

External borders: mandate of the Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)

2010/0039(COD) - 24/02/2010 - Legislative proposal

PURPOSE: to amend 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) to clarify the mandate of the Agency and address shortcomings.

PROPOSED ACT: Council Regulation.

BACKGROUND: the Frontex Agency was set up in 2004 and became operational in 2005. In 2008, the commission adopted a [Communication on the evaluation and future development of the FRONTEX Agency](#), accompanied by a impact assessment. The Communication issued recommendations for the short to medium term and launched ideas for the future development of the Agency in the longer term. It was welcomed by the Council and the European Parliament, who both shared the Commissions assessment that the Agency had been very successful since its inception and called for a further strengthening of the Agency. An independent evaluation also took place during 2008, on the basis of which the Frontex Management Board made a series of recommendations concerning changes to the legal basis of the Agency. This proposal reflects all recommendations of the 2008 Communication and the Management Board recommendations to the extent they require a revision of the legal framework of the Agency, with the exceptions as described in the impact assessment.

IMPACT ASSESSMENT: an impact assessment has been carried out - Commission staff working document [SEC\(2010\)0149](#). The preferred option of the impact assessment consists of a combination of the following sub-options:

- a revised mechanism with compulsory contributions of equipment from Member States combined with the gradual acquisition/leasing by Frontex of its own equipment, based on further analyses of needs and costs;
- a revised mechanism with compulsory contributions of human resources from Member States combined with a pool of border guards on semi-permanent detachment from Member States to Frontex, with the status of national experts;
- awarding the Agency a co-leading role for the implementation of joint operations, with detailed rules for the operational plan, evaluation, and incident reporting, to be enforced by Frontex;
- allowing Frontex to finance and implement technical assistance projects in third countries and to deploy liaison officers in third countries;
- giving Frontex a limited mandate to process personal data related to fight against criminal networks organising illegal immigration, under condition that such processing of personal data by Frontex is lawful, necessary and proportionate in relation to the tasks of the Agency;
- giving Frontex a coordinating role in implementing joint return operations;
- giving Frontex a mandate to analyse operational risks and requirements in the Member States.

The preferred option is fully reflected in this legislative proposal with the exception of giving Frontex a limited mandate to process personal data related to fighting criminal networks organising illegal immigration. The Commission does consider that all possibilities to reinforce the fight against the smuggling of migrants and against trafficking of human beings should be explored. However, it prefers to return to the question of personal data in the context of the overall strategy for information exchange to be

presented later this year and also taking into account the reflection to be carried out on how to further develop cooperation between Agencies in the justice and home affairs field as requested by the Stockholm programme.

LEGAL BASIS: Articles 74 and 77 (1) (b) and (c) of the Treaty on the Functioning of the European Union (TFEU). The proposal is within the limits set by these provisions and, in particular, respects the shared competencies of the Treaty in that Member States remain responsible for controlling their external borders. Notably this proposal upholds the principle that in the context of operations coordinated by the Agency, guest officers may only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards of the host Member State. Decisions to refuse entry in accordance with the Schengen Borders Code shall be taken only by border guards of the host Member State. No decision-making power in this regard is transferred to the Agency. The objectives of this proposal, while respecting the same fundamental limitations of the existing provisions, are to further develop an integrated management of operational cooperation, cannot be sufficiently achieved by the Member States.

CONTENT: the Commission presents a proposal to strengthen the FRONTEX Agency. The most important amendments to Council Regulation (EC) No 2007/2004 reflect the changes necessary to accommodate the preferred option of the impact assessment. Moreover a number of minor amendments of an essentially administrative character have been introduced taking into account the Management Board recommendations as well as the introduction of new "standard" provisions used in other Commission proposals for the setting up of new Agencies.

The main amendments to the Regulation are as follows:

Establishment of the Agency: the proposal clarifies the legal framework in which the Agency operates. It states that, 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 EU 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.

Definitions: the proposal clarifies the definition of "host Member State", and introduces the concept of Frontex Joint Support Teams, and revises the definition of technical equipment.

Main tasks: these include risk analysis and research. The proposal introduces the possibility for the Agency of coordinating joint return operations. The Agency also has new tasks related to the development and operation of information systems and to the provision of assistance to Eurosur. In addition, all personnel taking part in joint operations or joint return operations are required to have received appropriate training in fundamental rights. Lastly, a reporting mechanism to the Management Board regarding the operational activities of Member States with third countries is introduced.

Joint operations and pilot projects at the external borders: the Agency is required to draw up an operational plan, to conduct a prior risk analysis. The Agency may also terminate joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled. Furthermore, it shall constitute a pool of border guards called Frontex Joint Support Teams, for possible deployment during joint operations and pilot projects. The proposal requires the Agency to 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. Lastly, it provides that the Agency may decide to finance or co-finance the joint operations and pilot projects, with grants from its budget in accordance with the financial rules applicable to the Agency."

Organisational aspects of joint operations and pilot projects: a new article sets out the obligation to draw up an operational plan for all operations. This article makes provision regarding the content of the operational plan, the respective tasks and responsibilities, the composition of the teams, command and control, the reporting mechanisms i.e. evaluation and incident reporting, the technical equipment, and the applicable jurisdiction. The Agency and the requesting Member State must agree on the operational plan and the Agency must ensure the operational implementation of all organisational aspects.

Composition and deployment of Frontex Joint Support Teams (FJST): a new article sets out the obligations and conditions related to border guards to be made available to the FJST. Member States must make the border guards available for deployment. Members of the teams must perform their duties in full respect of fundamental rights and human dignity. The Agency must nominate a coordinating officer where FJST members are deployed. It will meet the costs of border guards of Member States participating in FJST

Risk analysis: for the Agency's risk analysis, Member States must provide the Agency with all necessary information regarding the situation and possible threats at the external borders. The Agency shall regularly evaluate the capacity of the Member States to face upcoming challenges, including present and future threats and pressures at the external borders of the EU.

Training: Member States must integrate the common core curricula in the training of national border guards. The training must include fundamental rights aspects.

Research: the proposal strengthens the role of the Agency i.e. monitoring and contributing to developments in relevant research activities

Technical equipment: the new provisions clarify the Agency's powers regarding the acquisition or lease of technical equipment and the rules of registration for heavy equipment. The Agency must also keep centralised records of a Technical Equipment Pool (TEP). Member States must contribute to the TEP to allow for a minimum amount of equipment covering the needs of the Agency. The article sets out rules regarding the management by the Agency of the TEP, and rules for the reimbursement of the minimum numbers per type of equipment, and the conditions for deployment and the eligible costs

Return cooperation: the proposal clarifies EU return policy, financial provisions and inserts the possibility for a Member State to request the Agency to ensure the coordination of a return operation. The Agency must adopt a Code of Conduct to be applied during joint return operations, including with regard to forced return monitoring and respect for fundamental rights. Member States must inform the Agency of their planned return operations and the degree of assistance requested from the Agency. The Agency must draw up a rolling operational plan on which the Management Board decides. The proposal clarifies the role of the Agency regarding the identification of relevant third countries

Information exchange systems: the Agency is required develop and operate an information system capable of exchanging classified information.

Data protection: a new Article requires the Agency to process data in accordance with Regulation 45 /2001 and the Management Board to establish measures to apply the aforementioned Regulation.

Security rules on the protection of classified information and non-classified sensitive information: another new article requires the Agency to apply the security principles of Decision 2001/844 for classified information, and to process non-classified sensitive information as adopted and implemented by the Commission.

Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries: the proposal gives the Agency the possibility of deploying liaison officers in third countries, and the tasks of the latter are set out in the text. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the Union's external relations policy. Member States must clarify where appropriate the role of the Agency in their bilateral agreements with third countries. The deployment of liaison officers and the conclusion of working arrangements with third countries are subject to prior approval by the Commission.

Headquarters Agreement: a new clause clarifies the need for a Headquarters Agreement between the Agency and the hosting Member State.

In addition, the proposal makes some modifications on provisions related to staff, the powers of the Management Board on staffing policy, the composition of the Management Board and the functions and powers of the Executive Director.

BUDGETARY IMPLICATION: the proposal amends an existing Regulation regarding the mandate and functioning of a European Agency. The subsidy related to the Frontex Agency forms already part of the Union's budget.