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(EU-Iceland/Liechtenstein/Norway/Switzerland)

on : 1 July 2010

No. Cion prop.: 6898/10 FRONT 22 COMIX 151 (COM(2010) 61 final)

Subject: **Proposal for a Regulation of the European Parliament and the Council 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 (FRONTEX)**

At its meeting on 1 July 2010, the Working Party on Frontiers/Mixed Committee started the third reading of the above proposal (Articles 1 to 6). The text of Articles 1 to 6 is reproduced in the Annex. Member States' comments are set out in footnotes. The new changes suggested by the Presidency, which have not yet been agreed, are underlined. The changes that have been agreed are set in bold.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

amending Council Regulation 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 (FRONTEX)¹

Article 1
Amendment

Regulation (EC) No 2007/2004 is amended as follows:

(1) In Article 1 paragraph 2 is replaced by the following:

"2. While considering that the responsibility for the control and surveillance of external borders lies with the Member States, the Agency shall facilitate and render more effective the application of existing and future European Union measures relating to the management of external borders, in particular the Schengen Borders Code, and in accordance with relevant Union law, International law, obligations related to access to international protection, and fundamental rights. It shall do so by ensuring the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States."

(2) Article 1a is amended as follows²:

(a) point 2 is replaced by the following:

"2. "host Member State" means a Member State **in which**, a deployment of a Rapid Border Intervention Team or a joint operation or a pilot project takes place **or from which it is launched**;"

¹ **Cion** entered a general reservation on the text proposed by the Presidency.

² **IT** reiterated its suggestion to include a definition on "joint operation" and "pilot projects" as set out in doc. 1309/10. **Cion** stressed that it is difficult to define within a single definition all aspects of a joint operation.

(b) point 4 is replaced by the following:

"4. "members of the teams"¹ means border guards of Member States serving with the Rapid Border Intervention Team or the Frontex Joint Support Team other than those of the host Member State;"

Point 7 has been deleted

(3) Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (c) and (d) are replaced by the following:

"(c) carry out risk analyses, including studies of the preparedness ~~the evaluation of the capacity~~ of Member States to face threats and pressure at the external borders;

(d) participate in the development of research relevant for the control and surveillance of external borders;"

(ii) point (f) is replaced by the following:

"(f) provide Member States with the necessary support², including, upon request, coordination regarding organising joint return operations;"

(iii) the following points (h) and (i) are added:

"(h) develop and operate information systems that enable swift and reliable exchanges of information regarding emerging risks at the external borders, including the Information and Coordination Network established by Council Decision 2005/267/EC;

(i) provide the necessary assistance to the development and operation of a European border surveillance system and, as appropriate, to the development of a common information sharing environment, including interoperability of systems."

¹ NL expressed the view that there might be overlapping by using both terms "members of the teams" and "guest officers".

² FR proposed adding "in organising joint return operations". Cion replied that it does not see an overlap but that it will further reflect on the precise wording of the text.

(b) the following paragraph 1a is inserted:

"All border guards and other personnel of the Member States, as well as the staff of the Agency shall, prior to their participation in operational activities organised by the Agency, have received training in relevant EU and international law, including fundamental rights and access to international protection."

(c) In paragraph 2 the last subparagraph is replaced by the following:

"Member States shall report to the Agency on these operational matters at the external borders outside the framework of the Agency. The Executive Director shall inform the Management Board on these matters on a regular basis and at least once a year."

(4) Article 3 is replaced by the following:

"Article 3¹

Joint operations and pilot projects at the external borders

1. The Agency shall evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States, including the requests of Member States related to circumstances requiring increased technical and operational assistance.

The Agency may itself initiate joint operations and pilot projects ~~in cooperation with Member States~~ in agreement with the host Member State(s)².

It may also decide to put its technical equipment at the disposal of Member States participating in the joint operations or pilot projects.

¹ **CH** suggested that the modalities of participation by the associated countries might be revised as well.

² **PL**, supported by **SI** and **RO**, would prefer keeping the original text "in cooperation with Member States". **FR**, supported by **EL**, suggested keeping both "in cooperation with Member States" and "in agreement with the host Member State(s)". **IT** reiterated the view of including a definition of Joint Operations and Pilot Projects. **PT** suggested mentioning "in cooperation with participating Member States". **HU**, **MT**, **DE**, **FI** and **AT** were in favour of the Presidency's proposal. **Cion** expressed the view that the Agency's independence and its power to terminate an operation should be safeguarded and was not in favour of the right to withdraw for a Member State.

Joint operations and pilot projects should be preceded by a thorough risk analysis.

The Agency may also terminate¹ joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled. Where appropriate², participating Member States may request the Agency to terminate a joint operation or pilot project.³

2. The Agency shall constitute a pool of border guards called Frontex Joint Support Teams in accordance with the provisions of Article 3b, for possible deployment during joint operations and pilot projects referred to in paragraph 1. It shall decide on the deployment of human resources and technical equipment in accordance with Articles 3a and 7.
 3. The Agency may operate through its specialised branches provided for in Article 16, for the practical organisation of joint operations and pilot projects.
 4. The Agency shall evaluate the results of the joint operations and pilot projects and transmit the detailed evaluation reports within 60 days following the end of the activity to the Management Board. The Agency shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence, efficiency **and effectiveness** of future operations and projects to be included in its general report provided for in Article 20(2)(b).⁴
 5. The Agency may decide to finance or co-finance the joint operations and pilot projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency."
- (5) The following Articles 3a, 3b and 3c are inserted:

¹ **EL** supported by **HU** and **MT** proposed adding "in agreement with the host Member State(s)" and expressed the view that the host Member State should be always informed on the operational part. **NL** suggested adding "or suspend".

² **SI**, **RO** and **IT** believe that the wording "Where appropriate" is too vague and suggested a more specific definition.

³ **CH**, supported by **PL**, **NL** and **ES**, suggested adding "after prior consultation with the Member State(s) concerned". **NL** suggested adding "If a participating Member State wishes to withdraw from a joint operation because of a serious incident, it shall consult the Agency and the host Member State. The operational plan shall include a provision on the possibility of such a withdrawal". **IT** would reflect on the Dutch proposal. **DE**, **FI** and **AT** were in favour of the Presidency's proposal.

⁴ **PL** proposed adding "In case of reported incidents involving a third state during the implementation of a joint operation or a pilot project, the EU delegation in that third state shall provide Member States concerned with all necessary support at the request".

"Article 3a

Organisational aspects of joint operations and pilot projects¹

1. The Executive Director shall draw up an operational plan for activities referred to in Article 3(1). The Executive Director and the host Member State, in consultation with participating Member States, shall agree on the operational plan detailing the organisational aspects in due time before the envisaged beginning of the activity.

The operational plan shall cover all aspects considered necessary for carrying out the joint operation or the pilot project, including the following:

- (a) a description of the situation, with modus operandi and objectives of the deployment, including the operational aim;
- (b) the foreseeable duration of the joint operation or pilot projects;
- (c) the geographical area where the joint operation or pilot project will take place;
- (d) description of the tasks and special instructions for the guest officers, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
- (e) the composition ²of the teams of guest officers as well as the deployment of other relevant staff³;
- (f) command and control provisions, including the names and ranks of the host Member State's border guards responsible for cooperating with the guest officers and the Agency, in particular those of the border guards who are in command during the period of deployment, and the place of the guest officers in the chain of command⁴;
- (g) the technical equipment ⁵to be deployed during the joint operation or pilot project, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;

¹ **PT, SE and PL** were in favour of the Presidency's proposals. **IT** reiterated its proposal regarding logistic and organisational modalities in managing illegal migrants as set out in doc. 1309/10.

² **FR** suggested adding "and conditions of deployment". **NO** supported the French proposal but could also accept the Presidency's proposal.

³ **SI** and **ES** asked for clarification on "the other relevant staff".

⁴ **NL** proposed deleting "in particular those of the border guards who are in command during the period of deployment, and the place of the guest officers in the chain of command". **Cion** expressed the view that it is preferable to keep the reference to "command and control" to be clear on who is giving instructions.

⁵ **FR** proposed the wording "technical equipment of any kind".

- (h1) provisions on¹ incident reporting² by the Agency to the Management Board and to relevant public authorities³.
- (h2) a reporting and evaluation scheme containing ~~detailed provisions on incident reporting~~, benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(4)⁴.
- (i) regarding sea operations, specific requirements regarding the applicable jurisdiction⁵ and relevant legislation ~~maritime law~~ concerning the geographical area where the joint operation takes place⁶.
- (j) **modalities of cooperation with third countries, if relevant.**⁷
2. Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State⁸. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.
3. The Agency shall, as part of its coordinating tasks, ensure the operational implementation of all the organisational aspects, including the presence of a staff member of the Agency, of joint operations and pilot projects referred to in this Article.

¹ **PT**, supported by **NL**, proposed adding "immediate".

² **NL**, supported by **PL**, proposed adding "including follow-up and evaluation". **Cion** was reluctant regarding a reference to a follow-up.

³ **ES** and **DE** asked for clarification on "relevant public authorities". **Cion** clarified that it is difficult to define the "relevant public authorities" and that an alternative wording could be "national relevant public authorities".

⁴ **SE**, supported by **SI** and **ES**, commented that this paragraph should be aligned with Article 8e (h).

⁵ **EL** expressed the view that regarding sea operations there should be no reference to the applicable jurisdiction.

⁶ **SE** proposed amending the paragraph as follows: "regarding sea operations, specific information on the jurisdiction and application of relevant legislation concerning the geographical area where the joint operation takes place". **SE**, supported by **SI**, commented that this paragraph should be aligned with Article 8e (i). **FR** suggested adding " and the area of disembarkation of intercepted illegal immigrants". **Cion** replied that the issue is already covered by the recently adopted guidelines.

⁷ **PL** suggested adding "(k) detailed provisions concerning transit of weapons and ammunitions for the purpose of joint operations and pilot projects in line with applicable legislation".

⁸ **FR** proposed adding "and participating Member States".

Article 3b

Composition and deployment of Frontex Joint Support Teams

1. On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles and the overall number of border guards to be made available for the Frontex Joint Support Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall numbers. Member States shall contribute to the Frontex Joint Support Teams via a national pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.
- ~~2.~~ 3. The contribution by Member States as regards their border guards to specific operations for the coming year is planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with these agreements,¹ Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional² situation substantially affecting the discharge of national tasks. Such a request shall be made at least thirty days³ before the intended deployment. The autonomy of the home Member State in relation to the selection of staff and the duration⁴ of their deployment shall remain unaffected⁵.
- ~~3.~~ 2. The Agency shall also contribute to the Frontex Joint Support Teams with competent border guards seconded by the Member States as national experts pursuant to Article 17(5). To that effect Member States shall ~~shall~~ may⁶ contribute by seconding border guards to the Agency as national experts. The maximum duration of such secondments shall not exceed six months in a twelve month period.⁷ They shall, for the purpose of this Regulation, be considered as guest officers and have the tasks and powers referred to in Article 10. The Member State having seconded the border guards in question shall be considered as "home Member State" as defined in Article 1a(3) for the purpose of applying Articles 3c, 10, and 10b. Other staff employed by the Agency on a temporary basis who are not qualified to perform border control functions shall only be deployed during joint operations and pilot projects for coordination tasks⁸.

¹ **NO, NL, PT, DK, FI** and **IT** were in favour of the Presidency's proposal. **NL** withdrew its proposal on this paragraph. **FI** lifted its reservation on the paragraph.

² **NO, SE, RO** and **PL** were in favour of deleting "exceptional". **FR** supported by **MT** and **IT** proposed replacing "exceptional" with "unforeseen". **The Presidency** considered that the French proposal could be a compromise. **Cion** replied that it prefers "exceptional" but it will further reflect on the French proposal.

³ **FR**, supported by **MT** and **IT**, proposed replacing "thirty days" with "forty five days".

⁴ **FR**, supported by **MT** and **IT**, suggested replacing "duration" with "conditions".

⁵ **Cion** explained that each Member State will contribute with the border guards at its disposal.

⁶ **NO, PT, DK, FI, FR, RO, MT** and **IT** were in favour of the Presidency's proposal.

⁷ **PL** proposed deleting the sentence on maximum secondment of six months per twelve month period.

⁸ **SI, PL** and **DE** suggested deleting the paragraph.

4. Members of the Frontex Joint Support Teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights and human dignity. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, members of the teams shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
5. In accordance with Article 8g the Agency will nominate a coordinating officer for each joint operation or pilot project where Frontex Joint Support Team members will be deployed.
6. The Agency shall meet the costs incurred by the Member States in making their border guards available pursuant to paragraph 1 for the Frontex Joint Support Teams in accordance with Article 8h.

Article 3c

Instructions to the Frontex Joint Support Teams

1. During deployment of Frontex Joint Support Teams, instructions to the teams shall be issued by the host Member State¹ in accordance with the operational plan referred to in Article 3a (1).
2. The Agency, via its coordinating officer as referred to in Article 3b (5), may communicate its views on those instructions to the host Member State. If it does so, the host Member State shall take those views into consideration.
3. In accordance with Article 8g the host Member State shall give the coordinating officer all necessary assistance, including full access to the Frontex Joint Support Teams at all times throughout the deployment.

¹ LU proposed adding "and the Coordinating officer". Cion indicated that it will further reflect on the implications of this proposal.

4. Members of the Frontex Joint Support Teams shall, while performing their tasks and exercising their powers, remain subject to the disciplinary measures of their home Member State."

(6) Article 4 is replaced by the following:

"Article 4

Risk analysis

The Agency shall develop and apply a common integrated risk analysis model.

It shall prepare both general and tailored risk analyses to be submitted to the Council and the Commission. For these purposes Member States shall provide the Agency with all necessary information regarding the situation and possible threats at the external borders.

The Agency shall regularly carry out studies on the preparedness¹ ~~regularly evaluate the capacity of~~ the Member States to face upcoming challenges, including present and future threats and pressures at certain sectors of the external borders of the European Union. These studies are complementing and supporting elements to the Schengen evaluation mechanism². ~~Therefore the Agency shall evaluate the national structures, the equipment and the resources of the Member States regarding border control.~~ The results of these studies ~~evaluations~~ shall be presented at least once per year to the Management Board of the Agency³.

The Agency shall incorporate the results of a common integrated risk analysis model in its development of the common core curriculum for border guards' training referred to in Article 5."

¹ **IT** will further reflect on the Presidency's proposal. **PL** asked clarification on "studies".

² **ES** and **IT** proposed deleting the sentence.

³ **FR** and **PT** were not in favour of the Presidency's proposal. **SI** retained its reservation and proposed deleting the third paragraph. **FI** was in favour of the Presidency's proposal. **RO** asked removing the new sentence. **NL** and **EE** could support the Presidency's proposal. **CH** was in favour of the Presidency's proposal and proposed replacing "external borders of the European Union" with "Schengen external frontiers". **PL**, **CZ** and **HU** stressed the importance of avoiding any overlapping with the Schengen Evaluation mechanism. **HU** entered a reservation on the Article. **EL** would prefer to return to the original text of the Commission proposal or alternatively delete the second paragraph of the Article. **DE** withdrew its reservation on the Article. **Cion** indicated that there is no overlap and that the capacity of MS is already assessed by the Agency as part of their work related to the further development of CIRAM.

(7) In Article 5 the first paragraph is replaced by the following:

"The Agency shall establish and further develop common core curricula for border guards' training and provide training at European level for instructors of the national border guards of Member States, including with regard to fundamental rights and access to international protection. Member States shall integrate the common core curricula in the training of their national border guards¹."

(8) Articles 6 and 7 are replaced by the following:

"Article 6

Monitor and contribute to research

The Agency shall monitor and contribute² to the developments in research relevant for the control and surveillance of the external borders and disseminate this information to the Commission and the Member States.

¹ **FR** raised the idea of an Erasmus type training programme, but proposed to add this in Recital 7 instead of in Article 5.

² **SI** and **AT** would prefer reintroducing the word "promote". **The Presidency** clarified that it was deleted as it was considered to go beyond the role of the Agency.