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## **MOTION FOR A RESOLUTION**

pursuant to Rule 88 (4)(b) of the Rules of Procedure

on the draft Council decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of the operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders

**Committee on Civil Liberties, Justice and Home Affairs**

**European Parliament resolution on the draft Council decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of the operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders**

*The European Parliament,*

- having regard to Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)<sup>1</sup>, particularly Article 12 (5),
  - having regard to the draft Council decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of the operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders,
  - having regard to Article 5a (4) (e) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>2</sup>,
  - having regard to Rule 88 (4)(b) of its Rules of Procedure,
- A. whereas the Commission presented a draft Commission decision on supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of the operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders<sup>3</sup> to the Schengen Borders Code Committee, which held a vote on 19 October 2009, failed to agree on the draft and, as a consequence, did not deliver a formal opinion,
- B. whereas the Commission, in accordance with Article 5 a (4) (a) Council Decision 1999/468/EC (the comitology decision) presented a modified text, in the form of a proposal for a Council decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of the operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders to the Council and the European Parliament on 7 December 2009<sup>4</sup>;
- C. whereas the Council approved the draft decision by qualified majority on 25 January 2010 with amendments, in particular, dividing the annex of the draft in two parts, part I on "Rules for sea border operations coordinated by the Agency" and part II "Guidelines for search and rescue situations and for disembarkation in the context of sea border operations coordinated by the Agency"<sup>5</sup>;

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<sup>1</sup> OJ L 105, 13.4.2006, p.1, as amended.

<sup>2</sup> OJ L 184, 17.7.1999, p.23, as amended.

<sup>3</sup> COM-AC DRC(2009)D00349/03.

<sup>4</sup> COM(2009)658 final.

<sup>5</sup> CSL 5323/1/10.

- D. whereas the Council, by letter of 29 January 2010, referred the draft decision to Parliament, stating that the Council would adopt the draft measure should Parliament not oppose it by 7 April 2010;
- E. whereas the European Parliament's Legal Service, in its opinion of 4 March 2010, concluded
- a) that the proposed measures exceeded the scope of Article 12 (5) of the Schengen Borders Code since, as a whole, they did not constitute "additional measures governing surveillance in general", but specific rules intended for reinforcing border checks and/ or refusal of entry at the external sea borders, the adoption of which were reserved to the legislature under Article 18 of the Schengen Borders Code; the same conclusions applied mutatis mutandis to the draft measures on search and rescue and disembarkation;
  - b) that the objectives presented in the Commission proposal could only be legally achieved through the adoption of a legislative instrument, either by amending the Schengen Borders Code or its annexes or by adopting another legislative instrument;
1. Opposes the adoption of the draft Council decision supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of the operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders;
  2. Considers the draft Council decision exceeds the implementing powers provided for in the above regulation;
  3. Asks the Commission to submit a legislative proposal to Parliament and to the Council on the basis of the Treaty without delay in conformity with Article 5a (4) (f) Council Decision 1999/468/EC;
  4. Requests the Commission to inform Parliament and the Council whether the objectives of the draft decision could be achieved through amending the 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 (COM(2010)61), for which the legislative procedure has already started, through a new proposal amending the Schengen Borders Code or through another new legislative proposal;
  5. Asks the Council to cooperate fully and proactively with the Commission and Parliament on the forthcoming legislative proposal, given the urgency to improve the situation of migrants and to facilitate joint operations coordinated by Frontex on the high seas;
  6. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.