## Basic information

| | |
|---|---|
| **2010/0039(COD)**<br><br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation | Procedure completed |
| External borders: mandate of the Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)<br><br>Amending Regulation (EC) No 2007/2004 2003/0273(CNS)<br><br>**Subject**<br><br>7.10.04 External borders crossing and controls, visas<br>7.10.08 Migration policy<br>8.40.08 Agencies and bodies of the EU | |

## Key players

European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| LIBE Civil Liberties, Justice and Home Affairs | | |
| | Shadow rapporteur<br><br>GUILLAUME Sylvie (S&D)<br><br>WIKSTRÖM Cecilia (ALDE)<br><br>FLAUTRE Hélène (Verts /ALE)<br><br>KELLER Ska (Verts/ALE)<br><br>KIRKHOPE Timothy (ECR)<br><br>ERNST Cornelia (GUE/NGL) | |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| AFET Foreign Affairs | LOCHBIHLER Barbara (Verts /ALE) | 30/03/2010 |
| DEVE Development | The committee decided not to give an opinion. | |

| Committee for opinion on the legal basis | Rapporteur for opinion | Appointed |
|---|---|---|
| JURI Legal Affairs | GERINGER DE OEDENBERG Lidia Joanna (S&D) | 01/12/2010 |

| | | | |
|---|---|---|---|
| Council of the European Union | **Council configuration** | **Meetings** | **Date** |
| | Justice and Home Affairs (JHA) | 3043 | 2010-11-08 |
| | Justice and Home Affairs (JHA) | 3081 | 2011-04-11 |
| | Justice and Home Affairs (JHA) | 3096 | 2011-06-09 |
| | Justice and Home Affairs (JHA) | 3085 | 2011-05-12 |
| | Environment | 3118 | 2011-10-10 |

| | | |
|---|---|---|
| European Commission | **Commission DG** | **Commissioner** |
| | Justice and Consumers | MALMSTRÖM Cecilia |

**Key events**

| Date | Event | Reference | Summary |
|---|---|---|---|
| 24/02/2010 | Legislative proposal published | COM(2010)0061 | Summary |
| 11/03/2010 | Committee referral announced in Parliament, 1st reading | | |
| 08/11/2010 | Debate in Council | | Summary |
| 11/04/2011 | Debate in Council | | Summary |
| 12/05/2011 | Debate in Council | | Summary |
| 09/06/2011 | Debate in Council | | Summary |
| 12/07/2011 | Vote in committee, 1st reading | | Summary |
| 15/07/2011 | Committee report tabled for plenary, 1st reading | A7-0278/2011 | |
| 13/09/2011 | Decision by Parliament, 1st reading | T7-0344/2011 | Summary |
| 13/09/2011 | Results of vote in Parliament | | |
| 13/09/2011 | Debate in Parliament | | |
| 10/10/2011 | Act adopted by Council after Parliament's 1st reading | | |
| 25/10/2011 | Final act signed | | |
| 25/10/2011 | End of procedure in Parliament | | |
| 22/11/2011 | Final act published in Official Journal | | |

**Technical information**

| | |
|---|---|
| **Procedure reference** | 2010/0039(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Regulation |

| | |
|---|---|
| **Amendments and repeals** | Amending Regulation (EC) No 2007/2004 2003/0273(CNS) |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 074<br>Treaty on the Functioning of the European Union TFEU 077-p1 |
| **Other legal basis** | Rules of Procedure EP 165 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | LIBE/7/02367 |

## Documentation gateway

### European Parliament

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE450.754 | 12/11/2010 | |
| Amendments tabled in committee | | PE454.546 | 06/01/2011 | |
| Committee opinion | AFET | PE448.907 | 18/01/2011 | |
| Specific opinion | JURI | PE465.036 | 25/05/2011 | |
| Amendments tabled in committee | | PE469.767 | 06/07/2011 | |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0278/2011 | 15/07/2011 | |
| Text adopted by Parliament, 1st reading/single reading | | T7-0344/2011 | 13/09/2011 | Summary |

### Council of the EU

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Draft final act | 00037/2011/LEX | 26/10/2011 | |

### European Commission

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(2010)0061 | 24/02/2010 | Summary |
| Document attached to the procedure | SEC(2010)0149 | 24/02/2010 | |
| Document attached to the procedure | SEC(2010)0150 | 24/02/2010 | |
| Commission response to text adopted in plenary | SP(2011)8584 | 09/11/2011 | |
| Document attached to the procedure | COM(2012)0590 | 23/10/2012 | Summary |

### National parliaments

| Document type | Parliament /Chamber | Reference | Date | Summary |
|---|---|---|---|---|
| Contribution | AT_BUNDESRAT | COM(2010)0061 | 19/04/2010 | |

| | | | | |
|---|---|---|---|---|
| Contribution | PT_PARLIAMENT | COM(2010)0061 | 03/05/2010 | |
| Contribution | CZ_SENATE | COM(2010)0061 | 05/05/2010 | |
| Contribution | IT_SENATE | COM(2010)0061 | 16/05/2010 | |
| Contribution | IT_CHAMBER | COM(2010)0061 | 16/06/2010 | |
| Contribution | PT_PARLIAMENT | COM(2012)0590 | 14/10/2013 | |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| EDPS | Document attached to the procedure | N7-0031/2011<br>OJ C 357 30.12.2010, p. 0001 | 17/05/2010 | Summary |
| EESC | Economic and Social Committee: opinion, report | CES0974/2010 | 15/07/2010 | |

**Additional information**

| Source | Document | Date |
|---|---|---|
| National parliaments | IPEX | |
| European Commission | EUR-Lex | |

**Final act**

Regulation 2011/1168
OJ L 304 22.11.2011, p. 0001 Summary

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

2010/0039(COD) - 09/06/2011

The Council discussed the issues outstanding on the revision of the rules concerning the European external borders agency Frontex.

Ministers focused on a number of outstanding issues including:

- the temporary secondment of border guards to the Frontex Joint Support Teams by Member States;
- the monitoring of return operations;
- the establishment and naming of a common pool of border guards for joint operations and Rabit intervention missions.

The goal is still to reach agreement with the European Parliament by the end of June, in line with the European Council conclusions of 24 March 2011.

# 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

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

2010/0039(COD) - 12/05/2011

In the margins of the Council, the Mixed Committee (the EU plus Norway, Iceland, Liechtenstein and Switzerland) discussed the state of play on the revision of the rules concerning Frontex. Negotiations with the European Parliament started in April. The goal is to reach agreement before the summer in line with the in line with the conclusions of the European Council of 24 March 2011.

The principal issues outstanding include:

- monitoring in the context of return cooperation;
- the exact provisions concerning the financing of technical equipment;
- the involvement of third countries, EU agencies and international organisations in Frontex activities;
- specifications concerning a fundamental rights strategy of Frontex.

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

2010/0039(COD) - 17/05/2010 - Document attached to the procedure

**Opinion of the European Data Protection Supervisor on 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 EDPS welcomes the fact that he was informally consulted by the Commission before the adoption of the proposal. Informal comments were issued by the EDPS on 8 February 2010 and resulted in a number of changes in the final version of the proposal adopted by the Commission.

On 2 March 2010, the proposal as adopted by the Commission was sent to the EDPS for consultation in accordance with Regulation (EC) No 45/2001.

It is also pertinent to mention that the EDPS issued an Opinion on a notification for Prior Checking received from the Data Protection Officer of FRONTEX concerning the ‘Collection of names and certain other relevant data of returnees for join return operations (JRO)’ (the Prior Check Opinion). The conclusions of the Opinion, the subject of which is the processing of personal data in the context of the preparation and realisation of the JROs under Article 9 of Regulation (EC) No 2007/2004, have been used as a basis for some of the observations and conclusions presented in this opinion.

The main conclusions of this Opinion are as follows :

Noting notes that the proposal aims to allow FRONTEX to fulfil its current tasks and responsibilities, as well as those provided by the proposed Regulation more effectively, the EDPS states that it is striking that the proposed Regulation is almost completely silent about the processing of personal data by FRONTEX, with a sole exception of the last sentence of Article 11 of the proposal. He is of the opinion that the proposed Regulation should — to the extent necessary and appropriate — **address clearly the question of the scope of the activities that may give rise to the processing of**

**personal data by FRONTEX**. The EDPS believes that a specific legal basis addressing the issue of the processing of personal data by FRONTEX and providing for clarification of the circumstances under which such processing by FRONTEX could take place, subject to strong data protection safeguards and in accordance with the proportionality and necessity principles, is needed. Only where necessary for clearly identified and lawful purposes (in particular JRO) should such processing be allowed.

The legal basis should specify the necessary and appropriate safeguards, limitations and conditions under which such a processing of personal data would take place, in compliance with Article 8 of the European Convention on Human Rights and Article 8 of the EU Charter of Fundamental Rights, including guarantees regarding the data subject's rights as one of the most important elements.

The Commission's reluctance to specify this in the proposed Regulation or to clearly state the date by when it will do so, instead preferring to postpone the matter pending new legal and political circumstances, raises serious concerns. In the EDPS's view, this approach could lead to undesirable legal uncertainty and a significant risk of non-compliance with data protection rules and safeguards.

In order further to improve the proposal, the EDPS also calls on the legislator to clarify in the proposed Regulation that the working arrangement which could be concluded with Europol on the basis of the proposed Article 13 of the FRONTEX Regulation, would exclude the exchange of personal information. Moreover, he also suggests a clarification of Article 11(b) of the proposal. (in order to clarify security obligations with regard to classified and non-classified documents.)

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

2010/0039(COD) - 11/04/2011

The Council looked at the **state-of-play** of discussions on the revision of the rules concerning the European external borders agency Frontex.

Some of the issues outstanding include:

- monitoring in the context of return cooperation;
- the processing of personal data collected by member states for the purpose of risk analysis in the context of operational activities coordinated by the agency; and
- the involvement of third countries, EU agencies and international organisations in Frontex activities.

The presidency intends to start negotiations with the European Parliament in the coming weeks. The goal is to reach agreement before the summer in line with the conclusions of the European Council of 24 March 2011.

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

2010/0039(COD) - 08/11/2010

The Council discussed the **state-of-play** concerning revised rules for the external borders agency FRONTEX. Some of the outstanding issues outstanding include:

- the development of a common integrated risk analysis model;
- the processing of personal data;
- the creation of a European system of border guards.

Council preparatory bodies have discussed the proposal at several meetings. Negotiations with the European Parliament have not yet started.

# 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.

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

2010/0039(COD) - 23/10/2012 - Document attached to the procedure

**Financial statement accompanying Regulation (EU) No 1168/2011**

**Background:** recent years have seen a sharp increase in the workload and priorities of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). Most recently, the increased migratory pressure at the Union's southern borders generated by the Arab spring and the deteriorating situation at the Greek external border have prompted calls from the Commission, the Council and the Parliament for the Agency to play a more active role. **The Agency's budget was increased significantly in both 2010 and 2011 to enable it to intensify its operational activities in these areas.** Moreover the development of the European external border surveillance system (Eurosur), in which Frontex is to become a key player, is increasingly seen as a crucial part of the Union's external border management as well as a means to reduce the unacceptably high number of lives lost at sea by irregular migrants seeking to enter the EU.

**Revision of Frontex's mandate:** against this background the Agency's mandate was amended in 2011 to enable it to respond to the new challenges and to meet the expectations of the Commission, the Council and the Parliament. The adoption of Regulation (EU) No 1168/2011 followed the submission to the European Parliament and the Council of a draft text adopted by the Commission. **This draft text was not accompanied by a financial statement** as the subsidy related to the Frontex Agency formed already part of the Union's budget and the Commission considered that the proposed changes would not require additional resources.

However, the amended Frontex Regulation places new and increased obligations on the Agency, entails **new tasks** for the Agency, and specifies that certain tasks have to be carried out by certain categories of the Agency staff. While t**hese tasks necessitate the creation of new posts** such as the Fundamental Rights Officer and the Coordinating Officers for all Frontex operational activities, they were not foreseen in the Commission's legislative proposal.

**Impact on the Agency's staffing in 2012 and 2013:** these changes have an important impact on the work of the Agency. Some of the changes were part of the Commission proposal to amend the Frontex Regulation, others have been amplified by the legislators (i.e. the role of the coordinating officers, the posting of Frontex liaison officers in third countries, the enhanced activities related to risk analysis), and some have been added as new tasks (i.e. the Fundamental Rights Officers, the setting up of the Fundamental Rights Forum, the possibility to process personal data which involves by definition the creation of secure information exchange channels to ensure the proper handling of such sensitive data).

It should also be emphasised that these enhanced and new tasks create an **additional administrative workload** in parallel to the enhanced operational activities of the Agency.

To address these issues the Agency has now carried out an exercise to prioritise these tasks, identifying those which are mandatory for Frontex to implement during the period 2013-2015. In parallel, it carried out a review of current programmes and projects so as to be able to redeploy staff to the new priorities and/or tasks.

**Redeployment alone, however, would not enable the Agency to fulfil all of the most important tasks**. This is why the Agency, in close cooperation with the Commission, took into consideration not only the new tasks and the conditions under which those tasks shall be carried out, but the difficult economic situation with which the European Union and its Member States are confronted.

In the light of these facts, it is proposed to request a

limited increase in the number of posts in Frontex establishment plan in two steps:

- **4 additional establishment plan posts** needed urgently, and included in the draft budget 2013, to comply with binding legal requirements whilst carrying out the Agency's core tasks; and
- **8 additional posts to be created as soon as possible**, following the required steps in terms of budget authorisation.

In the Draft Budget 2013, as a **first step**, the Commission proposed an increase to the establishment plan of four additional temporary agents up to the ceiling set by the Legislative Financial Statement. As the draft budget proposal of the Commission includes a reduction of 3 contract agents to implement the first instalment of the 5 % staff reduction over the years 2013-2017 announced in the Commission proposals for the next multiannual financial framework of 29 June 2011, the overall head count therefore increased by a net **one post**.

As a **second step**, the financial statement seeks a further increase in the Establishment Plan of eight posts, partially offset by a decrease of six in the number of seconded national experts. The net increase in the overall headcount arising from this proposal is therefore **two posts**.

**In terms of expenditures**, the estimated costs for 12 AD posts would amount to M 1.32 EUR (12x EUR 0.11 million). However, **the estimated impact on the Agency's expenditure in 2013 will be budget-neutral**, since the expenditure will be offset against the decreasing expenditure related to seconded national experts (SNE) currently performing these tasks. The relevant SNE posts will be gradually phased out in the course of 2013. The remaining costs will be met by additional savings within Title 1 and, if needed, redeployment from Title 2 to Title 1 of a maximum amount of EUR 750 000.

# 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.