



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 March 2010

7497/10

**Interinstitutional File:
2010/0039 (COD)**

LIMITE

**FRONT 35
CODEC 224
COMIX 212**

OUTCOME OF PROCEEDINGS

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

on : 9 -10 March 2010

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

At its meeting on 9-10 March 2010, the Working Party on Frontiers/Mixed Committee started the first reading of the above proposal (Articles 1 to 3 b). The text of Articles 1 to 3 b is reproduced in the Annex. Member States' comments are set out in footnotes.

The text of the recitals will be examined once the discussion of all Articles is finalised.

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)¹

Article 1
Amendment

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

(1) In Article 1 paragraph 2 is replaced by the following:

"2. While considering that the responsibility for the control and surveillance of external borders lies with the Member States, the Agency shall facilitate and render more effective the application of existing and future European Union measures relating to the management of external borders, in particular the Schengen Borders Code, and in accordance with relevant Union law, International law, obligations related to access to international protection, and fundamental rights. ²It shall do so by ensuring the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States."

¹ **UK** raised the issue of the status of UK participants in joint operations as observers and suggested that their participants would benefit from a similar protection regarding civil and criminal liability as regular guest officers deployed during joint operations.

² **EL** suggested including a reference to national law in Article 1. **Cion** did not support including this reference.

(2) Article 1a is amended as follows:

(a) point 2 is replaced by the following:

"2. "host Member State" means a Member State on the territory of which, or adjacent to, a deployment of a Rapid Border Intervention Team or a joint operation or a pilot project takes place;"¹

(b) point 4 is replaced by the following:

"4. "members of the teams" means border guards of Member States serving with the Rapid Border Intervention Team or the Frontex Joint Support Team other than those of the host Member State;"

(c) the following point 7 is added:

"7. "technical equipment" means any kind of technical equipment deployed during joint operations, pilot projects, Rapid Border Intervention Teams, return operations or technical assistance projects."²

(3) Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (c) and (d) are replaced by the following:

"(c) carry out risk analyses, including the evaluation of the capacity of Member States to face threats and pressure at the external borders;

(d) participate in the development of research relevant for the control and surveillance of external borders;"

(ii) point (f) is replaced by the following:

"(f) provide Member States with the necessary support, including, upon request, coordination regarding organising joint return operations;"

(iii) the following points (h) and (i) are added:

"(h) develop and operate information systems that enable swift and reliable exchanges of information regarding emerging risks at the external borders, including the Information and Coordination Network established by Council Decision 2005/267/EC;

¹ **EL, PL, HU, SI** and **MT** thought that the definition of "host Member State" as formulated covers only sea borders and is not applicable to land borders. **Cion** would reflect on this comment. **LT** and **BG** suggested better clarifying where the responsibility lies. **DE** suggested clarifying more clearly which is the host Member State. **Cion** explained that the proposed text does not aim at modifying the division of responsibility.

² **DE** and **HU** suggested personal equipment not to be covered. **FR** supported the current wording **FI, LT** and **DE** suggested adding a reference to the IBM concept as defined in the 2006 Council conclusions.

(i) provide the necessary assistance to the development and operation of a European border surveillance system and, as appropriate, to the development of a common information sharing environment, including interoperability of systems."

(b) the following paragraph 1a is inserted:

"All border guards and other personnel of the Member States, as well as the staff of the Agency shall, prior to their participation in operational activities organised by the Agency, have received training in relevant EU and international law, including fundamental rights and access to international protection."¹

(c) In paragraph 2 the last subparagraph is replaced by the following:

"Member States shall report to the Agency on these operational matters at the external borders outside the framework of the Agency. The Executive Director shall inform the Management Board on these matters on a regular basis and at least once a year."²

¹ **HU, AT and EL** suggested including, where appropriate in another part of the text, a general provision on the respect of fundamental rights applicable to all Frontex activities. **Cion** would reflect on this possibility. **EL** also suggested to refer to "basic" training. **LT** stressed that the responsibility for providing basic training lies with the Member States. It also suggested referring to additional training. **Cion** would prefer to keep the reference to training general. **SI** questioned about the relationship between this training and the Common Core Curriculum (CCC). **LT** suggested including a reference to the CCC.

CZ suggested this reference being included in the Preamble. **Cion** stressed that the CCC is a tool provided by Frontex for training carried out by Member States. **SE** pointed out that the reference to "other personnel" is vague. **Cion** underlined that it would be difficult to list all the categories of personnel.

² **FR** entered a scrutiny reservation.

- (4) Article 3 is replaced by the following:

"Article 3"¹

Joint operations and pilot projects at the external borders

1. The Agency shall evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States, including the requests of Member States related to circumstances requiring increased technical and operational assistance.

The Agency may itself initiate ²joint operations and pilot projects in cooperation with Member States.

It may also decide to put its technical equipment at the disposal of Member States participating in the joint operations or pilot projects.

Joint operations and pilot projects should be preceded by a thorough risk analysis.

The Agency may also terminate joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled.³

2. The Agency shall constitute a pool of border guards ⁴called Frontex Joint Support Teams in accordance with the provisions of Article 3b, for possible deployment during joint operations and pilot projects referred to in paragraph 1. It shall decide on the deployment of human resources and technical equipment in accordance with Articles 3a and 7.

¹ **LT** entered a substantial reservation on Article 3 in its entirety.

² **MT** suggested replacing the wording "initiate" with "propose".

³ **HU** entered a substantial reservation regarding the provision on the termination of Joint operations. **PL** entered a scrutiny reservation on the same provision, pointing out that it had some doubts on using for the FJST the same text used for the Rabits. **EL**, **MT** and **RO** suggested adding an explicit reference to the obligation for Frontex to consult the host Member State regarding the termination of a joint operation. **NL** suggested clarifying the conditions for terminating the joint operations. **LU** suggested clarifying the impact of the termination of a joint operation in budgetary terms. **Cion** pointed out that the right for Frontex to terminate joint operations would be linked to the possible change of the conditions of the joint operation, and thought it was obvious that Member States concerned would be consulted. It preferred to keep the current wording.

⁴ **LU** questioned whether the term border guards would also cover other experts than border guards "stricto sensu". **Cion** will reflect on the issue raised by **LU**.

3. The Agency may operate through its specialised branches provided for in Article 16, for the practical organisation of joint operations and pilot projects.¹
 4. The Agency shall evaluate the results of the joint operations and pilot projects and transmit the detailed evaluation reports within 60 days following the end of the activity to the Management Board. The Agency shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and efficiency² of future operations and projects to be included in its general report provided for in Article 20(2)(b).
 5. The Agency may decide to finance or co-finance the joint operations and pilot projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency."
- (5) The following Articles 3a, 3b and 3c are inserted:

"Article 3a

Organisational aspects of joint operations and pilot projects

1. The Executive Director shall draw up an operational plan for activities referred to in Article 3(1). The Executive Director and the host Member State shall agree on the operational plan detailing the organisational aspects in due time³ before the envisaged beginning of the activity.

¹ **NL**, supported by **SI**, suggested replacing the wording "specialized branches" with "Frontex operational offices" in line with the relevant decision of the Management Board. **EL** pointed out that the existing EU legislation refers to "specialized branches". For this reason, **Cion** prefers to keep the wording "specialized branches".

² **AT** suggested adding the wording "effectiveness". **Cion** would reflect on the suggestion by **AT**. Following a request from **RO** and **NL**, **Cion** clarified the difference between financing (covering 100% of the costs) and co-financing (parts of the costs to be covered by Member States), pointing out that the relevant criteria would be laid down in the Agency's financial Regulation.

³ **NL** suggested to refer to a fixed period rather than to "due time". **Cion** would prefer to keep the current wording.

The operational plan shall include the following:^{1 2 3 4}

- (a) a description of the situation, with modus operandi and objectives of the deployment, including the operational aim;
- (b) the foreseeable duration of the joint operation or pilot projects;
- (c) the geographical area where the joint operation or pilot project will take place;
- (d) description of the tasks and special instructions for the guest officers, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
- (e) the composition of the teams of guest officers;
- (f) command and control provisions, including the names and ranks of the host Member State's border guards responsible for cooperating with the guest officers and the Agency, in particular those of the border guards who are in command during the period of deployment, and the place of the guest officers in the chain of command;⁵
- (g) the technical equipment to be deployed during the joint operation or pilot project, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;

¹ **FI**, supported by **HU**, expressed the view that the list regarding the content of the operational plan is too detailed and that such list should not be exhaustive. **FI** suggested adding a reference to the inclusion in the operational plan of a provision on the use of force by guest officers. **DE**, **SI** and **PL** suggested adding a reference to the inclusion in the operational plan of a provision on the transport of arms. **EL** suggested a reference to the relevant national legislation on the use of arms. **EL** also suggested adding in the end of the list a provision on the cooperation with third countries. **Cion** pointed out that the use of force is already covered by Article 10 (points 5 to 7) and that the transport of arms should be dealt with in another context.

² **FR**, supported by **NL**, **SE**, **HU** and **LU**, suggested to include more detailed provisions regulating the involvement of the participating countries in drawing up the operational plan. **EL** drew the attention on the costs and delays that such a procedure would involve. **Cion** pointed out that Member States involved would be consulted, but the final decision would have to be taken by Frontex and the host Member State.

³ **FR**, supported by **NL** and **SE**, suggested adding that the operational plan should include a provision on disembarkment. **EL**, referring to the ongoing discussions on the guidelines for Frontex operations at sea, stressed the need to avoid duplications. **Cion** confirmed that there is no need to repeat in the Regulation the same provisions already contained in the draft guidelines.

⁴ **Cion** confirmed that the list is not exhaustive - i.e. a minimum list - and will reflect on the suggestions made by delegations.

⁵ **EL** suggested indicating more precisely the responsibility for the command.

- (h) a reporting and evaluation scheme containing detailed provisions on incident reporting, benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(4).^{1 2}
 - (i) regarding sea operations, specific requirements regarding the applicable jurisdiction and maritime law provisions concerning the geographical area where the joint operation takes place.
2. Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.
 3. The Agency shall, as part of its coordinating tasks, ensure the operational implementation of all the organisational aspects, including the presence of a staff member of the Agency, of joint operations and pilot projects referred to in this Article.

Article 3b

Composition and deployment of Frontex Joint Support Teams

1. On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles and the overall number of border guards to be made available for the Frontex Joint Support Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall numbers. Member States shall contribute to the Frontex Joint Support Teams via a national pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.³

¹ **DE** and **MT** suggested adding a reference to special events other than incidents.

² **NL** suggested including more details on the further development of the reporting mechanism and providing for a role of the coordinating officer in this mechanism.

³ **LT, SE, FR, NL** and **MT** underlined the need to better clarify to what extent Member States would have an obligation to contribute to the FJST. **HU** and **SI** questioned whether there is a difference between par.1 and 2. **DE** and **NL** raised some doubts about the links between par 1 and 2. **EL** asked for clarification on how the selection from the pool would be made. **Cion** explained that under paragraph 1 Frontex would have to ask Member States to deploy border guards for joint operations, whereas under paragraph 2 border guards would be detached to Frontex for 6 months and it would be for the Agency to decide to deploy them for specific joint operations. **Cion** also explained that Member States would be obliged to contribute to the FJST, but the number and profiles of the border guards to be made available by each Member States would not be defined in the Regulation but by a decision of the Management Board.

2. The Agency shall also contribute to the Frontex Joint Support Teams with competent border guards seconded by the Member States as national experts pursuant to Article 17(5). To that effect Member States shall contribute by seconding border guards to the Agency as national experts. The maximum duration of such secondments shall not exceed six months¹ in a twelve month period. They shall, for the purpose of this Regulation, be considered as guest officers and have the tasks and powers referred to in Article 10. The Member State having seconded the border guards in question shall be considered as "home Member State" as defined in Article 1a(3) for the purpose of applying Articles 3c, 10, and 10b. Other staff employed by the Agency on a temporary basis who are not qualified to perform border control functions shall only be deployed during joint operations and pilot projects for coordination tasks.^{2 3 4}

¹ **CH, DE, PL** and **LT** asked how the six-months would be counted. **CH** raised some doubts about the selection procedure being carried out by Frontex, instead of the Agency asking Member States to provide a certain number of border guards.

² **HU** asked whether the seconded experts could receive instructions by the Member States and entered a substantial reservation. **FR** suggested that coordination with the Member States seconding the experts be foreseen as regards their tasks. **Cion** pointed out that detached national experts deployed as guest officers in a Frontex joint operation would receive instructions exclusively by the host Member State, but would remain subject to disciplinary rules of the home Member States. However the Agency could decide in which joint operation these guest officers could be deployed.

³ **SE, DE** and **SI** expressed some doubts about the added value of this provision on the secondment of national experts. **CZ** would need to reflect more on the suggested mechanism. **DE**, supported by **LT** suggested that the secondment could be foreseen in the context of a pilot project.

PL, supported by **LT**, thought that the national administrative procedures for the secondment of national experts could be rather complicated.

⁴ **EL** and **LT** suggested replacing in the third line "shall contribute" with "may contribute".

3. Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least thirty days before the intended deployment. The autonomy of the home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected.^{1 2}
4. Members of the Frontex Joint Support Teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights and human dignity. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, members of the teams shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
5. In accordance with Article 8g the Agency will nominate a coordinating officer for each joint operation or pilot project where Frontex Joint Support Team members will be deployed.³
6. The Agency shall meet the costs incurred by the Member States in making their border guards available pursuant to paragraph 1 for the Frontex Joint Support Teams in accordance with Article 8h.⁴

¹ **EL** suggested expressing more clearly the link between par. 1 and 2 as regards making border guards available.

² **DE, NL, FI** and **SE** underlined the difference between the FJST and the Rabbits which are foreseen to be deployed in emergency situations. **DE**, supported by **NL**, suggested making the text more flexible by replacing the current wording in the second line with "unless national reasons are more urgent". **PL**, supported by **LT**, also suggested that the possibility for Member States to refuse secondment not being limited to exceptional circumstances.. **FI** entered a reservation on the 30 days notice.

³ **AT** suggested replacing "will" with "shall". **MT** suggested better defining the role of the coordinating officer by including at the end of the sentence the following wording: "The role of the FRONTEX Coordinator is to monitor the joint operation and foster cooperation and coordination amongst hosting and participating Member States"..

⁴ **PL** suggested adding a reference to pre-financing and to per diem. **LT** suggested including a reference to pre-financing for training. **Cion** pointed out that these issues could be dealt with by Frontex Management Board in the context of the Agency's Financial Regulation.