

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

2010/0039(COD) - 13/09/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 431 votes to 49 with 48 abstentions a resolution amending the proposal for a regulation of the European Parliament and of 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). The amendments at first reading are the result of negotiations between Parliament and Council. They may be summarised as follows :

Fundamental rights: Members strengthened the provisions on fundamental rights. The amended text states that the Agency shall fulfil its tasks in full compliance with Union law, including the Charter of Fundamental Rights of the European Union, international law, obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights and taking into account the reports of the Consultative Forum (see below). No person shall be disembarked in, or otherwise handed over to the authorities of, a country in contravention of the principle of non-refoulement, or from which there is a risk of expulsion or return to another country in contravention of that principle. The special needs of children, victims of trafficking, persons in need of medical assistance, persons in need of international protection and other vulnerable persons shall be addressed in accordance with Union and international law."

In addition, it is stipulated that the Agency shall draw up and further develop a **Code of Conduct** applicable to all operations coordinated by the Agency, which shall lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights with particular focus on unaccompanied minors and vulnerable persons, as well as persons seeking international protection, applicable to all persons participating in the activities of the Agency.

Furthermore, the text states that FRONTEX must draw up and further develop and implement its **Fundamental Rights Strategy**, and put in place an effective mechanism to monitor the respect for fundamental rights in all its the activities. A Consultative Forum shall be established to assist the Director and the Management Board in fundamental rights matters.

The **Consultative Forum** shall prepare an annual report of its activities. Those reports shall be made publicly available. A **Fundamental Rights Officer** shall be designated by the Management Board and shall have the necessary qualifications and experience in the field of fundamental rights, be independent in the performance of his/her duties as a Fundamental Rights Officer and shall report directly to the Management Board and the Consultative Forum on a regular basis and as such contribute to the mechanism for monitoring fundamental rights. Both the Fundamental Rights Officer and the Consultative Forum shall have access to all information concerning respect for fundamental rights, in relation to all the activities of the Agency.

The text adds that the home Member State shall provide for appropriate disciplinary or other measures in accordance with their law in case of violations of fundamental rights or international protection obligations in the course of such activities.

Tasks: the amended text adds to the tasks of Frontex and states that FRONTEX shall also (i) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, taking into account that some situations may involve **humanitarian emergencies and rescue at sea**; (ii) assist Member States in circumstances requiring increased technical and operational assistance at external borders, especially those Member States facing specific and disproportionate pressures; (iii) **set up European Border Guard Teams** that are to be deployed during joint operations, pilot projects and rapid interventions; (iv) deploy border guards from the European Border Guard Teams to Member States in joint operations, pilot projects or in rapid interventions in accordance with Regulation (EC) No 863/2007 on establishing a mechanism for the creation of Rapid Border Intervention Teams.

European Border Guard Teams: the text merges provisions for the setting up of Frontex Joint Support Teams and Rapid Border Intervention teams. Such Teams will be deployed **during joint operations and pilot projects and rapid interventions**.

Member States **shall contribute to the European Border Guard Teams via a national pool** on the basis of the various defined profiles by nominating border guards corresponding to the required profiles. The Agency shall also contribute to the European Border Guard Teams with competent border guards seconded by the Member States as national experts. In accordance with agreements with FRONTEX, Member States shall make the border guards available for secondment, unless this would seriously affect the discharge of national tasks. In such situations Member States may recall their seconded border guards.

The Agency shall **inform the European Parliament on an annual basis of the number of border guards** that each Member State has committed to the European Border Guard Teams

Member States facing disproportionate pressures: the amended text stipulates that one or more Member States facing specific and disproportionate pressures and confronted with circumstances requiring increased technical and operational assistance when implementing their obligations with regard to control and surveillance of external borders may request the Agency for assistance. The Agency shall organise the **appropriate technical and operational assistance** for the requesting Member State(s).

In this context, the text stipulates that at the request of a **Member State faced with a situation of urgent and exceptional pressure**, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State illegally, the **Agency may deploy for a limited period one or more European Border Guard Teams** on the territory of the requesting Member State for the appropriate duration in accordance Regulation (EC) No 863/2007. If the Executive Director decides to deploy one or more teams, an operational plan shall immediately, and in any event no later than **5 working days** of the date of the decision, be drawn up by the Agency and the requesting Member State.

Training: the Agency shall provide border guards who are members of the European Border Guard Teams with advanced training relevant to their tasks and powers and shall conduct regular exercises with those border guards. It shall also take the necessary initiatives to ensure that all border guards and other personnel of the Member States who participate in the European Border Guard Teams, 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 Union and international law, including fundamental rights and access to international protection and guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate facilities.

Technical equipment: the new text gives FRONTEX the power to acquire, itself or in co-ownership with a Member State, or lease technical equipment for external border control. Any such expenditure shall be provided for in the Agency's budget as adopted by the Management Board. Where the Agency acquires or leases major technical equipment, such as open sea and coastal patrol vessels or vehicles, to be used in

joint operations, the following provisions apply: (i) in case of acquisition and co-ownership, 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; (ii) in case of leasing, the equipment must be registered in a Member State. On the basis of a model agreement drawn up by the Agency, the Member State of registration and the Agency shall agree on modalities ensuring the periods of full availability of the co-owned assets for the Agency, as well as on the terms of use of the equipment.

Processing personal data: FRONTEX is **given the power to process personal data** both in the context of joint return operations and in the case of data collected during joint operations, pilot projects and rapid interventions. In the latter case, the text states that the Agency may further process personal data collected by the Member States during such operational activities and transmitted to the Agency in order to contribute to the security of the external borders of Member States. Such further processing of personal data by the Agency shall be limited to personal data regarding persons who are suspected on reasonable grounds of involvement in cross-border criminal activities, in facilitating illegal migration activities or in human trafficking activities. Such data shall be further processed by the Agency only for the following purposes i) transmission, on a case by case basis, to Europol or other Union law enforcement agencies; ii) use for the preparation of risk analyses. The personal data shall not be used by the Agency for the purpose of investigations, which remain under the responsibility of the competent national authorities. Onward transmission of such personal data processed by the Agency to third countries or other third parties shall be prohibited.

Scrutiny by Parliament: lastly, Parliament is given increased powers of scrutiny and the right to information. In addition, the European Parliament or the Council may invite the Executive Director of the Agency to report on the carrying out of his/her tasks, in particular on the implementation and monitoring of the Fundamental Rights Strategy, the general report of the Agency for the previous year, the work programme for the coming year and the Agency's multi-annual plan