadas ao longo do texto jurídico. Neste contexto, foi introduzido no regulamento um novo artigo sobre "não discriminação e respeito dos direitos fundamentais".

19. Reforço do orçamento. Os colegisladores chegaram a acordo sobre uma dotação adicional de um montante máximo de mil milhões de euros, a preços de 2018, a atribuir ao instrumento temático, em conformidade com o artigo 5.º e o anexo II do Regulamento QFP.

20. Atos delegados e atos de execução. Os colegisladores concordaram que os programas de trabalho da Comissão serão adotados por meio de atos de execução (procedimento de exame) e que o anexo III (âmbito de aplicação do apoio) será alterado por meio de um ato delegado.

21. Ações elegíveis para taxas de cofinanciamento mais elevadas. Algumas ações foram consideradas prioritárias, tendo as suas taxas de cofinanciamento sido aumentadas. Estas ações incluem o apoio imediato às vítimas de tráfico de seres humanos, o desenvolvimento de sistemas integrados de proteção das crianças nas fronteiras externas, medidas destinadas à identificação de pessoas vulneráveis e ao seu encaminhamento para os serviços de proteção e assistência imediata a essas pessoas, custos operacionais do ETIAS, medidas destinadas a aumentar a qualidade dos dados armazenados em sistemas de TIC no domínio da política de vistos e das fronteiras e medidas que visem melhorar a interoperabilidade dos sistemas de TIC.

22. Apoio operacional. A percentagem máxima prevista para o apoio operacional foi aumentada para 33 % do montante atribuído ao programa. Os custos relativos às atividades de formação e aos imóveis serão cobertos em ambos os objetivos, fronteiras e vistos, alargando o âmbito inicial proposto pela Comissão.

23. Operações de financiamento misto. Os colegisladores decidiram não incluir a possibilidade de o Instrumento utilizar este tipo de apoio financeiro.

24. Transferência de recursos (horizontal). Foi introduzida uma cláusula de receção para ter em conta a eventual transferência para o Instrumento, a pedido dos Estados-Membros, de um montante máximo de 5 % da dotação inicial de qualquer dos fundos ao abrigo do Regulamento Disposições Comuns em regime de gestão partilhada.

25. Pré-financiamento (horizontal). Foram acordadas para o Instrumento taxas de pré-financiamento específicas, com base no Regulamento Disposições Comuns.

26. Verificações de gestão e auditorias dos projetos realizados por organizações internacionais (horizontal). Em derrogação do Regulamento Disposições Comuns, foi acordado um novo artigo para facilitar o trabalho dos Estados-Membros com organizações internacionais em regime de gestão partilhada, sem alterar a obrigação dos Estados-Membros de garantirem a legalidade e regularidade das despesas declaradas à Comissão.

IV. CONCLUSÃO

27. A posição do Conselho em primeira leitura reflete o compromisso acordado entre o Conselho e o Parlamento Europeu, com o apoio da Comissão.

28. O Conselho considera que a sua posição em primeira leitura representa um compromisso equilibrado e que, uma vez adotado, o novo regulamento desempenhará um papel fundamental para assegurar uma gestão europeia integrada das fronteiras que seja rigorosa e efetiva nas fronteiras externas, salvaguardando simultaneamente a livre circulação das pessoas e os direitos fundamentais, contribuindo assim para garantir um elevado nível de segurança na União.

Conselho da
União Europeia

Bruxelas, 15 de junho de 2021
(OR. en)

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REV 1 ADD 1

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NOTA JUSTIFICATIVA DO CONSELHO

Assunto:	Posição do Conselho em primeira leitura com vista à adoção do REGULAMENTO DO PARLAMENTO EUROPEU E DO CONSELHO que cria o Fundo para a Segurança Interna – Nota justificativa do Conselho – Adotada pelo Conselho em 14 de junho de 2021

I. INTRODUÇÃO

1. A 15 de junho de 2018, a Comissão apresentou uma proposta de regulamento do Parlamento Europeu e do Conselho que cria o Fundo para a Segurança Interna[1] (a seguir designado por "FSI" ou "Fundo"), ao abrigo da rubrica 5 ("Segurança e Defesa") do Quadro Financeiro Plurianual (QFP) 2021-2027.

2. O Parlamento Europeu adotou a sua posição em primeira leitura na sessão plenária de 13 de março de 2019.[2]

3. O Comité Económico e Social Europeu adotou o seu parecer na sessão plenária de 18 de outubro de 2018[3].

4. O Comité das Regiões não emitiu parecer sobre este Fundo.

5. Em 7 de junho de 2019, o Conselho adotou uma orientação geral parcial[4] que serviu de mandato inicial para as negociações com o Parlamento Europeu. Em 12 de outubro de 2020, o Conselho adotou uma orientação geral completa[5] sobre a proposta mencionada anteriormente.

6. Os colegisladores encetaram negociações no segundo semestre de 2019. No trílogo de 10 de dezembro de 2020, os colegisladores chegaram a um acordo provisório, que foi apresentado na reunião do Comité de Representantes Permanentes de 16 de dezembro de 2020[6]. Nessa reunião, o texto apresentado pela Presidência recolheu o apoio necessário das delegações. Os trabalhos, nomeadamente para ultimar alguns dos considerandos, a terminologia, as disposições relativas à retroatividade para assegurar a continuidade do financiamento e os indicadores prosseguiram posteriormente a nível técnico.

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1 Doc. 10154/18 + ADD 1
2 Doc. 7404/19.
3 Doc. 13774/18.
4 Doc. 10137/19.
5 Doc. 11945/20 + COR 1.
6 Doc. 13862/1/20 REV 1.

7. O Comité de Representantes Permanentes analisou o texto de compromisso final[7] na perspetiva de chegar a acordo na reunião de 24 de fevereiro de 2021.

8. Em 1 de março de 2021, a Comissão das Liberdades Cívicas, da Justiça e dos Assuntos Internos (LIBE) do Parlamento Europeu confirmou o acordo político. O presidente da Comissão LIBE enviou uma carta ao presidente do Comité de Representantes Permanentes a confirmar que, caso o Conselho aprovasse o texto em primeira leitura, após revisão jurídico-linguística, o Parlamento aprovaria a posição do Conselho em segunda leitura.

9. O Comité de Representantes Permanentes confirmou o acordo político[8] na sua reunião de 10 de março de 2021.

II. OBJETIVO

10. O Fundo tem por objetivo estratégico contribuir para assegurar um elevado nível de segurança na União, em especial ao prevenir e combater o terrorismo e a radicalização, a criminalidade grave e organizada e a cibercriminalidade, apoiando e protegendo as vítimas da criminalidade, bem como através da preparação e da proteção contra riscos e crises relacionados com a segurança e a sua gestão eficaz no âmbito de aplicação do regulamento.

11. O Fundo contribuirá para a realização dos seguintes objetivos específicos: i) melhorar e facilitar o intercâmbio de informações a nível interno e entre as autoridades competentes dos Estados-Membros e os organismos competentes da União, bem como, sempre que pertinente, com países terceiros e organizações internacionais; ii) melhorar e intensificar a cooperação transfronteiriça, incluindo as operações conjuntas a nível interno e entre as autoridades competentes dos Estados-Membros em relação ao terrorismo e à criminalidade grave e organizada com dimensão transfronteiriça; iii) apoiar o reforço das capacidades dos Estados-Membros em matéria de prevenção e combate à criminalidade, ao terrorismo e à radicalização, bem como gerir incidentes, riscos e crises relacionados com a segurança.

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7 Doc. 6106/2/21 REV 2.
8 Doc. 6691/21.

III. ANÁLISE DA POSIÇÃO DO CONSELHO EM PRIMEIRA LEITURA

12. O Parlamento Europeu e o Conselho realizaram negociações com vista à obtenção de um acordo na fase da posição do Conselho em primeira leitura ("acordo no início da segunda leitura").

13. O texto da posição do Conselho em primeira leitura reflete o compromisso alcançado nas negociações entre o Parlamento Europeu e o Conselho, mediadas pela Comissão. Os elementos essenciais do compromisso resumem-se em seguida.

14. Agências de financiamento: Ao artigo 17.º foi aditado um número para que as agências da União sejam excecionalmente elegíveis para financiamento nos casos em que apoiem a execução de ações da União que sejam da competência das agências descentralizadas e em que as referidas ações não estejam cobertas pela contribuição da União, através do orçamento anual, para o orçamento dessas agências descentralizadas.

15. Ações em países terceiros ou com estes relacionadas: Foi alcançado um compromisso com o PE relativamente ao aditamento ao artigo 8.º, segundo o qual uma parte significativa do financiamento do instrumento temático deverá ser utilizada para apoiar ações realizadas em países terceiros ou com estes relacionadas "a fim de contribuir para a gestão da migração externa". A redação foi alterada para "no sentido de contribuir para o combate e a prevenção da criminalidade, incluindo o tráfico de droga, o tráfico de seres humanos e o combate às redes criminosas transfronteiriças de introdução clandestina de migrantes".

16. "Cooperação em matéria de informações": A posição do PE incluiu uma alteração que introduz o desenvolvimento de uma cultura comum de informações como quarto objetivo específico. A título de compromisso, chegou-se a um acordo provisório sobre um considerando relativo à cooperação e ao intercâmbio de informações sobre a criminalidade grave e organizada e o terrorismo.

17. Equipamento de série: O artigo 4.º, n.º 3, alínea b), da proposta da Comissão, que teria excluído do financiamento a aquisição ou manutenção de equipamentos de série, foi substituído por um considerando.

18. Ações não elegíveis que deverão ser elegíveis em situações de emergência: No artigo 4.º, n.º 3, em comparação com a proposta da Comissão, existe um número mais limitado de ações não elegíveis que poderão ser elegíveis em situações de emergência. Por exemplo, as ações com fins militares ou de defesa continuam a não ser elegíveis.

19. Aquisição de equipamentos: A percentagem da dotação de um programa de um Estado-Membro que pode ser utilizada para a aquisição de equipamento foi aumentada, de 15 % na proposta da Comissão para 35 %.

20. Apoio operacional: A percentagem da dotação que pode ser atribuída ao apoio operacional foi aumentada de 10 % para 20 %.

21. Atos delegados *versus* atos de execução. A Comissão adotará programas de trabalho por meio de atos de execução (procedimento de exame).

IV. CONCLUSÃO

22. A posição do Conselho em primeira leitura reflete o compromisso acordado entre o Conselho e o Parlamento Europeu, com o apoio da Comissão.

23. O Conselho considera que a sua posição em primeira leitura representa um compromisso equilibrado e que, uma vez adotado, o novo regulamento desempenhará um papel fundamental na prevenção e no combate do terrorismo e da radicalização, da criminalidade grave e organizada e da cibercriminalidade, contribuindo assim para garantir um elevado nível de segurança na União.

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