Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

REGULATION (EU) No 1168/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2011

amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

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 74 and points (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,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The development of a forward-looking and comprehensive European migration policy, based on human rights, solidarity and responsibility, especially for those Member States facing specific and disproportionate pressures, remains a key policy objective for the Union.

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

(3) The efficient implementation of the common rules on standards and procedures for the control and surveillance of the external borders calls for increased coordination of the operational cooperation between the Member States.

(4) Efficient management of the external borders through checks and surveillance contributes to combat illegal immigration and trafficking in human beings and to reduce the threats to the internal security, public policy, public health and international relations of the Member States.

Changes to legislation: *Regulation (EU) No 1168/2011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 18 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) Border control at the external borders is in the interest not only of the Member State at whose external borders it is carried out, but also of all Member States which have abolished internal border controls.

(6) In 2004 the Council adopted Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union[(3)] (Frontex) (hereinafter 'the Agency') which became operational in May 2005. Regulation (EC) No 2007/2004 was amended in 2007 by Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams[(4)].

(7) A further enhancement of the role of the Agency is in line with the objective of the Union to develop a policy with a view to the gradual introduction of the concept of Integrated Border Management. The Agency should, within the limits of its mandate, support the Member States in implementing that concept as defined in the Council conclusions on Integrated Border Management of 4-5 December 2006.

(8) The multiannual programme for an area of freedom, security and justice serving the citizen (the Stockholm Programme) adopted by the European Council on 10-11 December 2009 calls for a clarification and enhancement of the role of the Agency regarding the management of the external borders.

(9) The mandate of the Agency should therefore be revised in order to strengthen in particular its operational capabilities while ensuring that all measures taken are proportionate to the objectives pursued, are effective and fully respect fundamental rights and the rights of refugees and asylum seekers, including in particular the prohibition of *refoulement*.

(10) Current possibilities for providing effective assistance to the Member States regarding the operational aspects of external border management should be reinforced in terms of the available technical resources. The Agency should be able to plan with sufficient accuracy the coordination of joint operations or pilot projects.

(11) Minimum levels of necessary technical equipment provided by the Agency and/or, on a compulsory basis, by the Member States on the basis of annual bilateral negotiations and agreements will largely contribute to a better planning and implementation of the envisaged operations coordinated by the Agency.

(12) The Agency should manage lists of technical equipment owned either by the Member States or by the Agency and equipment co-owned by the Member States and the Agency, by setting up and keeping centralised records in a technical equipment pool. That pool should contain the minimum number of categories of technical equipment necessary to enable the Agency to conduct its activities.

(13) To ensure effective operations, teams of border guards should be set up by the Agency. Member States should contribute to those teams with an appropriate number of skilled border guards and make them available for deployment, unless they are faced with exceptional situations substantially affecting the discharge of national tasks.

***Changes to legislation:** Regulation (EU) No 1168/2011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 18 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(14) The Agency should be able to contribute to those teams with the border guards who are seconded by Member States to the Agency on a semi-permanent basis, who should be subject, in the exercise of their tasks and powers, to the same legal framework as the guest officers contributed directly to those teams by Member States. The Agency should adapt its internal rules on seconded national experts to allow for direct instructions by the host Member State to the border guards during joint operations and pilot projects.

(15) A well-defined operational plan, including an evaluation and an obligation to report incidents, agreed prior to the start of joint operations or pilot projects amongst the Agency and the host Member State, in consultation with the participating Member States, will largely contribute to the objectives of this Regulation with a more harmonised modus operandi regarding the coordination of joint operations and pilot projects.

(16) The incident reporting scheme should be used by the Agency to transmit to the relevant national public authorities and to its Management Board ('the Management Board') any information concerning credible allegations of breaches of, in particular, Regulation (EC) No 2007/2004 or the Schengen Borders Code established by Regulation (EC) No 562/2006 of the European Parliament and of the Council[(5)], including fundamental rights, during joint operations, pilot projects or rapid interventions.

(17) Risk analysis has been demonstrated to be a key element for conducting operations at the external borders. Its quality should be improved by adding a method for assessing the capacity of Member States to face upcoming challenges, including present and future threats and pressures at the external borders. However, those assessments should be without prejudice to the Schengen evaluation mechanism.

(18) The Agency should provide training, including on fundamental rights, access to international protection and access to asylum procedures, at European level, for instructors of the national border guards of Member States and additional training and seminars related to control and surveillance at the external borders and removal of third-country nationals illegally present in the Member States for officers of the competent national services. The Agency may organise training activities, including an exchange programme, in cooperation with Member States on their territory. Member States should integrate the results of the Agency's work in that perspective in the national training programmes of their border guards.

(19) The Agency should monitor and contribute to the developments in scientific research relevant to its field of activity and disseminate that information to the Commission and the Member States.

(20) In most Member States, the operational aspects of the return of third-country nationals illegally present in the Member States fall within the competence of the authorities responsible for controlling the external borders. As there is a clear added value in performing those tasks at Union level, the Agency should, in full compliance with the return policy of the Union, accordingly ensure the coordination or the organisation of joint return operations of Member States and identify best practices on the acquisition of travel documents, and define a code of conduct to be followed during the removal

Changes to legislation: *Regulation (EU) No 1168/2011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 18 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

of third-country nationals illegally present on the territories of the Member States. No Union financial means should be made available for activities or operations that are not carried out in conformity with the Charter of Fundamental Rights of the European Union ('the Charter of Fundamental Rights').

(21) For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the Agency may cooperate with Europol, the European Asylum Support Office, the European Union Agency for Fundamental Rights and other Union agencies and bodies, the competent authorities of third countries and the international organisations competent in matters covered by Regulation (EC) No 2007/2004 within the framework of working arrangements concluded in accordance with the relevant provisions of the Treaty on the Functioning of the European Union ('TFEU'). The Agency should facilitate operational cooperation between Member States and third countries within the framework of the external relations policy of the Union.

(22) Cooperation with third countries regarding matters covered by Regulation (EC) No 2007/2004 is increasingly important. To establish a solid cooperation model with relevant third countries, the Agency should be able to launch and finance projects of technical assistance and to deploy liaison officers in third countries in cooperation with the competent authorities of those countries. The Agency should be able to invite observers from third countries to participate in its activities, after having provided the necessary training. Establishing cooperation with third countries is also relevant with regard to promoting Union standards of border management, including respect for fundamental rights and human dignity.

(23) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68[(6)], should apply to the staff and to the Executive Director of the Agency, including the rules of professional secrecy or other equivalent duties of confidentiality.

(24) Furthermore, specific provisions should be adopted by the Management Board to allow national experts from Member States to be seconded to the Agency. Such provisions should, among others, specify that seconded national border guards to be deployed during joint operations, pilot projects or rapid interventions should be considered as guest officers with the corresponding tasks and powers.

(25) 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[(7)] applies to the processing of personal data by the Agency. The European Data Protection Supervisor should therefore monitor the processing of personal data by the Agency and have the power to obtain from the Agency access to all information necessary for his or her enquiries.

(26) In so far as the Member States are processing personal data, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of

***Changes to legislation:** Regulation (EU) No 1168/2011 of the European Parliament and of the Council is up to date with all changes known to be in force on or before 18 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

individuals with regard to the processing of personal data and on the free movement of such data[8] applies in full.

(27) When ensuring the operational management of IT systems, the Agency should follow European and international standards, including on data protection, taking into account the highest professional requirements.

(28) Regulation (EC) No 2007/2004 should therefore be amended accordingly.

(29) This Regulation respects the fundamental rights and observes the principles recognised in particular by the TFEU and the Charter of Fundamental Rights, notably the right to human dignity, the prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security, the right to protection of personal data, the right to asylum, the principle of *non-refoulement*, the principle of non-discrimination, the rights of the child, and the right to an effective remedy. This Regulation should be applied by the Member States in accordance with those rights and principles. Any use of force should be in accordance with the national law of the host Member State, including the principles of necessity and proportionality.

(30) The implementation of this Regulation should not affect the rights or obligations of Member States under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue or the Geneva Convention Relating to the Status of Refugees.

(31) Since the objective of this Regulation, namely to contribute to the creation of an integrated management of operational cooperation at the external borders of the Member States, cannot be sufficiently achieved by 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 Regulation does not go beyond what is necessary in order to achieve that objective.

(32) 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*[9], which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement[10]. Consequently, the delegations of the Republic of Iceland and the Kingdom of Norway should participate as members of the Management Board, albeit with limited voting rights.

(33) 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*[11], which fall within the area referred to in Article 1, points A, B and G of Decision 1999/437/EC read in conjunction with Article 3 of Council