

European Border and Coast Guard

(COM(2015)0671 – C8 0408/2015 – 2015/0310(COD))

Trilogue 21 June 2016

Drafting proposals:

(11a) *Given its activity at the external borders, the Agency should contribute to preventing and detecting serious crime with a cross-border dimension, such as the ~~criminal~~ migrant smuggling, trafficking in human beings and terrorism, where it is appropriate for it to act and where it has obtained relevant information through its activities. It should coordinate its activities with Europol as the agency responsible for supporting and strengthening Member States' actions and their cooperation in preventing and combating serious crime affecting two or more Member States.*

Cross-border crimes necessarily entail a cross-border dimension. Such a cross-border dimension is characterised by crimes linked to the illegally crossing the external border, including trafficking in human beings or smuggling of migrants, where there is a direct link with the crossing of the external border notwithstanding the provisions of article 1(2) of Council Directive 2002/90/EC which allows Member States NOT TO IMPOSE SANCTIONS WHERE THE AIM OF THE behaviour is to PROVIDE humanitarian assistance to migrants.

(33) ~~The Commission and the Member States should be represented within a Management Board to exercise policy and political oversight over the European Border and Coast Guard Agency. The Board should, where possible, consist of the operational heads of the national services responsible for border guard management or their representatives. The 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.~~ This Board should be **responsible for the taking of strategic decisions of the Agency**, entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the European Border and Coast Guard Agency and appoint the Executive Director and the Deputy Executive Director. **The Executive Director should be responsible for the preparation and implementation of the strategic decisions taken by the Management as well as for the taking of decisions related to the operational activities of the Agency.** The Agency should be governed and operated *taking into account* ~~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. **The Executive Director should be responsible for the preparation and implementation of the strategic decisions taken by the Management as well as for the taking of decisions related to the operational activities of the Agency**

Article 61

-1. The Management Board shall be responsible for the taking of strategic decisions of the Agency.

Article 67

3. The Executive Director shall ***be responsible for the preparation and implementation of the strategic decisions taken by the Management as well as for the taking of decisions related to the operational activities of the Agency. The Executive Director*** have the following functions and powers:

3a.

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

| <i>Article 72</i> Complaint Mechanism | <i>Article 72</i> Complaint Mechanism | <i>Article 72</i> Complaint Mechanism | Rapporteur Compromise proposal |
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| 1. The Agency, in cooperation with the Fundamental Rights Officer, shall take the necessary measures to set up a complaint mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of the Agency. | 1. The Agency, in cooperation with the Fundamental Rights Officer, shall take the necessary measures to set up a complaint mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of the Agency. | 1. The Agency, in cooperation with the Fundamental Rights Officer, shall take the necessary measures to set up <i>an independent, accessible, transparent and effective</i> complaint mechanism in accordance with this Article to monitor and ensure the respect for fundamental rights in all the activities of the Agency. | COM text |
| 2. Any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, return operation or return intervention, and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any third parties intervening on behalf of such a person, may submit a complaint, in writing, to the Agency. | 2. Any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, <u>migration management support teams</u> , return operation or return intervention, and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any third parties intervening on behalf of such a person, may submit a complaint, in writing, to the Agency. | 2. Any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, <i>migration management support team</i> , return operation or return intervention, and who considers him or herself to have been the subject of a breach of his or her <i>violation</i> of his or her fundamental rights, <i>as protected by Union law</i> , due to those actions, or any third parties intervening on behalf of such a person, may submit a complaint, in writing, to the Agency. | Council text |
| 3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible. Complaints which are anonymous, malicious, frivolous, vexatious, hypothetical or inaccurate shall be excluded from the complaint mechanism. | 3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible. Complaints which are anonymous, malicious, frivolous, vexatious, hypothetical or inaccurate shall be excluded from the complaint mechanism. | 3. Only substantiated complaints involving concrete fundamental rights violations shall be admissible. Complaints which are <i>manifestly unfounded</i> , anonymous, malicious, frivolous, vexatious, <i>or</i> hypothetical or inaccurate shall be excluded from the complaint mechanism. <i>Complaints may</i> | Council text |

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| | | <i>be submitted by third parties acting in good faith in the interests of a complainant who may wish to keep his or her identity undisclosed.</i> | |
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| <p>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 border guards to the home Member State and register the follow-up by the Agency or that Member State.</p> | <p>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 <u>members of the teams border guards</u> to the home Member State and register the follow-up by the Agency or that Member State.</p> | <p>4. The Fundamental Rights Officer shall be responsible for handling complaints received by the Agency in accordance with the Charter, including 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 and complaints concerning border guards to the home Member State and, including the relevant authority or body competent for fundamental rights in Member State, within a determined time period. The Fundamental Rights Officer shall also register and ensure the follow-up by the Agency or that Member State. Any decision shall be in written form and reasoned. The Fundamental Rights Officer shall inform the complainant of the decision on admissibility, and of the national authorities to which his or her complaint was forwarded. If a complaint is not admissible, complainants shall be informed of the reasons and provided with further options for addressing their concerns.</p> | <p>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 <u>members of the teams border guards</u> to the home Member State, including the relevant authority or body competent for fundamental rights in Member State, and register and ensure the follow-up by the Agency or that Member State.</p> <p>4a. (=para 8 of COM proposal) In accordance with the right to good administration, if a complaint is admissible, complainants 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. If a complaint is forwarded to national authorities or bodies, the complainant shall be provided with their contact details. If a complaint is not admissible, complainants shall be</p> |
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| | | | <p>informed of the reasons and provided with further options for addressing their concerns.</p> <p><i>Any decision shall be in written form and reasoned.</i></p> |
| <p>5. In case of a registered complaint concerning a staff member of the Agency, the Executive Director shall ensure appropriate follow-up, including disciplinary measures as necessary. The Executive Director shall report back to the Fundamental Rights Officer as to the findings and follow-up given by the Agency to a complaint.</p> | <p>5. In case of a registered complaint concerning a staff member of the Agency, the Executive Director shall ensure appropriate follow-up, including disciplinary measures as necessary. The Executive Director shall report back to the Fundamental Rights Officer as to the findings and follow-up given by the Agency to a complaint. <u>In case a complaint is related to data protection issues, the Executive Director shall involve the Data Protection Officer of the Agency.</u></p> | <p>5. In <i>the</i> case of a registered complaint concerning a staff member of the Agency, the Executive Director shall ensure appropriate follow-up, <i>in consultation with the Fundamental Rights Officer</i>, including disciplinary measures as necessary. The Executive Director shall report back to the Fundamental Rights Officer as to the findings and follow-up given by the Agency to a complaint <i>regarding the implementation of disciplinary measures within a determined time period, and if necessary, at regular intervals thereafter.</i></p> | <p>5. In <i>the</i> case of a registered complaint concerning a staff member of the Agency, the Executive Director shall ensure appropriate follow-up, <i>in consultation with the Fundamental Rights Officer</i>, including disciplinary measures as necessary. The Executive Director shall report back <i>within a determined timeframe</i> to the Fundamental Rights Officer as to the findings and follow-up given by the Agency to a complaint, <i>including disciplinary measures as necessary.</i> <u>In case a complaint is related to data protection issues, the Executive Director shall involve the Data Protection Officer of the Agency.</u> <i>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.</i></p> |
| <p>6. In case of a registered complaint concerning a border guard of a host Member State or a member of the teams, including seconded</p> | <p>6. In case of a registered complaint concerning a border guard of a host Member State or a member of the teams, including seconded</p> | <p>6. In case of a registered complaint concerning a border guard of a host Member State or a member of the teams, including seconded members</p> | <p>6. In case of a registered complaint concerning a border guard of a host Member State or a member of the teams, including seconded</p> |

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| <p>members of the teams or 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 to a complaint.</p> | <p>members of the teams or 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 to a complaint.</p> | <p>of the teams or 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 to a complaint <i>within a determined time period, and if necessary, at regular intervals thereafter. Where the relevant Member State does not report back, the Agency shall send a warning letter indicating the actions which the Agency can take if no follow-up is received to the letter.</i></p> | <p>members of the teams or 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 to a complaint <i>within a determined time period, and if necessary, at regular intervals thereafter. The Agency shall follow-up the matter in case no report is received from the relevant Member State.</i></p> |
| | | <p><i>6a. Where a border guard or a seconded national expert is found to have violated fundamental rights or international protection obligations, the Agency shall request the Member State to remove that border guard or seconded national expert immediately from the activity of the Agency or the rapid reaction pool.</i></p> | <p><i>6a. Where a border guard or a seconded national expert is found to have violated fundamental rights or international protection obligations, the Agency <u>may shall</u> request the Member State to remove that border guard or seconded national expert immediately from the activity of the Agency or the rapid reaction pool.</i></p> |
| <p>7. The Fundamental Rights Officer shall report to the Executive Director and to the Management Board as to the findings and follow-up given to complaints by the Agency and the Member States.</p> | <p>7. The Fundamental Rights Officer shall report to the Executive Director and to the Management Board as to the findings and follow-up given to complaints by the Agency and the Member States.</p> | <p>7. The Fundamental Rights Officer shall report to the Executive Director and to the Management Board as to the findings and follow-up given to complaints by the Agency and the Member States. <i>The Agency shall include in its annual report information</i></p> | <p>7. The Fundamental Rights Officer shall report to the Executive Director and to the Management Board as to the findings and follow-up given to complaints by the Agency and the Member States. <i>The Agency shall include in its annual report</i></p> |

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| | | <p>on the complaints mechanism, indicating the number of complaints received, the types of fundamental rights violation, the operation concerned and the follow-up measures taken by the Agency and Member States.</p> | <p>information on the complaints mechanism.</p> <p><i>[The details for reporting could be specified in a recital: the number of complaints received, the types of fundamental rights violation, the operation concerned and the follow-up measures taken by the Agency and Member States.]</i></p> |
| <p>8. In accordance with the right to good administration, if a complaint is admissible, complainants 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. If a complaint is not admissible, complainants shall be informed of the reasons and provided with further options for addressing their concerns.</p> | <p>8. In accordance with the right to good administration, if a complaint is admissible, complainants 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. If a complaint is not admissible, complainants shall be informed of the reasons and provided with further options for addressing their concerns.</p> | <p>8. — In accordance with the right to good administration, if a complaint is admissible, complainants 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. If a complaint is not admissible, complainants shall be informed of the reasons and provided with further options for addressing their concerns.</p> | <p>Moved above under 4.</p> |
| <p>9. The Fundamental Rights Officer shall, after consulting the Consultative Forum, draw up a standardized complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights. The Fundamental Rights Officer shall</p> | <p>9. The Fundamental Rights Officer shall, after consulting the Consultative Forum, draw up a standardized complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights. The Fundamental Rights Officer shall</p> | <p>9. The Fundamental Rights Officer shall establish the procedure for the complaints mechanism on the basis of Article 41 of the Charter and in accordance with the provisions set out above, after consulting the Consultative Forum, and draw up a standardized complaint form requiring detailed and</p> | <p>9. The Fundamental Rights Officer shall in accordance with the provisions set out above and after consulting the Consultative Forum, draw up a standardized complaint form requiring detailed and specific information concerning the alleged breach of fundamental rights and any further</p> |

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| <p>submit that form to the Executive Director and to the Management Board.</p> <p>The Agency shall ensure that the standardized complaint form is available in most common languages and that it shall be made available on the Agency’s website and in hardcopy during all activities of the Agency. Complaints shall be considered by the Fundamental Rights Officer even when they are not submitted in the standardized complaint form.</p> | <p>submit that form to the Executive Director and to the Management Board.</p> <p>The Agency shall ensure that the standardized complaint form is available in most common languages and that it shall be made available on the Agency’s website and in hardcopy during all activities of the Agency. Complaints shall be considered by the Fundamental Rights Officer even when they are not submitted in the standardized complaint form.</p> | <p>specific information concerning the alleged breach of fundamental rights violation. The Fundamental Rights Officer shall submit that form and all the other detailed procedures to the Executive Director and to the Management Board.</p> <p>The Agency shall ensure that the information about the possibility and procedure for making a complaint is readily available. The standardized complaint form is shall be made available in most common languages and that it shall be made available that third-country nationals understand or are reasonably believed to understand on the Agency’s website and in hardcopy during all activities of the Agency. Further guidance and assistance on the complaints procedure shall be provided to alleged victims and on request. Information tailored to children and other vulnerable groups shall be provided to facilitate their access to the complaints mechanism. Complaints shall be considered by the Fundamental Rights Officer even when they are not submitted in the standardized complaint form.</p> | <p>detailed rules as necessary. The Fundamental Rights Officer shall submit that form and any further detailed rules as necessary to the Executive Director and to the Management Board.</p> <p>The Agency shall ensure that the information about the possibility and procedure for making a complaint is readily available, including for vulnerable persons. The standardized complaint form is shall be made available in most common languages and that it shall be made available that third-country nationals understand or are reasonably believed to understand on the Agency’s website and in hardcopy during all activities of the Agency. Complaints shall be considered by the Fundamental Rights Officer even when they are not submitted in the standardized complaint form.</p> |
| <p>10. Any personal data contained in a complaint shall be handled and processed by the Agency and the Fundamental Rights Officer in</p> | <p>10. Any personal data contained in a complaint shall be handled and processed by the Agency and <u>including</u> the Fundamental Rights</p> | <p>10. Any personal data contained in a complaint shall be handled and processed by the Agency and the Fundamental Rights Officer in</p> | <p>10. Any personal data contained in a complaint shall be handled and processed by the Agency and <u>including</u> the Fundamental Rights</p> |

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| <p>accordance with Regulation (EC) No 45/2001 and by Member States in accordance with Directive 95/46/EC and Council Framework Decision 2008/977/JHA.</p> <p>The submission of the complaint is understood as the complainant consenting to the processing of his or her personal data in the meaning of point (d) of Article 5 of Regulation (EC) No 45/2001 by the Agency and the Fundamental Rights Officer.</p> <p>In order to safeguard the interest of the complainants, complaints shall be dealt with confidentially unless the complainant waives his or her right to confidentiality. For complainants who waive their right to confidentiality, it is understood that he or she consents to the Fundamental Rights Officer or the Agency disclosing his or her identity in relation to the matter under complaint.</p> | <p>Officer, in accordance with Regulation (EC) No 45/2001 and by Member States in accordance with Directive 95/46/EC and Council Framework Decision 2008/977/JHA.</p> <p>The submission of the complaint is understood as the complainant consenting to the processing of his or her personal data in the meaning of point (d) of Article 5 of Regulation (EC) No 45/2001 by the Agency and the Fundamental Rights Officer.</p> <p>In order to safeguard the interest of the complainants, complaints shall be dealt with <u>appropriate confidentially in accordance with national and EU law</u> unless the complainant waives his or her right to confidentiality. For complainants who waive their right to confidentiality, it is understood that he or she consents to the Fundamental Rights Officer or the Agency disclosing his or her identity in relation to the matter under complaint.</p> | <p>accordance with Regulation (EC) No 45/2001 and by Member States in accordance with Directive 95/46/EC and Council Framework Decision 2008/977/JHA.</p> <p>The submission of the complaint is understood as the complainant consenting to the processing of his or her personal data in the meaning of point (d) of Article 5 of Regulation (EC) No 45/2001 by the Agency and the Fundamental Rights Officer.</p> <p>In order to safeguard the interest of the complainants, complaints shall be dealt with confidentially unless the complainant waives his or her right to confidentiality. For complainants who waive their right to confidentiality, it is understood that he or she consents to the Fundamental Rights Officer or the Agency disclosing his or her identity to the competent authority and where relevant or necessary, the relevant authority or body competent for fundamental rights of the relevant Member State in relation to the matter under complaint.</p> | <p>Officer, in accordance with Regulation (EC) No 45/2001 and by Member States in accordance with Directive 95/46/EC and Council Framework Decision 2008/977/JHA.</p> <p>The submission of the complaint is understood as the complainant consenting to the processing of his or her personal data in the meaning of point (d) of Article 5 of Regulation (EC) No 45/2001 by the Agency and the Fundamental Rights Officer.</p> <p>In order to safeguard the interest of the complainants, complaints shall be dealt with confidentially by the Fundamental Rights Officer in accordance with national and EU law unless the complainant waives explicitly his or her right to confidentiality. For complainants who waive their right to confidentiality, it is understood that he or she consents to the Fundamental Rights Officer or the Agency disclosing his or her identity to competent authorities or bodies in relation to the matter under complaint, where necessary.</p> |
| | | <p>10a. Data protection rights and related complaints submitted by data</p> | <p>Withdraw amendment</p> |

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| | | <p><i>subjects shall be dealt with separately by the Data Protection Officer established in accordance with Article 44(1) of this Regulation. The Fundamental Rights Officer and the Data Protection Officer shall establish, in writing, a memorandum of understanding specifying their division of tasks as regards complaints received.</i></p> | |
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Commission services proposal regarding Presidency proposals on equipment

Article 38

(3a) The technical equipment pool shall contain a Rapid reaction equipment Pool with a limited number of equipment needed for possible Rapid border interventions. **The contributions of Member States to this pool shall be planned in accordance with annual bilateral negotiations and agreements referred in paragraph 4.** For the equipment on this list, Member States may not invoke the exceptional situation referred to in paragraph 4. The equipment on this list shall be sent to the destination for deployment as soon as possible but not later than 10 days after the date on which the operational plan is agreed.

The Agency shall contribute to this pool with equipment at the Agency's disposal as referred to in article 37(1).

Article 38

5. On a proposal of the Executive Director, the Management Board shall decide, on a yearly basis, on the rules relating to technical equipment, including the required overall minimum numbers per type of technical equipment, the conditions for deployment and reimbursement of costs **as well on the limited number of technical equipment for a Rapid reaction equipment Pool.** For budgetary purposes that decision should be taken by the Management Board by 30 June each year. ~~within 30 days from the date of adoption of the annual work programme~~