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*****I**
REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network
(COM(2009)0322 – C7-0055/2009 – 2009/0098(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Agustín Díaz de Mera García Consuegra

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 legislative text

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 377/2004 on the creation of an immigration liaison officers network (COM(2009)0322 – C7-0055/2009 – 2009/0098(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0322),
 - having regard to Article 251(2), Article 63(3)(b) and Article 66 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0055/2009),
 - having regard to the Communication from the Commission to the European Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
 - having regard to Article 294(3), Article 74 and Article 79(2)(c) of the Treaty on the Functioning of the European Union,
 - 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 (A7-0342/2010),
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 the 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.

AMENDMENTS BY PARLIAMENT*

to the Commission proposal

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2)(c) and Article 74 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure¹,

Whereas:

- (1) Regulation (EC) No 377/2004² lays down the obligation to establish forms of cooperation among immigration liaison officers of Member States, the objectives of such cooperation, the functions and appropriate qualifications of such liaison officers, as well as their responsibilities vis-à-vis the host country and the sending Member State.
- (2) Council Decision 2005/267/EC³ established a secure web-based Information and Coordination Network for Member States' Migration Management Services (ICONet) for the exchange of information on irregular migration, illegal entry and immigration and the return of illegal residents. The elements for information exchange are to include the networks of immigration liaison officers.
- (3) Council Regulation (EC) No 2007/2004⁴ established a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ("FRONTEX Agency"). The FRONTEX Agency is tasked with preparing general and tailored risk analyses to be submitted to the Council and the Commission.
- (4) Immigration liaison officers have to collect information concerning illegal immigration for use either at operational level or at strategic level, or both. Such information could substantially contribute to the FRONTEX Agency's activities related to risk analysis, and closer cooperation between the immigration liaison officers networks and the

¹ Position of the European Parliament of ...

² OJ L 64, 2.3.2004, p. 1.

³ OJ L 83, 1.4.2005, p. 48.

⁴ OJ L 349, 25.11.2004, p. 1.

FRONTEX Agency should be established to that effect.

- (5) All Member States should be able to initiate meetings, when considered appropriate, between the immigration liaison officers posted in a particular third country or region, in order to enhance cooperation between them. ***Representatives of the Commission and the FRONTEX Agency should participate in those meetings. Other bodies and authorities, such as the European Asylum Support Office and the Office of the United Nations High Commissioner for Refugees (UNHCR), could also be invited.***
- (6) Decision No 574/2007/EC of the European Parliament and of the Council¹ establishes for the period from 1 January 2007 to 31 December 2013 the External Borders Fund as part of the General programme "Solidarity and Management of Migration Flows", in order to contribute to strengthening the area of freedom, security and justice and applying the principle of solidarity between the Member States. The available resources of this Fund may be used to enhance the activities organised by the consular and other services of Member States in third countries and to support the reinforcement of the operational capacity of the immigration liaison officers networks, thereby promoting a more effective cooperation via these networks, between the Member States.
- (7) The European Parliament, the Council and the Commission should be informed regularly about the activities of immigration liaison officers networks in specific regions and/or countries of particular interest to the Union, as well as on the situation in those regions and/or countries, in matters relating to illegal immigration. The selection of the specific regions and/or countries of particular interest to the Union should be based on objective migratory indicators, such as statistics on illegal migration and risk analyses prepared by the FRONTEX Agency, and should be in line with overall EU external relations policy.
- (8) Regulation (EC) No 377/2004 should, therefore, be amended accordingly.
- (9) Since the objective of the proposed action, namely adapting the current Union provisions on the creation and functioning of immigration liaison officers networks in order to take into account changes in Union law, as well as practical experience gained in this context, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (10) This Regulation respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as in the Charter of Fundamental Rights of the European Union.
- (11) The United Kingdom is taking part in this Regulation, in accordance with Article 5(1) of the Protocol (No 19) on the Schengen *acquis* integrated into the framework of the

¹ OJ L 144, 6.6.2007, p. 22.

European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*¹.

- (12) Ireland is taking part in this Regulation, in accordance with Article 5(1) of the Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty Functioning of the European Union, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the *acquis*².
- (13) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (14) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*³ which fall within the area referred to in Article 1, point A and E of Council Decision 1999/437/EC of 17 May 1999⁴ on certain arrangements for the application of that Agreement.
- (15) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁵ which fall within the area referred to in Article 1, point A and E, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁶.
- (16) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and

¹ OJ L 131, 1.6.2000, p. 43.

² OJ L 64, 7.3.2002, p. 20.

³ OJ L 176, 10.7.1999, p. 36.

⁴ OJ L 176, 10.7.1999, p. 31.

⁵ OJ L 53, 27.2.2008, p. 52.

⁶ OJ L 53, 27.2.2008, p. 1.

development of the Schengen *acquis* which fall within the area referred to in Article 1, point A and E, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC¹,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendment

Regulation (EC) No 377/2004 is amended as follows:

(1) Article 3 is amended as follows:

- (a) in paragraph 1, the second sentence is deleted;
- (b) the following paragraph is added:

"3. The information referred to in paragraphs 1 and 2 shall be made available on the secure web-based Information and Coordination Network for Member States' Migration Management Services established by Council Decision 2005/267/EC* (hereinafter referred to as "ICONet") under the section dedicated to immigration liaison officers networks. The Commission shall also provide this information to the Council.

* OJ L 83, 1.4.2005, p. 48.";

(2) Article 4 is amended as follows:

(a) in paragraph 1, the second indent is replaced by the following:

- "– exchange information and practical experience, in particular at meetings and via ICONet,
- ***exchange information, when appropriate, on experience regarding asylum seekers' access to protection,***";

(b) paragraph 2 is replaced by the following:

"2. Representatives of the Commission and the FRONTEX Agency established by Regulation (EC) No 2007/2004* shall be entitled to participate in the meetings organised within the framework of the immigration liaison officers

¹ OJ L 83, 26.3.2008, p. 3.

network, although, if required by operational considerations, meetings may be held in the absence of these representatives. Other bodies and authorities may also be invited, as appropriate.

* OJ L 349, 25.11.2004, p. 1.";

(c) in paragraph 3, the following sentence is added:

"Such meetings may also be held at the initiative of other Member States.";

(3) Article 6 is replaced by the following:

"Article 6

1. The Member State holding the Presidency of the Council of the European Union or, if this Member State is not represented in the country or region, the Member State serving as acting Presidency shall draw up, by the end of each semester, a report to the European Parliament, the Council and the Commission on the activities of immigration liaison officers networks in specific regions and/or countries of particular interest to the European Union, as well as on the situation in those regions and/or countries, in matters relating to illegal immigration, ***taking into consideration all the relevant aspects, including human rights.*** The selection, following a consultation with the Member States and the Commission, of the specific regions and/or countries of particular interest to the European Union shall be based on objective migratory indicators, such as statistics on illegal ***immigration***, risk analyses ***and other relevant information/reports*** prepared by the FRONTEX Agency ***and by the European Asylum Support Office***, and shall ***take into consideration the*** overall EU external relations policy.
2. Such reports shall be drawn up in accordance with the model established by Commission Decision 2005/687/EC of 29 September 2005 on the format for the report on the activities of immigration liaison officers networks and on the situation in the host country in matters relating to illegal immigration* and indicate the relevant selection criteria.
3. The Commission shall, on the basis of the abovementioned reports, ***taking into consideration human rights aspects where relevant***, provide a factual summary ***and, where appropriate, recommendations*** to the European Parliament and to the Council, on an annual basis, on the development of the immigration liaison officers networks.

* OJ L 264, 8.10.2005, p. 8.".

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at

For the European Parliament

The President

For the Council

The President

EXPLANATORY STATEMENT

When the regulation now being amended was adopted (19 February 2004), FRONTEX was yet to be officially established. It was eight months later, on 26 October 2004, that the Council adopted the Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders.

By virtue of the remits set out in its rules of procedure, FRONTEX is responsible for: carrying out risk analysis based on the information gathered by the competent authorities in the Member States; facilitating operational cooperation between the Member States and third countries; similarly cooperating with the competent authorities of third countries and with international organisations through, for example, exchanges of experience on border control issues, the training of border guards, operational information exchanges and joint operations.

The original regulation (No 337/2004 of 19 February 2004) defined liaison officers as ‘the representative of one of the Member States, posted abroad by the immigration service or other competent authorities in order to establish and maintain contacts with the authorities of the host country with a view to contributing to the prevention and combating of illegal immigration, the return of illegal immigrants and the management of legal migration.’

Clearly, immigration liaison officers posted to third countries can, by virtue of their remits, make a decisive contribution to FRONTEX achieving its objectives, especially considering that the Agency has no representation outside the Union.

The proposal amending Council Regulation (EC) 337/2004 aims to harness the know-how and experience of immigration liaison officers for the benefit of FRONTEX and vice-versa, which was not a matter addressed in the original regulation.

The amending proposal has the following objectives: harnessing of the know-how of liaison officers and of FRONTEX for their mutual benefit; exploitation of the information obtained through the liaison officer networks and exchange of this via ICONet (*secure Information and Coordination Network for Member States' migration management services*); accessing of the External Borders Fund to promote the creation of liaison officer networks and facilitate their operation and, lastly, to expedite the system for the presentation of the half-yearly reports.

In order to achieve those objectives, the proposal amends Articles 3, 4 and 6 of Regulation 337/2004.

The legal bases for the proposal are Article 79(2)(c) and Article 74 of the Treaty on the Functioning of the European Union. This means that the system of ‘variable geometry’ applies in relation to the position of the United Kingdom, Ireland and Denmark as regards the Schengen protocol. The consequences of the proposed amendments for the protocols in this domain signed with Iceland, Norway, Switzerland and Liechtenstein have also been considered.

The amendments proposed are appropriate and necessary. The troubled times which the European Union is experiencing demand appropriate management of immigration flows. This

should be seen as having two facets: management of legal immigration and management of illegal and clandestine immigration.

The Community institutions should undertake to ensure that, in future, semantically and legally appropriate terminology is used that is compatible with national legislation in the Member States, whose aim is to replace the term 'illegal immigration' with 'irregular immigration'.

PROCEDURE

Title	Creation of an immigration liaison officers network			
References	COM(2009)0322 – C7-0055/2009 – 2009/0098(COD)			
Date submitted to Parliament	8.7.2009			
Committee responsible Date announced in plenary	LIBE 14.7.2009			
Rapporteur(s) Date appointed	Agustín Díaz de Mera García Consuegra 29.9.2009			
Discussed in committee	29.9.2009	5.11.2009	1.12.2009	7.4.2010
	26.10.2010	25.11.2010		
Date adopted	25.11.2010			
Result of final vote	+: -: 0:	46 3 0		
Members present for the final vote	Jan Philipp Albrecht, Sonia Alfano, Roberta Angelilli, Rita Borsellino, Simon Busuttil, Philip Claeys, Carlos Coelho, Rosario Crocetta, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Tanja Fajon, Hélène Flautre, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Teresa Jiménez-Becerril Barrio, Juan Fernando López Aguilar, Clemente Mastella, Véronique Mathieu, Louis Michel, Claude Moraes, Jan Mulder, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Birgit Sippel, Renate Sommer, Rui Tavares, Wim van de Camp, Axel Voss, Manfred Weber, Renate Weber, Tatjana Ždanoka			
Substitute(s) present for the final vote	Edit Bauer, Anna Maria Corazza Bildt, Anne Delvaux, Ioan Enciu, Evelyne Gebhardt, Ana Gomes, Stanimir Ilchev, Ádám Kósa, Petru Constantin Luhan, Marie-Christine Vergiat, Cecilia Wikström			