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

on :                    8 April 2010

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

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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)**

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At its meeting on 8 April 2010, the Working Party on Frontiers/Mixed Committee continued the first reading of the above proposal (Articles 10 to 15a as well as Article 2 on the "entry into force"). The text of these Articles is reproduced in the Annex. Member States' comments are set out in footnotes.

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)**

*Article 10*

*Amendment*

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

(13) In Article 10 paragraph 2 is replaced by the following:

"2. While performing their tasks and exercising their powers guest officers shall comply with Union law, in accordance with fundamental rights, and the national law of the host Member State<sup>1</sup>."

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<sup>1</sup> **NL** supported the current text but suggested amending the Schengen Borders Code to include a detailed description of border guards' responsibilities as regards borders surveillance. **Cion** is available to discuss the issue bilaterally with **NL** and referred to the upcoming revision of the SBC.

(14) Article 11 is replaced by the following:

**"Article 11**

***Information exchange systems***

The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks, with the Commission and the Member States. It shall develop and operate an information system capable of exchanging classified information with the Commission and the Member States. The exchange of information to be covered by this system shall not include the exchange of personal data<sup>1 2 3</sup>."

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<sup>1</sup> **FI** supported by **PT** and **AT** suggested deleting the third sentence and proposed including a provision that will allow limited rights for FRONTEX to process personal data, which it deems necessary for the Agency to perform its tasks. **FR** suggested that the possibility for FRONTEX, including its Liaison officers to deal with "personal data" should be provided in several articles. **FR** also suggested deleting the third sentence. **LU** would prefer the possibility for FRONTEX to exchange information with other Agencies be expressly mentioned. **LT** suggested adding a separate Article providing for the possibility for FRONTEX to handle personal data with clear limitations and for specific functions. **SI** supported **FI**, suggested also to make a distinction between the processing of personal data relating to staff and other types of personal data.

<sup>2</sup> **RO** supported the current wording and suggested adding a deadline for the system for the exchange of information to be operational. **BE** also supported the current wording.

<sup>3</sup> **HU** stressed the need to reflect more on the possibility to delete the third sentence and suggested regulating in detail for what purpose FRONTEX can process personal data. **CZ** proposed providing in a separate provision in which areas the information would be exchanged. Following a request by **NL**, **HU**, **CZ** and **EL** to clarify the scope of the proposed system for the exchange of information, **Cion** underlined that this Article does not aim at changing FRONTEX mandate and at creating an alternative system to the Schengen Information system and that the collection of personal data is not allowed. The Commission indicated that it will return to this issue in the context of information exchange between JHA Agencies.

(15) The following Articles 11a and 11b are inserted:

**"Article 11a**

***Data protection***

The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency

**Article 11b**

***Security rules on the protection of classified information and non-classified sensitive information***

1. The Agency shall apply the Commission's rules on security as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.
2. The Agency shall apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the European Commission."

(16) Articles 13 and 14 are replaced by the following:

**"Article 13**

***Cooperation with European Union agencies and bodies and international organisations***

The Agency may cooperate with Europol<sup>1</sup>, 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.<sup>2</sup>

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<sup>1</sup> Following requests by **RO** and **AT**, **Cion** clarified that there are no legal obstacles in cooperating with Europol and Cepol, including in terms of classified information.

<sup>2</sup> **EL** suggested adding the following second paragraph "In the same framework, the Agency may invite representatives of other European Union agencies and bodies or international organisations 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".

**Article 14**

***Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries<sup>1</sup>***

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate the operational cooperation between Member States and third countries, in the framework of the European Union external relations policy, including with regard to human rights<sup>2 3</sup>.

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<sup>1</sup> **HU** stressed the importance of establishing a legal framework for the observers of third countries in FRONTEX activities.

<sup>2</sup> **CZ** questioned whether a reference to the European Global Approach to migration should be included in this article. **NL, SE** and **PT** supported the current wording.

<sup>3</sup> **HU** underlined that there are countries that do not respect entirely fundamental rights and asked how the criterion on fundamental rights will be applied. **Cion** clarified that the choice of third countries where to deploy FRONTEX Liaison Officers would be made by the Agency's Management Board on the basis of risk analysis, of the feedback from joint operations and of the possible absence of Member States' immigration liaison officers in third countries.

2. <sup>1</sup>The Agency may deploy liaison officers, which should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of Member States' liaison officers set up pursuant to Council Regulation No 377/2004<sup>2</sup>. Liaison officers shall only be deployed to third countries in which border management practices respect minimum human rights standards<sup>3</sup>. Priority for deployment should be given to those third countries, which on the basis of risk analysis constitute a country of origin or transit regarding illegal migration.<sup>4</sup>
- <sup>5</sup>On a reciprocal basis the Agency may receive liaison officers posted by those third countries also, for a limited period of time. The Management Board shall adopt, on a proposal of the Executive Director, the list of priorities on a yearly basis in accordance with the provisions of Article 24.
3. The tasks of the liaison officers shall include, in compliance with European Union law and in accordance with fundamental rights<sup>6</sup>, the establishment and maintaining of contacts with the competent authorities of the third country to which they are assigned to with a view to contribute to the prevention of and fight against illegal immigration and the return of illegal migrants<sup>7</sup>.

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<sup>1</sup> **EL** suggested adding "In the framework of working arrangements concluded with third countries, the Agency. It also suggested replacing "third countries" with "those countries"

<sup>2</sup> **RO, PL, EL, BE, NL, SE** and **SI** expressed the view that overlapping of FRONTEX and Member States liaison officers should be avoided. **Cion** expressed the view that no impact in terms of overlapping would occur as in the beginning it was likely that only a limited number of Liaison Officers would be sent to third countries and co-exist with the already existing ILOs network

<sup>3</sup> **PL** questioned about the decision making process regarding cooperation with third countries and expressed the view that the role of the Agency in third countries should be based on the principle of subsidiarity. **EL** suggested that the criteria to select third countries where to deploy FRONTEX Liaisons officers should be based on the existence of working arrangements and on the respect of Human Rights instruments. **BE** and **SI** also referred to the need for third countries to respect human rights. **AT** supported by **LT** pointed out that on the contrary regarding the deployment of Liaisons' officers priority should be given to the third countries where minimum standards as regards the respect of human rights need to be monitored.

<sup>4</sup> **CZ** proposed adding the word "significant" before "countries of origin" and a reference to "EU neighbours in the South and in the East"...

<sup>5</sup> **EL** suggested replacing "On a reciprocal basis" with "In the same framework".

<sup>6</sup> **FR** suggested deleting the reference to "fundamental rights"

<sup>7</sup> **FI, DE, PT, FR** and **LT** referred to the need for FRONTEX Liaisons Officers to process personal data in performing their tasks. **Cion** expressed serious doubts on the need for FRONTEX Liaisons Officers to process personal data, but will reflect on the issue.

4. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the Union's external relations policy. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation. The Agency may also invite representatives of third countries, other European Union agencies and bodies or international organisations to participate in its activities referred to in Articles 3, 4 and 5. These representatives shall receive the appropriate training from the Agency prior to their participation.<sup>1</sup>
5. When concluding bilateral agreements with third countries as referred to in Article 2 (2) Member States shall<sup>2</sup>, where appropriate, include provisions concerning the role and competencies of the Agency, in particular regarding the exercise of executive powers by members of the teams deployed by the Agency during the activities referred to in Article 3.<sup>3</sup>
6. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty.

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<sup>1</sup> **PL** suggested a more flexible provision reflecting that FRONTEX technical assistance projects should be complementary to those carried out by the Member States. **EL** suggested merging paragraphs 4 and 6. **SK** pointed out that FRONTEX technical assistance could overlap with other types of EU funding. **IT** supported the current wording. **Cion** clarified that the EU is already supporting technical assistance projects and that the aim is to give FRONTEX the possibility to be eligible for EU funds and possibly launch their own technical assistance projects.

<sup>2</sup> **DE** and **NL** suggested replacing "shall" with "may". **LT** also supported a more flexible wording.

<sup>3</sup> **PL** supported by **SK** and **IT** suggested that FRONTEX should have a subsidiary role leaving sufficient flexibility for Member States. **IT** suggested moving point 6 to point 2. **Cion** underlined that working arrangements are not a precondition for launching technical assistance projects. **EL** stressed that pre-existing working arrangements can facilitate financial support to third countries. **HU** supported by **DE** and **LT** stressed that the current wording is too strict. **HU** also suggested clarifying what type of bilateral agreements are concerned. **Cion** clarified that only Member States can conclude bilateral agreements with third countries, but such agreements can be relevant for FRONTEX activities.

7. The activities referred to in paragraphs 2 and 6 shall be subject to receiving a prior favourable opinion of the Commission."<sup>1</sup>

(17) The following Article 15a is inserted:

**"Article 15a**

***Headquarters Agreement***

The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State in which the Agency has its seat and the facilities to be made available by that State, as well as the specific rules applicable to the Executive Director, the Deputy Executive Director, the members of the Management Board, the staff of the Agency and members of their families, in that State shall be laid down in a Headquarters Agreement between the Agency and the Member State in which the Agency has its seat. The Headquarters Agreement shall be concluded after obtaining the approval of the Management Board. The Member State in which the Agency has its seat should provide the best possible conditions to ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections<sup>2</sup>."

18) In Article 17, paragraph 3 is replaced by the following:

"3. For the purpose of implementing Article 3b(5) only an Agency's staff member subject to the Staff Regulations of Officials and to Title II of the Conditions of employment of other servants of the European Communities employed by the Agency can be designated as coordinating officer in accordance with Article 8g. For the purpose of implementing Article 3b(2)<sup>3</sup> only national experts seconded by a Member State to the Agency can be designated to be attached to the FRONTEX Joint Support Teams. The Agency shall designate those national experts that shall be attached to the FRONTEX Joint Support Teams in accordance with that Article."

(19) In Article 17 the following paragraphs 4 and 5 are added:

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<sup>1</sup> **DE** supported by **FR, AT, NL** and **LT** questioned the need of an authorisation from the Commission as the latter is represented in the Management Board. **Cion** explained that the prior favourable opinion of the Commission aims at reinforcing the coherence of EU external relations which is a legal obligation (art 14 (1)). Following a request by **SE**, **Cion** also clarified that no prior approval by the Commission is required as regards par. 4 of Article 14 referring to projects of operational nature.

<sup>2</sup> **PL** proposed rewording the paragraph in more general terms. **BE** suggested resolving practical problems by concluding a Memorandum of Understanding. Following a request by **SI**, **Cion** clarified that this provision contains a standard text (on the proper functioning of the Agency, the European-oriented schooling and the appropriate transport connections).

<sup>3</sup> Following a request by **HU**, **Cion** clarified that national experts will receive general instructions from the Agency and operational instructions from the host State.



"4. The Management Board shall adopt the necessary implementing measures in agreement with the Commission pursuant to the arrangements provided for in Article 110 of the Staff Regulations of Officials of the Union.

5. The Management Board may adopt provisions to allow national experts from Member States to be seconded to the Agency. Those provisions shall take into account the requirements of Article 3b(2), in particular the fact that they are considered as guest officers and have the tasks and powers referred to in Article 10."

(20) Article 20 is amended as follows:

(a) Paragraph 2 is amended as follows:

(i) point (h) is replaced by the following:

"(h) establish the organisational structure of the Agency and adopt the Agency's staff policy, in particular the multi-annual staff policy plan and submit the latter, in accordance with the relevant provisions of the framework Financial Regulation for the bodies referred to in Article 185 of the general Financial Regulation, to the Commission and the budgetary authority after receiving a favourable opinion of the Commission;<sup>1</sup>"

(ii) The following point (i) is inserted:

"(i) adopt the Agency's Multi Annual Plan aiming at outlining the future long term strategy regarding the activities of the Agency."

(b) Paragraph 4 is replaced by the following:

"4. The Management Board may advise the Executive Director on any matter strictly related to the development of operational management of the external borders, including activities related to research as defined in Article 6."

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<sup>1</sup> **SI** entered a linguistic reservation. **PL** suggested that the Council should participate in the adoption of the multi-annual staff policy plan. **AT**, **FI** and **DE** expressed the view that the decision should be taken exclusively by the Management Board and suggested deleting the reference to a favourable opinion from the Commission. **Cion** explained that a favourable opinion from the Commission would allow coherence of the implementation of the budget and of the multi-annual staff policy plan.

(21) Article 21 is amended as follows:

(a) In Paragraph 1 the last sentence is replaced by the following:

"This term of office shall be extendable<sup>1</sup>."

(b) Paragraph 3 is replaced by the following:

"3. Countries associated with the implementation, application and development of the Schengen acquis shall participate in the Agency. They shall have one representative and an alternate each in the Management Board. Under the relevant provisions of their association agreements, arrangements have been developed that specify the nature and extent of, and the detailed rules for, the participation by these countries in the work of the Agency, including provisions on financial contributions and staff.<sup>2</sup>"

(22) In Article 25 (3) the following point (g) shall be added:

"(g) to implement<sup>3</sup> the operational plan referred to in Articles 3a and 8g. "

(23) In Article 33, the following paragraphs 2a and 2b are inserted:

"2a. The evaluation shall analyse the needs for the Agency to employ independent border guards acting under the instructions of the Agency, including a detailed description of the legal framework that would need to be set in place for that purpose.<sup>4 5</sup>

2b. The evaluation shall include a specific analysis on the way the Charter of Fundamental Rights was respected pursuant to the application of the Regulation."

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<sup>1</sup> **FR** suggested maintaining the limitation on extending the term of office only once.

<sup>2</sup> **FI** supported by **AT** and **LT** are in favour of the current wording, stressing that Member States should keep their right to appoint their representatives in the Management Board

<sup>3</sup> **EL** suggested replacing "implement" with "monitor implementation".

<sup>4</sup> **SE** supported by **LT** questioned the relationship of this provision with the Stockholm program. **NL** supported the current wording and explained that it is in accordance with the Stockholm program. **PL** opposed the current wording stressing that this provision should be kept of a technical nature. **LT** proposed replacing the word "independent" with "national experts".

<sup>5</sup> **Cion** clarified that the evaluation should assess the legal aspects and needs regarding the feasibility of a European Border Guard and should be submitted to the FRONTEX Management Board.

*Article 2*

*Entry into force*

This regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

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