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European Agency for the Management of Operational Co-operation at the External Borders *

European Parliament legislative resolution on the proposal for a Council regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders (COM(2003) 687 – C5-0613/2003 – 2003/0273(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2003) 687)¹,
 - having regard to Article 66 of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0613/2003),
 - having regard to the Protocol integrating the Schengen acquis into the framework of the European Union,
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Budgets (A5-0093/2004),
1. Approves the Commission proposal as amended;
 2. Considers that the financial statement of the Commission proposal is compatible with the ceiling of heading 3 of the Financial Perspective without restricting other policies;
 3. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 4. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 5. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
 6. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

¹ Not yet published in OJ.

7. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 1

(1) Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which *is* a necessary corollary to the free movement of persons within the European Union and a fundamental component of an Area of Freedom, Security and Justice. To this end, the establishment of common rules on standards and procedures for the control of the external borders is foreseen.

(1) Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which ***constitutes a measure designed to prevent trafficking in human beings***, a necessary corollary to the free movement of persons within the European Union and a fundamental component of an Area of Freedom, Security and Justice. To this end, the establishment of common rules on standards and procedures for the control of the external borders is foreseen.

Amendment 2
Recital 6

(6) The Agency should provide training at European level for national instructors of border guards and additional training and seminars related to control and surveillance at the external borders ***and removal of third country nationals illegally resident in the Member States for officers of the competent national services***.

(6) The Agency should provide training at European level for national instructors of border guards and additional training and seminars related to control and surveillance at the external borders.

Amendment 3
Recital 7a (new)

(7a) In carrying out the above activities the Agency shall act in conformity with the objectives and priorities adopted by the Commission in accordance with Article 12 of Decision 2002/463/EC⁽¹⁾.

⁽¹⁾ Council Decision 2002/463/EC of 13

June 2002 adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme) (OJ L 161, 19.6.2002, p. 11).

Amendment 4
Recital 9

(9) The Agency should also support Member States in circumstances requiring increased technical and operational assistance at the external borders.

(9) The Agency should also support Member States in *exceptional* circumstances requiring increased technical and operational assistance at the external borders.

Amendment 5
Recital 10

(10) In most Member States, the operational aspects of return of third-country nationals illegally residing in the Member States fall under the competencies of the authorities responsible for controlling the external borders. As there is a clear added value in performing these tasks at European level, the Agency should, subject to the Community return policy, accordingly co-ordinate and organise return operations of Member States and develop best practices on the acquisition of travel documents and return of third-country nationals from the territories of the Member States.

deleted

Amendment 6
Recital 12

(12) Building upon the experiences of the External Borders Practitioners' Common Unit and the centres specialised in the different aspects of control and surveillance of land, air, and maritime borders respectively, which have been set up by Member States, the Agency may

deleted

itself create specialised branches responsible for dealing with land, air, and maritime borders.

Amendment 7
Recital 16a (new)

(16a) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹ applies to the processing of personal data by the Agency.

¹ *OJ L 8, 12.1.2001, p. 1.*

Amendment 8
Recital 17

(17) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency **and appoint the Executive Director.**

(17) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules **and** establish transparent working procedures for decision making by the Agency.

Amendment 9
Recital 18a (new)

(18a) The control of national borders should remain a sovereign Member State responsibility.

Amendment 10

Recital 19

(19) Bearing in mind the constantly changing nature of the challenges to efficient management of the external borders, a possible gradual widening of the scope of action of the Agency should be provided for. Such a wider scope could e. g. encompass tasking the Agency with the carrying out of inspections at the external borders and the facilitation of operational co-operation with relevant third countries and international organisations, taking into account the institutional framework of the European Community. This Regulation should apply to any other area related to the management of the external borders on a basis of a future proposal in accordance with the Treaty establishing the European Community.

deleted

Amendment 11

Recital 20

(20) Recalling that efficient control and surveillance of the external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, ***including return of third-country nationals illegally residing in the Member States***, constitutes an important step in this direction.

(20) Recalling that efficient control and surveillance of the external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, constitutes an important step in this direction.

Amendment 12

Recital 26

(26) This Regulation respects the fundamental rights and observes the principles recognised by Article 6(2) of the

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Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union

Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, *in particular in Article 19 thereof.*

Amendment 13
Article 1, paragraph 2

2. The Agency shall facilitate the application of *existing and future* Community measures relating to the management of the external borders by ensuring the co-ordination 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 European Union.

2. The Agency shall, *within its remit as laid down in Article 2*, facilitate the application of Community measures relating to the management of the external borders by ensuring the co-ordination 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 European Union.

Amendment 14
Article 2, point (ba) (new)

(ba) carry out inspections at the external borders.

Amendment 15
Article 2, point (da) (new)

(da) study measures to ensure the compatibility of technical equipment.

Amendment 16
Article 2, point (f)

(f) co-ordinate operational co-operation between Member States in the field of removal of third-country nationals illegally residing in the Member States.

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Amendment 17
Article 2, point (fa) (new)

(fa) study the need for and feasibility of setting up a European Border Guard.

Amendment 18
Article 2, point (fb) (new)

(fb) develop and coordinate a network of liaison officers for migration-related issues.

Amendment 19
Article 3, paragraph 2

2. The Agency may operate through its specialised branches provided for in Article 13, for the practical organisation of joint operations and pilot projects. *deleted*

Amendment 20
Article 3, paragraph 4

4. The Agency may decide to co-finance the operations and projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency. *deleted*

Amendment 21
Article 4, paragraph 2

It shall prepare both general and tailored risk assessments to be submitted to the Council and the Commission.

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Amendment 22
Article 5, paragraph 2

The Agency shall also offer additional

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training courses and seminars on subjects related to the control and surveillance of the external borders ***and return of third country nationals*** for officers of the competent national services of Member States.

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Amendment 23
Article 5, paragraph 2a (new)

The Agency may also hold training seminars at the request of the authorities of the Member States on the European Union's immigration policies and the procedures laid down by the competent institutions.

Amendment 24
Article 6

The Agency shall follow up on the developments in research relevant for the control and surveillance of the external borders and disseminate this information to the Commission and the Member States.

The Agency shall follow up on the developments in research relevant for the control and surveillance of the external borders and disseminate this information to the ***European Parliament, the*** Commission and the Member States.

Amendment 25
Article 9

Article 9

deleted

Return co-operation

1. The Agency shall subject to the Community return policy co-ordinate or organise joint return operations of Member States. The Agency may use Community financial means available in the field of return.

2. The Agency shall identify best practices on the acquisition of travel documents and the removal of illegally residing third-country nationals from the territories of the Member States.

Amendment 26
Article 13

Article 13

deleted

Specialised branches

The Agency shall evaluate the need for and decide the setting up of specialised branches in the Member States, subject to their consent.

The specialised branches of the Agency shall develop best practices with regard to the particular types of external borders for which they are responsible. The Agency shall ensure the coherence and uniformity of such best practices.

Each specialised branch shall submit a detailed annual report to the Agency on its activities as well as provide any other type of information relevant for the co-ordination of operational co-operation.

Amendment 27
Article 14, paragraph 3

3. The Agency's staff shall consist of a limited number of officials and of national experts in the field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

3. The Agency's staff shall consist of a limited number of officials *assigned by the Commission* and of national experts in the field of control and surveillance of the external borders seconded by the Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency as necessary to carry out its tasks.

Amendment 28
Article 17, paragraph 2, point (a)

(a) appoint the Executive Director on a proposal from the Commission in accordance with Article 23;

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Amendment 29
Article 17, paragraph 2, point (c)

(c) before **30 September** each year, and after receiving the opinion of the Commission, adopt, by a three-quarters majority of its members, the Agency's programme of work for the **coming** year and forward it to the European Parliament, the Council, the Commission; this programme of work shall be **adopted according to** the annual Community budgetary procedure **and** the Community legislative programme in relevant areas of the management of external borders;

(c) before **31 January** each year, and after receiving the opinion of the Commission, adopt, by a three-quarters majority of its members, the Agency's **draft** programme of work for the year **in question** and forward it to the European Parliament, the Council, the Commission; this programme of work shall be **finalised in the light of the outcome of** the annual Community budgetary procedure; **it shall take due account of** the Community legislative programme in relevant areas of the management of external borders;

Amendment 30
Article 17, paragraph 2, point (ha) (new)

(ha) sign memoranda of understanding with the European Police College, the European armaments agency, the European Maritime Safety Agency and other bodies working in the Agency's field of activity on a clear division of responsibilities, so as to avoid duplication of work.

Amendment 31
Article 18, paragraph 1

1. The Management Board shall be composed of twelve members **and two representatives of the Commission**. The Council shall appoint **the** members as well as their alternates who will represent them in their absence. **The Commission shall appoint its representatives and their alternates**. The duration of the terms of office shall be four years. This term of office shall be extendable once.

1. The Management Board shall be composed of twelve members. The Council **and the Commission** shall **each** appoint **six** members as well as their alternates who will represent them in their absence. The duration of the terms of office shall be four years. This term of office shall be extendable once.

Amendment 32
Article 18, paragraph 1a (new)

1a. Members of the Management Board shall be appointed on the grounds of their experience in the field of border protection.

Amendment 33
Article 19

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall ex-officio replace the Chairperson in the event of his/her being prevented from attending to his/her duties.

The Management Board shall ***be chaired by one of the Commission representatives.***

2. The term of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of the terms of office of the Chairperson or Deputy Chairperson shall be two years. These terms of office shall be extendable once.

Amendment 34
Article 22, paragraph 1

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. ***Without prejudice to the respective competencies of the Commission and the Management Board,*** the Executive Director shall neither seek nor take instructions from any government or from any other body.

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. The Executive Director shall neither seek nor take instructions from any government or from any other body.

Amendment 35
Article 22, paragraph 2

2. The European Parliament or the Council ***may*** invite the Executive Director of the

2. The European Parliament ***pursuant to Article 23a*** or the Council ***shall*** invite the

Agency to report on the carrying out of his/her tasks.

Executive Director of the Agency to report on the carrying out of his/her tasks.

Amendment 36
Article 23, paragraph 1

1. The Commission shall **propose candidates for the post of** the Executive Director based on a list following publication of the post in the Official Journal and other press or internet sites as appropriate.

1. The Commission shall **appoint** the Executive Director based on a list following publication of the post in the Official Journal and other press or internet sites as appropriate.

Amendment 37
Article 23, paragraph 1a (new)

1a. The European Parliament may hear the candidates prior to appointment and issue an opinion.

Amendment 38
Article 23, paragraph 2

2. The Executive Director of the Agency shall be appointed by the **Management Board** on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders. ***The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.***

Power to dismiss the Executive Director shall be with the **Management Board**, ***according to the same procedure.***

2. The Executive Director of the Agency shall be appointed by the **Commission** on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders.

Power to dismiss the Executive Director shall be with the **Commission**.

Amendment 39
Article 23, paragraphs 3, 4 and 5

3. The Executive Director shall be assisted by a Deputy Executive Director. If the Executive Director is absent or

indisposed, the Deputy Executive Director shall take his/her place.

4. The Deputy Executive Director shall be appointed by the Management Board on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders on the proposal of the Executive Director. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

Power to dismiss the Deputy Executive Director shall be with the Management Board, according to the same procedure.

5. The *terms of the offices* of the Executive Director *and the Deputy Executive Director* shall be five years. *They* may be prolonged by the *Management Board* once for another period of up to five years.

5. The *term of office* of the Executive Director shall be five years. *This term of office* may be prolonged by the *Commission* once for another period of up to five years.

Amendment 40
Article 23a (new)

Article 23a

Hearing of the Executive Director before the European Parliament

Each year the Executive Director shall submit and present to the European Parliament the general report on the Agency's activities. The European Parliament may also request at any time a hearing with the Executive Director on any subject related to the Agency's activities.

Amendment 41
Article 24a (new)

Article 24a

Working languages

The Agency shall determine its internal working languages.

Amendment 42
Article 25a (new)

Article 25a

Protection of personal data

1. Regulation (EC) No 45/2001 shall apply to the processing of personal data by the Agency.

2. Within six months after the entry into force of the Regulation, the Management Board shall lay down the practical arrangements for the application of paragraph 1.

Amendment 43
Article 26, paragraph 1, indent 4a (new)

- a contribution from the host Member State.

Amendment 44
Article 26, paragraph 3

3. The Executive Director shall draw up an estimate of the revenues and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with **an** establishment plan.

3. The Executive Director shall draw up an estimate of the revenues and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with **a provisional** establishment plan.

Amendment 45
Article 26, paragraph 6

6. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the European Union.

6. The estimate **and the provisional establishment plan** shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft budget of the European Union.

Amendment 46
Article 26, paragraph 11, subparagraph 2

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

The budgetary authority **shall notify the Agency whether it intends** to deliver an opinion. It shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project. **The Management Board shall defer implementation of the project in question until the opinion has been delivered.**

Amendment 47
Article 29, paragraph 1

1. Within **three years** from the date of the Agency having taken up its responsibilities, and every **five years** thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.

1. Within **two years** from the date of the Agency having taken up its responsibilities, and every **two years** thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation, **placing particular emphasis on respect for fundamental rights.**

Amendment 48
Article 29, paragraph 1a (new)

1a. The first evaluation shall also contain the findings of the Agency of the need for and feasibility of setting up a European Border Guard.

Amendment 49
Article 29, paragraph 2

2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency, **its added value** and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

Amendment 50
Article 29, paragraph 3

3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which *may* forward them, together with its own opinion as well as appropriate proposals, to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which *shall* forward them, together with its own opinion as well as appropriate proposals, to the ***European Parliament and the*** Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

Amendment 51
Article 30

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, unless specifically required for the Agency's operation and with the Commission's prior consent.

The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, unless specifically required for the Agency's operation and with the Commission's prior consent. ***The budgetary authority shall be duly informed of such departure.***

Amendment 52
Article 31

This Regulation shall enter into force ***on the [...] day following that of its publication in the Official Journal of the European Union.***

The Agency shall take up its responsibilities from 1 January 2005.

This Regulation shall enter into force ***once a definitive seat for the Agency has been established.***

The decision on the seat shall be taken following a procedure in which Member States interested in obtaining the seat make an offer as to what they are

prepared to contribute to the Agency. They shall outline inter alia whether they are willing to provide a building, what other assistance might be given and the expertise available in the Member State in the fields of activity of the Agency.

The decision on the seat of the Agency shall be taken by the Council not later than 31 December 2004. The Member State designated to host the Agency shall contribute financially to its setting up.