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**NOTE**

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

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Following the meeting of the Working Party on Frontiers/Mixed Committee on 17 January 2011, and with a view to continuing discussions at the meeting of this Working Party on 11 February 2011, the Presidency has revised the text of Articles 3 to 3(b) and of Articles 11 to 11(c) of the above draft Regulation, as set out in the Annex.

The changes suggested by the Presidency are underlined or marked for deletion, where applicable. The changes that have already been agreed are set in bold.

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)<sup>1</sup>**

"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 joint operations and pilot projects.." in cooperation with the Member States **concerned and in agreement with the host 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, after consulting the host Member State and informing the Member States 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.

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<sup>1</sup> **Cion** has a general reservation on the entire text.

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)
  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, **in consultation with participating Member States,** shall agree on the operational plan detailing the organisational aspects in due time before the envisaged beginning of the activity.

The operational plan shall cover all aspects considered necessary for carrying out the joint operation or the pilot project, including 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;
- (e) the composition of the teams of guest officers as well as the deployment of other relevant staff;
- (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;

**(h1) provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities.**

- (h2) 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).
- (i) regarding sea operations, specific ~~requirements regarding the applicable jurisdiction and maritime law provisions concerning~~ information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation takes place.
- (j) 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 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.
- ~~2.~~ 3. The contribution by Member States as regards their border guards to specific operations for the coming year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. The autonomy of the home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected. In accordance with these agreements, Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an unforeseen exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least thirty forty five 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.
- ~~3.~~ 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).<sup>1</sup>To that effect Member States shall may contribute by seconding border guards to the Agency as national experts. The maximum duration of such secondments shall not exceed six months 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.
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.

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<sup>1</sup> The Presidency suggests adding a reference to conditions of deployment in Art. 17 (5).

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.

(14) Article 11 is replaced by the following:

*"Article 11*

*Information exchange systems*

~~1. 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. Without prejudice to the competence of Member States to process personal data collected in the context of joint operations and pilot projects, the exchange of information to be covered by this system shall not include the exchange of such personal data.~~

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

*"Article 11a*

*Data protection*

~~**Regulation (EC) No 45/2001 shall apply to the Agency.**~~

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

*Article 11b*

**moved to Article 11d**

*"Article 11*

*Information exchange systems*

1. The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks, with the Commission, the Member States<sup>1</sup>, and, where appropriate, the European Agencies referred to in Article 13. It shall develop and operate an information system capable of exchanging classified information with these actors, including personal data referred to in Articles 11 a), 11 b) and 11 c).

(15) The following Articles 11a) to 11c) are inserted:

*"Article 11a*

*Data protection*

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<sup>1</sup> The Agency may exchange information with UK and Ireland if it relates to the activities in which they participate in accordance with Articles 12 and 20 (5) as well as administrative data to the extent that UK and Ireland wish to contribute to financial expenses of the exchange information system.

Regulation (EC) No 45/2001<sup>1</sup> shall apply to the Agency.

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. These measures shall be established after the consultation of the European Data Protection Supervisor.

Without prejudice to Articles 11b) and 11 c), the Agency may process personal data for administrative purposes.

*Article 11b)*

*Processing of personal data in the context of joint return operations*

In accordance with the measures referred to in the second paragraph of Article 11 a):

1. In performing its task of the organization and coordination of joint return operations of Member States referred to in Article 9, the Agency may process personal data of persons who are subject to such joint return operations.
2. The processing of such personal data shall respect the principles of necessity and proportionality. In particular, it shall be strictly limited to those personal data which are required for the purposes of the joint return operation.
3. The personal data shall be deleted as soon as the purpose for which they have been collected has been achieved and no later than 10 days after the joint return operation.
4. In case the personal data are not transferred to the carrier by a Member State, the Agency may transfer such data.

*Article 11c)*

*Processing of personal data collected during joint operations, pilot projects and the deployment of rapid border intervention teams*

In accordance with the measures referred to in Articles 11 a):

1. Without prejudice to the competence of Member States to collect personal data in the context of joint operations, pilot projects and the deployment of rapid border intervention teams and subject to the limitations set out in paragraphs 2 and 3, the Agency may further process personal data collected by the Member States during such operational activities and transmitted to the Agency in order to contribute to the security of the external borders of the Member States of the European Union..

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<sup>1</sup> OJ L 8, 12.1.2001, p. 1.

2. Such further processing of personal data by the Agency shall be limited to personal data regarding persons who are suspected, by the relevant authorities of Member States, on reasonable grounds of involvement in cross-border criminal activities, in facilitation of illegal migration activities or in human trafficking activities as defined in Article 1 (1) (a) and (b) of Council Directive 2002/90/EC1.

3. Personal data referred to in paragraph 2 shall be processed by the Agency only for the following purposes:

- a) transmission to Europol or other European Agencies, subject to Article 13 of this Regulation.
- b) use for the preparation of risk analyses referred to in Article 4.

4. The personal data shall be deleted as soon as they have been transmitted to Europol or other European Agencies or used for the preparation of risk analyses referred to in article 4. The term of storage shall in any event not exceed three months after the date of the collection of those data.

5. The processing of such personal data shall respect the principles of necessity and proportionality.

6. Onward transmission or other communication of such personal data processed by the Agency to third countries or other third parties is prohibited.

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