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NOTE

from: Incoming Belgian Presidency
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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)**

With a view to starting the third reading of the above proposal at the meeting of Working Party on Frontiers/Mixed Committee on 1 July 2010, the incoming Presidency submits a compromise proposal on Articles 1 to 9, as set out in the Annex. The new changes suggested by the incoming Presidency are underlined. The changes which have been already agreed are 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)

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 Code¹, 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:

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

(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;"

Point 7 has been deleted

(3) Article 2 is amended as follows:

¹ OJ L 105 13.4.2006, p. 1.

(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;"

(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/EC¹;

(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 joint operations and pilot projects ~~in cooperation with Member States~~ in agreement with the host Member State(s).

¹ OJ L 83, 1.4.2005, p. 48.

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. Where appropriate, participating Member States may request the Agency to terminate a joint operation or pilot project.

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 incident reporting by the Agency to the Management Board and to relevant 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 relevant legislation ~~maritime law~~ concerning 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 is planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. 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 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.
- ~~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). 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.
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.

Article 3c

Instructions to the Frontex Joint Support Teams

1. During deployment of Frontex Joint Support Teams, instructions to the teams shall be issued by the host Member State in accordance with the operational plan referred to in Article 3a (1).
2. The Agency, via its coordinating officer as referred to in Article 3b (5), may communicate its views on those instructions to the host Member State. If it does so, the host Member State shall take those views into consideration.
3. In accordance with Article 8g the host Member State shall give the coordinating officer all necessary assistance, including full access to the Frontex Joint Support Teams at all times throughout the deployment.

4. Members of the Frontex Joint Support Teams shall, while performing their tasks and exercising their powers, remain subject to the disciplinary measures of their home Member State."

(6) Article 4 is replaced by the following:

"Article 4

Risk analysis

The Agency shall develop and apply a common integrated risk analysis model.

It shall prepare both general and tailored risk analyses to be submitted to the Council and the Commission. For these purposes Member States shall provide the Agency with all necessary information regarding the situation and possible threats at the external borders.

The Agency shall regularly carry out studies on the preparedness ~~regularly evaluate the capacity~~ of the Member States to face upcoming challenges, including present and future threats and pressures at certain sectors of the external borders of the European Union. These studies are complementing and supporting elements to the Schengen evaluation mechanism. ~~Therefore the Agency shall evaluate the national structures, the equipment and the resources of the Member States regarding border control.~~ The results of these studies ~~evaluations~~ shall be presented at least once per year to the Management Board of the Agency.

The Agency shall incorporate the results of a common integrated risk analysis model in its development of the common core curriculum for border guards' training referred to in Article 5."

(7) In Article 5 the first paragraph is replaced by the following:

"The Agency shall establish and further develop common core curricula for border guards' training and provide training at European level for instructors of the national border guards of Member States, including with regard to fundamental rights and access to international protection.

Member States shall integrate the common core curricula in the training of their national border guards."

(8) Articles 6 and 7 are replaced by the following:

"Article 6

Monitor and contribute to research

The Agency shall monitor and contribute to the developments in research relevant for the control and surveillance of the external borders and disseminate this information to the Commission and the Member States.

Article 7

Technical equipment

1. The Agency may acquire or lease technical equipment for external border control to be deployed during joint operations, pilot projects, Rapid Border Intervention Teams, return

operations or technical assistance projects in accordance with the financial rules applicable to the Agency. Any acquisition of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. Any such expenditure shall be provided for in the Agency's budget as adopted by the Management Board in accordance with article 29, 9. In case the Agency acquires or leases important technical equipment such as open sea and coastal patrol vessels or vehicles, to be used in joint operations, the following provisions shall apply:

- in case of acquisition, the Agency agrees formally with one Member State that the latter will provide for the registration of the equipment;
- in case of leasing, the equipment must be registered in a Member State.

The Agency shall draw up a model agreement regulating the terms of use of the equipment.

The Member State of registration or the supplier of technical equipment shall provide the necessary experts and technical crew to operate the technical equipment in a legally sound and safe manner.

2. The Agency shall set up and keep centralised records of equipment in a technical equipment pool composed of equipment owned by Member States or by the Agency for external border control purposes. The technical equipment pool shall contain a minimum number per type of technical equipment defined in accordance with paragraph 5 of this article. The equipment listed in the technical equipment pool shall be deployed during the activities referred to in Articles 3, 8a and 9.
3. Member States shall contribute to the technical equipment pool referred to in paragraph 2. The contribution by Member States to the pool and deployment of the technical equipment for specific operations is planned on the basis of annual bilateral negotiations and agreement between the Agency and Member States.

To the extent that it forms part of the minimum number of equipment for a given year, Member States shall make their technical equipment available within ~~30~~ 45 days for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Their contributions to the technical equipment pool shall be reviewed annually.

4. The Agency shall manage the records of the technical equipment pool as follows:
 - (a) classification by type of equipment and by type of operation;
 - (b) classification by owner (Member State, Agency, others);
 - (c) overall numbers of required equipment;
 - (d) crew requirements if applicable;
 - (e) other information such registration details, transportation and maintenance requirements, national applicable export regimes, technical instructions, or other relevant information to handle the equipment correctly.

5. The Agency shall finance the deployment of the equipment which forms part of the minimum number of equipment provided by a given Member State for a given year. The deployment of equipment which does not form part of the minimum number of equipment shall be co-financed by the Agency up to a maximum of 60% of the eligible expenses.

The rules including the required overall minimum numbers per type of equipment, the conditions for deployment and reimbursement of costs shall be decided in accordance with Article 24 on a yearly basis by the Management Board on a proposal by the Executive Director. For budgetary purposes this decision should be taken by the Management Board by 31 March.

The minimum number of equipment shall be proposed by the Agency in accordance with its needs, notably be able to carry out joint operations, pilot projects and return operations, in accordance with the work programme of the Agency for the year in question.

If the minimum number of equipment proves to be insufficient to carry out the operational plan agreed for joint operations, pilot projects, Rapid Border Intervention Teams or return operations, it shall be revised by the Agency.

6. The Agency shall report on the composition and the deployment of equipment, which is part of the technical equipment pool, to the Management Board on a monthly basis. In case the minimum number of equipment referred to in paragraph 5 is not reached, the Executive Director shall inform the Management Board without delay. The Management Board shall take a decision on the prioritisation of the deployment of the technical equipment urgently and take the appropriate steps to remedy the identified shortcomings. It shall inform the Commission of the identified shortcomings and the steps taken. The Commission may subsequently inform the European Parliament and the Council, together with its own assessment."

(9) Article 8 is deleted.

(10) In Article 8e paragraph 1 is amended as follows:

(a) points (f) and (g) are replaced by the following:

"(f) command and control provisions, including the names and ranks of the host Member State's border guards responsible for cooperating with the Rapid Border Interventions teams, in particular those of the border guards who are in command of the teams during the period of deployment, and the place of the teams in the chain of command;

(g) the technical equipment to be deployed together with the teams, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions."

(b) the following points (h), ~~and~~ (i) and (j) shall be added:

"(h) a reporting and evaluation scheme containing detailed provisions on ~~incident~~ reporting of unforeseen events, 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 legislation in the geographical area where the joint operation takes place.

(j) **modalities of cooperation with third countries, if relevant.”**

(11) In Article 8h paragraph 1, **first subparagraph**, is replaced by the following:

"1. The Agency shall fully meet the following costs incurred by Member States in making available their border guards for the purposes mentioned in Article 3(2), Article 8a and Article 8c:"

(12) Article 9 is replaced by the following:

"Article 9

Return cooperation

1. Subject to the return policy of the Union, and in particular Directive 2008/115/EC¹, the Agency shall provide the necessary assistance, and upon request of the participating Member States ensure the coordination for organising joint return operations of Member States. The Agency may decide to finance or co-finance the operations and projects referred to in this paragraph, with grants from its budget in accordance with the financial rules applicable to the Agency. The Agency may also use Union financial means available in the field of return. The Agency shall ensure that in its grant agreements with Member States any financial support is conditional upon the full respect of the Charter of Fundamental Rights.
2. The Agency shall develop a Code of Conduct for the return of illegally present third-country nationals ~~by air~~ which shall apply during all joint return operations coordinated by the Agency, describing common standardized procedures which should simplify the organisation of joint return ~~flights operations~~ and assure return in a humane manner and in full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, the rights to the protection of personal data and non discrimination.
3. The Code of Conduct will in particular pay attention to the obligation set out in Article 8(6) of Directive 2008/115/EC to provide for an effective forced-return monitoring system. The monitoring of joint return operations should be carried out independently and should cover the whole joint return operation from the pre-departure phase until the hand-over of the returnees in the country of return. Furthermore, observations of the monitor, which shall cover the compliance with the Code of Conduct and in particular fundamental rights, shall be made available to the Commission and form part of the internal Final Return Operation Report. In order to ensure transparency and a coherent evaluation of the forced-return operations, reports of the monitor shall be included in an annual reporting mechanism.

¹ OJ L 348, 24.12. 2008, p.

4. Member States shall once a month, if necessary, inform the Agency of their ~~situation with regard to return and indicate to what extent~~ needs for the assistance or coordination of the Agency is required. The Agency shall draw up a rolling operational plan to provide the requesting Member States with the necessary operational support, including technical equipment referred to in Article 7(1). The Management Board shall decide in accordance with Article 24 on a proposal of the Executive Director, on the content and modus operandi of the rolling operational plan.
5. The Agency shall cooperate with competent authorities of the relevant third countries referred to in Article 14, identify best practices on the acquisition of travel documents and the return of illegally present third-country nationals."
