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REPORT

on the proposal for a Council regulation establishing a European Agency for
the Management of Operational Co-operation at the External Borders
(COM(2003) 687 – C5-0613/2003 – 2003/0273(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Christian Ulrik von Boetticher

PE 329.954

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 8 December 2003 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the proposal for a Council regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders (COM(2003) 687 – 2003/0273(CNS)).

At the sitting of 15 December 2003 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy for its opinion (C5-0613/2003).

At the sitting of 29 January 2004 the President of Parliament announced that he had also referred the proposal to the Committee on Budgets for its opinion.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Christian Ulrik von Boetticher rapporteur at its meeting of 2 December 2003.

At its meeting of 2 December 2003 the committee decided to include in its report the following motion for a resolution:

- B5-0470/2003, by Roberto Felice Bigliardo and others, on the proposal to set up a 'Border Management Agency', referred on 17 November 2003 to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee

The committee considered the Commission proposal and draft report at its meetings of 2 December 2003, 21 January 2004 and 19 February 2004.

At the last meeting it adopted the draft legislative resolution by 24 votes to 4, with 1 abstention.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Johanna L.A. Boogerd-Quaak (vice-chairwoman), Christian Ulrik von Boetticher (rapporteur), Mary Elizabeth Banotti, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Michael Cashman, Carmen Cerdeira Morterero, Gérard M.J. Deprez, Koenraad Dillen, Adeline Hazan, Marie-Thérèse Hermange (for Charlotte Cederschiöld), Margot Keßler, Timothy Kirkhope, Eva Klamt, Lucio Manisco (for Ilka Schröder), Luís Marinho (for Ozan Ceyhun), Marjo Matikainen-Kallström (for Carlos Coelho), Erik Meijer (for Giuseppe Di Lello Finuoli pursuant to Rule 153(2)), Elena Ornella Paciotti, Paolo Pastorelli (for Giacomo Santini), Hubert Pirker, Bernd Posselt, Olle Schmidt (for Baroness Ludford), Ole Sørensen (for Bill Newton Dunn), Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí and Maurizio Turco.

The opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Budgets are attached.

The report was tabled on 24 February 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders
(COM(2003) 687 – C5-0613/2003 – 2003/0273(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2003) 687)¹,
 - having regard to Article 66 of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0613/2003),
 - having regard to the Protocol integrating the Schengen acquis into the framework of the European Union,
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Budgets (A5-0093/2004),
1. Approves the Commission proposal as amended;
 2. Considers that the financial statement of the Commission proposal is compatible with the ceiling of heading 3 of the Financial Perspective without restricting other policies;
 3. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 4. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 5. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
 6. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 7. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

Amendment 1

Recital 1

(1) Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which *is* a necessary corollary to the free movement of persons within the European Union and a fundamental component of an Area of Freedom, Security and Justice. To this end, the establishment of common rules on standards and procedures for the control of the external borders is foreseen;

(1) Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which ***constitutes a measure designed to prevent trafficking in human beings***, a necessary corollary to the free movement of persons within the European Union and a fundamental component of an Area of Freedom, Security and Justice. To this end, the establishment of common rules on standards and procedures for the control of the external borders is foreseen;

Justification

It is important to show that the establishment of this agency can make a contribution to the fight against trafficking in human beings and that it does not simply represent an umpteenth measure clamping down on asylum-seekers from outside Europe.

Amendment 2

Recital 6

(6) The Agency should provide training at European level for national instructors of border guards and additional training and seminars related to control and surveillance at the external borders ***and removal of third country nationals illegally resident in the Member States for officers of the competent national services***;

(6) The Agency should provide training at European level for national instructors of border guards and additional training and seminars related to control and surveillance at the external borders;

Justification

See justification for amendment on Article 2f). In addition, since the European Parliament is not of the opinion that the Agency should work in the field of return it also considers that it should also not provide training in this field.

Amendment 3
Recital 7 a (new)

(7a) In carrying out the above activities the Agency shall act in conformity with the objectives and priorities adopted by the Commission as provided for in Article 12 of Council Decision 2002/463/EC.

Justification

The activities outlined in the preceding recitals fall under the scope of the ARGO programme. It seems therefore appropriate to ensure consistency with the objectives and priorities identified by the Commission in this context.

Amendment 4
Recital 9

(9) The Agency should also support Member States in circumstances requiring increased technical and operational assistance at the external borders;

(9) The Agency should also support Member States in ***exceptional*** circumstances requiring increased technical and operational assistance at the external borders;

Justification

Given the scale of the resources to be employed in such situations, support should be provided only in particularly serious circumstances, such as a mass influx of people fleeing a war.

Amendment 5
Recital 10

(10) In most Member States, the operational aspects of return of third-country nationals illegally residing in the Member States fall under the competencies of the authorities responsible for controlling the external borders. As there is a clear added value in performing these tasks at European level, the Agency should, subject to the Community return policy, accordingly co-ordinate and organise return

deleted

operations of Member States and develop best practices on the acquisition of travel documents and return of third-country nationals from the territories of the Member States;

Justification

See justification for amendment on Article 2 f).

Amendment 6
Recital 12

(12) Building upon the experiences of the External Borders Practitioners' Common Unit and the centres specialised in the different aspects of control and surveillance of land, air, and maritime borders respectively, which have been set up by Member States, the Agency may itself create specialised branches responsible for dealing with land, air, and maritime borders; *deleted*

Justification

See justification for amendment on Article 3, paragraph 2.

Amendment 7
Recital 16 a) (new)

16 a) Regulation (EC) No 45/2001¹ of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data applies to the processing of personal data by the Agency.

¹ OJ L 8, 12.1.2001, p. 1

Justification

If in the process of its activities the agency should acquire personal data it should be clear that it is bound by the law in force.

Amendment 8

Recital 17

(17) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency ***and appoint the Executive Director***;

(17) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules ***and*** establish transparent working procedures for decision making by the Agency;

Justification

See justification for amendment on Article 23, paragraph 1.

Amendment 9

Recital 18a (new)

(18a) The management of national borders should remain a sovereign Member State responsibility;

Justification

The Agency must cooperate with the Member States with a view to ensuring the more effective management of Community borders, but may not usurp their national role.

Amendment 10

Recital 19

(19) Bearing in mind the constantly changing nature of the challenges to efficient management of the external borders, a possible gradual widening of the scope of action of the Agency should be provided for. Such a wider scope could

deleted

e. g. encompass tasking the Agency with the carrying out of inspections at the external borders and the facilitation of operational co-operation with relevant third countries and international organisations, taking into account the institutional framework of the European Community. This Regulation should apply to any other area related to the management of the external borders on a basis of a future proposal in accordance with the Treaty establishing the European Community;

Justification

A wider scope of action of the agency is subject to a new legislative procedure. Any decision to extend the remit and the scope of activity of the agency should be submitted via the ordinary legislative procedure, i.e. involve consultation of the European Parliament.

Amendment 11 Recital 20

(20) Recalling that efficient control and surveillance of the external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, ***including return of third-country nationals illegally residing in the Member States***, constitutes an important step in this direction;

(20) Recalling that efficient control and surveillance of the external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, constitutes an important step in this direction;

Justification

See justification for amendment on Article 2 f).

Amendment 12 Recital 26

(26) This Regulation respects the

(26) This Regulation respects the

fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union;

fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, ***in particular in Article 19 thereof***,

Justification

It should be pointed out that the Agency must also observe Article 19 of the Charter of Fundamental Rights, which bans collective expulsions and stipulates that no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. Moreover, at the part-session from 12 to 15 January 2004 that provision was incorporated into the resolution on a common policy on illegal immigration (Pirker report); given the importance of this matter, however, attention should be drawn to it once again.

Amendment 13 Article 1, paragraph 2

2. The Agency shall facilitate the application of ***existing and future*** Community measures relating to the management of the external borders by ensuring the co-ordination 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 European Union.

2. The Agency shall ***within its remit laid down in Article 2 of this Regulation*** facilitate the application of Community measures relating to the management of the external borders by ensuring the co-ordination 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 European Union.

Justification

This amendment aims at clearly circumscribing the remit and activities of the Agency (see also amendment 4).

Amendment 14 Article 2, letter b a (new)

(ba) Carrying-out of inspections at the external borders.

Justification

Recital 19 already refers to such inspections in the context of a possible widening of the scope of action of the Agency. However, they are essential from the outset in order to guarantee that uniform standards are applied at the external borders.

Amendment 15
Article 2, point (d a) (new)

(da) study measures to ensure the compatibility of technical equipment.

Justification

If the management of borders is more and more regarded as a common task it would make sense to ensure in the long-run the compatibility of the technical equipment used by border guards.

Amendment 16
Article 2, point (f)

(f) co-ordinate operational co-operation between Member States in the field of removal of third-country nationals illegally residing in the Member States. ***deleted***

Justification

The European Parliament does not wish to entrust this task to an independent agency at European level. There would be a clear risk that the Agency gets the character of an "expulsion agency". Next to the general position as outlined in the explanatory statement in this specific case there would also be a danger of insufficient direct democratic control of such kind of operational activities.

Amendment 17
Article 2, point (f a) (new)

(fa) study the need for and feasibility of setting up a European Border Guard.

Justification

While the European Corps of Border Guards has been mentioned in a number of Commission Communications, it still remains to be seen whether there is any need for it, and what the likely legal and political implications are. The Agency should therefore first establish whether

there is a need for such a supranational Corps, and only then proceed to a feasibility study. Ultimately, the decision to establish the Corps remains a political one, for which very good reasons must be established.

Amendment 18
Article 2, letter (f b) (new)

(fb) Development and coordination of a network of liaison officers for migration-related issues.

Justification

The Member States' border units already include specialists trained in migration-related issues who exchange experience and best practices. The development of a network linking these specialists is already under way. The incorporation of this network into the structure of the European Agency represents a logical extension of the Agency's tasks.

Amendment 19
Article 3, paragraph 2

2. The Agency may operate through its specialised branches provided for in Article 13, for the practical organisation of joint operations and pilot projects. ~~*deleted*~~

Justification

See justification for amendment on Article 13.

Amendment 20
Article 3, paragraph 4

4. The Agency may decide to co-finance the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency. ~~*deleted*~~

Justification

In the explanatory memorandum and in the legislative financial statement the Commission outlines that "the ARGO programme will be replaced by the Agency in so far as operational co-operation at external borders is concerned" and that "return co-operation, the operational

costs of joint return operations of third country nationals (...) could be borne by Community funds available in the future in the field of Return." The Commission hereby makes reference to the proposal for a European return programme it intends to make (with a budget of 30 Mio. €).

For several reasons an agency is not the appropriate body to finance operations and projects:

- a) it would require the agency to hire very specialised staff for the management of these funds (call for proposals, selection, contracts, project management etc.) which does not correspond with the idea of pooling specialised staff in the field of border protection;*
- b) it would make the control of the expenditure more difficult;*
- c) it would contradict the basic idea to create an agency because of the expected 'added value' at community level.*

Amendment 21
Article 4, paragraph 2

It shall prepare both general and tailored risk assessments to be submitted to the Council and the Commission.

It shall prepare both general and tailored risk assessments to be submitted to the **European Parliament, the** Council and the Commission.

Justification

The European Parliament needs access to the work of the agency on the same footing as Council in order to exercise its political control functions. It also needs this information to do a proper work as a co-legislator in this area.

Amendment 22
Article 5, paragraph 2

The Agency shall also offer additional training courses and seminars on subjects related to the control and surveillance of the external borders **and return of third country nationals** for officers of the competent national services of Member States.

The Agency shall also offer additional training courses and seminars on subjects related to the control and surveillance of the external borders for officers of the competent national services of Member States.

Justification

See justification for amendment on Article 2f). In addition, since the European Parliament is not of the opinion that the Agency should work in the field of return it also considers that it should also not provide training in this field.

Amendment 23
Article 5, paragraph 3

The Agency may also hold training seminars at the request of the authorities of the Member States on the European Union's immigration policies and the procedures laid down by the competent institutions.

Justification

Officers operating on the national territory of the Member States, but not necessarily working with the Agency, might benefit from training courses on immigration policies organised by the Agency, where these are requested by the authorities which employ the officers.

Amendment 24
Article 6

The Agency shall follow up on 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.

The Agency shall follow up on the developments in research relevant for the control and surveillance of the external borders and disseminate this information to the ***European Parliament, the*** Commission and the Member States.

Justification

See justification for amendment on Article 4.

Amendment 25
Article 9

Article 9

deleted

Return co-operation

1. The Agency shall subject to the Community return policy co-ordinate or organise joint return operations of Member States. The Agency may use Community financial means available in the field of return.

2. The Agency shall identify best practices on the acquisition of travel documents and the removal of illegally

residing third-country nationals from the territories of the Member States.

Justification

See justification for amendment on Article 2f). In addition, since the European Parliament is not of the opinion that the Agency should work in the field of return it also considers that it should also not provide training in this field.

Amendment 26
Article 13

Article 13

deleted

Specialised branches

The Agency shall evaluate the need for and decide the setting up of specialised branches in the Member States, subject to their consent.

The specialised branches of the Agency shall develop best practices with regard to the particular types of external borders for which they are responsible. The Agency shall ensure the coherence and uniformity of such best practices.

Each specialised branch shall submit a detailed annual report to the Agency on its activities as well as provide any other type of information relevant for the co-ordination of operational co-operation.

Justification

For reasons of control, efficiency and cost effectiveness it does not make sense to set up an independent agency in one Member State having in addition specialised branches in other Member States. The existing centres specialised in the different aspects of control and surveillance of land, air and maritime borders, which have been set up by Member States, should therefore become integral part of the agency at one single location.

Amendment 27
Article 14, paragraph 3

3. The Agency's staff shall consist of a limited number of officials and of national experts in the field of control and

3. The Agency's staff shall consist of a limited number of officials ***assigned by the Commission*** and of national experts in the

surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

Justification

Given that the Agency shall be managing actions which so far have been funded under ARGO, a programme managed directly by the Commission, it seems appropriate to foresee the specific assignment of Commission officials to the Agency, as provided in Article 36 of the Staff Regulations. This means that Commission staff would de-facto be redeployed, on a temporary basis, to the Agency.

Amendment 28 Article 17, paragraph 2, point (a)

(a) appoint the Executive Director on a proposal from the Commission in accordance with Article 23; ***deleted***

Justification

Given that the Commission bears ultimate political responsibility for the management of Community activities, it appears appropriate to leave the task of selecting and appointing the executive body, generally the director, to the Commission.

Amendment 29 Article 17, paragraph 2, point c

c) before ***30 September*** each year, and after receiving the opinion of the Commission, adopt, by a three-quarters majority of its members, the Agency's programme of work for the ***coming*** year and forward it to the European Parliament, the Council, the Commission; this programme of work shall be ***adopted according to*** the annual Community budgetary procedure ***and*** the Community legislative programme in relevant areas of the management of external borders;

c) before ***31 January*** each year, and after receiving the opinion of the Commission, adopt, by a three-quarters majority of its members, the Agency's ***draft*** programme of work for the year ***in question*** and forward it to the European Parliament, the Council, the Commission; this programme of work shall be ***finalised in the light of the outcome of*** the annual Community budgetary procedure. ***It shall take due regard of*** the Community legislative programme in relevant areas of the management of external borders;

Justification

The Agency's work programme should be finalised only once the budgetary authority has authorised the subsidy for the Agency and its establishment plan.

Amendment 30

Article 17, paragraph 2, point (h a) (new)

(ha) sign memoranda of understanding with the European Police College, the European armaments agency, the European Maritime Safety Agency and other bodies working in the Agency's field of activity on a clear division of responsibilities, so as to avoid duplication of work.

Justification

There is a risk of duplication of work that should be avoided from the outset. The European Police College for example also offers courses on border control.

Amendment 31

Article 18, paragraph 1

1. The Management Board shall be composed of twelve members ***and two representatives of the Commission***. The Council shall appoint ***the*** members as well as their alternates who will represent them in their absence. ***The Commission shall appoint its representatives and their alternates***. The duration of the terms of office shall be four years. This term of office shall be extendable once.

1. The Management Board shall be composed of twelve members. The Council ***and the Commission*** shall ***each*** appoint ***six*** members as well as their alternates who will represent them in their absence. The duration of the terms of office shall be four years. This term of office shall be extendable once.

Justification

This amendment seeks to reinforce the role of the Commission thereby giving the agency a more communitarian character.

Amendment 32

Article 18, paragraph 1 a (new)

1a. Members shall be appointed on the

grounds of their experience in the field of border protection.

Justification

The only reason for the creation of the agency is the pooling of expertise. This should be reflected in the Management Board as well.

Amendment 33
Article 19

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall ex-officio replace the Chairperson in the event of his/her being prevented from attending to his/her duties.

The Management Board shall ***be chaired by the Commission Representative.***

2. The term of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of the terms of office of the Chairperson or Deputy Chairperson shall be two years. These terms of office shall be extendable once.

Justification

See justification for amendment on Article 18, paragraph 1.

Amendment 34
Article 22, paragraph 1

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. ***Without prejudice to the respective competencies of the Commission and the Management Board, the*** Executive Director shall neither seek nor take instructions from any government or from any other body.

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. ***The*** Executive Director shall neither seek nor take instructions from any government or from any other body.

Justification

This provision is superfluous, given that the Commission and national experts are represented equally on the Management Board.

Amendment 35
Article 22, paragraph 2

2. The European Parliament or the Council **may** invite the Executive Director of the Agency to report on the carrying out of his/her tasks.

2. The European Parliament **pursuant to Article 23 a** or the Council **shall** invite the Executive Director of the Agency to report on the carrying out of his/her tasks.

Justification

The proposed new Article 23 a) new goes further than the text of Article 22, paragraph 2. It is important that Parliament should exercise political scrutiny as of right, and not simply as an option.

Amendment 36
Article 23, paragraph 1

1. The Commission shall **propose candidates for the post of** the Executive Director based on a list following publication of the post in the Official Journal and other press or internet sites as appropriate.

1. The Commission shall **appoint** the Executive Director based on a list following publication of the post in the Official Journal and other press or internet sites as appropriate.

Justification

See justification for amendment on Article 18, paragraph 1.

Amendment 37
Article 23, paragraph 1 a (new)

1a. The European Parliament may hear the candidate prior to his appointment and issue an opinion.

Justification

The amendment seeks to reinforce the ex-ante political control powers of the European Parliament.

Amendment 38
Article 23, paragraph 2

2. The Executive Director of the Agency shall be appointed by the **Management Board** on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders. **The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.**

Power to dismiss the Executive Director shall be with the **Management Board, according to the same procedure.**

2. The Executive Director of the Agency shall be appointed by the **Commission** on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders.

Power to dismiss the Executive Director shall be with the **Commission.**

Justification

See justification for amendment on Article 18, paragraph 1.

Amendment 39
Article 23, paragraphs 3, 4 and 5

3. The Executive Director shall be assisted by a Deputy Executive Director. If the Executive Director is absent or indisposed, the Deputy Executive Director shall take his/her place.

4. The Deputy Executive Director shall be appointed by the Management Board on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders on the proposal of the Executive Director. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

Power to dismiss the Deputy Executive Director shall be with the Management Board, according to the same procedure.

5. The **terms of the offices** of the Executive Director **and the Deputy Executive Director** shall be five years. **They** may be

5. The **term of office** of the Executive Director shall be five years. **This term of office** may be prolonged by the

prolonged by the **Management Board** once for another period of up to five years.

Commission once for another period of up to five years.

Justification

In a dualistic structure comprising a permanent executive body and a programming and monitoring body, there is no need for a Deputy Executive Director.

Amendment 40
Article 23 a (new)

Article 23a

Hearing of the Executive Director before the European Parliament

Each year the Executive Director shall submit and present to the European Parliament the general report on the Agency's activities. The European Parliament may also request at any time a hearing with the Executive Director on any subject related to the Agency's activities.

Justification

This amendment seeks to reinforce the political control powers of the European Parliament.

Amendment 41
Article 24 a (new)

Article 24a

Working languages

The Agency shall determine its internal working languages.

Justification

For efficiency reasons, the definition of working languages seems to be appropriate. A highly specialised agency with a proposed staff of 27 cannot work in all official languages, in particular after enlargement. Without a provision on working languages in the legal text, the agency could encounter legal challenges if it requires the knowledge of certain languages from candidates applying for open positions (see case C 130/03, currently before the European Court of Justice).

Amendment 42
Article 25 a (new)

Article 25a

Protection of personal data

- 1. Regulation (EC) No 45/2001 shall apply to the processing of personal data by the Agency.***
- 2. Within six months after the entry into force of the Regulation, the Management Board shall lay down the practical arrangements for the application of paragraph 1.***

Justification

If in the process of its activities the agency should acquire personal data it should be clear that it is bound by the law in force.

Amendment 43
Article 26, paragraph 1, indent 4a (new)

- a contribution from the host Member State.

Justification

A host Member State profits in many respects from the presence of an EU body on its territory. There should therefore also be an obligation to assist the agency by providing for example a building.

Amendment 44
Article 26, paragraph 3

3. The Executive Director shall draw up an estimate of the revenues and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with ***an*** establishment plan.

3. The Executive Director shall draw up an estimate of the revenues and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with ***a provisional*** establishment plan.

Justification

See amendment 10

Amendment 45
Article 26, paragraph 6

6. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the European Union.

6. The estimate **and the provisional establishment plan** shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the European Union.

Justification

See amendment 10

Amendment 46
Article 26, paragraph 11, subparagraph 2

Where a branch of the budgetary authority **has notified its intention** to deliver an opinion, **it** shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

The budgetary authority **shall notify the Agency whether it intends** to deliver an opinion. **It** shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project. **The Management Board shall defer the adoption of the measures in question until the opinion has been delivered.**

Justification

The wording is more in line with the provisions of Article 179(3) of Council Regulation 1605/2002 (Financial Regulation), which, mutatis mutandis, apply here.

Amendment 47
Article 29, paragraph 1

1. Within **three** years from the date of the Agency having taken up its responsibilities, and every **five** years thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.

1. Within **two** years from the date of the Agency having taken up its responsibilities, and every **two** years thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation **placing particular emphasis on respect for fundamental rights.**

Justification

Given the Agency's scope of action, provision should be made for regular, close scrutiny, in keeping with the two-year term of office of the members of the Management Board, with a view to preventing any risk of the misuse of authority. Such a step is all the more justifiable in the early stages of the Agency's operational life.

Amendment 48 Article 29, paragraph 1 a (new)

1a. The first evaluation shall also contain the findings of the Agency of the need for and feasibility of setting up a European Border Guard.

Justification

While the European Corps of Border Guards has been mentioned in a number of Commission Communications, it still remains to be seen whether there is any need for it, and what the likely legal and political implications are. The Agency should therefore first establish whether there is a need for such a supranational Corps, and only then proceed to a feasibility study. Ultimately, the decision to establish the Corps remains a political one, for which very good reasons must be established.

Amendment 49 Article 29, paragraph 2

2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency, ***its added value*** and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

Amendment 50 Article 29, paragraph 3

3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which ***may*** forward them, together with its own opinion as well as appropriate proposals, to

3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which ***shall*** forward them, together with its own opinion as well as appropriate proposals, to

the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

the ***European Parliament and the Council***. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

Justification

There is no explanation why such a recommendation from the Management Board and the opinion of the Commission thereon should only be forwarded to the Council.

Amendment 51

Article 30

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, unless specifically required for the Agency's operation and with the Commission's prior consent.

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, unless specifically required for the Agency's operation and with the Commission's prior consent. ***The budgetary authority shall be duly informed of such derogations.***

Amendment 52

Article 31

This Regulation shall enter into force ***on the [...] day following that of its publication in the Official Journal of the European Union.***

The Agency shall take up its responsibilities from 1 January 2005.

This Regulation shall enter into force ***once a definitive seat for the agency has been established.***

The decision on the seat shall be taken following a procedure in which Member States interested in obtaining the seat make an offer as to what they are prepared to contribute to the Agency. They shall outline inter alia whether they are willing to provide a building, what other assistance might be given and the

expertise available in the Member State in the fields of activity of the Agency.

The decision on the location of the Agency shall be taken by the Council not later than 31 December 2004. The Member State designated to host the Agency shall contribute financially to its setting up.

Justification

The present situation in which several new agencies have to start their activities in provisional locations and in uncertainty about their future place of work should be avoided. Although in the framework of the European Council heads of state or government on 13 December 2003 found an agreement on the seats for several agencies they did not decide upon a seat for the present agency. See also justification for amendment on Article 26, fifth indent (new). In addition, an agency should "fit" into the Member State where it will be located. It would for example be difficult to explain why a maritime agency should be located in a Member State without access to the sea and without know-how in this area. When Parliament and Council negotiated the new text of the Financial Regulation they issued a joint statement which called on the Member States hosting a Community body to contribute to their setting up.

EXPLANATORY STATEMENT

I. The proposal

The objective of this proposal is to set up a European Agency for the Management of Operational Co-operation at the External Borders. It shall seek "to render more effective the implementation of Community policy on the management of the external borders by better co-ordinating the operational co-operation between the Member States."¹ Its main tasks as laid down in Article 2 shall be:

- Co-ordination of the operational co-operation between Member States in the field of control and surveillance of the external borders.
- Rendering assistance to Member States on training of their national border guards by providing training at European level for national instructors of border guards, as well as holding seminars and offering additional training to officers of national border guards.
- Carrying out of general and tailored risk assessments.
- Follow-up on developments in research relevant for the control and surveillance of the external borders.
- Rendering assistance to Member States confronted with circumstances requiring increased operational and technical assistance at the external borders.
- Co-ordination of operational co-operation between Member States on removal of third-country nationals illegally residing in Member States.

Chapter III on the structure of the agency (Articles 12 - 25) and Chapter IV on the financial requirement (Articles 26 - 31) follow the examples of other recently set-up community agencies.

II. Background of the proposal

The current proposal has to be seen in the context of and as a reaction to calls from the European Parliament to set up an integrated management of borders including the creation of an agency, the proposals made by the Convention on the future of Europe and the debate on progress to achieve an area of freedom, security and justice largely held by heads of state and government but also the Justice and Home Affairs ministers.

The European Parliament has in the past called on many occasions for increased efforts to set up a common integrated management of the EU's external borders.² It made in this general

¹ Explanatory memorandum COM(2003) 687, page 5.

² See for example European Parliament resolution of 3 April 1998 on the implications of enlargement of the European Union for cooperation in the field of justice and home affairs, OJ C 138, 4.5.1998, p. 214, in particular point 19.

context also concrete reference to the challenging situation after the eastern enlargement¹ and the creation of an independent agency: In its resolution on the implications of enlargement of the European Union for cooperation in the field of justice and home affairs of 1998 it proposed already "the establishment of a European Academy for Internal Security in the current border area between the European Union and the applicant countries to be responsible for training police forces and border control forces in the European Union and the applicant countries in order to prepare them for the use of Community law and the implementation of common and Community measures;"² These calls were made at a time when the Commission still thought that the protection of external borders was entirely up to Member States and therefore action from the part of the Commission would not be necessary.³

The Working group X "Freedom, Security and Justice" of the Convention also reached general agreement that practical progress should be made on the management of external borders "in order to develop gradually a genuinely integrated system of external border control management." The group recommended that the Treaty "contain a legal basis allowing the adoption of all necessary measures needed for the gradual development of a common system of external border management."⁴

This recommendation led to the new wording of what became Article III-166, paragraph 1 c):

1. The Union shall develop a policy with a view to:

[...]

(c) the gradual introduction of an integrated management system for external borders.

As to the discussions by Council it needs to be recalled that - following discussions on the management of external borders at the Seville, Thessaloniki and Brussels European Councils - at its meeting of 27/28 November 2003 Justice and Home Affairs ministers already adopted conclusions as regards the agency while the Commission had only presented the proposal on 11 November 2003. Although correct in legal terms this approach is deplorable in political terms: a possibility for public discussion was not given and the clear signal sent to Parliament that its opinion does not matter.

III. Position of the Rapporteur

The Rapporteur welcomes the proposal of the Commission. In general terms, the rapporteur agrees with setting up an independent agency with its own legal personality.

He would like to underline that he supports the creation of an independent agency because of the very specific circumstances: The tasks that are proposed to be given to the Agency are

¹ See for example European Parliament report of 9 April 2002 on the proposal for a Council decision adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO), amendment 4, OJ C 127E, 29.5.2003, p. 143.

² European Parliament resolution of 3 April 1998 on the implications of enlargement of the European Union for cooperation in the field of justice and home affairs, OJ C 138, 4.5.1998, p. 214, point 10.

³ As outlined for example by Commissioner Verheugen in the committee meeting of 20 February 2002 during the exchange of views on the ARGO programme.

⁴ CONV 426/02 WG X 14, p. 17.

almost entirely tasks that were up until today fulfilled by Member States and not the Commission. At the same time Parliament has considered the task of the common integrated management of external borders to be one that should also be dealt with at the European level. The creation of an agency therefore constitutes an important step to this end. This situation is very different from a situation in which tasks are directly given from the Commission to an agency thereby increasing the fragmentation of the executive power of the EU.

The rapporteur shares the view that the existing structures have serious institutional shortcomings that can only be remedied by the creation of an agency. As was also outlined by the Commission in its communication in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents (COM (2003) 323) the institutional status of the Common Unit for external border practitioners (SCIFA+) as a Council working party raises questions about its effectiveness. A more permanent body would be needed. At the same time the developing network of decentralised centres would need "a coherent, effective and really operational co-ordination."¹ The rapporteur is also of the opinion that the creation of an agency would increase transparency in an area that so far is rather characterised by opaqueness.

The rapporteur would like the agency, however, to have a 'more communitarian' character like expressed by Parliament on many occasions and just recently in its resolution on the Council and Commission statements on the preparation of the European Council in Brussels on 12-13 December 2003: "15. Takes note of the recent Commission proposal to set up a European Border Management Agency to improve operational cooperation between Member States, but stresses the need for any structure to include the full involvement of the Commission and Parliament;"² Only in this way can the agency be effectively controlled and be held accountable.

By reading the proposal of the Commission it becomes evident that it was drafted with having a "rather intergovernmental" structure in mind. This can be seen throughout the text and only a few examples should be given here to illustrate the point: emphasis on national experts seconded by Member States in Article 13, paragraph 3 (a provision that does for example not exist in the Commission's proposals to set up a European railway agency (COM (2002) 23), a European maritime safety agency (COM (2000) 802) or a European food authority (COM (2000) 716)), emphasis on assistance to Member States in the proposed list of main tasks in Article 2, composition of the Management Board (12 "members and two representatives of the Commission"; would this for example mean that the Commission "representatives" are not "members"?) etc.

Most of the amendments proposed by the rapporteur therefore seek to achieve in particular this objective, namely to give the agency a 'more communitarian' character. The rapporteur thereby follows in broad terms the lines as laid down in the European Parliament resolution

¹ The shortcoming of are also documented in the 'report on the implementation of programmes, ad hoc centres, pilot projects and joint operations' prepared by the Greek presidency, Doc. 10058/03. This report also gives a good overview of the structure as it has developed so far.

² European Parliament resolution of 4 December 2003 on the Council and Commission statements on the preparation of the European Council in Brussels on 12-13 December 2003; not yet published in OJ.

on the Communication from the Commission 'The operating framework for the European regulatory agencies (COM(2002) 718)'.¹

Several amendments seek consequently to increase the role of the European Commission (for example appointment of the Executive Director; chairmanship of the Management Board; composition of the Management Board) and the political control powers of the European Parliament (hearing of the Executive Director prior to his appointment; regular presence before the responsible parliamentary committee). By respecting the opinion as expressed in the above cited report of the Committee on Constitutional Affairs the rapporteur does, however, not propose to include representatives of the European Parliament in the Management Board. The rapporteur objects strongly to the opinion of Council that each Member State should have a representative in the Management Board of the agency as expressed in the Council conclusions of 27 November 2003.²

Next to this political message as to the structure of the proposed agency the rapporteur would like to voice a second message: He does not want this agency to co-ordinate or even organise joint return operations of Member States. The same criticisms as voiced by the Parliament in the past are still valid: It is again a proposal that puts the cart before the horse in the sense that it is premature to set up such an operational structure without harmonised standards on for example the definition of a refugee. Common legislation on immigration and asylum is still largely missing but proposals and initiatives on specific aspects of return (joint flights, mutual recognition of expulsion decisions, assistance in cases of transit for the purposes of removal by air etc.) continue to be made. The since a long time announced proposal on minimum standards for return procedures and mutual recognition of return decisions is also not yet made. Therefore, at the current stage the co-ordination of operational co-operation between Member States on removal of third-country nationals illegally residing in Member States should not be a task for the new agency.

¹ European Parliament resolution of 13 January 2004 on the communication from the Commission: 'The operating framework for the European regulatory agencies'; not yet published in OJ.

² Doc. 15446/2003: Council conclusions on the main elements of the Commission proposal for a Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, point 7.

19 February 2004

MINORITY OPINION

by Giuseppe Di Lello, Ole Krarup, Erik Meijer and Ilka Schröder

A European Border Agency represents the nucleus of a European border police force which will add to the suffering of refugees and migrants at the EU's external borders and within the EU, given that its political task will be to further develop and consolidate the repressive aspects of 'Fortress Europe'. This is clearly not in the interests of people who are trying to escape miserable living conditions, political persecution or forms of state and non-state violence.

Even if the Agency would not have any operational powers right now, the risk is that this is precisely what the European Commission and a large majority of this Parliament are trying to achieve in the near future.

We do not support these efforts to establish another repressive instrument in the so-called "fight against illegal immigration" while entering the territory of the Union illegally is often the only way to enter it at all for people who are in dire need of support.

6 November 2003

MOTION FOR A RESOLUTION – B5-0470/2003

pursuant to Rule 48 of the Rules of Procedure

by Roberto Felice Bigliardo, Cristiana Muscardini, Nello Musumeci, Antonio Mussa, Mauro Nobilia and Franz Turchi

on the proposal to set up a 'Border Management Agency

European Parliament resolution on the proposal to set up a 'Border Management Agency'

The European Parliament,

- having regard to Rule 48 of the Rules of Procedure,
- A. expressing great concern at the human tragedies occurring in the Mediterranean every day as a result of boats crammed with poor people fleeing hunger, misery and persecution being shipwrecked,
- B. whereas these tragedies are the consequence of a new form of slavery devised by truly unscrupulous criminal organisations,
- C. convinced that governments complicit in this wretched trade use it to exert various forms of pressure on European governments,
- D. expressing appreciation of the Council's decision to create a European border management agency,
 1. Considers that a European multinational department should be set up to offer national police forces assistance and support in combating illegal immigration;
 2. Takes the view that the Council and the Commission should study the possibility of devising a satellite system to intercept the influx of illegal immigrants by sea;
 3. Considers that the Council should consider the possibility of suspending economic relations with countries which refuse to cooperate in signing agreements to control their borders and combat human trafficking;
 4. Calls on the Commission to propose to the Council the introduction of a European system for exchanging information on asylum, immigration and the countries of origin of migrants.

18 February 2004

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS, HUMAN RIGHTS, COMMON SECURITY AND DEFENCE POLICY

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders
(COM(2003) 687 - C5-0613/2003 - 2003/0273(CNS))

Draftswoman: Cristiana Muscardini

PROCEDURE

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Cristiana Muscardini draftswoman at its meeting of 26 November 2003.

It considered the draft opinion at its meeting of 18 February 2004.

At the meeting it adopted the following suggestions unanimously with 1 abstention.

The following were present for the vote: Elmar Brok (chairman), Baroness Nicholson of Winterbourne (vice-chairwoman), Geoffrey Van Orden (vice-chairman), Christos Zacharakis (vice-chairman), Luís Queiró (on behalf of draftswoman), Ole Andreasen, Bastiaan Belder, John Walls Cushman, Véronique De Keyser, Olivier Dupuis (for Emma Bonino), Per Gahrton, Catherine Lalumière, Cecilia Malmström, Pasqualina Napoletano, Arie M. Oostlander, Jannis Sakellariou, José Ignacio Salafranca Sánchez-Neyra, Ursula Schleicher (for Michael Gahler pursuant to Rule 153(2)), Ilkka Suominen, Joan Vallvé, Paavo Väyrynen and Karl von Wogau.

SHORT JUSTIFICATION

Introduction

1. The proposal for a Council Regulation under examination is the fruit of various discussions at recent European Councils (Seville, Thessaloniki, Brussels).
2. The main tasks of the Agency, which would take up its responsibilities on 1 January 2005, would be to:
 - coordinate the operational cooperation between Member States in the field of control and surveillance of the external borders;
 - assist Member States on the training of national border guards, as well as organising seminars;
 - carry out general and tailored risk assessments;
 - follow up on developments in research relevant for the control and surveillance of the external borders;
 - render assistance to Member States confronted with circumstances requiring increased operational and technical assistance at the external borders;
 - coordinate operational cooperation between Member States on removal of third-country nationals illegally residing in Member States.
3. The Agency would not be given a policy-making role. It would, however, be independent from the technical viewpoint and would have financial, legal and administrative autonomy.

The Agency's staff would have no law-enforcement powers in the Member States and therefore would not carry out actual controls at the external borders.

4. The Agency would be expected to cooperate directly with Member States and coordinate all joint operations and pilot projects at the external borders.
5. A maximum of EUR 15 million per annum is budgeted for 2005-2006; from 2007 the allocation will depend on the new Financial Perspective. However, the proposal stipulates that the Agency may co-finance – together with the Member States – joint operations at the external borders.
6. A decision has yet to be made on the seat of the Agency, but the proposal mentions the possibility of the Agency setting up 'specialised branches' (to deal specifically with maritime, air and land borders) in the Member States, subject to their consent.

Conclusions

With approximately 6 000 kilometres of external land borders to control after enlargement in May 2004, the European Union will certainly need an effective external border management

system. Better management of the external border controls will help in the fight against terrorism, illegal immigration networks and trafficking in human beings.

For these reasons, the draftsman welcomes the proposal to establish a European Agency for the management of operational cooperation at the EU's external borders.

However, while the principle of coordinating these border activities within a European framework remains absolutely indispensable, there are a number of elements in the proposal which in our opinion require certain changes.

The amendments tabled are intended to help the Agency to be able to operate efficiently. Above all, given the inter-governmental nature of border control, a task which is undertaken by every single Member State at its own borders, and given the lengthy experience each Member State has of these controls (whether air, sea, land or a combination of all three), it is necessary for the Management Board to be made up of a member for every Member State, together with two representatives from the Commission. Creating an EU-level Agency, which is vital in the realm of external borders, will be all the more effective if the work involved can benefit from the skills acquired 'on the spot' by the individual countries at their own borders.

Another element which is essential for the Agency's effective working is a system of majority voting, whereas unanimity would lead to the blocking of the decision-taking process.

Among the initiatives, it might be useful to consider the feasibility of special cooperation agreements with those non-EU countries which are already included in the enlarged Europe policy, as well as with those which have regular relations (economic, political and cultural) with the European Union. This would simplify border crossing, while still complying with the EU's external relations policy.

Another initiative relates to the possibility of organising training courses not only for officers who will be working for the Agency but also for those working on their own national territory, who could thus acquire better border management skills.

Furthermore, in the framework of border management organised at the EU level, some thought could be given to the possibility of setting up a multi-national body of border guards, with the task of collaborating with Member States in border control operations.

Any information which the Agency may provide regarding abuses committed in the country of origin of illegal immigrants which have come to its attention could also contribute to the fight against the trafficking of human beings and terrorism, and to the promotion of democracy and rule of law. For this reason, an amendment has been tabled which adds this task to those already listed in the proposal.

Still within the information sphere, since the Agency will be a European Union body it seems only right to add the European Parliament to the list of institutions which will be in contact with it, both regarding the information that the Agency will be able to provide and regarding the evaluations which it will conduct and forward to the other EU institutions.

In view of the declarations made by the UN Secretary General on the occasion of the European Parliament's plenary session of 29 January 2004, in which he spoke of the

importance of Europe being open to immigrants, the draftsman would also like to stress the importance of the Agency having, among its tasks, that of making sure that all control and return operations be undertaken with full respect for the rights of the individual, and that, at the same time, the Agency should forward to the European Parliament, the Council and the Commission any information relating to cases of illegal immigration resulting from situations where democratic and human rights have been violated in non-EU countries.

With regard to the proposed budget, the EUR 15 million envisaged for 2005-2006 seem inadequate in view of the complexity of the tasks to be entrusted to the Agency.

AMENDMENTS

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

Text proposed by the Commission ¹	Amendments by Parliament
	Amendment 1 CHAPTER II Tasks Article 2 <i>Main tasks</i>
	<i>fa) examine the possibility of setting up a multi-national European body to collaborate in conducting control operations at the external borders of the European Union (border police);</i>
	<i>Justification</i>
	<i>The Agency could have a further task of examining the feasibility of having a European body of border guards with the appropriate characteristics and skills to actively collaborate in the management of the external borders.</i>

¹ Not yet published in OJ.

Amendment 2
CHAPTER II
Tasks
Article 2
Main tasks

fb) inform the European Parliament, the Council and the Commission of any violations of human rights and democracy committed in the countries of origin of illegal immigrants;

Justification

It is important for the Agency to be able to inform the European institutions of any violations committed in illegal immigrants' countries of origin which come to its attention, in order to be able to manage legal immigration better and to help the European Union to offer genuine opportunities to legal immigrants.

Amendment 3
CHAPTER II
Tasks
Article 3

Joint operations and pilot projects at the external borders

4. The Agency may decide to co-finance the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency.

4. The Agency may decide to co-finance, ***up to a maximum of 40%***, the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency.

Justification

A ceiling should be set for Community expenditure in cases where the Agency decides to provide co-financing.

Amendment 4
CHAPTER II
Tasks
Article 4
Risk assessment

It shall prepare both general and tailored risk assessments to be submitted to the Council and the Commission.

It shall prepare both general and tailored risk assessments to be submitted to ***the European Parliament***, the Council and the

Council and the Commission.

Commission.

Justification

It is evident that the European Parliament should be kept informed by those bodies working on behalf of the European Union.

Amendment 5

CHAPTER II

Tasks

Article 5

Training

The Agency may also hold training seminars at the request of the authorities of the Member States on the European Union's immigration policies and the procedures laid down by the competent institutions.

Justification

Officers operating on the national territory of the Member States, but not necessarily working with the Agency, might benefit from training courses on immigration policies organised by the Agency, where these are requested by the authorities which employ the officers.

Amendment 6

CHAPTER II

Tasks

Article 6

Follow-up to research

The Agency shall follow up on 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.

The Agency shall follow up on the developments in research relevant for the control and surveillance of the external borders and disseminate this information to ***the European Parliament***, the Commission and the Member States.

Justification

It is evident that the European Parliament should be kept informed by those bodies working on behalf of the European Union.

Amendment 7
CHAPTER II
Tasks
Article 9
Return co-operation

1. The Agency shall subject to the Community return policy co-ordinate or organise joint return operations of Member States. The Agency may use Community financial means available in the field of return.

1. The Agency shall, subject to the Community return policy, co-ordinate or organise joint return operations of Member States ***and shall verify that return operations are conducted with respect for the dignity and fundamental rights of the individual.*** The Agency may use Community financial means available in the field of return.

Justification

Protecting human dignity is too important a value not to be guaranteed, including in the course of return operations.

Amendment 8
CHAPTER III
Structure
Article 18
Composition of the Management Board

1. The Management Board shall be composed of ***twelve members*** and two representatives of the Commission. The Council shall appoint the members as well as their alternates who will represent them in their absence. The Commission shall appoint its representatives and their alternates. The duration of the terms of office shall be four years. This term of office shall be extendable once.

1. The Management Board shall be composed of ***one representative per Member State*** and two representatives of the Commission. The Council shall appoint the members as well as their alternates who will represent them in their absence. The Commission shall appoint its representatives and their alternates. The duration of the terms of office shall be four years. This term of office shall be extendable once.

Justification

The Management Board ought to represent all the Member States since legislation on immigration, visas and asylum still varies from one Member State to another; while immigration has an impact on all the Member States, the 22 countries of the future enlarged Europe which will have external EU borders will have even greater difficulties.

At this historic moment for the European Union, the inter-governmental nature of the Agency must therefore be maintained. Any transformation into an EU system may occur after the Union has established common standards on the above-mentioned issues.

However, it is important to emphasise that the Management Board may function with 25 plus 2 members only if a voting system based on an absolute majority, and not on unanimity, is maintained.

23 February 2004

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for adoption of a Council regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders
(COM(2003) 687 – C5-0613/2003 – 2003/0273(CNS))

Draftsman: Wilfried Kuckelkorn

PROCEDURE

The Committee on Budgets appointed Wilfried Kuckelkorn draftsman at its meeting of 21 January 2004.

It considered the draft opinion at its meeting of 17 February 2004.

At this meeting it adopted the following suggestions unanimously with 1 abstention.

The following were present for the vote: Terence Wynn (chairman), Reimer Böge (vice-chairman), Anne Elisabet Jensen (vice-chairwoman), Franz Turchi (vice-chairman), Ioannis Averoff, Joan Colom i Naval, Den Dover, James E.M. Elles, Göran Färm, Markus Ferber, Salvador Garriga Polledo, Neena Gill, Catherine Guy-Quint, María Esther Herranz García, Constanze Angela Krehl, John Joseph McCartin, Juan Andrés Naranjo Escobar, Joaquim Píscarreta, Giovanni Pittella, Per Stenmarck, Kyösti Tapio Virrankoski, Ralf Walter (representing the draftsman) and Brigitte Wenzel-Perillo.

SHORT JUSTIFICATION

Background

The proposal follows-up the conclusions of the Thessaloniki European Council of 19 and 20 June 2003 and of the European Council on 16 and 17 October 2003, which welcomed the Commission's intention to present a proposal for an Agency for the management of external borders.

Border controls are the exclusive competence of Member States. However their co-ordination on the basis of common rules is essential for the achievement of the objectives laid down in Article 62 TEC, i.e. an integrated common border management. This task has so far been entrusted to a Council body called External borders practitioners' common unit (a.k.a. the Common Unit), set up in June 2002.

Recent evaluation of the joint actions carried out by Member States in this area have led the Commission to suggest the establishment of a permanent, independent **Community** structure. According to the Commission, the advantages of this option would be

- better access to technical know-how,
- increased visibility of Community action,
- cost savings with regard to operational co-operation.

This new structure would

- take over tasks currently carried out by national centres¹,
- award grants currently managed by the Commission under the ARGO programme², and
- deal with new tasks such as the co-ordination or organisation of joint return operations of illegal non-EU residents.

The remit of the Agency would cover:

- co-ordinating joint operations and pilot projects relating to the surveillance at the EU external borders;
- providing training for instructors of national border guards as well as supplementary training to officers of national border guards;
- carrying out general and tailored risk analyses;
- carrying out research relevant for control and surveillance of EU external borders;
- co-ordinating actions in the field of return of illegal third-country immigrants;

¹ e.g. Risk analysis currently co-ordinated by the Finnish Risk Analysis Centre or training, under the responsibility of the Austrian Ad-Hoc Centre for Border Guard Training

² Action Programme for administrative cooperation in the field of external borders, visa, asylum and immigration (2002-2006), OJ L 161 of 19.6.2002, p. 11

- providing increased technical and operational assistance in connection with Member States' control and surveillance of the EU external borders;
- managing records of technical equipment of the Member States.

Financial endowment

The Agency, once fully established, would benefit from an annual allocation of € 8.7 million. After a start-up subsidy of 6.1 million in 2005, the Agency would require increased funds to allow the acquisition of specific technical equipment. The one-off € 15 million earmarked for this specific purpose would be spread over three years. Below is an overview of the evolution of the Agency's budget over 5 years:

		2004	2005	2006	2007	2008	2009
Annual or recurrent costs	Title 3		5,000	6,440	6,440	6,440	6,440
Specific technical equipment				1,000	7,000	7,000	
Total operational expenditure			5,000	7,440	13,440	13,440	6,440
Administrative expenditure	Titles 1 & 2		1,157	2,314	2,314	2,314	2,314
Total in C.A.			6,157	9,754	15,754	15,754	8,754

The administrative expenditure is based on an establishment plan of 27 staff (17 officials or temporary agents and 10 seconded national experts¹). The Commission underlines that "the number of staff may increase following the assignment to the Agency of new tasks by the Council and in accordance with the financial resources allocated to the Agency by the budgetary authority for the post 2007 period"².

Interaction between the Agency and existing Community instruments

The Commission suggests entrusting the Agency with some of the actions sponsored under the ARGO programme³ but fails to detail the financial and administrative implications of the proposal. This is no small omission given that in 2004 the budgetary authority decided to increase the appropriations for the programme from the € 6.3 million initially requested by the Commission to € 21.3 million (CA).

In practice, the Commission would like to *delegate* to the Agency the evaluation, approval, co-financing and co-ordination of proposals for joint operations and pilot projects hitherto

¹ It should be noted that 10 out of the total 15 A-grade staff would be national experts seconded from the Member States.

² Point 5.2, fourth subparagraph of the Financial Statement

³ "The operational activities covered by Article 3 would correspond to those in the field of external border control and surveillance presently co-financed under the ARGO programme. The ARGO programme will be replaced by the Agency in so far as operational co-operation at external borders is concerned." Explanatory memorandum, point 8, re. Article 3 page 10

submitted by Member States under the ARGO programme. The Agency would also carry out training and research activities which *can* be co-financed by the same programme.

Finally, the Agency would be co-ordinating return programmes for illegal immigrants. In this context it is worth recalling that the Commission is expected to submit a proposal for Financial Instrument for Return Management with an expected allocation of €30 million per year.

Draftsman's conclusions

The financial implications of the proposals and, in particular, its repercussions on the financial endowment of the ARGO programme will have to be considered carefully at the time of the establishment of the next budget.

In the meantime, a series of amendments have been tabled in order to

- try and ensure consistency between action carried out by the Agency and projects co-financed by the ARGO programme;
- foresee the assignment of Commission staff to the Agency to oversee the co-financing of joint actions and compensate the transfer of tasks from the Commission to the Agency;
- circumscribe the tasks allocated to the Agency and ensure that any proposal to extend its remit will require prior consultation of the Parliament;
- bring the Agency's procedure in line with the decisions taken by the budgetary authority with regard to its subsidy and with the provisions of the Financial Regulation.

AMENDMENT TO THE LEGISLATIVE RESOLUTION

on the proposal for a Council regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders

(COM(2003) 273 – C5-0613/2003 – 2003/0273(CNS))

Amendment 1

[The European Parliament]

Considers that the financial statement of the Commission proposal is compatible with the ceiling of heading 3 of the Financial Perspective without restricting other policies;

AMENDMENTS

The Committee on Budgets calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 2
Recital 7 a (new)

(7a) In carrying out the above activities the Agency shall act in conformity with the objectives and priorities adopted by the Commission as provided for in Article 12 of Council Decision 2002/463/EC.

Justification

The activities outlined in the preceding recitals fall under the scope of the ARGO programme. It seems therefore appropriate to ensure consistency with the objectives and priorities identified by the Commission in this context.

Amendment 3
Recital 12

(12) Building upon the experiences of the External Borders Practitioners' Common Unit and the centres specialised in the different aspects of control and surveillance of land, air, and maritime borders respectively, which have been set up by Member States, the Agency may ***itself*** create specialised branches responsible for dealing with land, air, and maritime borders;

Building upon the experiences of the External Borders Practitioners' Common Unit and the centres specialised in the different aspects of control and surveillance of land, air, and maritime borders respectively, which have been set up by Member States, the Agency may, ***in accordance with the procedure laid down in Article 13***, create specialised branches responsible for dealing with land, air, and maritime borders;

Justification

The establishment of specialised branches in Member States is likely to result in increased administrative costs. The Commission's prior consent and the involvement of the budgetary authority (see amendment 8) are necessary prerequisites.

¹ Not yet published in OJ.

Amendment 4
Recital 19

*(19) Bearing in mind the constantly **deleted** changing nature of the challenges to efficient management of the external borders, a possible gradual widening of the scope of action of the Agency should be provided for. Such a wider scope could e. g. encompass tasking the Agency with the carrying out of inspections at the external borders and the facilitation of operational co-operation with relevant third countries and international organisations, taking into account the institutional framework of the European Community. This Regulation should apply to any other area related to the management of the external borders on a basis of a future proposal in accordance with the Treaty establishing the European Community;*

Justification

Any decision to extend the remit and the scope of activity of the agency should be submitted via the ordinary legislative procedure, i.e. involve consultation of the European Parliament.

Amendment 5
Article 1, paragraph 2

2. The Agency shall facilitate the application of **existing and future** Community measures relating to the management of the external borders by ensuring the co-ordination 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 European Union.

2. The Agency shall **within its remit laid down in Article 2 of this Regulation** facilitate the application of Community measures relating to the management of the external borders by ensuring the co-ordination 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 European Union.

Justification

This amendments aims at clearly circumscribing the remit and activities of the Agency (see also amendment 4.

Amendment 6
Article 3, paragraph 1

1. The Agency shall evaluate, approve and co-ordinate proposals for joint operations and pilot projects made by Member States.

The Agency may itself launch initiatives for joint operations and pilot projects in co-operation 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.

1. The Agency shall evaluate, approve and co-ordinate proposals for joint operations and pilot projects made by Member States.

The Agency may itself launch initiatives for joint operations and pilot projects in co-operation with Member States.

The eligibility criteria laid down in Article 10 of Council Decision 2002/463/EC¹ shall apply.

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

Justification

Projects co-financed by the Agency should comply with the eligibility criteria established under the ARGO programme (involvement of at least 2 Member States, compliance with the general objectives of the programme etc.), hence the reference to Article 10 of the decision establishing this programme.

Amendment 7
Article 3, paragraph 4

4. The Agency may decide to co-finance the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the ***financial rules applicable to the Agency.***

4. The Agency may decide to co-finance the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the ***Financial Regulation. It shall take into account the specific objectives and thematic priorities identified in the work programme established by the Commission in compliance with Article 12 of Council decision 2002/463/EC.***

Justification

Action carried out and co-financed by the Agency should be consistent with the objectives which the Commission, as stipulated in Article 12 of the ARGO decision, identifies in its annual work programme for the implementation of the ARGO programme. Grants should be awarded in accordance with the provisions of the Financial Regulation, as stipulated in

¹ OJ L 161 of 19.6.2002

Amendment 8
Article 13, paragraph 1

The Agency shall evaluate the need for **and decide** the setting up of specialised branches in the Member States, subject to **their** consent.

The Agency shall evaluate the need for the setting up of specialised branches in the Member States **and**, subject to **the Commission's** consent **and to the procedure set out in Article 26, paragraph 11, decide their establishment.**

Justification

See amendment 3

Amendment 9
Article 14, paragraph 3

3. The Agency's staff shall consist of a limited number of officials and of national experts in the field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

3. The Agency's staff shall consist of a limited number of officials **assigned by the Commission** and of national experts in the field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

Justification

Given that the Agency shall be managing actions which so far have been funded under ARGO, a programme managed directly by the Commission, it seems appropriate to foresee the specific assignment of Commission officials to the Agency, as provided in Article 36 of the Staff Regulations. This means that Commission staff would de-facto be redeployed, on a temporary basis, to the Agency.

Amendment 10
Article 17, paragraph 2, point c

c) before **30 September** each year, and after receiving the opinion of the

c) before **31 January** each year, and after receiving the opinion of the Commission,

Commission, adopt, by a three-quarters majority of its members, the Agency's programme of work for the *coming* year and forward it to the European Parliament, the Council, the Commission; this programme of work shall be ***adopted according to*** the annual Community budgetary procedure ***and*** the Community legislative programme in relevant areas of the management of external borders;

adopt, by a three-quarters majority of its members, the Agency's programme of work for the year ***in question*** and forward it to the European Parliament, the Council, the Commission; this programme of work shall be ***finalised in the light of the outcome of*** the annual Community budgetary procedure. ***It shall take due regard of*** the Community legislative programme in relevant areas of the management of external borders;

Justification

The Agency's work programme should be finalised only once the budgetary authority has authorised the subsidy for the Agency and its establishment plan.

Amendment 11 Article 26, paragraph 3

3. The Executive Director shall draw up an estimate of the revenues and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with ***an*** establishment plan.

3. The Executive Director shall draw up an estimate of the revenues and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with ***a provisional*** establishment plan.

Justification

See amendment 10

Amendment 12 Article 26, paragraph 6

6. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the European Union.

6. The estimate ***and the provisional establishment plan*** shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the European Union.

Justification

See amendment 10

Amendment 13
Article 26, paragraph 2

2. The expenditure of the Agency shall include the staff, administrative, infrastructure and operational expenses.

2. The expenditure of the Agency shall include the staff, administrative, infrastructure and operational expenses.
Expenditure relating to the Agencies' branches, established in accordance with Article 13, shall be detailed separately both in the Agency's budget and in the General Budget of the Union.

Amendment 14
Article 26, paragraph 11, subparagraph 2

Where a branch of the budgetary authority ***has notified its intention*** to deliver an opinion, ***it*** shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

The budgetary authority ***shall notify the Agency whether it intends*** to deliver an opinion. ***It*** shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project. ***The Management Board shall defer the adoption of the measures in question until the opinion has been delivered.***

Justification

The wording is more in line with the provisions of Article 179(3) of Council Regulation 1605/2002 (Financial Regulation), which, mutatis mutandis, apply here.

Amendment 15
Article 29, paragraph 2

2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency, ***its added value*** and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

Amendment 16
Article 29, paragraph 3

3. The Management Board shall receive the findings of the evaluation and issue

3. The Management Board shall receive the findings of the evaluation and issue

recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which **may** forward them, together with its own opinion as well as appropriate proposals, to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which **shall** forward them, together with its own opinion as well as appropriate proposals, to the **European Parliament and the** Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

Amendment 17
Article 30

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, unless specifically required for the Agency's operation and with the Commission's prior consent.

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, unless specifically required for the Agency's operation and with the Commission's prior consent. ***The budgetary authority shall be duly informed of such derogations.***

Amendment 18
Article 31, subparagraph 2 a (new)

The decision on the location of the Agency shall be taken by the Council not later than 31 December 2004. The Member State designated to host the Agency shall contribute financially to its setting up.

Justification

When Parliament and Council negotiated the new text of the Financial Regulation they issued a joint statement which called on the Member States hosting a Community body to contribute to their setting up.