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REPORT

on the proposal for a Council decision establishing a European Migration Network

(COM(2007)0466 – C6-0303/2007 – 2007/0167(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Luciana Sbarbati

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

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

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision establishing a European Migration Network
(COM(2007)0466 – C6-0303/2007 – 2007/0167(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2007)0466),
 - having regard to Article 66 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0303/2007),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Rules 51 and 35 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0066/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Title

Proposal for a
COUNCIL DECISION
establishing a European Migration
Network

Proposal for a
COUNCIL DECISION
establishing a European Migration *and*
Asylum Network

Justification

The European network's job is to collect and exchange information on immigration and asylum, and this should be reflected in its acronym (EMAN). This amendment seeks to replace 'European Migration Network' with 'European Migration and Asylum Network' and 'EMN' with 'EMAN' throughout the proposal (with the exception of recitals 1 to 5, which refer to the name used to date).

Amendment 2 Recital 6

(6) The **EMN** should avoid duplicating the work of existing Community instruments or structures whose purpose is to collect and exchange information in the areas of migration and asylum and should provide an added value in comparison with them, in particular through the broad scope of its tasks, a strong focus on analysis, links with the academic community and the public availability of its outputs.

(6) The **EMAN** should avoid duplicating the work of existing Community instruments or structures whose purpose is to collect and exchange information in the areas of migration and asylum and should provide an added value in comparison with them, in particular through **its neutrality**, the broad scope of its tasks, a strong focus on analysis, links with the academic community, **non-governmental organisations (NGOs), international organisations, and central administrations**, and the public availability of its outputs.
(if the amendment concerning abbreviation "EMAN" is adopted, it would apply throughout the whole text, except for recitals 1 to 5)

Justification

The European network's job is to collect and exchange information on immigration and asylum, and this should be reflected in its acronym (EMAN). This amendment seeks to replace 'European Migration Network' with 'European Migration and Asylum Network' and 'EMN' with 'EMAN' throughout the proposal (with the exception of recitals 1 to 5, which refer to the name used to date).

The EMAN must be able to base its work on information from government departments, universities, research centres, NGOs and international organisations.

Amendment 3 Recital 6 a (new)

(6a) Among other existing instruments and structures, Regulation (EC) No

862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection¹ constitutes an important reference framework for the functioning of the European Migration Network. Attention should also be paid to the valuable work carried out by the CIREFI² and to Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services³ (ICOnet).

1. OJ L 199, 31.7.2007, p. 23.

2. Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI), as established following Council Conclusions of 30 November 1994 (OJ C 274, 19.09.1996, p. 50).

3. OJ L 83, 1.4.2005, p. 48.

Justification

Introduction of a Council proposal that can be acceptable to the Parliament.

Amendment 4

Recital 8

(8) In order to ensure that the National Contact Points have the necessary expertise to deal with the multi-faceted aspects of migration and asylum issues, they should be composed of at least three experts who, individually or jointly, have competencies in policy-making, law, research and statistics. These experts may come from the Member States' administrations ***or from any other organisation.***

(8) In order to ensure that the National Contact Points have the necessary expertise to deal with the multi-faceted aspects of migration and asylum issues, they should be composed of at least three experts ***from different backgrounds (government departments, non-governmental organisations and universities)*** who, individually or jointly, have competencies in policy-making, law, research and statistics. These experts may come from the Member States' administrations, ***non-governmental organisations, universities or research centres. Each National Contact Point should also collectively have adequate expertise in information***

technology, in setting up collaboration schemes and networking with other national organisations and entities, and in collaborating in a multilingual environment at European level.

Justification

The EMAN must be able to base its work on information from government departments, universities, research centres, NGOs and international organisations. A text agreed by the Council is added, as it can be acceptable to the EP.

Amendment 5

Recital 9

(9) Each National Contact Point should establish a national migration network, composed of organisations and individuals active in the area of migration and asylum, ***and including***, for example, universities, research organisations and researchers, governmental and non-governmental organisations and international organisations, in order to enable the voices of all relevant stakeholders to be heard.

(9) Each National Contact Point should establish a national migration network, composed of organisations and individuals active in the area of migration and asylum. ***In order to ensure the reliability and comparability of information on migration and asylum produced by the network, the National Contact Points should include representatives from***, for example, universities, research organisations and researchers, governmental and non-governmental organisations and international organisations, in order to enable the voices of all relevant stakeholders to be heard.

Justification

The EMAN must be able to base its work on information from government departments, universities, research centres, NGOs and international organisations and it must be made explicit in the text that those actors shall be from diverse organisations.

Amendment 6

Recital 12

(12) When necessary for the attainment of its objectives, the EMN should be able to establish cooperative relationships with other entities active in the area of migration and asylum. When establishing such relationships, particular attention should be

(12) When necessary for the attainment of its objectives, the EMN should be able to establish cooperative relationships with other entities active in the area of migration and asylum. When establishing such relationships, particular attention should be

paid to ensuring a good degree of cooperation with entities in Denmark, Norway, Iceland, Switzerland, the candidate countries, countries covered by the European Neighbourhood Policy and Russia.

paid to ensuring a good degree of cooperation with entities in Denmark, Norway, Iceland, Switzerland, the candidate countries, countries covered by the European Neighbourhood Policy and Russia, ***with international organisations, including NGOs, with universities and research centres and with the countries of origin and of transit of asylum seekers and migrants.***

Justification

The EMAN must be able to base its work on information from government departments, universities, research centres, NGOs and international organisations. Furthermore, information exchange needs to be established with specific countries of relevance to the EMAN's remit.

Amendment 7 Recital 14

(14) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and 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 data should be taken into account in the context of the information exchange system of the EMN.

(14) ***Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹***, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and 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 data should be taken into account in the context of the information exchange system of the EMN.

¹ *OJ L 145, 31.5.2001, p. 43.*

Justification

Access to EMAN documents needs to be ensured in compliance with Regulation 1049/2001, and EMAN data, information, reports and assessments must be made accessible to the public

and disseminated as widely as possible.

Amendment 8
Recital 14 a (new)

(14a) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

Justification

Text agreed by the Council is added, as it can be acceptable to the EP. Attention is drawn to the fact that the deadline for the opt-in procedure has not yet elapsed. In case of completion of the opt-in procedure within the deadline, this recital will be revised as appropriate.

Amendment 9
Recital 14 b (new)

(14b) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

Justification

Text agreed by the Council is added, as it can be acceptable to the EP. Attention is drawn to the fact that the deadline for the opt-in procedure has not yet elapsed. In case of completion of the opt-in procedure within the deadline, this recital will be revised as appropriate.

Amendment 10
Article 1, paragraph 2

The objective of the EMN shall be to meet the information needs of Community institutions, Member States' authorities and institutions, and the general public on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration **and** asylum, with a view to supporting policy- and decision-making in the European Union in these areas.

The objective of the EMN shall be to meet the information needs of Community institutions, Member States' authorities and institutions, and the general public, **as well as third countries and international organisations**, on **all aspects of** migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration, asylum **and integration, including detailed statistics showing the impact of EU legislation**, with a view to supporting policy- and decision-making in the European Union in these areas.

Justification

The information collected by the EMAN is of relevance to all within and outside the EU.

Amendment 11
Article 2, point (a)

(a) collect and exchange up-to-date data and information from a range of sources, including academia;

(a) collect and exchange up-to-date **and reliable** data and information from a range of sources, including academia **and NGOs**;

Justification

The EMAN's remit should be broadened to include the production of analyses and comparisons of European legislation and policies and the implementation of European and international rules at national level, as well as the drawing up of recommendations and conclusions. It should cooperate with all involved and interested parties and disseminate information. With a view to ensuring the comparability of data at European level, the EMAN should be able to play a role in the progressive introduction of common indicators and criteria.

Amendment 12
Article 2, point (b)

(b) undertake analysis of the data and information referred to in point (a) and provide it in a readily-accessible format;

(b) undertake analysis of the data and information referred to in point (a) and provide it in a readily-accessible, **understandable and comparable** format;

Justification

The EMAN's remit should be broadened to include the production of analyses and comparisons of European legislation and policies and the implementation of European and international rules at national level, as well as the drawing up of recommendations and conclusions. It should cooperate with all involved and interested parties and disseminate information. With a view to ensuring the comparability of data at European level, the EMAN should be able to play a role in the progressive introduction of common indicators and criteria.

Amendment 13 Article 2, point (c)

(c) develop methods to improve the comparability, objectivity and reliability of data at Community level by establishing indicators and criteria that will improve the consistency of information and help in the development of Community activities *related* to migratory statistics;

(c) develop methods to improve the comparability, objectivity and reliability of data at Community level by establishing indicators and criteria that will improve the consistency of information and help in the development of Community activities *relating* to migratory statistics ***and to asylum (for example, data and statistics concerning the number of legal and illegal immigrants, of returns, of asylum applications accepted and rejected, and of countries of origin) for the purpose of harmonising such indicators and criteria at European level, in cooperation with other competent European bodies;***

Amendment 14 Article 2, point (d)

(d) publish periodic reports on the migration and asylum situation in the Community and its Member States;

(d) ***produce and*** publish periodic reports on the migration and asylum situation in the Community and its Member States;

Justification

The EMAN's remit should be broadened to include the production of analyses and comparisons of European legislation and policies and the implementation of European and international rules at national level, as well as the drawing up of recommendations and conclusions. It should cooperate with all involved and interested parties and disseminate information. With a view to ensuring the comparability of data at European level, the EMAN should be able to play a role in the progressive introduction of common indicators and

criteria.

Amendment 15
Article 2, point (d a) (new)

(da) compile and publish the EU's and the Member States' migration and asylum laws and any other relevant information on the subject (quotas, regularisations, terms and conditions to be met by those wishing to apply for refugee status, practices and related case-law, etc.). The exchange of information concerning requirements on the labour market in the Member States could represent a step forward in the management of economic migrants as part of a comprehensive approach at EU level;

Justification

The EMN must be able to base its work on information from the Member States (which are responsible for taking decisions concerning the number of economic migrants to be admitted), with a view to becoming involved in the drawing up of EU policies in this area.

Amendment 16
Article 2, point (d b) (new)

(db) produce analyses, assessments, recommendations and conclusions on the implementation in the Member States of EC directives on migration and asylum and on the compliance of national rules with European and international rules, at the request of the Commission, the European Parliament or the Council, with a view to providing them with assistance and support in the performance of their respective tasks;

Justification

The EMAN's remit should be broadened to include the production of analyses and comparisons of European legislation and policies and the implementation of European and international rules at national level, as well as the drawing up of recommendations and conclusions. It should cooperate with all involved and interested parties and disseminate information. With a view to ensuring the comparability of data at European level, the EMAN

should be able to play a role in the progressive introduction of common indicators and criteria.

Amendment 17
Article 2, point (f)

(f) raise awareness of the EMN, by providing access to the information it gathers and disseminating the output of the EMN;

(f) raise awareness of the EMN, by providing access to the information it gathers and disseminating the output of the EMN ***as widely as possible***;

Justification

The EMAN's remit should be broadened to include the production of analyses and comparisons of European legislation and policies and the implementation of European and international rules at national level, as well as the drawing up of recommendations and conclusions. It should cooperate with all involved and interested parties and disseminate information. With a view to ensuring the comparability of data at European level, the EMAN should be able to play a role in the progressive introduction of common indicators and criteria.

Amendment 18
Article 2, point (g)

(g) co-ordinate information and co-operate with other relevant European and international bodies.

(g) co-ordinate information and co-operate with other relevant ***national***, European and international ***governmental and non-governmental*** bodies.

Justification

The EMAN's remit should be broadened to include the production of analyses and comparisons of European legislation and policies and the implementation of European and international rules at national level, as well as the drawing up of recommendations and conclusions. It should cooperate with all involved and interested parties and disseminate information. With a view to ensuring the comparability of data at European level, the EMAN should be able to play a role in the progressive introduction of common indicators and criteria.

Amendment 19
Article 2, paragraph 1 a (new)

The EMN shall ensure that its activities are consistent and coordinated with the

relevant Community instruments and structures in the area of migration and asylum.

Justification

The EMAN's remit should be broadened to include the production of analyses and comparisons of European legislation and policies and the implementation of European and international rules at national level, as well as the drawing up of recommendations and conclusions. It should cooperate with all involved and interested parties and disseminate information. With a view to ensuring the comparability of data at European level, the EMAN should be able to play a role in the progressive introduction of common indicators and criteria.

Amendment 20

Article 4, paragraph 2, point (a)

(a) ***participate in*** the preparation of the EMN's annual programme of activities, on the basis of a draft from the Chair;

(a) ***contribute to*** the preparation of ***and approve*** the EMN's annual programme of activities, ***including an indicative amount of the minimum and maximum budget for each National Contact Point, which ensures that the basic costs arising from the proper functioning of the EMN, in accordance with Article 5, are covered,*** on the basis of a draft from the Chair;

Justification

A revised text agreed by the Council concerning the competencies of the Steering Board is added, as it can be acceptable to the EP.

Amendment 21

Article 4, paragraph 2, point (d)

(d) identify the most appropriate strategic cooperative relationships with other entities competent in the area of migration and asylum and approve, when necessary, the administrative arrangements for such cooperation, as referred to in Article 10;

(d) identify the most appropriate strategic cooperative relationships with other ***national, European and international governmental and non-governmental*** entities competent in the area of migration and asylum and approve, when necessary, the administrative arrangements for such cooperation, as referred to in Article 10;

Justification

The EMAN must be able to cooperate with the largest possible number of national, European and international governmental and non-governmental entities.

Amendment 22 Article 5, paragraph 1

1. Each Member State shall designate one entity which shall act as National Contact Point.

The National Contact Point shall be composed of at least three experts. One of these experts, who shall act as the national coordinator, shall be an official or employee of the designated entity. ***The remaining experts may belong to this entity or to other national and international organisations based in the Member State, either public or private.***

1. Each Member State shall designate one ***neutral*** entity which shall act as National Contact Point.

In order to facilitate the work of the EMN and to ensure the achievement of its objectives, the Member States shall take into account, when necessary, the need for co-ordination between their representative on the Steering Board and their National Contact Point.

The National Contact Point shall be composed of at least three experts ***from different backgrounds (government departments, non-governmental organisations and universities)***. One of these experts, who shall act as the national coordinator, shall be an official or employee of the designated entity.

The National Contact Points shall be bound by the principles of impartiality and objectivity in all aspects of their competences.

Justification

The National Contact Point must comprise experts from different backgrounds and the work must be coordinated between the National Contact Point and the representative on the Steering Board.

Amendment 23 Article 5, paragraph 2, point (a)

(a) expertise in the area of asylum and migration, covering aspects of policy-making, law, research and statistics;

(a) ***wide-ranging*** expertise in the area of asylum and migration, covering aspects of policy-making, law, research and statistics;

Justification

The National Contact Point must comprise experts from different backgrounds and the work must be coordinated between the National Contact Point and the representative on the Steering Board.

Amendment 24 Article 5, paragraph 3, point (b)

(b) contribute national data to the information exchange system referred to in Article 8;

(b) contribute national data, ***analyses and assessments*** to the information exchange system referred to in Article 8;

Justification

In addition to collecting data, the contact points must be able to produce analyses and assessments.

Amendment 25 Article 5, paragraph 3, point (c)

(c) develop a capacity to issue ad hoc requests addressed to it and to quickly respond to such requests from other National Contact Points;

(c) develop a capacity to issue ad hoc requests addressed to it and to quickly respond to such requests from other National Contact Points ***as well as to requests from the Commission, the European Parliament or the Council;***

Justification

The contact points must be able to respond to requests from the Commission, the EP and the Council.

Amendment 26 Article 5, paragraph 3, point (d)

(d) establish a national migration network, composed of a wide-range of organisations and individuals active in the ***area*** of migration and asylum ***and*** representing all relevant stakeholders. Members of the national migration network ***may*** be called upon to contribute to the activities of the EMN, in particular with regard to Articles 8

(d) establish a national migration ***and asylum*** network, composed of a wide-range of ***governmental and non-governmental*** organisations, ***in particular universities, research centres, and professional associations,*** and individuals active in the ***various areas*** of migration and asylum, representing all relevant stakeholders ***and capable of providing specific know-how.***

and 9.

Members of the national migration **and asylum** network **shall** be called upon to contribute to the activities of the EMN, in particular with regard to Articles 8 and 9.

Justification

The contract points must be able to cooperate with governmental and non-governmental organisations, universities, research centres, etc.

Amendment 27
Article 6, paragraph 3

3. After consultation of **the Steering Board and** the National Contact Points, the Commission shall, within the limits of the general objective and tasks defined in Articles 1 and 2, adopt the EMN's annual programme of activities. The programme shall specify the objectives and thematic priorities. The Commission shall monitor the execution of the annual programme of activities and regularly report on its execution and the development of the EMN to the Steering Board.

3. After consultation of the National Contact Points **and of the European Parliament and approval by the Steering Board**, the Commission shall, **with due regard to the financial resources available and** within the limits of the general objective and tasks defined in Articles 1 and 2, adopt the EMN's annual programme of activities. The programme shall specify the objectives and thematic priorities. The Commission shall monitor the execution of the annual programme of activities and regularly report on its execution and the development of the EMN to the Steering Board.

Justification

A revised text agreed by the Council ensuring that the Steering Board has a power of approval of the annual programme, is also added, as it can be acceptable to the EP, as well as references to the Council Regulation 1995/2006.

Amendment 28
Article 7, paragraph 5 a (new)

5a. The activities referred to in paragraph 5, if not planned in the EMN's annual programme of activities, shall be communicated in good time to the National Contact Points.

Justification

A text agreed by the Council is added, as it can be acceptable to the EP.

Amendment 29

Article 8, title

Information exchange system

Publication, dissemination and exchange of information

Justification

The information exchanged, collected and compiled by the EMAN must be published and disseminated as widely as possible, and all involved and interested parties must be included.

Amendment 30

Article 8, paragraph 1

1. An Internet-based information exchange system, accessible via a dedicated website, shall be established in accordance with this Article.

1. An Internet-based information **publication, dissemination and** exchange system, accessible via a dedicated website, shall be established in accordance with this Article.

Justification

The information exchanged, collected and compiled by the EMAN must be published and disseminated as widely as possible, and all involved and interested parties must be included.

Amendment 31

Article 8, paragraph 2, subparagraph 1

2. The content of the information exchange system shall normally be public.

2. The content of the information **publication, dissemination and** exchange system shall normally be public.

Justification

The information exchanged, collected and compiled by the EMAN must be published and disseminated as widely as possible, and all involved and interested parties must be included.

Amendment 32

Article 8, paragraph 3, point (f)

f) a directory of researchers and research institutions in the area of migration and asylum.

(f) a directory of researchers and research institutions in the area of migration and asylum ***and of NGOs and national, European, international and intergovernmental organisations active in that area.***

Justification

The information exchanged, collected and compiled by the EMAN must be published and disseminated as widely as possible, and all involved and interested parties must be included. It should be made explicit in the text that intergovernmental organisations such as the IOM are also included.

Amendment 33

Article 8, paragraph 3, point (f a) (new)

(fa) a European bibliography including published and unpublished academic works, in particular reports, brochures and conference papers;

Amendment 34

Article 8, paragraph 3, point (f b) (new)

(fb) a European agenda announcing conferences and key events in relation to all aspects of migration and asylum;

Amendment 35

Article 8, paragraph 3, point (f c) (new)

(fc) a database into which researchers and doctoral students may enter information on their theses and studies in progress.

Amendment 36

Article 9, paragraph 1

1. Each National Contact Point shall produce every year a report describing the migration and asylum situation in the Member State, which shall include policy

1. Each National Contact Point shall produce every year a report describing the migration and asylum situation in the Member State, which shall include ***legal***

developments and statistical data.

developments (laws and case-law), policy developments and statistical data.

Justification

The EMAN must look into not just statistical and political developments but also legal developments in connection with immigration and asylum.

Amendment 37

Article 10, paragraph 1

1. The EMN shall cooperate with entities in the Member States **or in** third countries, **including** international organisations, competent in the field of migration and asylum.

1. The EMN shall cooperate with **governmental and non-governmental** entities, **bodies and organisations at European Union level and** in the Member States **and** third countries **and** international organisations competent in the field of migration and asylum.

The EMN shall give priority to interaction with third countries of origin and transit for migrants to the European Union.

Justification

The EMAN must cooperate with other governmental and non-governmental entities, bodies and organisations at EU level and with the Member States and international organisations.

Amendment 38

Article 10, paragraph 1 a (new)

1a. EMN cooperation with the countries in which asylum-seekers and migrants originate and through which they transit shall ensure consistency in the implementation of the common immigration and asylum policy. Such cooperation shall be designed to achieve a suitable degree of cooperation with neighbouring countries in order to consolidate the European neighbourhood policy.

Justification

The EU Member States and non-EU countries (in particular neighbouring countries) must

jointly devise a strategy and develop operational cooperation between the countries of origin, transit and destination with a view to managing migration more effectively along the main migration routes. Such a dialogue (based on solidarity) could cover actions undertaken in a spirit of partnership in pursuit of successful legal immigration whilst ensuring that more effective measures are taken against illegal immigration and trafficking in human beings.

Amendment 39
Article 13

No later than three years after the entry into force of this Decision, and every three years thereafter, the Commission shall present to the European Parliament, the Council, the Committee of the Regions and the Economic and Social Committee, a report on the development of the EMN. The report shall be accompanied, if necessary, by proposals for amendments to this Decision.

No later than three years after the entry into force of this Decision, and every three years thereafter, the Commission shall present to the European Parliament, the Council, the Committee of the Regions and the *European* Economic and Social Committee, a report on the development of the EMN. The report shall be accompanied, if necessary, by proposals for amendments to this Decision ***with a view to the possible establishment of a European Migration Monitoring Centre.***

Justification

Provision must be made for the possibility of establishing a Monitoring Centre if this seems advisable in the wake of the three-yearly report.

Amendment 40
Article 15, paragraph 1

This Decision shall apply from ***1 January 2008.***

This Decision shall apply from ***the date of its publication in the Official Journal of the European Union.***

Justification

Technical amendment.

Amendment 41
Article 15 a (new)

Article 15 a

Revision

This Decision shall be revised within a period of six months following the entry into force of the Treaty of Lisbon.

EXPLANATORY STATEMENT

Parliament is being consulted on a Commission proposal for a Council decision establishing a European Migration Network.

A European Migration Network already exists and bases its work on a set of National Contact Points. It was set up under a pilot project, which was followed by a preparatory action. The Council decision currently before Parliament now seeks to establish an appropriate legal basis for the network's operation.

The rapporteur fully endorses the main lines of the Commission proposal and the broad agreement reached within the Council, particularly as regards consolidating the network as such and not – at least for the meantime – setting up a further European monitoring centre or agency. This will avoid unnecessary red tape. The collection of data, information and analyses can be performed efficiently by a network which handles common, EU-related aspects of the work of competent or interested national and international bodies.

The Council has made an extremely swift response to the Commission proposal, reaching substantive agreement on the proposal and making only a few amendments to certain points. Parliament's opinion is not, however, a mere formality, and the rapporteur therefore calls on the Council to take proper account of it with a view to the final adoption of the proposal for a decision. The rapporteur has tabled amendments that take over Council proposals, with a view to facilitating agreement between the institutions.

This report drawn up on behalf of Parliament seeks in particular to:

- **change the network's name from 'European Migration Network (EMN)' to 'European Migration and Asylum Network (EMAN)'**. This proposal stems from the simple fact that the network deals with both asylum and migration matters; it is therefore appropriate and logical for this to be reflected in its name and acronym;

- **broaden the network's remit** to cover the production of studies, analyses and assessments concerning the application and implementation of directives, the drafting of legal analyses and the drawing up of conclusions and recommendations, inter alia at the request of Parliament and the other institutions, so as to ensure that its work is of practical use to those involved in decision-making processes;

- ensure that the EMAN is able to perform its task of collecting and exchanging immigration and asylum **data that are comparable at European level**, by making it clear that the aim is to lay down **common criteria and indicators** at European level;

- ensure that the EMN is able to work in **close cooperation with other migration and asylum organisations** and stakeholders – primarily with government departments, but also with NGOs, universities, research centres, experts, international organisations and non-Community states – so as to draw its data from a wide range of sources and have a multidisciplinary approach;

- ensure that the EMAN makes an effort to **communicate and disseminate information** on its work, in order to raise the profile of the network and its work. To this end it should, in particular, use the Internet to publish and disseminate data and analyses, in compliance with Regulation 049/2001 on access to documents;
- reject the Council's proposed amendment of Article 4 of the proposal for a decision (on the composition and remit of the EMAN **Steering Board**), which would leave the EP as a mere observer with no voting rights, while the Commission – with the rapporteur's full support – is proposing that the EP should have a representative with voting rights;
- prevent the EMAN's work from **overlapping with that of other European bodies**; the EMAN should instead cooperate with those bodies and base its activities on the work that has already been carried out, in a spirit of full and unfettered cooperation.

To wind up, the rapporteur recommends that Parliament adopt the Commission proposal subject to the amendments tabled, so as to enable the network to be established as early as possible in 2009.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE PROPOSED LEGAL BASIS

Mr Gérard Deprez
Chairman
Committee on Civil Liberties, Justice and Home Affairs
BRUSSELS

Subject: Opinion on the legal basis of the Proposal for a Council Decision establishing a European Migration Network (COM(2007)0466 – C6-0303/2007 – 2007/0167(CNS))

Dear Mr Chairman,

By letter of 6 February 2008 you asked the Committee on Legal Affairs pursuant to Rule 35(2), to consider whether the legal basis of the above Commission proposal was valid and appropriate.

The committee considered the above question at its meeting of 26 February 2008.

The legal basis proposed by the Commission is Article 66 of the EC Treaty.

The Civil Liberties Committee considers that the legal basis ought to be amended to Articles 62 and 63 of the EC Treaty. This change in the legal basis would give Parliament the benefit of the co-decision procedure rather than mere consultation.

Pertinent provisions of the EC Treaty

Article 62

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

1. measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;

2. measures on the crossing of the external borders of the Member States which shall establish:

(a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;

(b) rules on visas for intended stays of no more than three months, including:

(i) the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;

(ii) the procedures and conditions for issuing visas by Member States;

(iii) a uniform format for visas;

(iv) rules on a uniform visa;

3. measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.

Article 63

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

1. measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:

(a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,

(b) minimum standards on the reception of asylum seekers in Member States,

(c) minimum standards with respect to the qualification of nationals of third countries as refugees,

(d) minimum standards on procedures in Member States for granting or withdrawing refugee status;

2. measures on refugees and displaced persons within the following areas:

(a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection,

(b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;

3. measures on immigration policy within the following areas:

(a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion,

(b) illegal immigration and illegal residence, including repatriation of illegal residents;

4. measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member

State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five-year period referred to above.

Article 66

The Council, acting in accordance with the procedure referred to in Article 67, shall take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered by this title, as well as between those departments and the Commission.

Article 67

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

2. After this period of five years:

- the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council,

- the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.

3. By derogation from paragraphs 1 and 2, measures referred to in Article 62(2)(b) (i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

4. By derogation from paragraph 2, measures referred to in Article 62(2)(b) (ii) and (iv) shall, after a period of five years following the entry into force of the Treaty of Amsterdam, be adopted by the Council acting in accordance with the procedure referred to in Article 251.

5. By derogation from paragraph 1, the Council shall adopt, in accordance with the procedure referred to in Article 251:

- the measures provided for in Article 63(1) and (2)(a) provided that the Council has previously adopted, in accordance with paragraph 1 of this article, Community legislation defining the common rules and basic principles governing these issues,

- the measures provided for in Article 65 with the exception of aspects relating to family law.

Appraisal

Article 67 EC lays down the procedure governing the adoption of measures provided for in

Articles 62-66. The provision is complex with a number of qualifications and exceptions. For present purposes it is sufficient to note that pursuant to Article 67, paragraph 2, second indent, the Council Decision of 2004 extended the co-decision procedure to cover most measures provided for in Title IV of the EC Treaty, except for those relating to legal migration, family law and some asylum issues¹.

It is observed, *in limine*, that it is settled case-law of the Court of Justice² that the choice of the legal basis for a Community act is to be determined solely by reference to objective criteria that are amenable to judicial review, and in particular the aim and content of the act being proposed.

The content of the proposal under consideration consists of fifteen recitals and fifteen articles. According to Article 1, the Proposal deals with the establishment of an European Migration Network whose objective is "to meet the information needs of Community institutions, Member States' authorities and institutions, and the general public on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policy- and decision-making in the European Union in these areas".

In fact, the aim is to formalise and define better, through the adoption of an appropriate legal instrument, a network structure which is already in existence³.

According to the proposal the EMN is to be a permanent structure composed by "National Contact Points designated by the Member States" and the Commission (Art. 3) and guided by a Steering Board made up of representatives of Member States, the European Parliament and Commission, assisted by two scientific experts (Art. 4). Rules are laid down on coordination, meetings, an information exchange system, reports and studies, cooperation with other entities and the budget. Article 2 describes the activities that the EMN is to perform in order to provide up-to-date, objective, reliable and comparable information about migration and asylum issues.

Specifically what the EMN is required to do is to collect and exchange data, undertake analyses, develop methods of analysis, publish periodic reports, establish an internet-based information exchange system, coordinate information and cooperate with other European and international bodies.

¹ Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Art. 251 of that Treaty OJ 2004 L396/45;

"Article 1

1. As from 1 January 2005 the Council shall act in accordance with the procedure laid down in Article 251 of the Treaty when adopting measures referred to in Article 62(1), (2)(a) and (3) of the Treaty.

2. As from 1 January 2005 the Council shall act in accordance with the procedure laid down in Article 251 of the Treaty when adopting measures referred to in Article 63(2)(b) and (3)(b) of the Treaty."

² See Case C-338/01 *Commission v. Council* [2004] ECR. I-7829, para. 54; Case C-211/01 *Commission v. Council* [2003] ECR. I-8913, para. 38; Case 62/88 *Greece v. Council* [1990] ECR I-01527, para. 62.

³ Thessaloniki European Council of June 2003. See Council document 11638/03.

In order to evaluate what the appropriate legal basis might be, it is necessary to analyse briefly the pertinent provisions of EC Treaty.

Article 62 EC deals with measures to ensure the absence of controls on persons, whether they be Union citizens or nationals from third countries, when crossing internal borders; measures on crossing external borders, establishing standards and procedures for checks on persons at such borders; rules on visas for those intending to stay no more than three months, and measures setting out the conditions under which nationals from third countries have the freedom to travel within the territory of the Member States during a period of no more than three months.

Article 63 EC covers measures relating to asylum, refugees and displaced persons, immigration policy and legal residence of nationals of third countries. As regards asylum and refugees, it enables criteria to be laid down for deciding which State should be responsible for considering an asylum application, together with minimum standards for determining whether third country nationals are to be categorised as refugees and minimum standards for granting or withdrawing refugee status. As regards displaced persons, Article 63 enables minimum standards to be adopted for giving temporary protection to displaced persons from third countries and measures to be taken in order to promote a balance of effort between Member States in dealing with the consequences of receiving refugees and displaced persons. Thirdly, it covers conditions of entry and residence and illegal immigration. Lastly, it takes in the rights and the conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States¹.

Article 66 EC empowers the Council to take measures to ensure cooperation between the relevant departments of the administrations of the Member State in the areas covered by Title IV, and between those departments and the Commission.

Both Articles 62 and 63 EC refer to measures relating to "standards", "criteria", "rules", "procedures" and "conditions" directly affecting policies on visa, asylum and immigration.

The proposal in question does not lay down this kind of provision, but is confined to establishing a structure responsible for research and the management of information dealing with issues connected with asylum and immigration, as a result of cooperation between "entities" designated by Member States that are to act as National Contract Points and the Commission, which is to coordinate the work of the network through the Steering Board.

On the one hand, the absence of measures regulating directly the issues of asylum and immigration and, on the other, the provision of a structure resulting from cooperation between Member States and Commission with the aim of collect and processing information and data on asylum and migration in order to support the activity of European Union in those areas, make it clear that the measures provided in the proposal fall within the "administrative

¹ See opinion of Advocate General Geelhoed in Case C-109/01, *Secretary of State for the Home Department v. Hacene Akrich*: "Article 63 EC affords the Community legislature the possibility of determining considerable parts of immigration legislation at Community level" (at para. 2)).

cooperation" covered by Article 66 EC¹.

Given the existence of a specific provision on administrative cooperation, the argument of the Civil Liberties Committee that "a legal act establishing a fund or an organisation (such as a network) should be based on the legal basis of the respective policy" does not stand up.

In the light of the analysis carried out above, it is submitted that the proposal for a decision sets out measures ensuring "cooperation between the relevant departments of the administrations of the Member States in the area covered by this title, as well as between those departments and the Commission".

At its meeting of 26 February 2008 the Committee on Legal Affairs accordingly decided, unanimously², to recommend that the existing legal basis of Article 66 of the EC Treaty should be maintained.

Yours sincerely,

Giuseppe Gargani

¹ See Council Decision 2002/463/EC of Council Decision 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, which is based on Article 66 EC.

² The following were present for the final vote: Giuseppe Gargani (chairman), Titus Corlăţean (vice-chairman), Rainer Wieland (vice-chairman), Lidia Joanna Geringer de Oedenberg (vice-chairwoman), Francesco Enrico Speroni (vice-chairman), Diana Wallis (draftswoman), Monica Frassoni, Neena Gill, Piia-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Antonio Masip Hidalgo, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Vicente Miguel Garcés Ramón (for Giulietto Chiesa), Sajjad Karim (for Carlo Casini), Gabriele Stauner (for Bert Doorn), József Szájer (for Othmar Karas) and Jacques Toubon (for Jaroslav Zvěřina).

PROCEDURE

Title	European Migration Network	
References	COM(2007)0466 – C6-0303/2007 – 2007/0167(CNS)	
Date of consulting Parliament	20.9.2007	
Committee responsible Date announced in plenary	LIBE	27.9.2007
Committee(s) asked for opinion(s) Date announced in plenary	BUDG	27.9.2007
Not delivering opinions Date of decision	BUDG	14.11.2007
Rapporteur(s) Date appointed	Luciana Sbarbati	5.11.2007
Legal basis disputed Date of JURI opinion	JURI	26.2.2008
Discussed in committee	22.1.2008	27.2.2008
Date adopted	27.2.2008	
Result of final vote	+: 47 –: 0 0: 3	
Members present for the final vote	Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Esther De Lange, Panayiotis Demetriou, Gérard Deprez, Bárbara Dührkop Dührkop, Claudio Fava, Armando França, Urszula Gacek, Kinga Gál, Roland Gewalt, Lilli Gruber, Jeanine Hennis-Plasschaert, Livia Járóka, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Roselyne Lefrançois, Sarah Ludford, Viktória Mohácsi, Claude Moraes, Javier Moreno Sánchez, Rareş-Lucian Niculescu, Luciana Sbarbati, Inger Segelström, Csaba Sógor, Søren Bo Søndergaard, Vladimir Urutchev, Ioannis Varvitsiotis, Renate Weber, Manfred Weber, Tatjana Ždanoka	
Substitute(s) present for the final vote	Edit Bauer, Simon Busuttil, Maria da Assunção Esteves, Anne Ferreira, Genowefa Grabowska, Sophia in 't Veld, Metin Kazak, Marian-Jean Marinescu, Marianne Mikko, Bill Newton Dunn, Hubert Pirker, Nicolae Vlad Popa, Eva-Britt Svensson	