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

2010/0039(COD) - 25/10/2011 - Final act

PURPOSE: to amend Council Regulation (EC) No 2007/2004 establishing FRONTEX expanding the powers of the Agency.

LEGISLATIVE ACT: Regulation (EU) No 1168/2011 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.

BACKGROUND: Frontex was created in 2004 with the aim of coordinating and assisting Member States' actions in the surveillance and control of the external borders of the EU. The Agency officially became operational on 1 May 2005 and is based in Warsaw, Poland. In 2011, Frontex established a first regional operational office in Piraeus, Greece, on a pilot basis. Since Frontex became operational, its financial resources have increased significantly (from EUR 6 million in 2005 to EUR 86 million in 2011). In September 2011, the European Parliament also adopted Amending Budget No 4/2011 which adds another EUR 43.9 million to Frontex's 2011 budget due to a substantial increase in the agency's operational activities.

Frontex's main tasks include the coordination of joint operations at the sea, land and air external borders, the coordination of joint return operations, the establishment of common training standards for national border guards and the carrying out of risk analyses.

The need for strengthening Frontex's role and its capacities as regards the **fight against illegal immigration** has been underlined by the Council and by the European Council at several occasions, including in the European Pact on Immigration and Asylum adopted in October 2008 and in the Stockholm Programme adopted in December 2009.

As a consequence, in February 2010 the Commission tabled a proposal which formed the basis of the current agreement.

CONTENT: following agreement at first reading with the European Parliament, the Council adopted new rules for Frontex, the European Agency for the management of operational cooperation at the external borders of the EU, amending Council Regulation (EC) No 2007/2004. The revised rules will strengthen the operational capacities of Frontex in a number of areas.

Tasks: the new Regulation adds to the tasks of Frontex and states that FRONTEX shall also:

- 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;

- assist Member States in circumstances requiring increased technical and operational assistance at external borders, especially those Member States facing specific and disproportionate pressures;

- set up European Border Guard Teams that are to be deployed during joint operations, pilot projects and rapid interventions;

- 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.

The main changes from the 2004 Regulation are:

- the possibility for Frontex of **buying or leasing its own equipment** (cars, vessels, helicopters etc.) or to buying such equipment in co-ownership with a Member State;

- **a mechanism for Member States to second national border guards and make available equipment** to the Agency, i.e.: once the Agency and a Member State agree on an annual plan, this Member State should on request by Frontex make the border guards and the equipment available to Frontex as described in the annual plan, unless this would seriously affect the discharge of national tasks. The equipment put at the disposal of the Agency will be registered in a centralised records of a Technical Equipment Pool (TEP);

- a **joint leading role for the Agency** regarding joint operations and pilot projects;

- "**European Border Guard Teams**" is the common name for teams deployed during Frontex operations (be it joint operations, pilot projects or rapid border interventions);

- more detailed provisions on 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, technical equipment, and the applicable jurisdiction.);

- strengthened provisions for the protection of **fundamental rights**, including the establishment of a Consultative Forum on Fundamental Rights and the designation of a Fundamental Rights Officer;

- reinforced tasks for the Agency as regards **risk analysis** (i.e. to regularly assess the capacity of Member States to face threats and pressures at the external borders);

- specific provisions on **processing of personal data**, including the possibility of transferring personal data to Europol or other EU law enforcement agencies regarding persons suspected of involvement in cross-border criminal activities, facilitation of illegal immigration activities or in human trafficking activities;

- reinforced tasks as regards **training** (common core curricula for national border guards) and research activities (monitoring and contributing to developments in relevant research activities);

- a strengthened coordinating role for Frontex as regards **joint return operations in full respect for fundamental rights**; and

- the possibility for the Agency of launching **technical assistance projects and deploying liaison officers in third countries**.

Fundamental rights: 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. 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.

Lastly, 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.

ENTRY INTO FORCE: 12/12/2011.