

MANAGEMENT BOARD DECISION 3/2021 of 15 January 2021

adopting rules for the Executive Director to authorise statutory staff to carry and use weapons, including on mandatory cooperation with the competent national authorities, and ensuring that the conditions for issuing such authorisations continue to be met by statutory staff

THE MANAGEMENT BOARD

Having regard to the European Border and Coast Guard Regulation ('the Regulation')¹, and in particular Article 55(5)(b),

Whereas:

- (1) In accordance with Article 55(5)(b) of the Regulation, the Management Board, on the basis of a proposal from the Executive Director, shall establish the rules for the Executive Director to authorise statutory staff to carry and use weapons in accordance with Article 82 and Annex V to the Regulation, including on mandatory cooperation with the competent national authorities, in particular of the Member State² of nationality, the Member State of residence, and the Member State of the initial training; those rules also address how the Executive Director ensures that the conditions for issuing such authorisations continue to be met by statutory staff, in particular as regards handling weapons including the performance of regular shooting tests.
- (2) In this context, it is necessary to establish the role of the Executive Director, especially concerning the control mechanisms provided for in Part 4 of Annex V to the Regulation.

HAS DECIDED AS FOLLOWS:

PART I - GENERAL PROVISIONS

Article 1 Scope

This decision establishes:

- (a) the rules for the Executive Director to authorise statutory staff (category 1) deployed as members of the teams ('statutory staff') to carry and use weapons. It also establishes the rules to ensure that the conditions which are set out for issuing such authorisations continue to be met by this staff;
- (b) The definition of the Authorisation in Article 3(1); and

¹ Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard (OJ L 295, 14.11.2019, p. 1).

² For the purpose of this decision, the term "Member States" includes also the States participating in the relevant development of the Schengen acquis within the meaning of the Treaty on the Functioning of the European Union and its Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union.

- (c) The conditions for the suspension, termination and reinstatement of the Authorisation in Article 3(3) and (4).

Article 2

Functions of the Executive Director

For the purposes of this decision, the Executive Director shall:

- (a) Ensure that the conditions for issuing the Authorisation are met by statutory staff.
- (b) Cooperate with the competent national authorities, in particular of the Member State of nationality, the Member State of residence³, and the Member State of the initial training of the statutory staff, for the purpose of verifying whether the conditions for issuing the Authorisation are met.
- (c) Issue the Authorisation.
- (d) Ensure that the conditions for issuing the Authorisation, in point (a), continue to be met by statutory staff.
- (e) Establish control mechanisms as referred to in Part 4 of Annex V to the Regulation by defining requirements for the initial training, annual training and the performance of medical, psychological and physical fitness.
- (f) Suspend, terminate or reinstate the Authorisation in accordance with this decision, where necessary.

PART II - THE AUTHORISATION

Article 3

The Authorisation

1. The Executive Director may authorise statutory staff to carry and use weapons during Frontex operational activities, including carrying a weapon (e.g. transport, training) outside of Frontex operational activities (the 'Authorisation'), if the conditions for issuing the Authorisation provided for in Article 4 are met.
2. The Authorisation follows the obligatory elements set out in Article 6.
3. The Executive Director shall suspend or terminate the Authorisation if the statutory staff concerned ceases to meet the conditions in Article 5, or in the cases provided for in Article 11.
4. If the Authorisation is suspended, the Executive Director may reinstate the Authorisation in accordance with Article 12.

Article 4

Conditions for issuing the Authorisation

1. Statutory staff shall meet the following minimum conditions:
 - (a) He or she has successfully completed the initial training programme for statutory staff.
 - (b) He or she has successfully completed the initial training programme for statutory staff regarding use of force, weapons, ammunition and equipment performed in a Member State's training institutions.
 - (c) His or her Member State of nationality or Member State of residence, and/or Member State of the initial training have not brought forward any indication that could form an impediment for issuing the Authorisation.
2. Additional conditions may be established by an Executive Director decision.

³ For the purpose of this decision, the term 'Member State of residence' means the Member State which the statutory staff member has declared as his or her country of residence to the Agency.

Article 5
Conditions after issuing the Authorisation

In addition to the conditions in Article 4, statutory staff are obliged to meet the following requirements after obtaining the Authorisation:

- (a) He or she has successfully completed the annual training on the use of force (theoretical and practical). A detailed training programme, including relevant tests, shall be defined by the Executive Director. The framework requirements for that training are defined in Article 9. Required medical, psychological and physical fitness tests are addressed in Article 10(2).
- (b) He or she is not subject to any security inquiry, administrative inquiry or disciplinary proceedings, as set out in the respective Management Board decisions.⁴
- (c) His or her Member State of nationality or Member State of residence, and/or Member State of the initial training, in accordance with Article 7, have not brought forward any indication that could lead to the suspension or termination of the Authorisation.

If the conditions above are not met, the Executive Director shall suspend or terminate the Authorisation in accordance with Article 11.

Article 6
Obligatory elements of the Authorisation

1. The Authorisation shall cover all types of weapons, including:
 - (a) Lethal weapons:
 - Firearms;
 - (b) Non-lethal weapons including, but not limited to:
 - Baton;
 - Lachrymatory agents.
2. The Authorisation shall be issued in the form of a document (“Authorisation card”) which shall follow the Agency’s visual identity, and includes the following information:
 - (a) The registration number of the Authorisation and of the Authorisation card.
 - (b) Name, surname and personal identification number of the statutory staff to whom the Authorisation is issued.
 - (c) A recent digitised photograph of the statutory staff.
 - (d) Date of issue.
 - (e) The following statement: “The holder of this document is hereby authorised to carry and use weapons in accordance with Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard.”
3. The template of the Authorisation card including its security features shall be established by decision of the Executive Director.
4. The Authorisation and a copy of the Authorisation card is saved in the personal file of the statutory staff and in the Opera system.

Article 7
Cooperation with national authorities of the Member State of nationality and the Member State of residence of the statutory staff

1. Before issuing the Authorisation, the Executive Director informs the Member State of nationality and the Member State of residence of the statutory staff about the intention of the Agency to issue such authorisation. The Member States shall inform the Agency on the point of contact at the national level to receive this information, should it be different from the national contact point for communication with the Agency.
2. The Member State(s) in paragraph 1 shall provide any indication to the Executive Director if there are any existing constraints or pending procedures in this Member State which would prevent the issuance of the Authorisation, in accordance with the applicable data protection rules. Should that Member

⁴ Management Board Decision 26/2018 of 25 October 2018 adopting general implementing provisions on the conduct of administrative inquiries and disciplinary procedures, the Management Board decision on the supervisory mechanism established in accordance with Article 55(5)(a) of the Regulation and the Management Board decision on adopting Security Rules for the European Border and Coast Guard Agency (Frontex) and rules on protecting European Union Classified Information (EUCL) in Frontex.

State(s) not provide any indication within 30 calendar days, it shall be considered as an absence of reservations. The Member State(s) in paragraph 1 may request to extend the 30 calendar days' period once, by an additional 30 calendar days. In this case, the Executive Director shall refrain from issuing the authorisation, as long as the information is not provided. Where the Member State(s) concerned does not inform the Executive Director within the provided extension, the Executive Director may issue the Authorisation and in parallel inform the Member State(s) concerned.

3. After the Authorisation is issued, the Member State of nationality and the Member State of residence of the statutory staff concerned shall inform the Executive Director about any circumstances or procedure which might result in the possible suspension or termination of the Authorisation. In such case, paragraph 2 is applied accordingly. Article 11 is applied if necessary.

Article 8

Cooperation with national authorities of the Member State of the initial training

1. For the purpose of issuing the Authorisation, the Executive Director receives the certificate of the appointed Member State training institution. This certificate should be in English and bear the Agency's visual identity.
2. The certificate attesting successful completion of the training in the area of use of force and use of weapons shall describe the types of instruments of force in respect of which the statutory staff was trained. This can take the form of a supplement to the initial training graduation certificate.
3. The Authorisation shall not be issued until the certificate mentioned in paragraphs 1 and 2 has been provided.

PART III - CONTROL MECHANISMS

Article 9

Annual training

For the purpose of this decision, the Executive Director shall issue a decision establishing a control mechanism in order to safeguard that statutory staff have received adequate training on the conditions on the use of force, including on the relevant Union and international law according to Article 62(2) of the Regulation and Annex V to the Regulation. That decision shall include the following elements:

- (a) Annual training shall involve theoretical and practical elements regarding the use of force including the use of weapons and ammunition, as well as on first aid.
- (b) In addition to the elements in point (a), the Executive Director, in cooperation with Member State training institutions, ensures the conditions for training and that annual tests may be completed by each member of the statutory staff with the view of obtaining the Authorisation. The provisions of the Codes of Conduct⁵ and practical examples in relation to the use of force and use of weapons in relation to the Codes of Conduct shall be part of the theoretical element.
- (c) The results of the annual tests are valid until the end of the calendar year following that of their issuance.

Article 10

Assessment of medical, psychological and physical fitness

1. For the purpose of this decision, the Executive Director shall establish a control mechanism referred to in Part 4 of Annex V to the Regulation in order to safeguard that statutory staff do not perform their duties under the influence of alcohol, narcotics or drugs.
2. In addition, the Executive Director shall establish detailed conditions for regular medical testing to safeguard that statutory staff do not carry out their functions under the influence of alcohol, narcotics or drugs. The Executive Director shall also define the process and procedure for the assessment of medical, psychological and physical fitness, which may include the performance of tests.
3. The results of the medical, psychological and physical fitness tests shall be reflected in a certificate which is valid from its date of issuance until the end of that calendar year, unless otherwise stated.

⁵ Decision of the Executive Director No R-ED-2017-32 of 10 April 2017 adopting the Code of Conduct applicable to all persons participating in Frontex Operational Activities and Decision of the Executive Director No R-ED-2018-40 of 26 April 2018 adopting the Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex.

PART IV - SUSPENSION, TERMINATION AND REINSTATEMENT OF THE AUTHORISATION

Article 11

Suspension or termination of the Authorisation

1. The Executive Director shall suspend an Authorisation in the following cases:
 - (a) Failure to pass the annual training on the use of force referred to in Article 9(a) and (b).
 - (b) Failure to obtain a valid medical certificate as referred to in Article 10(3).
 - (c) Where national authorities of the Member State of nationality or residence of the statutory staff indicate the need for suspension as referred to in Article 7(3).
2. The Executive Director may suspend an Authorisation in accordance with the Management Board decision on the supervisory mechanism established in accordance with Article 55(5)(a) of the Regulation.
3. The decision of the Executive Director in paragraph 2 may be delegated according to the supervisory mechanism established in accordance with Article 55(5)(a) of the Regulation.
4. The Executive Director may suspend an Authorisation due to alleged violations of the Codes of Conduct of the Agency by the statutory staff.
5. The suspension decision may concern all weapons or only certain types of weapons (e.g. firearms) for which an Authorisation was issued.
6. The Executive Director shall specify in the suspension decision the conditions and the timeframe based on which an Authorisation may be reinstated in accordance with Article 12.
7. Where an Authorisation is suspended, statutory staff may still be deployed as a member of the team unless the Executive Director decides otherwise.
8. The Executive Director shall terminate the Authorisation in the following cases:
 - (a) The respective National Security Authority does not issue a security clearance to the statutory staff;
 - (b) The national authorities of the Member State of nationality or residence of the statutory staff indicate the need for termination as referred to in Article 7(3);
9. The Executive Director may terminate an Authorisation when the statutory staff's employment is terminated under Article 47, 48, 49, 50 and 50a or 119 of the CEOS⁶;
10. The Executive Director may terminate the Authorisation in accordance with the Management Board decision on the supervisory mechanism established in accordance with Article 55(5)(a) of the Regulation. This decision may be delegated according to that mechanism.
11. Where an Authorisation is suspended or terminated, the statutory staff is obliged to immediately return his/her Authorisation card, as well as the service weapons, ammunition and other equipment concerned.
12. The decision to suspend or terminate an Authorisation is inserted in the personal file of the statutory staff concerned.

Article 12

Reinstatement of the Authorisation

1. The Executive Director shall reinstate an Authorisation where both of the following conditions are met:
 - (a) The statutory staff meets the conditions for reinstatement set out by the Executive Director in the suspension decision;
 - (b) The statutory staff meets the conditions set out in Articles 4 and 5.

⁶ Council Regulation (EEC, Euratom, ECSC), No 2591/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ L 56/01, 4.3.1968, as last amended.

2. The Executive Director may also reinstate an Authorisation in accordance with the Management Board decision on the supervisory mechanism established in accordance with Article 55(5)(a) of the Regulation.
3. The decision to reinstate an Authorisation is inserted in the personal file of the statutory staff concerned.

PART V - FINAL PROVISIONS

Article 13 **Entry into force**

This decision enters into force on the day following its adoption.

Done by written procedure, 15 January 2021.

For the Management Board

[signed]

Marko Gašperlin
Chairperson

