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*Committee on Civil Liberties, Justice and Home Affairs*

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**2010/0039(COD)**

12.11.2010

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## **DRAFT REPORT**

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) (COM(2010)0061 – C7-0045/2010 – 2010/0039(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Simon Busuttil

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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)  
(COM(2010)0061 – C7-0045/2010 – 2010/0039(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0061),
  - having regard to Article 294(2) and Articles 74 and 77(1)(b) and (c) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0045/2010),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinion sent to its President by a national parliament on the compliance of the draft act with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 15 July 2010<sup>1</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A7-0000/2010),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> Not yet published in the Official Journal.

## Amendment 1

### Proposal for a regulation – amending act Recital 1

*Text proposed by the Commission*

(1) The development of a forward-looking and comprehensive European migration policy, based on solidarity and responsibility, remains a key policy objective for the European Union.

*Amendment*

(1) The development of a forward-looking and comprehensive European migration policy, based on solidarity and responsibility, ***especially for those Member States facing specific or disproportionate pressures***, remains a key policy objective for the European Union.

Or. en

*Justification*

*The Agency should be mandated to pay special attention to Member States which are facing specific and disproportionate burdens on their national asylum systems.*

## Amendment 2

### Proposal for a regulation – amending act Recital 14

*Text proposed by the Commission*

(14) To ensure effective operations, Member States should make an appropriate number of skilled border guards available to participate in joint operations and pilot projects. ***Teams of border guards*** for deployment by the Agency should therefore be set up

*Amendment*

(14) To ensure effective operations, Member States should make an appropriate number of skilled border guards available to participate in joint operations, ***rapid border intervention missions*** and pilot projects. ***An EU Border Guard System*** for deployment by the Agency should therefore be set up.

Or. en

### Amendment 3

#### Proposal for a regulation – amending act Recital 15

*Text proposed by the Commission*

(15) The Agency should be able to contribute to those teams with border guards seconded by Member States to the Agency on a semi-permanent basis, which shall be subject, in the exercise of their tasks and powers, to the same legal framework as the guest officers contributed directly to the Teams by Member States. The Agency should adapt its internal rules on seconded national experts to allow for direct instructions by the host state to the border guards during joint operations and pilot projects.

*Amendment*

(15) The Agency should be able to contribute to those teams with border guards seconded by Member States to the Agency on a semi-permanent basis, which shall be subject, in the exercise of their tasks and powers, to the same legal framework as the guest officers contributed directly to the Teams by Member States. The Agency should adapt its internal rules on seconded national experts to allow for direct instructions by the host state to the border guards during joint operations, ***rapid border intervention missions*** and pilot projects.

Or. en

### Amendment 4

#### Proposal for a regulation – amending act Article 1 - point 1

Regulation (EC) No 2007/2004  
Article 1 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

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. 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

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.

Member States.

*The Agency shall fulfil its tasks in full respect for relevant Union law, including the Charter of Fundamental Rights of the European Union, international law, including the Geneva Convention Relating to the Status of Refugees of 1951, obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights.*

Or. en

## Amendment 5

### Proposal for a regulation – amending act

Article 1 – point 1 a (new)

Regulation (EC) No 2007/2004

Article 1 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(1a) In Article 1 paragraph 3 is replaced by the following:***

***"The Agency shall also provide the Commission and the Member States with the necessary technical support and expertise in the management of the external borders and promote solidarity between Member States, especially those facing specific and disproportionate pressures."***

Or. en

### *Justification*

*The Agency should be mandated to pay special attention to Member States which are facing specific and disproportionate burdens on their national asylum systems.*



## Amendment 6

### Proposal for a regulation – amending act

#### Article 1 – point 2 – point a

Regulation (EC) No 2007/2004

Article 1 a – point 2

#### *Text proposed by the Commission*

2. "host Member State" means a Member State on the territory of which, **or adjacent to**, a deployment of a **Rapid Border Intervention Team** or a joint operation or a pilot project takes place;

#### *Amendment*

2. " host Member State" means a Member State on the territory **or within the jurisdiction** of which a deployment of a **rapid border intervention mission** or a joint operation or a pilot project takes place;

Or. en

#### *Justification*

*The term "adjacent" is not clear enough for legal purposes.*

## Amendment 7

### Proposal for a regulation – amending act

#### Article 1 – point 2 – point b

Regulation (EC) No 2007/2004

Article 1 a – point 4

#### *Text proposed by the Commission*

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;

#### *Amendment*

4. "members of the teams" means border guards of Member States serving with **the EU Border Guard System** other than those of the host Member State;

Or. en

#### *Justification*

*Frontex Joint Support Teams and Rapid Border Intervention teams should be merged into a EU Border Guard System which will consist of a pool of national border guards that can be tapped by the Agency for the purposes of its joint operations, rapid border intervention missions and pilot projects. This will streamline the provisions of the regulation, avoid duplication and confusion of roles and give a clearer European identity to the Agency's missions.*

## Amendment 8

### Proposal for a regulation – amending act

#### Article 1 – point 2 – point b a (new)

Regulation (EC) No 2007/2004

Article 1 a – point 5

*Text proposed by the Commission*

*Amendment*

*(ba) Point 5 is replaced by the following:*

**"5. "requesting Member State" means a Member State whose competent authorities request the Agency to deploy the EU Border Guard System on its territory;"**

Or. en

*Justification*

*see justification for AM 7*

## Amendment 9

### Proposal for a regulation – amending act

#### Article 1 – point 2 – point c

Regulation (EC) No 2007/2004

Article 1 a – point 7

*Text proposed by the Commission*

*Amendment*

7. "technical equipment" means any kind of technical equipment deployed during joint operations, pilot projects, **Rapid Border Intervention Teams**, return operations or technical assistance projects.

7. "technical equipment" means any kind of technical equipment deployed during joint operations, pilot projects, **rapid border intervention missions**, return operations or technical assistance projects.

Or. en

*Justification*

*see justification for AM 7*

## Amendment 10

### Proposal for a regulation – amending act

#### Article 1 – point 3 – point a – point i a (new)

Regulation (EC) No 2007/2004

Article 2 – paragraph 1 – point e

*Text proposed by the Commission*

*Amendment*

*(ia) point (e) is replaced by the following:*

**"(e) assist Member States in circumstances requiring increased technical and operational assistance at external borders, especially those Member States facing specific and disproportionate pressures;"**

Or. en

*Justification*

*see justification for AM 5*

## Amendment 11

### Proposal for a regulation – amending act

#### Article 1 – point 3 – point a – point ii a (new)

Regulation (EC) No 2007/2004

Article 2 – paragraph 1 – point g

*Text proposed by the Commission*

*Amendment*

*(iia) point (g) is replaced by the following:*

**"(g) deploy border guards from the EU Border Guard System to Member States in joint operations or in rapid border intervention missions in accordance with Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers<sup>1</sup>.**

*Justification*

*see justification for AM 7*

**Amendment 12**

**Proposal for a regulation – amending act**

**Article 1 – point 3 – point b**

Regulation (EC) No 2007/2004

Article 2 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(b) the following paragraph 1a is inserted:*** ***deleted***

***"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."***

*Justification*

*This paragraph is being moved to Article 5 for the purposes of legal consistency (AM 45).*

**Amendment 13**

**Proposal for a regulation – amending act**

**Article 1 – point 4**

Regulation (EC) No 2007/2004

Article 3 – title

*Text proposed by the Commission*

*Amendment*

Joint operations and pilot projects at the

Joint operations, ***rapid border intervention missions*** and pilot projects at external

*Justification*

*see justification for AM 7*

**Amendment 14**

**Proposal for a regulation – amending act**

**Article 1 – point 4**

Regulation (EC) No 2007/2004

Article 3 – paragraph -1 a (new)

*Text proposed by the Commission*

*Amendment*

***(-1a) The Agency shall constitute a pool of border guards called the EU Border Guard System in accordance with the provisions of Article 3b for possible deployment during joint operations, pilot projects and rapid border intervention missions referred to in paragraph 1b. It shall also decide on the deployment of human resources and technical equipment in accordance with Articles 3a and 7.***

Or. en

*(Former Article 1 – point 4 – point 2 (Article 3 – paragraph 2) with additions "and rapid border intervention missions" and "also")*

*Justification*

*Article 3 paragraph 2 (see AM 16) is being moved to the beginning of Article 3 for the purposes of legal consistency and was amended to reflect the amendment on the EU Border Guard System (see AM 7).*

**Amendment 15**

**Proposal for a regulation – amending act**

**Article 1 – point 4**

Regulation (EC) No 2007/2004

Article 3 – paragraph 1

*Text proposed by the Commission*

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 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 joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled.

*Amendment*

1. The Agency shall evaluate, approve and coordinate proposals for joint operations, ***rapid border intervention missions*** and pilot projects made by Member States, including the requests of Member States related to circumstances requiring increased technical and operational assistance, ***especially in cases of specific and disproportionate pressures.***

The Agency may itself initiate and conduct joint operations, ***rapid border intervention missions*** and pilot projects in cooperation with Member States.

***The Agency may itself, and in agreement with the host Member State(s) concerned, launch initiatives for joint operations, pilot projects and rapid border intervention missions in cooperation with Member States.***

It may also decide to put its technical equipment at the disposal of Member States participating in the joint operations, ***rapid border intervention missions*** or pilot projects.

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

***In agreement with the Member State concerned,*** the Agency may also terminate joint operations, ***rapid border intervention missions*** and pilot projects if the conditions to conduct these initiatives are no longer fulfilled.

Or. en

*Justification*

*see justifications for AM 7 and AM 5*

## Amendment 16

### Proposal for a regulation – amending act

#### Article 1 – point 4

Regulation (EC) No 2007/2004

Article 3 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**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.**

**deleted**

Or. en

*(Moved to point Article 1 – point 4 – point -1 a (new))*

*Justification*

*This paragraph is being moved to the beginning of Article 3 for the purposes of legal consistency (see AM 14).*

## Amendment 17

### Proposal for a regulation – amending act

#### Article 1 – point 4

Regulation (EC) No 2007/2004

Article 3 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. The Agency may operate through its specialised branches provided for in Article 16, for the practical organisation of joint operations and pilot projects.

3. The Agency may operate through its specialised branches **or regional operational offices as** provided for in Article 16, for the practical organisation of joint operations and pilot projects.

Or. en

## Amendment 18

### Proposal for a regulation – amending act

#### Article 1 – point 4

Regulation (EC) No 2007/2004

Article 3 – paragraph 4

#### *Text proposed by the Commission*

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. The Agency shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and efficiency of future operations and projects to be included in its general report provided for in Article 20(2)(b).

#### *Amendment*

4. The Agency shall evaluate the results of the joint operations, ***rapid border intervention missions and*** pilot projects and transmit the detailed evaluation reports within 60 days following the end of the activity to the Management Board. The Agency shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and efficiency of future operations and projects to be included in its general report provided for in Article 20(2)(b).

Or. en

#### *Justification*

*see justification for AM 7*

## Amendment 19

### Proposal for a regulation – amending act

#### Article 1 – point 4

Regulation (EC) No 2007/2004

Article 3 – paragraph 5

#### *Text proposed by the Commission*

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.

#### *Amendment*

5. The Agency may decide to finance or co-finance the joint operations, ***rapid border intervention missions and*** pilot projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency.

Or. en



*Justification*

*see justification for AM 7*

**Amendment 20**

**Proposal for a regulation – amending act**

**Article 1 – point 5**

Regulation (EC) No 2007/2004

Article 3 a (new) – title

*Text proposed by the Commission*

Organisational aspects of joint operations  
and pilot projects

*Amendment*

Organisational aspects of joint operations,  
***rapid border intervention missions*** and  
pilot projects

Or. en

*Justification*

*see justification for AM 7*

**Amendment 21**

**Proposal for a regulation – amending act**

**Article 1 – point 5**

Regulation (EC) No 2007/2004

Article 3 a (new) – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

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 shall agree on the operational plan detailing the organisational aspects in due time before the envisaged beginning of the activity.

*Amendment*

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

Or. en

## Amendment 22

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3 a (new) – paragraph 1 – subparagraph 2 – point c

*Text proposed by the Commission*

*Amendment*

c) the geographical area where the joint operation or pilot project will take place;

(c) the geographical area where the joint operation, ***rapid border intervention mission*** or pilot project will take place;

Or. en

*Justification*

*see justification for AM 7*

## Amendment 23

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3 a (new) – paragraph 1 – subparagraph 2 – point g

*Text proposed by the Commission*

*Amendment*

(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;

(g) the technical equipment to be deployed during the joint operation, ***rapid border intervention mission*** or pilot project, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;

Or. en

*Justification*

*see justification for AM 7*

## Amendment 24

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3 a (new) – paragraph 1 – subparagraph 2 – point i

#### *Text proposed by the Commission*

(i) regarding sea operations, ***specific requirements regarding*** the applicable jurisdiction and maritime law provisions concerning the geographical area where the joint operation takes place.

#### *Amendment*

(i) regarding sea operations, the applicable jurisdiction and maritime law provisions concerning the geographical area where the joint operation takes place.

Or. en

#### *Justification*

*This amendment is a linguistic clarification.*

## Amendment 25

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3 a (new) – paragraph 2

#### *Text proposed by the Commission*

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.

#### *Amendment*

2. ***The adoption as well as*** 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.

Or. en

## Amendment 26

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3 a (new) – paragraph 3

*Text proposed by the Commission*

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.

*Amendment*

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 *during* joint operations and pilot projects referred to in this Article.

Or. en

*Justification*

*This amendment is a linguistic clarification.*

## Amendment 27

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3 b (new) – title

*Text proposed by the Commission*

Composition and deployment *of Frontex Joint Support Teams*

*Amendment*

Composition and deployment

Or. en

*Justification*

*see justification for AM 7*

## Amendment 28

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation No 2007/2004

Article 3 b (new) – paragraph 1

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 EU Border Guard System**. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall numbers. Member States shall contribute to **the EU Border Guard System** via a national pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.

Or. en

#### *Justification*

*Ssee justification for AM 7*

## Amendment 29

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3 b (new) – paragraph 2

#### *Text proposed by the Commission*

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 contribute by seconding border guards to the Agency as national experts.

#### *Amendment*

2. The Agency shall also contribute to **the EU Border Guard System** with competent border guards seconded by the Member States as national experts pursuant to Article 17(5). To that effect Member States shall 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.

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 for coordination tasks.

Or. en

#### *Justification*

*see justification for AM 7*

#### **Amendment 30**

##### **Proposal for a regulation – amending act**

##### **Article 1 – point 5**

Regulation (EC) No 2007/2004

Article 3 b (new) – paragraph 4

##### *Text proposed by the Commission*

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.

##### *Amendment*

4. Members of the *EU Border Guard System* 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, *they* shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

*Justification*

*see justification for AM 7*

**Amendment 31****Proposal for a regulation – amending act****Article 1 – point 5**

Regulation (EC) No 2007/2004

Article 3 b (new) – paragraph 5

*Text proposed by the Commission*

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.

*Amendment*

5. In accordance with **Article 3g** the Agency *shall* nominate a coordinating officer for each joint operation, **rapid intervention mission** or pilot project where **EU Border Guard System** members will be deployed. **The role of the coordinating officer shall be to monitor the operation of and to foster cooperation and coordination amongst hosting and participating Member States.**

*Justification*

*This amendment aims to clarify the role of Frontex coordinating officers.*

**Amendment 32****Proposal for a regulation – amending act****Article 1 – point 5**

Regulation (EC) No 2007/2004

Article 3 b (new) – paragraph 6

*Text proposed by the Commission*

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.

*Amendment*

6. The Agency shall meet the costs incurred by the Member States in making their border guards available pursuant to paragraph 1 for **the EU Border Guard System** in accordance with Article 8h.

*Justification*

*see justification for AM 7*

**Amendment 33**

**Proposal for a regulation – amending act**

**Article 1 – point 5**

Regulation (EC) No 2007/2004

Article 3 b (new) – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) The Agency shall publish, on an annual basis, a record of the number of border guards that each Member State has committed to the EU Border Guard System in accordance with this Article.***

Or. en

*Justification*

*This amendment aims to have more transparency in the allocation of border guards to Frontex by Member States.*

**Amendment 34**

**Proposal for a regulation – amending act**

**Article 1 – point 5**

Regulation (EC) No 2007/2004

Article 3 c (new) – title

*Text proposed by the Commission*

*Amendment*

Instructions to ***the Frontex Joint Support Teams***

Instructions to ***the border guards in the EU Border Guard System***

Or. en

*Justification*

*see justification for AM 7*



## Amendment 35

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3 c (new) – paragraph 1

#### *Text proposed by the Commission*

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).

#### *Amendment*

1. During deployment of **border guards in the EU Border Guard System**, instructions shall be issued by the host Member State in accordance with the operational plan referred to in Article 3a (1).

Or. en

#### *Justification*

*see justification for AM 7*

## Amendment 36

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3 c (new) – paragraph 3

#### *Text proposed by the Commission*

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.

#### *Amendment*

3. In accordance with **Article 3g** the host Member State shall give the coordinating officer all necessary assistance, including full access to **the EU Border Guard System** at all times throughout the deployment.

Or. en

#### *Justification*

*see justification for AM 7*

## Amendment 37

### Proposal for a regulation – amending act

#### Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3 c (new) – paragraph 4

*Text proposed by the Commission*

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.

*Amendment*

4. Members of *the EU Border Guard System* shall, while performing their tasks and exercising their powers, remain subject to the disciplinary measures of their home Member State.

Or. en

*Justification*

*see justification for AM 7*

## Amendment 38

### Proposal for a regulation – amending act

#### Article 1 – point 5 a (new)

Regulation (EC) No 2007/2004

Article 3 d (new)

*Text proposed by the Commission*

*Amendment*

*(5a) The following Article is inserted:*

*"Article 3d*

#### *Rapid Border Intervention*

*1. 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 members of the EU Border Guard System on the territory of the requesting Member State for the appropriate duration, in accordance with Article 4 of Regulation (EC) No 863/2007.*

***2. In the event of a situation as described in paragraph 1, Member States shall, at the request of the Agency, immediately communicate the number, names and profiles of border guards from their national component of the EU Border Guard System which they are able to make available within three days to be members of a team. Member States shall make the border guards available for deployment at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.***

***3. When determining the composition of a team for deployment, the Executive Director shall take into account the particular circumstances which the requesting Member State is facing. The team shall be composed in accordance with the operational plan referred to in Article 3a."***

Or. en

*(Former Articles 8a and 8b of Regulation No 2007/2004, with "Rapid Border Intervention Teams" replaced by the EU Border Guard System and title, paragraph numbering and references to articles changed )*

*Justification*

*see justification for AM 7*

*Since the Frontex Joint Support Teams and the Rapid Border Intervention Teams are being merged into the EU Border Guard System, articles relating to the Rapid Border Intervention Teams are being merged into the articles concerning the Frontex Joint Support Teams for the purposes of simplification and legal clarity.*

**Amendment 39**

**Proposal for a regulation – amending act**

**Article 1 – point 5 b (new)**

Regulation (EC) No 2007/2004

Article 3 e (new)

***(5b) The following Article is inserted:***

***"Article 3e***

***Procedure for deciding on deployment***

***1. A request for deployment of the teams in accordance with Article 3d shall include a description of the situation, possible aims and envisaged needs for the deployment. If required, the Executive Director may send experts from the Agency to assess the situation at the external borders of the requesting Member State.***

***2. The Executive Director shall immediately inform the Management Board of a Member State's request for deployment of the teams.***

***3. When deciding on the request of a Member State, the Executive Director shall take into account the findings of the Agency's risk analyses as well as any other relevant information provided by the requesting Member State or another Member State.***

***4. The Executive Director shall take a decision on the request for deployment of the teams as soon as possible and in any event no later than two working days from the date of the receipt of the request. The Executive Director shall simultaneously notify the requesting Member State and the Management Board in writing of the decision. The decision shall state the main reasons on which it is based.***

***5. If the Executive Director decides to deploy one or more teams, an operational plan shall immediately and in any event no later than two working days of the date of the decision be drawn up by the Agency and the requesting Member State in accordance with Article 3a.***

***6. As soon as the operational plan has been agreed, the Executive Director shall***

*inform the Member States of the requested number and profiles of border guards which are to be deployed in the teams. This information shall be provided, in writing, to the national contact points designated under Article 3f and shall indicate the date on which the deployment is to take place. A copy of the operational plan shall also be provided to them.*

*7. If the Executive Director is absent or indisposed, the decisions related to the deployment of the teams shall be taken by the Deputy Executive Director.*

*8. Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.*

*9. Deployment of the teams shall take place no later than three working days after the date on which the operational plan is agreed between the Executive Director and the requesting Member State."*

Or. en

*(Former Article 8 d of Regulation No 2007/2004, with references to articles changed)*

*Justification*

*see justification for AM 38*

#### **Amendment 40**

**Proposal for a regulation – amending act**

**Article 1 – point 5 c (new)**

Regulation (EC) No 2007/2004

Article 3 f (new)

*Text proposed by the Commission*

*Amendment*

***(5c) The following Article is inserted:***

**"Article 3f**

**National contact point**

**Member States shall designate a national contact point for communication with the Agency on all matters pertaining to the EU Border Guard System. The national contact point shall be reachable at all times."**

Or. en

*(Former Article 8 f of Regulation No 2007/2004, with "teams" replaced by the EU Border Guard System)*

*Justification*

*see justification for AM 38*

**Amendment 41**

**Proposal for a regulation – amending act**

**Article 1 – point 5 d (new)**

Regulation (EC) No 2007/2004

Article 3 g (new)

*Text proposed by the Commission*

*Amendment*

**(5d) The following Article is inserted:**

**"Article 3g**

**Coordinating Officer**

**1. The Executive Director shall appoint one or more experts from the staff of the Agency to be deployed as coordinating officer. The Executive Director shall notify the host Member State of the appointment.**

**2. The coordinating officer shall act on behalf of the Agency in all aspects of the deployment of the teams. In particular, the coordinating officer shall:**

**(a) act as an interface between the Agency and the host Member State;**

*(b) act as an interface between the Agency and the members of the teams, providing assistance, on behalf of the Agency, on all issues relating to the conditions for their deployment with the teams;*

*(c) monitor the correct implementation of the operational plan;*

*(d) report to the Agency on all aspects of the deployment of the teams.*

*3. In accordance with Article 25(3)f, the Executive Director may authorise the coordinating officer to assist in resolving any disagreement on the execution of the operational plan and deployment of the teams.*

*4. In discharging his duties, the coordinating officer shall take instructions only from the Agency."*

Or. en

*(Former Article 8 g of Regulation No 2007/2004)*

*Justification*

*see justification for AM 38*

## **Amendment 42**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 6**

Regulation (EC) No 2007/2004

Article 4 – paragraph 2

*Text proposed by the Commission*

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.

*Amendment*

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 *their* external borders.

*Justification**linguistic clarification***Amendment 43****Proposal for a regulation – amending act****Article 1 – point 6**

Regulation (EC) No 2007/2004

Article 4 – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

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 European Union, ***especially for those Member States facing specific and disproportionate pressures.*** ***To this end,*** the Agency shall evaluate the national structures, the equipment and the resources of the Member States regarding border control. The results of these evaluations shall be presented at least once per year to the Management Board of the Agency.

Or. en

*Justification**see justification for AM 5***Amendment 44****Proposal for a regulation – amending act****Article 1 – point 7**

Regulation No 2007/2004

Article 5

*Text proposed by the Commission*(7) ***In*** Article 5 the first paragraph is*Amendment*(7) Article 5 ***is amended as follows:***



replaced by the following:

***(a) the following paragraphs are inserted before the first paragraph:***

***"The Agency shall provide border guards who are part of the EU Border Guard System with advanced training relevant to their tasks and powers and shall conduct regular exercises with those border guards in accordance with the advanced training and exercise schedule referred to in the Agency's annual work programme.***

***The Agency shall also take the necessary initiatives to ensure that all border guards and other personnel of the Member States who participate in the EU Border Guard System, 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."***

***(b) 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 the 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."

"The Agency shall establish and further develop common core curricula for border guards' training and provide training at *EU* level for instructors of the national border guards of Member States, including with the 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."

***(c) the following paragraph is inserted after the last paragraph:***

***"The Agency shall establish an exchange programme enabling national border guards participating in the EU Border Guard System to acquire knowledge or specific know-how from experiences and good practices abroad by working with border guards in a Member State other than their own."***

*Justification*

*These paragraphs are moved from Article 8c (see AM 51 and Article 2 (see AM 12)). For the purposes of legal clarity, provisions on training are gathered together in Article 5.*

**Amendment 45**

**Proposal for a regulation – amending act**

**Article 1 – point 8**

Regulation (EC) No 2007/2004

Article 7 – paragraph 1

*Text proposed by the Commission*

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. Any acquisition of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. 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:

*Amendment*

1. The Agency may acquire or lease technical equipment for external border control to be deployed during joint operations, **rapid border intervention missions**, pilot projects return operations or technical assistance projects in accordance with the financial rules applicable to the Agency. Any acquisition of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. 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:

*Justification*

*see justification for AM 7*

## Amendment 46

### Proposal for a regulation – amending act

#### Article 1 – point 8

Regulation (EC) No 2007/2004

Article 7 – paragraph 2

#### *Text proposed by the Commission*

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.

#### *Amendment*

2. The Agency shall set up and keep centralised records of equipment in a technical equipment pool composed of equipment owned by Member States **and** 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, **3d** and 9.

Or. en

## Amendment 47

### Proposal for a regulation – amending act

#### Article 1 – point 8

Regulation (EC) No 2007/2004

Article 7 – paragraph 5 – subparagraph 1

#### *Text proposed by the Commission*

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.***

#### *Amendment*

5. The Agency shall finance the deployment of the equipment provided by a given Member State.

Or. en

*Justification*

*The Agency should finance the deployment of all the equipment provided by a given Member State and not just part it.*

**Amendment 48**

**Proposal for a regulation – amending act**

**Article 1 – point 8**

Regulation (EC) No 2007/2004

Article 7 – paragraph 5 – subparagraph 3

*Text proposed by the Commission*

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.

*Amendment*

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

Or. en

*Justification*

*see justification for AM 7*

**Amendment 49**

**Proposal for a regulation – amending act**

**Article 1 – point 8**

Regulation (EC) No 2007/2004

Article 7 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. The Agency shall publish, on an annual basis, a record of the technical equipment that each Member State has committed to the pool in accordance with this Article.***

Or. en

## *Justification*

*This amendment aims at having more transparency in the allocation of equipment to Frontex by Member States.*

### **Amendment 50**

#### **Proposal for a regulation – amending act**

##### **Article 1 – point 9 (new)**

Regulation (EC) No 2007/2004

Article 8 – paragraph 1

*Text proposed by the Commission*

*Amendment*

(9) Article 8 is *deleted*.

(9) Article 8 is *amended as follows*:

*(a) paragraph 1 is replaced by the following:*

**"1. Without prejudice to Article 64(2) of the Treaty, one or more Member States facing specific and disproportionate pressures on their national asylum systems 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)."**

*(b) in paragraph 2 the following point is added:*

**"(ba) deploy border guards from the EU Border Guard System."**

Or. en

## *Justification*

*The deletion of Article 8 by the Commission proposal creates a legal lacuna. See also justification for AM 5*

## **Amendment 51**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 9 a (new)**

Regulation (EC) No 2007/2004

Article 8 a

*Text proposed by the Commission*

*Amendment*

***(9a) Articles 8a, 8b, 8c, 8d, 8e, 8f and 8g are deleted.***

Or. en

#### *Justification*

*Provisions of Articles 8a and 8b are moved to Article 3d (new) (AM 38).*

*Article 8c is moved to Article 5 (AM 44).*

*Article 8d is moved to Article 3e (new) (AM 39).*

*The provisions of Article 8e are moved into Article 3a. Since the Frontex Joint Support Teams and the Rapid Border Intervention Teams are being merged into the EU Border Guard System, articles relating to the Rapid Border Intervention Teams are being merged into the articles concerning the Frontex Joint Support Teams for the purposes of simplification and legal clarity.*

*Article 8f is moved to Article 3f (new) (AM 40).*

*Article 8g is moved to Article 3g (new) (AM 41).*

## **Amendment 52**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 11**

Regulation (EC) No 2007/2004

Article 8 h – paragraph 1

#### *Text proposed by the Commission*

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**:

#### *Amendment*

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(-1a)**, **Article 3(d)** and **Article 5**:

Or. en

#### *Justification*

*The Articles in question were moved by other amendments. The reference should therefore be aligned.*

## **Amendment 53**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 12**

Regulation (EC) No 2007/2004

Article 9 – paragraph -1a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(-1a) The Agency shall provide Member States with the necessary support for the coordination and organisation of voluntary return schemes.***

Or. en

## **Amendment 54**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 12**

Regulation (EC) No 2007/2004

Article 9 – paragraph 1

*Text proposed by the Commission*

1. Subject to the return policy of the Union, **and** in particular Directive 2008/115/EC , the Agency shall provide the necessary assistance, and upon request of the participating Member States ensure the coordination for organising 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.

*Amendment*

1. Subject to the return policy of the Union, in particular Directive 2008/115/EC **and without entering into the merits of return decisions**, the Agency shall provide the necessary assistance, and upon request of the participating Member States **also** ensure the coordination for organising joint return operations of Member States, **including through the chartering of aircraft for the purpose of such operations**. The Agency **shall** 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 the financial means **of the European Union** available in the field of return, **notably in the European Return Fund**. 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.

Or. en

*Justification*

*EU resources in the field of return should be accessible to Frontex. In the field of return, the role of Frontex is only logistical. The merits of the return decisions should be taken into consideration during the asylum proceedings.*

**Amendment 55**

**Proposal for a regulation – amending act**

**Article 1 – point 12**

Regulation (EC) No 2007/2004

Article 9 – paragraph 3

*Text proposed by the Commission*

3. The Code of Conduct **will** in particular **pay attention to** the obligation set out in Article 8(6) of Directive 2008/115/EC to

*Amendment*

3. The Code of Conduct **shall**, in particular, **take into account** the obligation set out in Article 8(6) of Directive



provide for an effective forced-return monitoring system. The monitoring of joint return operations should be carried out independently 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.

2008/115/EC to provide for an effective forced-return monitoring system ***to ensure that the return is carried out in full respect for fundamental human rights.*** The monitoring of joint return operations should be carried out independently 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.

Or. en

#### *Justification*

*This amendment aims at reinforcing the monitoring system of return procedures.*

#### **Amendment 56**

##### **Proposal for a regulation – amending act**

##### **Article 1 – point 12**

Regulation (EC) No 2007/2004

Article 9 – paragraph 5

##### *Text proposed by the Commission*

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.***

##### *Amendment*

5. The Agency shall cooperate with competent authorities of the relevant third countries referred to in Article 14 ***to enable the return of illegally present third-country nationals. Such cooperation shall include*** the acquisition of travel documents ***as well as the completion of any other necessary formalities to enable their return.***

Or. en

*Justification*

*Frontex should assist Member States in the acquisition of travel documents for the purposes of return.*

**Amendment 57**

**Proposal for a regulation – amending act**

**Article 1 – point 13 a (new)**

Regulation (EC) No 2007/2004

Article 10 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***In Article 10 paragraph 4 is replaced by the following:***

**"4. Guest officers shall wear their own uniform while performing their tasks and exercising their powers. They shall wear a blue armband with the insignia of the European Union [...] on their uniforms, identifying them as participating in a joint operation or pilot project. For the purposes of identification vis-à-vis the national authorities of the host Member State and its citizens, guest officers shall at all times carry an accreditation document, as provided for in Article 10a, which they shall present on request."**

Or. en

**Amendment 58**

**Proposal for a regulation – amending act**

**Article 1 – point 14**

Regulation (EC) No 2007/2004

Article 11

*Text proposed by the Commission*

*Amendment*

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

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.***

shall develop and operate an information system capable of exchanging classified information with the Commission and the Member States.

Or. en

#### *Justification*

*The Agency should have the power to process personal data for limited purposes with strict criteria as to how this data should be handled, in order to enable it to play a greater role in combating cross-border crime and irregular migration. Therefore, the wording of this Article must be amended.*

#### **Amendment 59**

##### **Proposal for a regulation – amending act**

##### **Article 1 – point 15 a (new)**

Regulation (EC) No 2007/2004

Article 11 a a (new)

*Text proposed by the Commission*

*Amendment*

***The following Article 11aa is inserted:***

***"Article 11aa***

##### ***Processing of personal data***

***1. In performing its tasks, the Agency may process personal data in order to contribute to the security of the external borders of the Member States of the European Union.***

***2. The processing of personal data shall respect the principles of necessity and proportionality.***

***3. The processing of personal data by the Agency shall be limited to personal data obtained during joint operations or pilot projects or rapid border intervention missions regarding persons who are suspected 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>1</sup>, persons who are victims of such activities and whose data may lead to the perpetrators of such illegal activities as well as persons who are subject to return operations in which the Agency is involved.*

*4. The personal data shall be deleted as soon as the purpose for which they have been collected has been achieved. The term of storage shall in any event not exceed three months after the date of the collection of those data.*

*5. Personal data processed by the Agency for the purpose specified in this Article shall, subject to Article 13 of this Regulation, be transmitted to Europol.*

*6. 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.*

*7. Onward transmission or other communication of personal data processed by the Agency to Member States or third countries or other third parties shall be prohibited.*

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<sup>1</sup> OJ L 328, 5.12.2007, p. 17"

Or. en

#### *Justification*

*The Agency should have the power to process personal data. Due safeguards will be introduced with strict criteria: data should be processed for limited purposes, namely for situations regarding persons whom there are reasonable grounds to suspect involvement in cross-border criminal activities, in irregular migration activities or in human trafficking activities, persons who are victims of such activities and whose data may lead to the perpetrators of such illegal activities as well as persons who are subject to return operations in which the Agency is involved.*

## Amendment 60

### Proposal for a regulation – amending act

#### Article 1 – point 16

Regulation (EC) No 2007/2004

Article 13

#### *Text proposed by the Commission*

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.

#### *Amendment*

The Agency *shall* 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.

Or. en

## Amendment 61

### Proposal for a regulation – amending act

#### Article 1 – point 16

Regulation (EC) No 2007/2004

Article 14 – paragraph 1

#### *Text proposed by the Commission*

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.

#### *Amendment*

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall *seek to cooperate with the competent authorities of third countries and* 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.

Or. en

## *Justification*

*Frontex should take initiatives to exercise its capacity to cooperate with third country authorities.*

### **Amendment 62**

#### **Proposal for a regulation – amending act**

##### **Article 1 – point 16**

Regulation (EC) No 2007/2004

Article 14 – paragraph 2

#### *Text proposed by the Commission*

2. The Agency may deploy liaison officers, which should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of Member States' liaison officers set up pursuant to Council Regulation No 377/2004. Liaison officers shall only be deployed to third countries ***in which border management practices respect minimum human rights standards.***

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.

#### *Amendment*

2. The Agency may deploy liaison officers, which should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of Member States' liaison officers set up pursuant to Council Regulation No 377/2004. Liaison officers shall only be deployed to third countries ***with which it has concluded a working agreement in accordance with this Article.*** 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.

Or. en

### **Amendment 63**

#### **Proposal for a regulation – amending act**

##### **Article 1 – point 16**

Regulation (EC) No 2007/2004

Article 14 – paragraph 7

*Text proposed by the Commission*

7. The activities referred to in paragraphs 2 and 6 shall be subject to receiving a prior favourable opinion of the Commission."

*Amendment*

7. The activities referred to in paragraphs 2 and 6 shall be subject to receiving a prior favourable opinion of the Commission, ***and the European Parliament shall be immediately and fully informed.***"

Or. en

*Justification*

*The role of the European Parliament should be reinforced.*

#### **Amendment 64**

**Proposal for a regulation – amending act**

**Article 1 – point 17 a (new)**

Regulation (EC) No 2007/2004

Article 16

*Text proposed by the Commission*

*Amendment*

***(17a) Article 16 is replaced by the following:***

**"Article 16**

**Specialised branches *and regional operational offices***

**The Management Board of the Agency shall evaluate the need for, and decide upon the setting up of, specialised branches *and/or regional operational offices* in the Member States, subject to their consent, taking into account that due priority should be given to the operational and training centres already established and specialised in the different aspects of control and surveillance of the land, air and maritime borders respectively.**

**The specialised branches *and regional operational offices* of the Agency shall develop best practices with regard to the particular types of external borders *or the particular geographic region* for**

which they are responsible. The Agency shall ensure the coherence and uniformity of such best practices.

Each specialised branch *and regional operational office* shall submit a detailed annual report to the Executive Director of the Agency on its activities and shall provide any other type of information relevant for the coordination of operational cooperation."

Or. en

## Amendment 65

### Proposal for a regulation – amending act

#### Article 1 – point 18

Regulation (EC) No 2007/2004

Article 17 – paragraph 3

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 3g**. 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 EU Border Guard System**. The Agency shall designate those national experts *who* shall be attached to **the EU Border Guard System** in accordance with that Article.

Or. en

#### *Justification*

*see justification for AM 7*



## Amendment 66

### Proposal for a regulation – amending act

#### Article 1 – point 21 – point a

Regulation (EC) No 2007/2004

Article 21 – paragraph 1 – last sentence

*Text proposed by the Commission*

*Amendment*

This term of office shall be **extendable**.

This term of office shall be **renewable**.

Or. en

*Justification*

*linguistic clarification*

## Amendment 67

### Proposal for a regulation – amending act

#### Article 1 – point 21 a (new)

Regulation (EC) No 2007/2004

Article 25 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***(21a) In Article 25 paragraph 2 is replaced by the following:***

***"2. 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 general report of the Agency for the previous year, the work programme for the coming year and the Agency's multi-annual plan referred to in Article 20(i)."***

Or. en

*Justification*

*The role of the European Parliament should be reinforced.*

## Amendment 68

### Proposal for a regulation – amending act

#### Article 1 – point 23

Regulation No 2007/2004

Article 33 – paragraph 2 a (new)

#### *Text proposed by the Commission*

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***.

#### *Amendment*

2a. The evaluation shall analyse the need ***for the further development of the EU Border Guard System and*** for the Agency to employ independent border guards acting under ***its*** instructions ***and include*** a detailed description of the legal framework that would need to be set in place for ***those purposes***.

Or. en

## EXPLANATORY STATEMENT

One of the attributes of a common EU area of freedom, security and justice is that of the removal of internal borders, especially within the Schengen area. In turn, this has rendered the external borders of EU Member States a matter of common concern and has made the need for an integrated management of external borders ever more compelling.

With 42 672 km of external sea borders and 8 826 km of land borders, the Schengen free-movement area comprises 25 countries (including three non-EU states) enabling free internal travel for nearly half a billion people across the continent. The abolition of internal borders has facilitated freedom of movement for citizens in an unprecedented manner.

But this calls for a coordinated approach in securing external borders. And whereas external borders remain open and efficient for *bona fide* travellers and for people who need protection, they must be closed for cross-border crime and for other illicit activities.

An integrated management ensuring a uniform and high level of control and surveillance is therefore necessary. This calls for an adoption and implementation of common rules and also calls for increased cooperation between Member States in securing their external borders. More combined effort is needed and more pooling of resources.

Crucially, cooperation must be based on solidarity among Member States, especially with frontier Member States that, owing to their geographic or demographic situation, face severe migratory pressures at their borders. The deployment in October 2010 of the first Frontex Rapid Border Intervention Teams (RABITS), at the request of Greece in the light of its emergency situation at its border with Turkey, is a case in point.

It is in the light of this need for more coordination and solidarity that the Frontex agency plays an important role.

The Agency was set up in 2004 and became operational in 2005. Over the past five years, the Agency has faced a rapidly changing scenario in migratory flows at the Union's external borders. It has grown into a compliment of more than 200 staff and has been active in several land, air and sea joint operations. But its effectiveness has not reached expected levels.

We must learn from these first years of experience and give the Agency a renewed mandate with more resources and more tools to become more effective.

As requested by the Hague programme, the Commission presented a Communication on the evaluation and future development of the FRONTEX Agency adopted on 13 February 2008. The situation of the Frontex agency was addressed in European Parliament resolutions concerning immigration, the Pact on Immigration and Asylum and in the Stockholm Programme. The general message in each of these documents was that a number of aspects of the Agency needed to be improved.

A recurring problem was that Frontex was too dependent on Member States for the deployment of personnel and equipment in missions coordinated by the Agency. The participation of the Member States had been patchy and pledges for equipment have been low.

These shortcomings have seriously hampered the efficiency of the Agency. Another problem was the lack of cooperation from third countries.

On its part, the European Parliament has consistently supported the Agency, notably through significant budget increases over the years to support Frontex operations. Parliament has also repeatedly called for improvements in the Agency's enabling legislation in order to address its shortcomings and improve its efficiency.

The proposal presented by the Commission is a step towards improving the agency in the light of the experience of its first years of operation. It provides amendments that are necessary to ensure a better defined mandate and an improved functioning of the Agency in the coming years.

The rapporteur welcomes the Commission proposals and hopes to improve them through a series of amendments that are contained in this report.

### **The future of the Frontex agency**

The rapporteur believes that we have to clearly determine what we want from Frontex and what shape we want it to take in the coming years. The Treaty of Lisbon, the Stockholm Programme and the proposed Single Market Act all confirm that Europe is aiming to achieve a single area of freedom, security and justice for the benefit of its citizens. In this regard we have to make sure that the mechanisms concerned with this area live up to these ambitions. Frontex is no exception and its enabling law must be changed to ensure that it is better equipped to play its role.

Frontex should therefore be the European external border agency that coordinates common EU action in relation to the external borders of EU Member States. In particular, Frontex should be ready to assist Member States in circumstances requiring increased technical and operational assistance at external borders, especially those Member States facing specific and disproportionate pressures. In so doing, the Agency should embody European solidarity whereby pooled resources from different Member States should be brought together to support Member States in difficulties or particular points at the Union's external border which are vulnerable or which require concerted action.

Frontex should work hand-in-hand with other European agencies, notably Europol and Eurojust in the fight against cross-border crime. And it should also work hand-in-hand with the European Asylum Support Office in order to ensure that third-country nationals who seek protection in the EU manage to access Europe's asylum system through proper, legitimate means.

Frontex also has to be available at all times when needed, including in situations of emergency. Europe can no longer look on powerless at emergency situations because it is unable to muster resources or pool assets. Frontex must therefore have the necessary means and equipment to deliver in a timely and efficient manner and that its legislation is up to date for it to deliver this purpose.

Your rapporteur believes that Frontex should therefore be able to bring together national border guards from different EU Member States in a pool of EU border guards or indeed, a EU Border Guard System. This pool should be drawn up for the purposes of joint operations,

rapid border intervention missions and pilot projects involving the Agency and all Member States should be required to participate. The Agency must also support this pool through specialised training and other initiatives. The system could be an embryonic structure which could, in future, be developed into a fully-fledged EU Border Guard Agency.

### **Fundamental Rights**

Like all other EU agencies and bodies, Frontex has the duty to observe and uphold fundamental rights in all realms of its affairs. Your rapporteur welcomes the numerous elements in the Commission proposal which underline the importance of fundamental rights and which strengthen the ability and obligation of Frontex to ensure that respect for such rights is an integral part of border management.

### **Proposed Amendments**

In the light of the above, your rapporteur is proposing amendments to the Frontex regulation in order to achieve the following:

1. Strengthen the provisions on **fundamental human rights**.
2. Merge the articles providing for the setting up of Frontex Joint Support Teams and Rapid Border Intervention teams into one article providing for a **EU Border Guard System** which will consist of a pool of national border guards that can be tapped by the Agency for the purposes of its joint operations, rapid border intervention missions and pilot projects. This will streamline the provisions of the regulation, increase transparency, avoid duplication and confusion of roles and most importantly, give a clearer European identity to the Agency's missions.
3. Support the Commission's proposal to require Member State to participate in the EU Border Guard System through national border guards of their own, the compulsory-solidarity clause - and to equip the Agency with the means to purchase or lease its own equipment.
4. Mandate the Agency to pay special attention to **Member States which are facing specific and disproportionate burdens** on their national asylum systems.
5. **Tighten the timeframes** within which rapid border intervention missions should be deployed. All deadlines for action are reduced so that rapid border interventions can truly cater for emergency situations.
6. Introduce a role for Frontex in assisting with **voluntary returns** over and above the role of the agency for other returns.
7. Introduce a reference to **regional operational offices** based on the recent experience of the opening of the first regional operational office in Greece.
8. Grant the Agency the power to **process personal data** in order to enable it to play a greater role in combating cross-border crime and irregular migration. At the same time, provide for due safeguards on the protection of personal data. Thus, data should be processed for limited purposes, namely for situations regarding persons whom there are

reasonable grounds to suspect involvement in cross-border criminal activities, in irregular migration activities or in human trafficking activities, persons who are victims of such activities and whose data may lead to the perpetrators of such illegal activities as well as persons who are subject to return operations in which the Agency is involved. There should be strict criteria as to how this data should be handled.

9. Increase the **democratic scrutiny** of the Agency by giving the European Parliament a greater role to monitor the work of the Agency, including on its working arrangements with third countries.
10. Require the review of the Agency's mandate, in five years, to analyse the further development of the **EU Border Guard System**.