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from:	Presidency
to:	Working Party on Frontiers/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
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) - Personal data related issues

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Regulation (EC) No 2007/2004 (FRONTEX Regulation) does not contain any specific provisions regarding the collection and processing of personal data by the FRONTEX Agency. It mentions in Recital 19) that "Regulation (EC) No 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data applies to the processing of personal data by the Agency".

Regulation (EC) No 45/2001 defines the general principles and criteria on data protection applying to the processing of personal data carried out by EU institutions and bodies in the exercise of activities falling within the scope of Community law, including the condition that such processing shall be lawful, necessary and proportionate for the performance of their tasks.

The FRONTEX Agency has to date processed personal data in the exercise of its administrative tasks. It also processes personal data in the context of joint return operations. Personal data collected during joint operations (for example data related to fighting criminal networks involved in the smuggling of migrants and in trafficking of human beings) are currently processed by the (host) Member State(s) according to their national data protection legislation.

The proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing the FRONTEX Agency, presented by the Commission on 24 February 2010 (doc. 6898/10 FRONT 22 COMIX 151) refers to the application of Regulation (EC) No 45/2001 both in the Preamble (Recitals 4 and 25) and in the text (Article 11 a). In addition, the issue of personal data is also addressed in Article 11. The proposal does not contain any further specific provisions on the processing of personal data by the Agency.

The EDPS has issued an opinion on the proposed Regulation which is contained in doc. 10127/10 FRONT 83 CODEC 475 COMIX 391.

During the discussions in the Working Party on Frontiers/Mixed Committee on the proposal, a number of delegations were in favour of the current text of the proposed Regulation, whereas other delegations expressed the view that the Regulation should include specific provisions regarding the collection and processing of personal data by the FRONTEX Agency, including in the context of operational activities.

In light of the above, and with a view to further discussion at the meeting of the Working Party on Frontiers/Mixed Committee on 20-21 September 2010, the Presidency invites delegations to reflect on the following questions:

- As mentioned above, FRONTEX is currently processing personal data collected in the context of joint return operations. Should specific provisions addressing the collection and processing of such personal data by the Agency be included in the text of the proposed Regulation?
- Should the FRONTEX Agency be allowed to process personal data also in relation to other tasks and responsibilities?

- If so:

- for which other tasks and responsibilities ?
- for which purposes?
- under which conditions and limitations, and subject to which safeguards?
- to what extent and under which conditions could such personal data possibly be shared by the FRONTEX Agency with other EU institutions and bodies (i.e. Europol, Eurojust), with the Member States and with third countries or parties?

Following the meeting of the Working Party on Frontiers/Mixed Committee on 20-21 September 2010 and taking into account the outcome of the discussion at that meeting, the Presidency intends to submit the issue to the Strategic Committee on Immigration Frontiers and Asylum on 19-20 October 2010.