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NOTE

from: Greek delegation

to: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

No. Cion prop.: 6898/10 FRONT 22 CODEC 222 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)**

Delegations will find attached a proposal from the Greek delegation on the amendment of 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).

**COUNCIL 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**

Numerous conclusions by the Council and the European Council, the European Pact on immigration and asylum, and the Stockholm programme, have clearly demonstrated the paramount importance of the role of FRONTEX in reinforcing the protection of the external borders of the European Union and combating illegal migration. The current discussion on amending the Council Regulation (EC) No 2007/2004 is an excellent opportunity to turn into action the practical measures foreseen at the JHA Council Conclusions of February 2010.

Given the increasing pressure of illegal migration especially at the south-eastern external borders of the European Union, it is in the interest of all Member States to turn the Agency into a major player for the integrated management of the EU's external borders, in the framework of the principle of solidarity and fair sharing of responsibility.

To this end, the amendment of the FRONTEX Regulation should be concluded as a matter of urgency, in order to expand the activities and reinforce the European Agency, especially in three main areas:

- **Enhanced cooperation with Third Countries**

The aim of this cooperation should be well defined, as combating the illegal flows arriving to the EU external borders and supporting the EU member states, especially the most affected by this situation.

The cooperation with third countries should take place in the context of working arrangements between the European Agency and the third country, which should be pure operational texts (as is the case for the already signed working arrangements between FRONTEX and third countries). As regards the cooperation in the framework of joint operations coordinated by FRONTEX, the well established rule of the needed consent of the host member state for every form of participation of a third country should be respected.

- **Joint Operations**

Providing operational assets to the Agency is a strong sign for European solidarity and contributes substantially to the protection of the common external borders of the EU. The current CRATE should be a consistent pool for joint operations. Greece welcomes the initiative that minimum levels of necessary technical equipment should be established, which should be provided by the Member States according to their capabilities and depending on their own needs.

Furthermore we welcome the provisions included in the draft Regulation providing that Frontex should have the possibility to purchase/lease/rent operational assets of its own.

The success of joint operations can be assured by thorough and qualified risk analyses. The proposed evaluation of the member states capacity is not doing justice to this aim, as well as to the principle of solidarity and fair burden sharing. A coherent approach must also be found for a differentiation of the risk analysis from the Schengen evaluation mechanism, an approach which avoids a potential duplication of responsibilities and evaluations.

Where needed, at borders with high illegal migration pressure and in accordance to the risk analyses carried out by the Agency, the joint operations should become of a permanent character.

The close cooperation between the Agency and the host member-state as regards the initiation, the termination and the setting up of the operational plan of each joint operation should be well defined in the amended regulation.

- **Joint Return Operations**

Greece supports the stronger involvement of Frontex in the organization, coordination and financing of return operations. It is an essential support especially for those Member States which are confronted by a special burden imposed by illegal migration.

In order to achieve the above mentioned aims, Greece would like to propose the following amendments to the draft regulation, currently under discussion:

- **Article 2, par. 1(c)**

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

Comment: These procedures may result in a duplication of the Schengen evaluation mechanism.

- **Article 3 par. 1**

"....The Agency may also terminate, **in agreement/after prior consultation with the Host Member State**, ~~after informing the MS concerned~~, joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled. Participating Member States may request the Agency to terminate a joint operation or pilot project."

Comment: the host M-S should have the prevailing role regarding the termination of joint operations. The current wording implies that the participating Member State have a more important role in joint operations than the hosting Member State.

- **Article 3a, par. 1 - letter i)**

"regarding sea operations, specific information on the application of the relevant ~~jurisdiction and~~ legislation in the geographical area where the joint operation takes place"

- **Article 4**

"The Agency shall develop and apply a common integrated risk analyses 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 **in agreement/after prior consultation with Member State(s) concerned** studies on the preparedness of the ~~latter 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 ~~without prejudice to~~ **conducted on behalf of the Member State(s) and are not related with** the Schengen Evaluation Mechanism.

The results of those studies shall be presented at least once per year to the Management Board of the Agency.

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

Comment: This modification ensures that, the studies are not related with the Schengen Evaluation Mechanism, on one hand and on the other hand the approval to carry out these specific studies remains under the responsibility of the Member states.

▪ **Article 7, par. 1**

“The Agency may acquire or lease technical equipment for external border control to be deployed during joint operations, pilot projects, Rapid Border Intervention Teams, return operations or technical assistance projects in accordance with the financial rules applicable to the Agency. Any acquisition or leasing of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. Any such expenditure shall be provided for in the Agency’s budget as adopted by the Management Board in accordance with article 29.9. In case the Agency acquires or leases important technical equipment such as open sea and coastal patrol vessels or vehicles, to be used in joint operations, the following provisions shall apply:

In case of acquisition, the Agency agrees formally with one Member State that the latter will provide for the registration of the equipment in accordance with the applicable legislation of that Member State.;

In case of leasing, the equipment must be registered in a Member State.

Based on a model agreement drawn up by the Agency the Member State of registration and the Agency shall agree on the terms of use of the equipment. The Member State of registration or the supplier of technical equipment shall provide the necessary experts and technical crew to operate the technical equipment in a legally sound and safe manner.”

Comment: All expenses for technical equipment acquired or leased by the Agency should be fully financed by the Agency. To this end, detailed provisions are required to be inserted in the text.

▪ **Article 8e, par. 1 - letter i)**

"regarding sea operations, specific information on the application of the relevant ~~jurisdiction and~~ legislation in the geographical area where the joint operation takes place”

Comment: the term “legislation” includes also the jurisdiction in the geographical area where the joint operation takes place.

▪ **Article 13**

“The Agency may cooperate with Europol, the European Asylum Support Office, the Fundamental Rights Agency, other European Union agencies and bodies, and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty and the provisions on the competence of those bodies. The Agency may invite representatives of other European Union agencies and bodies or international organizations to participate in its activities referred to in articles 3, 4 and 5. The participation of representatives of international organizations in activities referred to in articles 4 and 5 may take place only upon agreement of the Member States concerned and in those referred to in article 3 only upon agreement of the Host Member State. These representatives shall receive the appropriate training from the Agency prior to their participation.”

Comment: The provisions concerning participation of representatives of European Agencies and international organizations in FRONTEX activities should be covered under article 13 instead of 14.

▪ **Article 14, par. 6**

“The Agency may also invite representatives of third countries, ~~other European Union agencies and bodies or international organizations~~ to participate in its activities referred to in articles ~~3, 4~~ and 5 upon agreement of the Member States concerned, as well as in those referred to in article 3 **upon agreement of the Host Member State**. These representatives shall receive the appropriate training from the Agency prior to their participation”.

Comment: The basic rule of FRONTEX regarding the need for the consent of the host member state or member state concerned for the participation of third countries representatives in the Agency’s activities should be well defined in the Regulation.