



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 13 December 2010

17619/10

LIMITE

**FRONT 165
COMIX 814**

OUTCOME OF PROCEEDINGS

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

dated: 30 November 2010

Subject: **Summary of discussions**

- 1. Proposal for a Regulation of the European Parliament and of 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)
- Draft report of the EP Rapporteur**

The Working Party had an exchange of views on the basic principles outlined in the explanatory statement of the draft report of the EP rapporteur on the proposal for the amendment of FRONTEX Regulation.

Several delegations believe that the issue of the protection of fundamental rights is sufficiently addressed in the current text of the proposal, whereas other delegations support or can accept the rapporteur's suggestion to include additional provisions in this regard. **Cion** is open to reflect on this suggestion.

Most delegations find it is premature to have a reference to a EU border guard system as proposed by the rapporteur, before the feasibility study foreseen by the Stockholm Programme is carried out. Other delegations could be more flexible regarding the terminology, provided that the basic principle of the necessity of bilateral agreements between Frontex and the Member States is maintained. **Cion** will reflect on the rapporteur's suggestion.

It was acknowledged that the issue of Member States' contributions to the Agency in terms of human resources and equipment will need further reflection. Several delegations are not in favour of the rapporteur's proposal to pay special attention to Member States facing special burdens on their asylum systems. There is a consensus against the rapporteur's proposal to tighten the timeframe for RABITs' deployment. Several delegations are not in favour of involving Frontex in voluntary return, whereas others support the rapporteur's proposal in this regard. Several delegations support the rapporteur's suggestion to include an explicit reference to Frontex regional offices. **Cion** pointed out the need to clarify in more precise terms what types of activities would be covered by the rapporteurs's suggestion.

Some delegations cannot accept the rapporteur's proposal to increase democratic scrutiny by the European Parliament on the Agency, whereas others are more flexible in this regard.

It was acknowledged that the issue of the analysis of the further development of a EU border guard system is linked to the ongoing discussions on Art.33 of the proposal.

- **Presidency proposals (regarding Articles 4, 11, 11a and 33)**
 - **doc. 16587/10 FRONT 156 CODEC 1313 COMIX 764**

The Working Party examined the compromise proposals regarding the abovementioned draft Regulation, as set out in doc. 16587/10 FRONT 156 CODEC 1313 COMIX 764. The outcome of the discussion regarding this point is set out in doc.17451/10 FRONT 164 CODEC 1461 COMIX 813. **The Presidency** invited delegations to send written comments.

2. **Information given to third-country nationals on the purpose and procedure of thorough second line checks**
- **Information by the Presidency**
 - **doc. 15300/10 FRONT 142 COMIX 686**
 - **doc. 16588/10 FRONT 157 COMIX 765**

The Presidency recalled its initiative regarding the information given to third-country nationals on the purpose and procedure of thorough second line checks, as set out in doc. 15300/10 FRONT 142 COMIX 686, and presented the compilation of Member States' documents used at the border for this purpose, as set out in doc. 16588/10 FRONT 157 COMIX 765. **Cion** will reflect on possible follow-up to this initiative, including possible identification of best practices, depending on Member States' needs and suggestions.

3. **Report from the Commission to the European Parliament and the Council on the application of Title III (Internal Borders) of the Schengen Borders Code**
- **doc. 14999/10 FRONT 139 COMIX 664**

CH expressed doubts about the added value of the unannounced on-site visits referred to in the report. **CZ** pointed out that it will adapt practices on intra-Schengen flights and remove the remaining obstacles at its internal borders as quickly as possible.

MT pointed out that the third-country nationals who are refused entry should be returned to their country of departure. **PT** indicated that at the occasion of recent checks at the internal borders many people were unable to show proof of their legal stay. **DK** stressed that these situations are exceptional. **EL** underlined the need to distinguish such situations occurring at internal borders from the "refusal of entry" as referred to in Article 7 of the Schengen Borders Code which applies at the external borders.

Following a question raised by the **Presidency** of on the application of Return Directive in circumstances where internal border controls are reintroduced, **Cion** recalled that once the directive will be transposed, Member States will have the obligation to issue return decisions for illegally staying third-country nationals apprehended at the internal borders. **Cion** will further reflect on the issue with a view to next meeting of the Working Party on Frontiers/Mixed Committee and invited delegations to share their opinions and experiences.

The Presidency invited delegations to send possible comments in writing.

4. A.O.B

BE gave a presentation on the Operation "Hermes", aimed at identifying the flows of illegal immigration inside the EU on the main transport routes, focusing in particular on its operational results, including the interception of 1900 illegal immigrants. **BE** indicated that the future Hungarian Presidency will carry on the initiative, in the context of Operation "Mitras".

SI reverted to the issue regarding third country nationals subject to a visa obligation travelling with a valid passport without a visa and an invalid passport with a visa, raising the question of the procedures to be followed in particular when the visa sticker is damaged or perforated, as set out in doc. 17135/10 VISA 289 FRONT 161 COMIX 792.

Cion reiterated the opinion that in these cases the person should be allowed entry unless the visa sticker is significantly damaged (e.g. the number of the visa sticker or machine readable zone is not readable). **Cion** stated it will consider including guidance on the matter in the Practical Handbook. Following a question from **HU** on the regime applicable to persons holding a valid residence permit in an invalid passport, **Cion** clarified that these persons can be allowed entry only if they are also in possession of a valid passport.

LV recalled the temporary reintroduction of controls at internal borders control as from 24 May 2010 to 1 June 2010, on the basis of the Article 23 (1) of the Schengen Borders Code, on the occasion of NATO Parliamentary Assembly.

SK announced that it had become member of the ICAO/PKD.

The incoming Hungarian Presidency presented its work program for the Working Party on Frontiers/Mixed Committee, which will continue the examination of the proposal for the amendment of Frontex Regulation and will also focus on the upcoming proposal for the amendment of the Schengen Borders Code and on the reports that the Commission is expected to present on Local Border Traffic and on Eurosur. The Working Party will also deal with the border related aspects of the implementation of the VIS and of the return directive and will continue to follow-up the initiative of the Belgian Presidency regarding second line checks. The next meeting of the Working Party on Frontiers/Mixed Committee will take place on 17 January 2011.
