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 (EU-Iceland/Liechtenstein/Norway/Switzerland)

on : 30 April 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 30 April 2010, the Working Party on Frontiers/Mixed Committee started the second reading of the above proposal (Articles 1 to 3a). The text of Articles 1 to 3a is reproduced in the Annex. Written contributions from some delegations are contained in docs 9668/10, 9671/10, 9672/10 and 9673/10. Member States' comments are set out in footnotes. The changes made to the text and agreed on by the Working Party are in bold. The changes suggested by the Presidency, which have not yet been agreed, are underlined.

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 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. It 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."

(2) Article 1a is amended as follows:

(a) point 2 is replaced by the following^{1 2}:

"2. "host Member State"³ means a Member State on the territory or area of interest of which, ~~or adjacent to~~^{4 5}, a deployment of a Rapid Border Intervention Team or a joint operation or a pilot project takes place;"

(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;"

The following point 7 was deleted

~~6 7~~

(3) Article 2 is amended as follows⁸:

(a) paragraph 1 is amended as follows:

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

"(c) carry out risk analyses, including studies of the preparedness ~~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;"

¹ **IT** proposed adding a new definition on joint operations. **Cion** stated it was not in favour of including such a definition.

² **LT** suggested adding a definition of "guest officers".

³ **PL**, **CZ** and **LV** supported that the definition of the "host Member State" should be clearer and more precise.

⁴ **IT** supported by **HU**, **LT**, **PL** and **BG** suggested keeping the wording of the existing legislation without indicating "area of interest" or "adjacent to". **EL** supported by **HU** and **NL** suggested keeping the wording "adjacent to" **Cion** would prefer to keep the term "adjacent to", but will also reflect on the suggestions made by delegations.

⁵ **EL** proposed adding after "adjacent" the wording "(for operations at sea)".

⁶ **HU**, **LT**, **CZ**, and **PL** supported the Finnish proposal, as set out in doc. 9668/10, concerning the concept of the "Integrated Border management (IBM)". **IT** was not in favour of the Finnish proposal. **MT** entered a scrutiny reservation on the Finnish proposal. **SI**, **DE**, **AT** and **PT** suggested keeping the Finnish proposal as a recital in the Preamble. **BG** and **BE** suggested including the Finnish proposal in the Schengen Borders Code. **NL** could accept both solutions. **Cion** would reflect on the possibility to include the Finnish proposal in a recital.

⁷ **HU** withdrew its proposal as contained in doc. 9672/10.

⁸ **AT** proposed adding a general provision on fundamental rights in FRONTEX Regulation.

(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;
- (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."

(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."

(4) Article 3 is replaced by the following:

"Article 3

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, in agreement with the Host Member State, joint operations and pilot projects in cooperation with Member States¹.

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.

¹ **Cion** suggested deleting "in cooperation with Member States". **IT, EL, MT, CY** and **CH** supported **Cion's** proposal. **SE** supported by **FR, PL** and **NO** suggested keeping both "in agreement with the Host Member State" as suggested by the Presidency and "in cooperation with Member States". **BE** supported **SE** and proposed moving "in agreement with the Host Member State" at the end of the sentence. **Cion** stated that it could accept only one of the two options.

The Agency may also terminate, prior consultation with the Member State (s) concerned¹, joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled².

2. The Agency shall constitute a pool of border guards called 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.
3. The Agency may operate through its specialised branches provided for in Article 16, for the practical organisation of joint operations and pilot projects.
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, efficiency **and effectiveness** of future operations and projects to be included in its general report provided for in Article 20(2)(b).³
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."

¹ **IT** supported by **MT** suggested rewording the text suggested by the Presidency as "with prior consultation with the **host** Member State(s) concerned". **Cion** stressed that prior consultation is not in line with the EU financial Regulations regarding provisions on reimbursement, i.e. when conditions are no longer fulfilled.

² **HU, SE, PL, NO, and LV** were in favour of the Dutch proposal on the possibility of suspending or for a Member State to withdraw from a joint operation as set out in doc. 9671/10. **Cion** stressed the importance of the possibility the Agency to terminate a joint operation. **IT** can agree with the possibility to suspend a joint operation, but not for a Member State to withdraw from it. **SI** entered a scrutiny reservation on the latter proposal.

³ **PL** expressed the view that in case of incidents involving a third State the coordinating officer shall report to the Agency as suggested by **NL** in doc. 9671/10 and also to EU delegation in the third State concerned. **NL** proposed that the two suggestions could be combined. **EL** expressed a positive view on these suggestions on which it will reflect, whereas. **IT** was not in favour. **Cion** was not in favour of establishing the proposed reporting obligation for the Coordinating Officer and stressed that other existing channels could be used instead.

(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 ¹agree on the operational plan detailing the organisational aspects in due time before the envisaged beginning of the activity.

The operational plan shall include the following:

- (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^{2 3 4};
- (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;
- (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;
- (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 **SE** proposed adding "after consulting the participant Member State(s)".

² **IT** suggested that an alternative could be to add a reference to article 10.

³ **PL, SI, LT** and **NL** supported the Finnish proposal on including a reference to the use of force, as set out in doc. 9668/10. **HU** supported the Finnish proposal but suggested that the provision should be more flexible. **PL** and **SE** also suggested including a reference to the transport of arms.

⁴ **Cion** was not in favour of including a provision on the transport of weapons in this Regulation.

(i) regarding sea operations, specific requirements regarding the applicable jurisdiction and maritime law¹ provisions concerning the geographical area where the joint operation takes place².

(h)³ **modalities of cooperation with third countries, if relevant.**

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 States⁴.
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.

¹ **EL** supported by **IT** suggested deleting "maritime law". **Cion** expressed the view that the current wording should not be changed.

² **NL** suggested adding a reference to the guidelines for FRONTEX operations at sea. **SE** supported by **FR** suggested adding "and detailed information on its disembarkation". **MT** entered a reservation on the suggestions made by **NL** and **SE**.

³ **The Presidency** clarified that the reference letter should be read as "j" instead of "h".

⁴ **Cion** was not in favour of the Finnish proposal on the possibility for Member States to amend restrictions to the operational plan as set out in doc. 9668/10. **LT** and **NL** supported the Finnish proposal. **Cion** expressed the view that participation of the Member States in the drafting of the operational plan is already the current practice and should not be further detailed in the Regulation.