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**NOTE**

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from: Presidency

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

No. Cion prop.: 6898/10 FRONT 22 COMIX 151 (COM(2010) 61 final)

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Subject: **Proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)**

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Delegations will find in the Annex a consolidated version of the draft Regulation amending Regulation (EC) No 2007/2004 (FRONTEX Regulation) as it stands at this point, with delegations' comments in footnotes. The text is based in particular on doc. 15812/10 FRONT 150 CODEC 1197 COMIX 722 and doc.17451/10 FRONT 164 CODEC 1461 COMIX 813.

Proposed changes to the text as submitted are underlined or marked for deletion, where applicable. The changes that have already been agreed are set in bold.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL**

**amending Council Regulation No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)<sup>12</sup>**

*Article 1*  
*Amendment*

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

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

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

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

<sup>2</sup> **UK** raised the issue of the status of UK participants in joint operations as observers expressing the wish that their participants would benefit from a similar protection regarding civil and criminal liability as regular guest officers deployed during joint operations. Taking into account that the CLS expressed the view that the relevant provisions of Frontex Regulation do not apply to UK officers, the UK would submit the text of a Council Declaration in this regard.

(2) Article 1a is amended as follows:

(a) point 2 is replaced by the following:

"2. "host Member State" means a Member State **in which** a deployment of a Rapid Border Intervention Team or a joint operation or a pilot project takes place **or from which it is launched**;"

(b) point 4 is replaced by the following:

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

**Point 7 has been deleted**

(3) Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

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

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

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

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

- "(h) develop and operate information systems that enable swift and reliable exchanges of information regarding emerging risks at the external borders, including the Information and Coordination Network established by Council Decision 2005/267/EC<sup>1</sup>;
- (i) provide the necessary assistance to the development and operation of a European border surveillance system and, as appropriate, to the development of a common information sharing environment, including interoperability of systems."

(b) the following paragraph 1a is inserted:

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

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

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

(4) Article 3 is replaced by the following:

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<sup>1</sup> OJ L 83, 1.4.2005, p. 48.

"Article 3<sup>12</sup>

*Joint operations and pilot projects at the external borders*

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

The Agency may itself initiate joint operations and pilot projects.. " in cooperation with the Member States ~~concerned~~<sup>3</sup> **and in agreement with the host Member States**".

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

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

The Agency may also terminate, after informing the MS concerned,<sup>4</sup> joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled.

<sup>5</sup>Participating Member States may request the Agency to terminate a joint operation or pilot project.<sup>6</sup>

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<sup>1</sup> **CH**, supported by **NO**, expressed the view that the ongoing revision of FRONTEX Regulation should take into account the extension of the voting rights of the associated States as defined in the Arrangements on the modalities of their participation in the Agency.

<sup>2</sup> **AT** and **CH** expressed support for the proposed revised text.

<sup>3</sup> **NL**, **RO** and **FI** support deleting "concerned". **EL**, **IT** and **MT** are not in favour of this deletion.

<sup>4</sup> **EL** suggested a reference to the consultation of the host Member State regarding the termination of an operation.

<sup>5</sup> Some delegations proposed providing also for the possibility for the Agency to suspend (**NL**, **IT**) and/or for a Member State to withdraw (**NL**, **RO**) from a joint operation or a pilot project. **HU** is not in favour of the possibility of suspending an operation. **IT** and **EL** drew the attention on the need to define the conditions as well as the responsibility for the costs related to a possible suspension.

<sup>6</sup> The proposed revised text takes into account suggestions made during the negotiations regarding the possibility for the participating Member States to request the Agency to terminate a joint operation or a pilot project.

2. The Agency shall constitute a pool of border guards called Frontex Joint Support Teams in accordance with the provisions of Article 3b, for possible deployment during joint operations and pilot projects referred to in paragraph 1. It shall decide on the deployment of human resources and technical equipment in accordance with Articles 3a and 7.
  3. The Agency may operate through its specialised branches provided for in Article 16, for the practical organisation of joint operations and pilot projects.
  4. The Agency shall evaluate the results of the joint operations and pilot projects and transmit the detailed evaluation reports within 60 days following the end of the activity to the Management Board. <sup>1</sup>The Agency shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence, efficiency **and effectiveness** of future operations and projects to be included in its general report provided for in Article 20(2)(b)
  5. The Agency may decide to finance or co-finance the joint operations and pilot projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency."
- (5) The following Articles 3a, 3b and 3c are inserted:

*"Article 3a*

*Organisational aspects of joint operations and pilot projects<sup>2</sup>*

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

The operational plan shall cover all aspects considered necessary for carrying out the joint operation or the pilot project, including the following:<sup>3</sup>

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<sup>1</sup> **PL** suggested adding that in case of reported incidents during the operations, the EU delegation should provide the Member State(s) concerned with the necessary support.

<sup>2</sup> **RO** expressed support for the Presidency's proposal on Art. 3a.

<sup>3</sup> **IT** suggested that the operational plan should also contain provisions on logistics, organization and modalities regarding the management of illegal migration. **FR** suggests adding that the operation plan should contain specific provisions on the conditions of deployment and a reference to the area of disembarkation, whereas **MT** and **EL** are not in favour of including this e reference. It was acknowledged that the issue of disembarkation during joint operations is already covered by the guidelines on Frontex operations at sea. **FR** entered a positive scrutiny reservation on this point.

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

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

- (h2) a reporting and evaluation scheme containing ~~detailed provisions on incident reporting~~, benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(4).
- (i) regarding sea operations, specific ~~requirements regarding the applicable jurisdiction and maritime law provisions concerning~~ information on the application of the relevant jurisdiction<sup>1</sup> and legislation in the geographical area where the joint operation takes place.
- (j) modalities of cooperation with third countries, if relevant.**

2. Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

3. The Agency shall, as part of its coordinating tasks, ensure the operational implementation of all the organisational aspects, including the presence of a staff member of the Agency, of joint operations and pilot projects referred to in this Article.

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<sup>1</sup> EL suggested deleting the "applicable jurisdiction".

*Article 3b*

*Composition and deployment of Frontex Joint Support Teams*

1. On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles and the overall number of border guards to be made available for the Frontex Joint Support Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall numbers. Member States shall contribute to the Frontex Joint Support Teams via a national pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.
- ~~2.~~ 3. The contribution by Member States as regards their border guards to specific operations for the coming year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. <sup>1</sup>In accordance with these agreements, Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an unforeseen <sup>2</sup>~~exceptional~~ situation substantially affecting the discharge of national tasks. Such a request shall be made at least ~~thirty~~ forty five <sup>3</sup>days before the intended deployment. The autonomy of the home Member State in relation to the selection of staff and the duration<sup>4</sup> of their deployment shall remain unaffected.
- ~~3.~~ 2. The Agency shall also contribute to the Frontex Joint Support Teams with competent border guards seconded by the Member States as national experts pursuant to Article 17(5). To that effect Member States ~~shall~~ may contribute by seconding border guards to the Agency as national experts. The maximum duration of such secondments shall not exceed six months in a twelve month period. They shall, for the purpose of this Regulation, be considered as guest officers and have the tasks and powers referred to in Article 10. The Member State having seconded the border guards in question shall be considered as "home Member State" as defined in Article 1a(3) for the purpose of applying Articles 3c, 10, and 10b. Other staff employed by the Agency on a temporary basis who are not qualified to perform border control functions shall only be deployed during joint operations and pilot projects for coordination tasks.<sup>5</sup>

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<sup>1</sup> The proposed revised text takes into account the suggestions by some delegations to add a reference to bilateral negotiations and agreements between the Agency and the Member States as a basis for the planning of Member States annual contributions' as regards border guards to specific operations. **AT, NL, FI and RO expressed support for this text.**

<sup>2</sup> During the negotiations a majority of delegations supported replacing the term "exceptional" with "unforeseen".

<sup>3</sup> During the negotiations several delegations suggested extending the deadline of thirty days for the deployment to forty-five days.

<sup>4</sup> **FR and NO** suggested replacing "duration" with "conditions".

<sup>5</sup> **SI and DE** suggested deleting point 3) of the current text as they do not see the added value of temporary secondment of border guards to the Agency. **Cion** is not in favour of this deletion. The proposed revised text replaces "shall" with "may" that would make the secondment not compulsory for Member States. **AT and RO** expressed support for this modification.



4. Members of the Frontex Joint Support Teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights and human dignity. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, members of the teams shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
5. In accordance with Article 8g the Agency will nominate a coordinating officer for each joint operation or pilot project where Frontex Joint Support Team members will be deployed.
6. The Agency shall meet the costs incurred by the Member States in making their border guards available pursuant to paragraph 1 for the Frontex Joint Support Teams in accordance with Article 8h.

Article 3c

*Instructions to the Frontex Joint Support Teams*

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

(6) Article 4 is replaced by the following:

"Article 4  
*Risk analysis*<sup>1</sup>

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

The Agency shall regularly carry out studies on the preparedness ~~regularly evaluate the capacity~~ of the Member States to face upcoming challenges, including present and future threats and pressures at certain sectors of the external borders of the European Union. These studies are without prejudice to the Schengen Evaluation Mechanism.

~~Therefore the Agency shall evaluate the national structures, the equipment and the resources of the Member States regarding border control.~~ The results of these studies ~~evaluations~~ shall be presented at least once per year to the Management Board of the Agency.

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

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

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

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

"Article 6  
*Monitor and contribute to research*

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

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<sup>1</sup> During the negotiations concerns have been expressed regarding the possibility that giving Frontex the task to study the preparedness of Member States to face upcoming challenges at the external borders might lead to an overlap with the Schengen Evaluation mechanism. In order to meet these concerns, the current revised text provides explicitly that the studies carried out by the Agency in this context would be without prejudice to the Schengen Evaluation mechanism. CZ has suggested to solve the issue in a declaration. The possibility to solve it in a recital is also under consideration.

## Article 7

### *Technical equipment*

1. The Agency may acquire or lease technical equipment for external border control to be deployed during joint operations, pilot projects, Rapid Border Intervention Teams, return operations or technical assistance projects in accordance with the financial rules applicable to the Agency.<sup>1</sup> Any acquisition **or leasing** of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. **Any such expenditure shall be provided for in the Agency's budget as adopted by the Management Board in accordance with Article 29.(9).** In case the Agency acquires or leases important technical equipment such as open sea and coastal patrol vessels or vehicles, to be used in joint operations, the following provisions shall apply:

in case of acquisition, the Agency agrees formally with one Member State that the latter will provide for the registration of the equipment in accordance with the applicable legislation of that Member State.;

in case of leasing, the equipment must be registered in a Member State.

Based on a model agreement drawn up by the Agency, the Member State of registration and the Agency shall agree on the terms of use of the equipment.<sup>2</sup>The Member State of registration or the supplier of technical equipment shall provide the necessary experts and technical crew to operate the technical equipment in a legally sound and safe manner.

2. The Agency shall set up and keep centralised records of equipment in a technical equipment pool composed of equipment owned by Member States or by the Agency for external border control purposes. The technical equipment pool shall contain a minimum number per type of technical equipment defined in accordance with paragraph 5 of this article. The equipment listed in the technical equipment pool shall be deployed during the activities referred to in Articles 3, 8a and 9.

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**FR** suggested adding that the Agency might contribute to the acquisition of equipment by the Member States. **EL** suggested that the Agency should cover the operational costs of the equipment acquired. According to the **Cion**, these suggestions go beyond the Agency's mandate. Frontex is carrying out a feasibility study on the technical possibilities and the modalities regarding the acquisition of the equipment by the Agency and foreseen to be completed by the end of 2010, that will also cover the relevant rules on procurement.

<sup>2</sup> Following suggestions by some delegations, the proposed revised text provides that, based on a model agreement drawn up by the Agency, the Member State of registration and the Agency shall agree on the terms of use of the equipment.

3. Member States shall contribute to the technical equipment pool referred to in paragraph 2. **The contribution by Member States to the pool and deployment of the technical equipment for specific operations shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States.**

In accordance with these agreements<sup>1</sup> and to the extent that it forms part of the minimum number of equipment for a given year, Member States shall make their technical equipment available ~~within 30~~ for deployment at the request of the Agency, unless they are faced with an **exceptional unforeseen** situation substantially affecting the discharge of national tasks. **Such request shall be made at least 45 days before the intended deployment.** The contributions to the technical equipment pool shall be reviewed annually.

4. The Agency shall manage the records of the technical equipment pool as follows:

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

5. The Agency shall finance the deployment of the equipment which forms part of the minimum number of equipment provided by a given Member State for a given year. The deployment of equipment which does not form part of the minimum number of equipment shall be co-financed by the Agency up to a maximum of 60% of the eligible expenses.<sup>2</sup>

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

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

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<sup>1</sup> The proposed revised text is based on the suggestions by some delegations to include a reference to bilateral agreements in the second paragraph of Article 7(3), in line with the first paragraph.

<sup>2</sup> **EL, IT, RO, CY, LT** and **LV** are not in favour of the current text of Article 7(5), and would prefer all technical equipment, even exceeding the minimum number, to be fully financed by the Agency. **MT** suggested that in case the Agency assesses that a Member State is not in a position to provide technical equipment within the minimum number, it should fully finance any additional equipment to be provided by that Member State. **Cion**'s pointed out that there could be a certain flexibility, provided that the basic principle that technical equipment should be co-financed and not fully financed is respected.

If the minimum number of equipment proves to be insufficient to carry out the operational plan agreed for joint operations, pilot projects, Rapid Border Intervention Teams or return operations, it shall be revised by the Agency<sup>1</sup>.

6. The Agency shall report on the composition and the deployment of equipment, which is part of the technical equipment pool, to the Management Board on a monthly basis. In case the minimum number of equipment referred to in paragraph 5 is not reached, the Executive Director shall inform the Management Board without delay. The Management Board shall take a decision on the prioritisation of the deployment of the technical equipment urgently and take the appropriate steps to remedy the identified shortcomings. It shall inform the Commission of the identified shortcomings and the steps taken. The Commission may subsequently inform the European Parliament and the Council, together with its own assessment."
- (9) Article 8 is deleted.
- (10) In Article 8e paragraph 1 is amended as follows:
- (a) points (f) and (g) are replaced by the following:
- "(f) command and control provisions, including the names and ranks of the host Member State's border guards responsible for cooperating with the Rapid Border Interventions teams, in particular those of the border guards who are in command of the teams during the period of deployment, and the place of the teams in the chain of command;
- (g) the technical equipment to be deployed together with the teams, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions."
- (b) the following points (h1), (h2), ~~and~~ (i) **and (j)** shall be added:
- (h1) **provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities.**
- (h2) a reporting and evaluation scheme containing ~~detailed provisions on incident reporting~~, benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(4).
- (i) regarding sea operations, specific ~~requirements regarding the applicable jurisdiction and maritime law provisions concerning information on the application of the relevant jurisdiction and legislation in~~ the geographical area where the joint operation takes place.
- (j) modalities of cooperation with third countries, if relevant."**

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<sup>1</sup> **FR** suggested adding the wording "on the basis of justified needs and of an agreement between the Agency and the Member States".

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

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

12) Article 9 is replaced by the following:

"Article 9

*Return cooperation*

1. Subject to the return policy of the Union, and in particular Directive 2008/115/EC<sup>1</sup> the Agency shall provide the necessary assistance, and upon request of the participating Member States ensure the coordination or the organization<sup>2</sup> ~~for organising~~ of joint return operations of Member States. The Agency may decide to finance or co-finance the operations and projects referred to in this paragraph, with grants from its budget in accordance with the financial rules applicable to the Agency. The Agency may also use Union financial means available in the field of return. The Agency shall ensure that in its grant agreements with Member States any financial support is conditional upon the full respect of the Charter of Fundamental Rights.
2. The Agency shall develop a Code of Conduct for the return of illegally present third-country nationals ~~by air~~<sup>3</sup> which shall apply during all joint return operations coordinated by the Agency, describing common standardized procedures which should simplify the organisation of joint return ~~flights~~ operations and assure return in a humane manner and in full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, the rights to the protection of personal data and non discrimination.
3. The Code of Conduct will in particular pay attention to the obligation on Member States set out in Article 8(6) of Directive 2008/115/EC to provide for an effective forced-return monitoring system. <sup>4</sup>The monitoring of joint return operations should be carried out ~~independently~~<sup>5</sup> in conformity with aforementioned Directive and should cover the whole joint return operation from the pre-departure phase until the hand-over of the returnees in the country of return. Furthermore, observations of the monitor, which shall cover the compliance with the Code of Conduct and in particular fundamental rights, shall be made available to the Commission and form part of the internal Final Return Operation Report. In order to ensure transparency and a coherent evaluation of the forced-return operations, reports of the monitor shall be included in an annual reporting mechanism.

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<sup>1</sup> OJ L 348, 24.12. 2008.

<sup>2</sup> **DE** expressed support for the Presidency's proposal. **FR** and **MT** s suggested using the wording "chartering" in par.1.

<sup>3</sup> Following suggestions by some delegations underlining that return operations are not limited to air operations, in the proposed revised text the specific reference to "air" and "flights" has been deleted. **ES** cannot agree on this deletion.

<sup>4</sup> **DE** and **ES** suggested keeping only the first sentence of Article 9(3) and delete the rest.

<sup>5</sup> **ES, RO**, and **MT** support deleting of the term "independently", whereas **NL, AT** and **NO** do not support this deletion.

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

(13) In Article 10, paragraph 2 is replaced by the following:

"2. While performing their tasks and exercising their powers guest officers shall comply with Union law, in accordance with fundamental rights, and the national law of the host Member State."

(14) Article 11 is replaced by the following:<sup>2</sup>

"Article 11

*Information exchange systems*

~~1. The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks, with the Commission and the Member States. It shall develop and operate an information system capable of exchanging classified information with the Commission and the Member States. The exchange of information to be covered by this system shall not include the exchange of personal data. Without prejudice to the competence of Member States to process personal data collected in the context of joint operations and pilot projects, the exchange of information to be covered by this system shall not include the exchange of such personal data.~~

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

"Article 11a

*Data protection*

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

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

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<sup>1</sup> IT expressed the view that "once a month" is redundant.

<sup>2</sup> BG, CH, FR, LT, ES, DE, RO, MT, SI, EE, PL, PT entered a general scrutiny reservation on the entire proposed text regarding processing of personal data by Frontex. Some of these delegations (ES, RO, SI, EE, PT), however, expressed a positive view regarding the possibility for the Agency to process personal data. BG referred to the need to see the added value of this possibility. CH and FR, subject to their reservations, expressed general support for the proposed text. FI, supported by AT, could agree with the possibility for the Agency to process personal data, but suggested reflecting further on some specific provisions. PL, subject to its reservation, expressed the preliminary view that the changes proposed could go beyond Frontex mandate. EL suggested clarifying which type of confidential information would be exchanged and limiting such exchange to what is strictly necessary.



Article 11b

**moved to Article 11d**

"Article 11

*Information exchange systems<sup>1</sup>*

1. The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks, with the Commission and the Member States and, where appropriate, European Agencies. It shall develop and operate an information system capable of exchanging classified information with these actors.

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

"Article 11a

*Data protection*

Regulation (EC) No 45/2001<sup>2</sup> shall apply to the Agency.

The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency. These measures shall be subject to the approval of the European Data Protection Supervisor.

Without prejudice to Articles 11b) and 11 c), the Agency may process personal data for administrative purposes, such as personal data for recruitment purposes and for the management of its staff.<sup>3</sup>

Article 11b)

*Processing of personal data in the context of joint return operations<sup>4</sup>*

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

1. In performing its task of the organization and coordination of joint return operations of Member States referred to in Article 9, the Agency may process personal data of persons who are subject to such joint return operations.

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<sup>1</sup> **Cion** pointed out that it should be considered how to link Article 11 with the following provisions to make clear which type of personal data may be processed in information exchange systems.

<sup>2</sup> OJ L 8, 12.1.2001, p. 1.

<sup>3</sup> **AT** suggested that the examples of personal data that Frontex may process for administrative purposes might better be placed in a recital. **Cion** would prefer the deletion of such examples.

<sup>4</sup> **NL** entered a scrutiny reservation on Article 11 b). **Cion** raised some doubts about the possibility for Frontex to transfer personal data to third countries.

2. The processing of such personal data shall respect the principles of necessity and proportionality. In particular, it shall be strictly limited to those personal data which are required for the purposes of the joint return operation.

3. The personal data shall be deleted as soon as the purpose for which they have been collected has been achieved and no later than 10 days after the joint return operation.

4. The Agency may transfer the processed personal data to the carrier and the third country to which the person shall be returned.

#### *Article 11c)<sup>1</sup>*

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

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

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

2. Such further processing of personal data by the Agency shall be limited to personal data regarding persons who are suspected,<sup>2</sup> by the relevant authorities of Member States, on reasonable grounds of involvement in cross-border criminal activities, in illegal migration activities or in human trafficking activities as defined in Article 1 (1) (a) and (b) of Council Directive 2002/90/EC.<sup>3</sup>

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<sup>1</sup> **NL, PL and LT** entered a scrutiny reservation on Article 11 c). **NL**, suggested considering if contributing to the security of external borders would be in line with Frontex mandate. **EL** pointed out that in principle it has no objections on processing of personal data by Frontex if necessary but stressed the need to clarify some specific issues (channels of communication, Agencies referred to in par. 3 a), type of risk analysis referred to in par. 4, etc.). **CZ** could accept processing of personal data by Frontex for joint return operations, but had some doubts regarding the same possibility for joint operations and pilot projects. **PL**, supported by **LT**, expressed the view that the proposed provisions go too far. **Cion** could generally agree with the suggested text, but made some suggestions regarding some specific provisions (see following footnotes). **Cion** also stressed that limiting the possibility for Frontex to process personal data only to personal data regarding joint operations may be too restrictive, as the Agency may receive data (in the future) from MS' risk analyses also.

<sup>2</sup> **FI**, supported by **AT**, suggested reflecting on whether the restriction to personal data only of suspected persons is necessary.

<sup>3</sup> **Cion** suggested an explicit reference to the facilitation of illegal migration.

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

- a) transmission to Europol or other European Agencies;<sup>1</sup>e, subject to Article 13 of this Regulation.
- b) use for the preparation of risk analyses referred to in Article 4.

4. The personal data shall be deleted as soon as they have been transmitted to Europol or other European Agencies or used for the preparation of risk analyses referred to in article 4. The term of storage shall in any event not exceed three months after the date of the collection of those data.<sup>2</sup>

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

6. Onward transmission or other communication of such personal data processed by the Agency to third countries or other third parties is prohibited.<sup>3</sup>

Article 11d (previous Article 11b)

*Security rules on the protection of classified information and non-classified sensitive information*

1. The Agency shall apply the Commission's rules on security as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom<sup>4</sup>. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.
2. The Agency shall apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the European Commission. The Management Board shall establish measures for the application of these security principles."

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<sup>1</sup> **FI**, supported by **AT**, suggested reflecting on whether it should be foreseen that Frontex would also receive personal data from Europol and other Agencies. **Cion** proposed providing mutual exchange of information between Frontex and Europol, while noting that such exchange with Europol is not a purpose as such.

<sup>2</sup> **FI**, supported by **AT**, suggested reconsidering the three months deadline for deleting the data and introducing instead a reference to their deletion after the end of the operation.

<sup>3</sup> **SE** suggested considering if par. 6 would not be in conflict with Regulation 1049/2001 on public access to documents. It suggested that deleting "third parties" might remedy this problem.

<sup>4</sup> OJ L 317, 3.12.2001, p. 1.

### Article 13

#### *Cooperation with European Union agencies and bodies and international organisations*

The Agency may cooperate with Europol, the European Asylum Support Office, the Fundamental Rights Agency, other European Union agencies and bodies, and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty and the provisions on the competence of those bodies.

Onward transmission or other communication of personal data processed by the Agency to other European Union agencies or bodies shall be subject to specific working agreements regarding the exchange of personal data and subject to the prior approval of the European Data Protection

#### Supervisor.*Article 14*

#### *Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries<sup>1</sup>*

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate, the operational cooperation between Member States and third countries, in the framework of the European Union external relations policy, including with regard to human rights.<sup>2</sup>
2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty.<sup>3</sup>

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<sup>1</sup> **AT** and **RO** expressed support for the Presidency's proposal on Article 14.

<sup>2</sup> **IT** believes that the current text is too broad and suggested that the Agency should also support Member States in concrete terms regarding the cooperation with third countries.

<sup>3</sup> **IT** expressed the view that a reference to external relations policy should be kept in par. 2.

3.2. — The Agency may deploy its liaison officers, which should enjoy the highest possible protection to carry out their duties, in third countries ~~where Member States are not sufficiently represented~~. They shall form part of the local or regional cooperation networks of Member States' **immigration** liaison officers set up pursuant to Council Regulation No 377/2004<sup>1</sup>. Liaison officers shall only be deployed to third countries in which border management practices respect minimum human rights standards.<sup>2</sup> Their deployment shall be approved by the Management Board. Within the framework of the European Union external relations policy, priority for deployment should be given to those third countries, which on the basis of risk analysis constitute a country of origin or transit regarding illegal migration on a reciprocal basis the Agency may receive liaison officers posted by those third countries also, for a limited period of time. The Management Board shall adopt, on a proposal of the Executive Director, the list of priorities on a yearly basis in accordance with the provisions of Article 24.

4.3. — The tasks of the Agency's liaison officers shall include, in compliance with European Union law and in accordance with fundamental rights, the establishment and maintaining of contacts with the competent authorities of the third country to which they are assigned to with a view to contribute to the prevention of and fight against illegal immigration and the return of illegal migrants.

5. 4. — The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the Union's external relations policy. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation. ~~The Agency may also invite representatives of third countries, other European Union agencies and bodies or international organisations to participate in its activities referred to in Articles 3, 4 and 5. These representatives shall receive the appropriate training from the Agency prior to their participation.~~

6. The Agency may also invite representatives of third countries, other European Union agencies and bodies or international organisations to participate in its activities referred to in Articles 3, 4 and 5. <sup>3</sup>These representatives shall receive the appropriate training from the Agency prior to their participation.

7. 5. — When concluding bilateral agreements with third countries as referred to in Article 2 (2) Member States shall may, ~~where appropriate~~, include provisions concerning the role and competencies of the Agency, in particular regarding the exercise of executive powers by members of the teams deployed by the Agency during the activities referred to in Article 3.

6. ~~The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty.~~

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<sup>1</sup> OJ L 64, 2.3.2004, p. 1.

<sup>2</sup> **FR** suggested that the third countries where to deploy Frontex ILOs should be the most important in terms of risk. Regarding the FR suggestion, **the Presidency** indicated that it would be difficult to identify which countries are most important in terms of risk.

<sup>3</sup> **EL** suggested that the host Member State should be involved regarding the invitation of other bodies. **ES**, supported by **CY**, expressed the view that the current wording does not provide enough guarantees. **MT** supported **EL** and **ES**. **FR** suggested that the decision to invite third countries should be approved by the Management Board.

8. The activities referred to in paragraphs 2 and 3 6 shall be subject to receiving a prior favourable opinion of the Commission".<sup>1</sup>

(17) The following Article 15a is inserted:

*"Article 15a*

*Headquarters Agreement*

The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State in which the Agency has its seat and the facilities to be made available by that State, as well as the specific rules applicable to the Executive Director, the Deputy Executive Director, the members of the Management Board, the staff of the Agency and members of their families, in that State shall be laid down in a Headquarters Agreement between the Agency and the Member State in which the Agency has its seat. The Headquarters Agreement shall be concluded after obtaining the approval of the Management Board. The Member State in which the Agency has its seat should provide the best possible conditions to ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections."<sup>2</sup>

(18) In Article 17, paragraph 3 is replaced by the following:

"3. For the purpose of implementing Article 3b(5) only an Agency's staff member subject to the Staff Regulations of Officials and to Title II of the Conditions of employment of other servants of the European Communities employed by the Agency can be designated as coordinating officer in accordance with Article 8g. For the purpose of implementing Article 3b (2) only national experts seconded by a Member State to the Agency can be designated to be attached to the Frontex Joint Support Teams. The Agency shall designate those national experts that shall be attached to the Frontex Joint Support Teams in accordance with that Article."

(19) In Article 17 the following paragraphs 4 and 5 are added:

"4. The Management Board shall adopt the necessary implementing measures in agreement with the Commission pursuant to the arrangements provided for in Article 110 of the Staff Regulations of Officials of the Union.

5. The Management Board may adopt provisions to allow national experts from Member States to be seconded to the Agency. Those provisions shall take into account the requirements of Article 3b (2), in particular the fact that they are considered as guest officers and have the tasks and powers referred to in Article 10."

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<sup>1</sup> PT, DE, AT, NL, IT and SE suggested deleting par. 8. Cion opposes the deletion of par. 8.

<sup>2</sup> PL has a reservation on the current text of Article 15a, suggesting rewording the last sentence, that in the current text is similar to the wording used in the EASO Regulation, be reformulated in a less detailed and more flexible way, in line with the corresponding text in the proposal regarding the Large Scale I.T. Agency.

(20) Article 20 is amended as follows:

(a) Paragraph 2 is amended as follows:

(i) point (h) is replaced by the following:

"(h) establish the organisational structure of the Agency and adopt the Agency's staff policy, in particular the multi-annual staff policy plan. ~~and submit the latter~~ In accordance with the relevant provisions of the framework Financial Regulation for the bodies referred to in Article 185 of **Council Regulation (EC, Euratom) No 1605/2002** ~~the general Financial Regulation~~ <sup>the multi-annual staff policy plan shall be submitted</sup> to the Commission and the budgetary authority after receiving a favourable opinion of the Commission;"

(ii) The following point (i) is inserted:

"(i) adopt the Agency's Multi Annual Plan aiming at outlining the future long term strategy regarding the activities of the Agency. "

(b) Paragraph 4 is replaced by the following:

"4. The Management Board may advise the Executive Director on any matter strictly related to the development of operational management of the external borders, including activities related to research as defined in Article 6."

(21) Article 21 is amended as follows:

(a) In Paragraph 1 the last sentence is replaced by the following:

"This term of office shall be extendable."

(b) Paragraph 3 is replaced by the following:

"3. Countries associated with the implementation, application and development of the Schengen acquis shall participate in the Agency. They shall have one representative and an alternate each in the Management Board. Under the relevant provisions of their association agreements, arrangements have been developed that specify the nature and extent of, and the detailed rules for, the participation by these countries in the work of the Agency, including provisions on financial contributions and staff."

(22) In Article 25 (3) the following point (g) shall be added:

"(g) **Ensure the implementation of** the operational plan referred to in Articles 3a and 8g."

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<sup>1</sup> Commission Regulation (EC, Euratom) No 2343/2002 (OJ L 357, 31.12.2002, p. 72), amended by Commission Regulation (EC, Euratom) No 652/2008 (OJ L 181, 10.1.2008, p. 23).

(23) In Article 33, the following paragraphs 2a and 2b are inserted:<sup>1</sup>

~~"2a. The evaluation shall analyse the needs for the Agency to employ independent border guards acting under the instructions of the Agency, including a detailed description of the legal framework that would need to be set in place for that purpose.~~

2a. The next evaluation shall also analyse the needs for further increased coordination of the management of the external borders of the Member States, including the feasibility of the creation of a European system of border guards."

"2b. The evaluation shall include a specific analysis on the way the Charter of Fundamental Rights was respected pursuant to the application of the Regulation."

## *Article 2*

### *Entry into force*

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>1</sup> During the negotiations, concerns have been raised by some delegations regarding the possibility that the evaluation foreseen in Article 33 should analyse the need for the Agency to employ independent border guards. In order to meet these concerns, the proposed revised text provides for the analysis of the need for further increased coordination of the management of the external borders, including the feasibility of the creation of a European system of border guards. This text is acceptable to a majority of delegations. **SI** and **RO**, on the contrary, would prefer the deletion of the paragraph.