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Proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 168/2007 establishing a European Union Agency for
Fundamental Rights**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Pursuant to Article 2 of Council Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights¹ (“the founding Regulation”), the objective of the Agency is “to provide the relevant institutions, bodies, offices, and agencies of the Community and its Member States, when implementing Community law, with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competencies to fully respect fundamental rights”.

Every five years, the European Union Agency for Fundamental Rights (“the Agency”) commissions an independent external evaluation of its achievements (in line with Article 30(3) and (4) of the founding Regulation). The first external evaluation of the Agency took place in 2012², and did not lead to any amendment to the founding Regulation. The second external evaluation³ took place in 2017. The Commission services analysed the recommendations made to the Commission by the external evaluator and by the Management Board of the Agency (Staff Working Document of 26 July 2019⁴).

In light of the findings of the external evaluation and of the analysis of the Commission services, this proposal aims to introduce some targeted technical amendments in the founding Regulation of the Agency.

The purpose of the amendments proposed is twofold:

- to align certain provisions of the Agency’s founding Regulation with the Common Approach annexed to the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19 July 2012 (hereinafter ‘the Common Approach’)⁵, in order to enhance the efficiency, relevance and governance of the Agency;
- to clarify that, since the entry into force of the Lisbon Treaty, the scope of the Agency’s activities covers the competences of the Union and therefore includes the thematic areas of police cooperation and judicial cooperation in criminal matters.

Whilst this is a direct legal consequence of the entry into force of the Lisbon Treaty, which replaced the Community by the Union, there is a merit in spelling it out in the founding Regulation in order to fully reflect the Agency’s relevance for assisting the Union institutions, bodies, offices and agencies and the Member States on issues relating to fundamental rights.

¹ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, 22.2.2007, p. 1).

² External evaluation of the European Union Agency for Fundamental Rights, 19 November 2012, https://fra.europa.eu/sites/default/files/fra-external_evaluation-final-report.pdf.

³ 2nd independent External Evaluation of the European Union Agency for Fundamental Rights, 31 October 2017 https://fra.europa.eu/sites/default/files/fra_uploads/2nd-fra-external-evaluation-october-2017_en.pdf.

⁴ SWD(2019)313.

⁵ Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies and Common Approach of 19 July 2012 https://europa.eu/european-union/sites/europaeu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf

The proposal is not an initiative within the Regulatory Fitness Programme (REFIT).

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

The Agency was established under Council Regulation (EC) No 168/2007. The Agency's objective is "to provide the relevant institutions, bodies, offices, and agencies of the Community and its Member States, when implementing Community law, with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competencies to fully respect fundamental rights" (Article 2 of the founding Regulation).

Under the proposal, the mandate of the Agency remains intact. Thirteen years after the adoption of the founding Regulation, however, some technical amendments are warranted to align it with the requirements of the Common Approach, for improved governance, efficiency and performance of the Agency, and to clarify that, since the entry into force of the Lisbon Treaty, in December 2009, the Agency's remit is Union law.

- **Consistency with other Union policies**

All Union policies are required to respect fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union ('EU Charter of Fundamental Rights'). By enabling the Agency to provide in a more efficient way expertise and assistance in the area of fundamental rights to EU institutions and bodies, the proposed amendments to the Agency's founding Regulation will improve the quality of other Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposed Regulation is Article 352 of the Treaty on the Functioning of the European Union (TFEU). It is a general objective of the European Union to ensure that its own action fully respects fundamental rights, as enshrined in the EU Charter of Fundamental Rights. The enhanced efficiency, relevance and governance that the Agency will gain with the technical amendments proposed will further that objective, without there being specific powers provided for in the Treaty to that end.

- **Subsidiarity**

This proposal addresses certain aspects relating to the internal functioning of the Agency and the way in which it operates within the EU institutional framework. Therefore, the objectives of this proposal cannot be achieved by action at national level.

- **Proportionality**

The principle of proportionality is fully respected in so far as the amendments proposed concern only those parts of the founding Regulation where clarification or modifications are necessary to improve the Agency's efficiency, relevance and governance.

- **Choice of the instrument**

A Regulation of the Council is the only suitable instrument to amend the existing Regulation (EC) No 168/2007 of the Council.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations**

The second external evaluation of the Agency, cited above, concluded that the Agency should continue to do what it does and that its current mandate is relevant and corresponds to stakeholders' needs. The external evaluator reported that a large majority of stakeholders acclaims the Agency's EU added value, considers that the quality of the Agency's outputs is undisputable and that the Agency's effectiveness and impact at EU level are visible. The external evaluator concluded, however, that some targeted technical amendments of the founding Regulation are warranted to improve the governance, efficiency and performance of the Agency: i) first, it should be made clear that since the entry into force of the Treaty of Lisbon, in December 2009, the Agency is to act within the competences of the Union; ii) second, the Agency's founding Regulation should be aligned with the Common Approach on decentralised agencies for efficiency gains and better governance.

- **Stakeholder consultations**

The second external evaluation of the Agency was based on a wide-ranging consultation of stakeholders, including Member States' authorities, EU and international institutions, civil society organisations, academia and international organisations.

- **Collection and use of expertise**

The initiative follows the external evaluation of the Agency in 2017 and a Staff Working Document of the Commission services analysing the recommendations made to the Commission by the external evaluator and by the Agency's Management Board (SWD(2019)313). The Staff Working Document was also based on consultations with the Agency's stakeholders and on the experiences of the Commission's representatives in the Agency's Management Board.

- **Impact assessment**

The proposed amendments of the Agency's founding Regulation are of technical nature. They will not create any impact for citizens, businesses, Member States or budgets of public authorities. The impact of the initiative will be limited to the Agency itself. An impact assessment was therefore not needed.

- **Regulatory fitness and simplification**

Not applicable. The proposal is not linked to REFIT.

- **Fundamental rights**

The Agency provides data and expertise on the fundamental rights situation in the Member States. It informs the work of EU institutions and Member States in the area of fundamental rights. By improving its governance, efficiency and performance, the proposal will allow the Agency to better carry out its statutory mission.

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications, as the Agency will not receive additional tasks and its mandate remains intact.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

In accordance with the Common Approach on decentralised agencies, the proposal includes a provision on the evaluation of the Agency by the Commission.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The proposal contains two articles. The first article specifies the proposed amendments of the Agency's founding Regulation, while the second article is related to the entry into force of the proposed amending Regulation.

The amendment to Article 3 (Scope) simply reflects the consequence of the entry into force of the Lisbon Treaty for the scope of the Agency's activities, which became "Union law" instead of "Community law", and therefore encompasses the area of police cooperation and judicial cooperation in criminal matters (the former so-called "third pillar" of the European Union).

All the other amendments proposed are to align the founding Regulation with the Common Approach and with the Framework Financial Regulation, in order to enhance the efficiency, relevance and governance of the Agency.

All the amendments are therefore of a technical nature and do not alter the mandate of the Agency, nor do they attribute it any additional competences.

In Articles 4, 5, 8, 9, 10, 12 and 15, reference to "Annual Work Programme" in the founding Regulation no longer corresponds to the reality, and should therefore be replaced with references to the "multiannual programming document" (that is, a programming document containing both multi-annual and annual components) that the Agency draws up every year in accordance with the Financial Framework Regulation. Aside from this clerical modification, the following table gives an overview of the amendments proposed to the founding Regulation.

Article	Subject	Changes
1	Subject matter	No change
2	Objective	No change
3	Scope	Replacement of the word "Community" with the word "Union".
4	Tasks	No change
5	Areas of activities	Deletion of the provisions of the Article that refer to the Multiannual Framework.
5a	The multiannual work programme	Concentration in this new Article of provisions previously spread in various Articles
6	Working methods	No change
7	Relations with relevant Community bodies, offices and agencies	No change
8	Cooperation with organisations at	No change

	Member State and international level	
9	Cooperation with the Council of Europe	No change
10	Cooperation with civil society; Fundamental Rights Platform	No change
11	Bodies of the Agency	No change
12	Management Board	<p>The amendments proposed relate to the:</p> <ul style="list-style-type: none"> -additional administrative and budgetary skills required from its members; -possibility to reappoint a former member or alternate member for non-consecutive terms; -replacement of a member before the expiry of his/her term completes the 5-year term of his/her predecessor; -specification that a two-third majority is required for the election of the Management Board Chair and Vice-chair and that the other two members of the Executive Board are elected by the majority of the Management Board members (in both cases, the member appointed by the Council of Europe has no right to vote); -provision that the Management Board: is conferred appointing authority powers - which, by decision, shall be delegated to the Director, who, in turn, is authorised to sub-delegate those powers - and that the Board can suspend such delegations where exceptional circumstances so require; adopts a security strategy (including rules on handling EU classified information); adopts rules on the management and prevention of conflict of interests; adopts a communication strategy; -provision that the majority required for decision-making on ordinary matters is the majority of the Management Board members; -provision that an extraordinary Management Board meeting can be convened also at the request of the Commission.
13	Executive Board	<p>Amendments to:</p> <ul style="list-style-type: none"> - clarify that the Executive Board's task to supervise the preparatory work for the decisions to be adopted by the

		<p>Management Board entails scrutinising budgetary and human resources matters;</p> <ul style="list-style-type: none"> - attribute the tasks of adopting the anti-fraud strategy prepared by the Director; ensuring adequate follow-up to audit and investigations of the European Anti-Fraud Office (OLAF) and of the European Public Prosecutor Office (EPPO); assisting the Director in the implementation of the decisions of the Management Board; - provide that, where necessary, in case of urgency, the Executive Board may take provisional decisions on behalf of the Management Board; - indicate that it can be convened at the request of one of its members ; - clarify that decisions are adopted by majority of the present members and that the Council of Europe representative has voting rights on items related to the decisions on which s/he has a right to vote in the Management Board, in accordance with Article 12(8).
14	Scientific Committee	Amendment to enable the Management Board to draw from the reserve list in case a member needs to be replaced before the end of the Scientific Committee's mandate.
15	Director	<p>The amendments proposed are to provide that:</p> <ul style="list-style-type: none"> - the Director's term can be extended by five years (instead of three) and that the procedure should be initiated in the course of the twelve (instead of nine) months preceding the end of his/her term; - the Director is responsible: for implementing the decisions adopted by the Management Board, the preparation of an action plan to follow up on the conclusions of retrospective evaluations, an anti-fraud strategy, and an action plan to follow up on audits reports and OLAF investigations; - the majority required for the dismissal of the Agency's Director in the event of misconduct, unsatisfactory performance recurring or serious irregularities is a two-third majority of the Management Board's members.
16	Independence and public interests	No change
17	Transparency and access to documents	No change

18	Data protection	No change
19	Review by the Ombudsman	No change
20	Drawing up of the budget	No change
21	Implementation of the budget	No change
22	Combating fraud	No change
23	Legal status and location	No change
24	Staff	Deletion of the paragraph providing that the Agency exercises “appointing authority powers” (replaced by the provision that these are exercised by the Management Board who, by decision, delegates them to the Director).
25	Language arrangements	No change
26	Privileges and immunities	No change
27	Jurisdiction of the Court of Justice	No change
28	Participation and scope in respect of candidate countries and countries with which a Stabilisation and Association Agreement has been concluded	No change
29	Transitional arrangements	No change
30	Evaluations	Amendments to specify that the evaluation of the Agency will be commissioned by the Commission, every five years starting from the entry into force of this amending Regulation; and that on the occasion of every second evaluation the results achieved by the Agency will be assessed with regard to its objectives, mandate and tasks, including an assessment of whether the continuation of the Agency is still justified with regard to these objectives, mandate and tasks.
31	Review	Deleted (consequence of the amendments to Article 30)
32	Commencement of the Agency’s operation	No change
33	Repeal	No change
34	Entry into force and application	No change

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 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 consent of the European Parliament⁶,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The European Union Agency for Fundamental Rights (the ‘Agency’) was established by Council Regulation (EC) No 168/2007⁷ to assist and provide expertise to the Union institutions, bodies, offices and agencies and Member States relating to fundamental rights.
- (2) In order to improve clarity of the Agency’s scope of activities and to enhance the governance and the efficiency of the Agency’s operation, it is necessary to clarify and update certain provisions of Regulation (EC) No 168/2007 without changing the objective and the tasks of the Agency.
- (3) First of all, in order to fully reflect the Agency’s relevance for assisting the Union institutions, bodies, offices and agencies and the Member States on issues of fundamental rights, it should be clarified in the Regulation that, since the entry into force of the Treaty of Lisbon, the scope of the Agency’s activities covers the competences of the Union, including police cooperation and judicial cooperation in criminal matters.
- (4) Furthermore, some targeted technical amendments of Regulation (EC) No 168/2007 are necessary in order for the Agency to be governed and operated in line with the principles of the Common Approach annexed to the Joint Statement of the European Parliament, the Council of the European Union and the European Commission on decentralised agencies of 19 July 2012 (‘the Common Approach’)⁸. The alignment of Regulation (EC) No 168/2007 with the principles set out in the Common Approach are

⁶ OJ C [...], [...], p. [...].

⁷ Regulation (EC) No 168/2007 of the Council of 15 February 2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, 22.2.2007, p. 1).

⁸ Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies and Common Approach of 19 July 2012 https://europa.eu/european-union/sites/europaeu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf

tailored to the specific work and nature of the Agency and aim to bring simplification, better governance and efficiency gains to the Agency's operation.

- (5) First, the definition of the areas of activities of the Agency should be based on the Agency's multiannual programming document alone. The current approach of setting in parallel a broad thematic Multiannual Framework every five years should be discontinued, as it has been made redundant by the multiannual programming document that the Agency has been adopting annually since 2017, to conform with Commission Delegated Regulation (EU) No 1271/2013⁹, (succeeded by Commission Delegated Regulation (EU) 2019/715¹⁰). Based on the Union policy agenda and on stakeholders' needs, the multiannual programming document clearly sets out the areas and specific projects on which the Agency is to work for a three-year period. This should enable the Agency to plan its work and thematic focus over time and to adapt it annually to emerging priorities.
- (6) Second, to ensure better governance and functioning of the Agency's Management Board, a number of provisions of Regulation (EC) No 168/2007 should be amended.
- (7) Given the important monitoring role of the Management Board, its members should be required to have appropriate administrative and budgetary skills, in addition to the requirement of independence, knowledge in the fundamental rights area and management experience.
- (8) It should also be clarified that, while Management Board members' and alternate members' terms cannot be renewed consecutively, it should be possible to reappoint a former member or alternate member for one or more non-consecutive terms. If, on the one hand, not allowing consecutive renewals is justified to ensure their independence, on the other hand, allowing reappointments for non-consecutive terms would make it easier for Member States to appoint suitable members meeting all the necessary requirements.
- (9) With regard to the replacement of Management Board members, it should be clarified that in all cases of termination of the term of office before the expiry of the 5-year period, not only in case of loss of independence, but also in other cases such as in case of resignation or death, the new member's term will complete his/her predecessor's five-year term, unless the remaining term is less than two years, in which case a new five-year term may run afresh.
- (10) To align with the situation within the Institutions, the Agency's Management Board should be given the powers of the appointing authority. Except for the appointment of the Director, these powers should be delegated to the Director. The Management Board should exercise appointing authority powers regarding staff of the Agency in exceptional circumstances only.
- (11) To avoid stalemates and simplify the voting proceedings for the election of the Executive Board members, it should be provided that the Management Board elects them by a majority of the members of the Management Board with voting rights.

⁹ 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).

¹⁰ Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L 122, 10.5.2019, p. 1).

- (12) Finally, to further align Regulation (EC) No 168/2007 with the Common Approach and strengthen the Management Board's capacity to supervise the administrative, operational and budgetary management of the Agency, it is necessary to attribute additional tasks to the Management Board and to further specify the tasks attributed to the Executive Board. The additional tasks of the Management Board should include adopting a security strategy, including rules on the handling EU classified information, a communication strategy, and rules for the management and prevention of conflict of interests in respect of its members and those of the Scientific Committee. It should be made clear that the Executive Board's task to supervise the preparatory work for the decisions to be adopted by the Management Board entail scrutinising budgetary and human resources matters. In addition, the Executive Board should be tasked with adopting the anti-fraud strategy prepared by the Director and ensuring adequate follow-up to audit findings and to investigations of the European Anti-Fraud Office (OLAF) and of the European Public Prosecutor Office (EPPO). Moreover, it should be provided that, where necessary, in case of urgency, the Executive Board may take provisional decisions on behalf of the Management Board.
- (13) In order to simplify the existing procedure of replacing the members of the Scientific Committee, the Management Board should be allowed to appoint the person next in line on the reserve list for the remaining term of office where a member needs to be replaced before the end of his or her term.
- (14) As for the Agency's Director, given the very selective appointment procedure and the fact that the number of candidates potentially meeting the selection criteria is often low, his or her term should be extendable for up to five years. Moreover, given the importance of the position and the thorough procedure which involves the European Parliament, the Council and the Commission, such procedure should start in the course of the twelve month preceding the end of the term.
- (15) Furthermore, to enhance the stability of the Director's mandate and hence that of the Agency's operation, the majority required to propose his or her dismissal should be raised from the current one third to the two-third majority of the members of the Management Board. Finally, to specify the Director's overall responsibility for the administrative management of the Agency, it should be explicitly provided that it is the Director's responsibility to implement the decisions adopted by the Management Board, to prepare an anti-fraud strategy for the Agency, and to set out an action plan to follow up on internal or external audit reports and OLAF or EPPO's investigations.
- (16) To align Regulation (EC) No 168/2007 with the Common Approach it is necessary to provide that the Commission should carry out the evaluation of the Agency every five years.
- (17) Regulation (EC) No 168/2007 should therefore be amended accordingly,
- HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 168/2007

Regulation (EC) No 168/2007 is amended as follows:

- (1) Article 3 is replaced by the following:

‘Article 3

Scope

1. The Agency shall carry out its tasks for the purpose of meeting the objective set in Article 2 of this Regulation within the competences of the Union.
2. The Agency shall refer in carrying out its tasks to fundamental rights as referred to in Article 6 of the Treaty on European Union.
3. The Agency shall deal with fundamental rights issues in the Union and in its Member States when implementing Union law.’;

- (2) Article 4 is amended as follows:

- (a) in paragraph 1, point (c) is replaced by the following:

‘(c) carry out, cooperate with or encourage scientific research and surveys, preparatory studies and feasibility studies, including, where appropriate and compatible with its priorities and its multiannual work programme, at the request of the European Parliament, the Council or the Commission;’;

- (b) the following paragraphs 3 and 4 are added:

‘3. The Scientific Committee shall be consulted before adoption of the report referred to in point (e) of paragraph 1;

4. The Agency shall send the reports referred to in points (e) and (g) of paragraph 1 not later than 15 June to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions.’;

- (3) Article 5 is replaced by the following:

‘Article 5

Areas of activity

The Agency shall carry out its tasks on the basis of its multiannual work programme and with due regard to the available financial and human resources.’;

- (4) the following Article 5a is inserted:

'Article 5a

The multiannual work programme

1. The multiannual work programme shall be in accordance with the available financial and human resources and shall take into account the research and statistical work of the Union.
 2. The Director shall submit the draft of the multiannual work programme to the Commission and the Scientific Committee for their opinion. The Director shall send that draft also to national liaison officers in the Member States.
 3. The Director shall submit the draft of the multiannual work programme to the Management Board for adoption after the Commission and the Scientific Committee have delivered their opinion.
 4. The Director shall send the multiannual work programme to the European Parliament, the Council and the Commission.';
- (5) in Article 8, paragraph 1 is replaced by the following:

'1. Each Member State shall nominate a government official as a national liaison officer.

The national liaison officer shall be the main contact point for the Agency in the Member State.

The national liaison officers may, in particular, transmit opinions of their Member State on the draft multiannual work programme to the Director prior to its submission to the Management Board. The Agency shall communicate to the national liaison officers all documents drawn up in accordance with Article 4(1).'';

- (6) Article 9 is replaced by the following:

'Article 9

Cooperation with the Council of Europe

In order to avoid duplication and in order to ensure complementarity and added value, the Agency shall coordinate its activities with those of the Council of Europe, particularly with regard to its multiannual work programme and cooperate with civil society in accordance with Article 10.

To that end, the Union shall, in accordance with the procedure provided for in Article 218 of the Treaty, enter into an agreement with the Council of Europe for the purpose of establishing close cooperation between the latter and the Agency. That agreement shall include the appointment of an independent person by the Council of Europe to sit on the Agency's Management Board and on its Executive Board, in accordance with Articles 12 and 13.';

(7) in Article 10(4), point (a) is replaced by the following:

‘(a) make suggestions to the Management Board on the multiannual work programme to be adopted pursuant to Article 5a;’;

(8) Article 12 is amended as follows:

(a) in paragraph 1, the introductory phrase is replaced by the following:

‘1. The Management Board shall be composed of persons with appropriate experience in the management of public or private sector organisations, with appropriate administrative and budgetary skills, as well as knowledge in the field of fundamental rights, as follows:’;

(b) paragraphs 3, 4 and 5 are replaced by the following:

‘3. The term of office of the members and alternate members of the Management Board shall be five years. A former member or alternate member may be reappointed for one or more non-consecutive terms.

4. Apart from normal replacement or death, the term of office of the member or the alternate member shall end only when he or she resigns. However, where a member or an alternate member no longer meets the criteria of independence, he or she shall resign forthwith and notify the Commission and the Director of the Agency. In those cases outside the normal replacement, the party concerned shall appoint a new member or a new alternate member for the remaining term of office. The party concerned shall also appoint a new member or a new alternate member for the remaining term of office, if the Management Board has established, based on a proposal of one third of its members or of the Commission, that the respective member or alternate member no longer meets the criteria of independence. Where the remaining term of office is less than two years, the mandate of the new member or alternate member may be extended for a full term of five years.

5. The Management Board shall elect its Chairperson and Vice-Chairperson and the other two members of the Executive Board referred to in Article 13(1) from its members appointed pursuant to point (a) of paragraph 1 to serve for a two-and-a-half year term, which may be renewed once.

The Management Board’s Chairperson and Vice-Chairperson shall be elected by a majority of two thirds of the members of the Management Board referred to in points (a) and (c) of paragraph 1. The other two members of the Executive Board referred to in Article 13(1) shall be elected by a majority of the members of the Management Board referred to in points (a) and (c) of paragraph 1.’;

(c) paragraph 6 is amended as follows:

(a) points (a) and (b) are replaced by the following:

‘(a) adopt the Agency's multiannual work programme;

(b) adopt the annual reports referred to in Article 4(1)(e) and (g), comparing in the latter one, in particular, the results achieved with the objectives of the multiannual work programme;’;

(b) point (e) is replaced by the following:

‘(e) in accordance with paragraphs 7a and 7b of this Article exercise, with respect to the staff of the Agency, the powers conferred by Council Regulation (EEC, Euratom, ECSC) No 259/68 (“the Staff Regulations”) ¹¹ on the appointing authority and by the Conditions of Employment of Other Servants on the authority empowered to conclude a contract of employment (“the appointing authority powers”);’;

(c) the following points (m) to (o) are added:

‘(m) adopt a security strategy, including rules on the exchange of EU classified information;

(n) adopt rules for the prevention and management of conflict of interests in respect of its members as well as of the Scientific Committee;

(o) adopt and regularly update the communication strategy referred to in Article 4(1)(h).’;

(d) the following paragraphs 7a and 7b are inserted:

‘7a. The Management Board shall adopt, in accordance with Article 110(2) 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 Director and defining the conditions under which this delegation of powers can be suspended. The Director shall be authorised to sub-delegate those powers.

¹¹ 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).

7b. 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 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 Director.’;

- (e) paragraphs 8 and 9 are replaced by the following:

‘8. As a general rule, decisions by the Management Board shall be taken by a majority of all members.

Decisions referred to in points (a) to (e), (g), (k) and (l) of paragraph 6 shall be taken by a two-thirds majority of all members.

Decisions referred to in Article 25(2) shall be taken by unanimity.

Each member of the Management Board, or in his or her absence his or her alternate, shall have one vote. The Chairperson shall have the casting vote.

The person appointed by the Council of Europe may vote only on decisions referred to in points (a), (b) and (k) of paragraph 6.

9. The Chairperson shall convene the Management Board twice a year, without prejudice to extraordinary meetings. The Chairperson shall convene extraordinary meetings on his or her own initiative or at the request of the Commission or of at least one third of the members of the Management Board.’;

- (9) Article 13 is replaced by the following:

‘Article 13

Executive Board

1. The Management Board shall be assisted by an Executive Board. The Executive Board shall supervise the necessary preparatory work for the decisions to be adopted by the Management Board. In particular, it shall scrutinise budgetary and human resources matters;

2. The Executive Board shall also:

- (a) review the Agency’s multiannual work programme referred to in Article 5a, based on the draft prepared by the Director and forward it to the Management Board for adoption;
- (b) review the Agency’s draft annual budget and forward it to the Management Board for adoption;
- (c) review the draft annual report on the Agency’s activities and forward it to the Management Board for adoption;

- (d) adopt an anti-fraud strategy for the Agency, proportionate to the fraud risks, taking into account the costs and benefits of the measures to be implemented and based on a draft prepared by the Director;
- (e) ensure adequate follow-up to the 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) or of the European Public Prosecutor (EPPO);
- (f) without prejudice to the responsibilities of the Director, as set out in Article 15(4), assist and advise him/her, in the implementation of the decisions of the Management Board with a view of reinforcing the supervision of administrative and budgetary management.

3. Where necessary, for reasons of urgency, the Executive Board may take provisional decisions on behalf of the Management Board, including on the suspension of the delegation of the appointing authority powers in accordance with the conditions referred to in Article 12(7a) and (7b) and on budgetary matters.

4. The Executive Board shall be composed of the Chairperson and the Vice-Chairperson of the Management Board, two other members of the Management Board elected by the Management Board in accordance with Article 12(5) and one of the representatives of the Commission in the Management Board.

The person appointed by the Council of Europe in the Management Board may participate in the meetings of the Executive Board.

5. The Executive Board shall be convened by the Chairperson. It may also be convened at the request of one of its members. It shall adopt its decisions by majority of present members. The person appointed by the Council of Europe may vote on items related to the decisions on which that person has a right to vote in the Management Board in accordance with Article 12(8).

6. The Director shall take part in the meetings of the Executive Board, without voting rights.’;

(10) Article 14 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The Scientific Committee shall be composed of 11 independent persons, highly qualified in the field of fundamental rights. The Management Board shall appoint the 11 members and approve a reserve list established by order of merit following a transparent call for applications and selection procedure and after having consulted the competent committee of the European Parliament. The Management Board shall ensure even geographical

representation. The members of the Management Board shall not be members of the Scientific Committee. The rules of procedure referred to in Article 12(6)(g) shall lay down the detailed conditions governing the appointment of the Scientific Committee.

- (b) paragraph 3 is replaced by the following:

‘3. The members of the Scientific Committee shall be independent. They may be replaced only at their own request, or in the event of their being permanently prevented from fulfilling their duties. However, where a member no longer meets the criteria of independence, he or she shall resign forthwith and notify the Commission and the Director of the Agency. Alternatively the Management Board may declare, on a proposal of one third of its members or of the Commission, a lack of independence and revoke the person concerned. The Management Board shall appoint the first available person in line on the reserve list for the remaining term of office. Where the remaining term of office is less than two years, the mandate of the new member may be extended for a full term of five years. The list of members of the Scientific Committee shall be made public and shall be updated by the Agency on its web site.’;

- (11) Article 15 is amended as follows:

- (a) paragraphs 3 and 4 are replaced by the following:

‘3. The Director's term of Office shall be five years.

In the course of the 12 months preceding the end of this period, the Commission shall undertake an evaluation. In this evaluation, the Commission shall assess in particular:

- a) the performance of the Director;
- b) the Agency's duties and requirements in the coming years.

The Management Board, acting on a proposal from the Commission, taking account of the evaluation report, may extend the term of office of the Director once for not more than five years.

The Management Board shall inform the European Parliament and the Council about its intention to extend the Director's mandate. Within a delay of one month before the Management Board formally takes its decision to extend this mandate, the Director may be asked to make a declaration before the competent committee of the European Parliament and to answer questions from its members.

If the term of office is not extended, the Director shall remain in office until the appointment of his or her successor.

4. The Director shall be responsible for:

- (a) the performance of the tasks referred to in Article 4 and in particular the preparation and publication of the documents drawn up in accordance with Article 4(1)(a) to (h) in cooperation with the Scientific Committee;
 - (b) the preparation and implementation of the Agency's multiannual work programme;
 - (c) matters of day-to-day administration;
 - (d) implementing decisions adopted by the Management Board;
 - (e) the implementation of the Agency's budget, in accordance with Article 21;
 - (f) the implementation of effective monitoring and evaluation procedures relating to the performance of the Agency against its objectives according to professionally recognised standards and performance indicators;
 - (g) preparing an action plan to follow up on the conclusions of retrospective evaluations assessing the performance of programmes and activities that entail significant spending, in accordance to Article 29 of Delegated Regulation (EU) 2019/715;
 - (h) reporting annually to the Management Board on the results of the monitoring and evaluation system;
 - (i) preparing an anti-fraud strategy for the Agency and presenting it to the Executive Board for approval;
 - (j) preparing an action plan following up conclusions of internal or external audit reports and evaluations, as well as investigation by the European Anti-Fraud office (OLAF) and reporting on progress to the Commission and the Management Board;
 - (k) cooperation with national liaison officers;
 - (l) cooperation with civil society, including coordination of the Fundamental Rights Platform in accordance with Article 10.';
- (b) paragraph 7 is replaced by the following:

‘7. The Director may be dismissed before his or her term has expired by the decision of the Management Board taken by two-thirds majority of all its members, or of the Commission, in the event of misconduct, unsatisfactory performance or recurring or serious irregularities.’;

(12) in Article 24, paragraph 2 is deleted;

(13) Article 30 is amended as follows:

- (a) the title is replaced by the following:

‘Evaluation and review’;

- (b) paragraphs 3 and 4 are replaced by the following:

‘3. By [5 years after entry into force], and every five years thereafter, the Commission shall commission an evaluation to assess particularly the impact, effectiveness and efficiency of the Agency and its working practices. The evaluation shall, in particular, address the possible need to amend the mandate of the Agency, and the financial implications of any such amendment.

‘4. The Commission shall report to the European Parliament, the Council and the Management Board on the findings of the evaluation. The findings of the evaluation shall be made public.’;

- (c) the following paragraph 5 is added:

‘5. On the occasion of every second evaluation, there shall be an assessment of the results achieved by the Agency having regard to its objectives, mandate and tasks, including an assessment of whether the continuation of the Agency is still justified with regard to these objectives, mandate and tasks.

- (14) Article 31 is deleted.

Article 2

Entry into force and application

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 all Member States.

Done at Brussels,

*For the Council
The President*