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Committee on Foreign Affairs

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OPINION

of the Committee on Foreign Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) (COM(2010)0061 – C7-0045/2010 – 2010/0039(COD))

Rapporteur: Barbara Lochbihler

SHORT JUSTIFICATION

On 24 February 2010, the Commission adopted a legislative proposal which proposes amendments to Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX).

The objective of this legislative proposal is to adapt the Regulation, in the light of the 2008 Communication of the Commission on the evaluation and future development of Frontex and of the Management Board recommendations, with the view of strengthening the operational capabilities of the Agency. More precisely, this proposal would provide the Agency with a reinforced role in preparing, coordinating and implementing operations with special regard to the sharing of tasks with EU Member States, namely in terms of deployment of human resources and technical equipment. Besides, with this proposal, Frontex's internal and external mandate and powers would be significantly enhanced. The Agency would be able to co-lead border patrol operation with EU Member States, deploy liaison officers in third countries, coordinate joint return operations, launch and finance pilot projects.

The revision of Frontex's mandate takes place after a substantial and progressive increase of its budget. The Agency which started in 2004 with an amount of 6, 2 million has now risen to the amount of 83 million in 2009

The entry into force of the Lisbon Treaty creates a new legal framework which has to be taken into consideration in this opinion since it communitarises the area of freedom, security and justice, expands the jurisdiction of the Court of Justice of the European Union in this field, extends the power of the European Parliament in conferring it a legislative role on equal footing with the Council and strengthens fundamental rights principles in making the Charter of Fundamental Rights binding and engaging the EU in an accession process to the ECHR.

The opinion drafted by the Subcommittee on Human Rights for the Foreign Affairs Committee aims therefore to scrutinize how the Agency, in the light of the revision and extension of its mandate, can guarantee, protect and promote the respect for fundamental rights pursuant to its obligation as EU Agency. It aims at the same time to address the question of responsibility and accountability as well as the lack of transparency of the Agency in order to adapt it to the provisions and spirit of the Lisbon Treaty. The overall question of responsibilities between Member States' officers, the host Member State border officers and Frontex's personnel remains unclear and ambiguous in the Commission's proposal and should be treated by the lead committee of Parliament together with open questions with regard to the competent body for complaints in case of violations of human rights of migrants.

The amendments proposed by the Commission constitute welcome developments and tend to formalise the commitment and obligation of the Agency to respect fundamental rights in the following areas by:

- clarifying the legal framework of Frontex operations by confirming that the Agency's activities are subject to the Schengen Borders Code and should be conducted in accordance with relevant Union law, international law, obligations related to access to international protection and fundamental rights,

- providing trainings in fundamental rights as an obligation for the personnel taking part in joint operations,
- creating an incident reporting and evaluation scheme,
- making financial support to joint return operations conditional upon the full respect of the Charter of Fundamental Rights,
- developing a code of conduct for the return of irregular third countries' nationals, including the establishment of an effective system for the monitoring of forced returns which is carried out independently and reports back to the Commission by an independent monitor,
- requesting in the evaluation carried out by the Management board every five years a specific analysis "of the way the Charter of Fundamental Rights was respected",

However, these proposals still remain limited and non-systematic. The proposed measures have to be implemented on a systematic and binding manner for becoming effective mechanisms. Besides, an independent and highly qualified expertise with regard to fundamental rights and access to international protection is to be considered as essential at all levels and stages of the operations conducted by Frontex.

The evaluation process of the Agency's activities, which is carried out every five years by the Management Board, has proved so far that the human rights impact of its activities have never been assessed in detail in spite of the call by the European Parliament in its resolution of 18 December 2008 "to fully evaluate Frontex's activities with regard to their impact on fundamental freedoms and rights, including the responsibility to protect". Therefore, a comprehensive and independent evaluation involving Frontex's partners such as the Fundamental Rights Agency and the UNHCR as well as non-governmental organisations with relevant expertise is indispensable in view of the proposed strengthening of its internal and external mandate. In addition to it, the rapporteur would recommend that new Article 33(2b) be amended to require that the evaluation focus on how the rights under the Charter of Fundamental Rights were guaranteed rather than the way in which the Charter was respected. It would be even appropriate to annex such evaluation to the general annual report of Frontex.

Besides this five-years evaluation, Frontex' own assessment as regards joint operations as well as pilot projects require systematic and independent monitoring and assessment of how fundamental rights obligations have been fulfilled in practice and not be limited to examining the fulfilment of operational objectives. This independent account has to become a matter of principle in the revised regulation. An evaluation of compliance with fundamental rights would also create a real opportunity for the Commission to react to any shortcoming resulting from Frontex's operations in relation to the application of EU law. The current cooperation with UNHCR should be extended so as to allow the UN Agency to participate in the preparation and implementation of joint operations notably when it comes to asylum related aspects.

The inclusion in the legislative proposal of a reporting and evaluation scheme containing provisions on incident reporting goes in the right direction but still lacks of concrete procedures to guarantee compliance with the Charter of Fundamental Rights and to monitor accountability and responsibility, the latter remaining extremely imprecise in the Commission proposal. In line with the monitoring requirements introduced for joint return operations, the revised Regulation should include a mandatory requirement for all Frontex operations to be independently observed and reported on to EU Institutions from the perspective of compliance with EU law and fundamental rights.

The new provision of the legislative proposal which stipulates that adequate training should become an obligation for all those involved in joint operations has to be welcomed. A cooperation agreement has been recently signed between Frontex and the Agency for Fundamental Rights which notably foresees an assessment of training needs of Frontex staff and an evaluation of the implementation of training in fundamental rights. An exchange of letters between Frontex and the UNHCR also formalised their cooperation in this field since 2008.

Nevertheless, the Commission must give access to information related to trainings to the Parliament, including to the assessments to be provided by the FRA. An enhanced cooperation in capacity building initiatives such as trainings with both the Fundamental Rights Agency and the UNHCR could be considered as a clear added value. The involvement of civil society organisations in the development and implementation of training programmes should be at the same time ensured by Frontex.

The rapporteur is of the opinion that the legal advice dimension within Frontex has to be substantially reinforced through the setting up of a pool of experts on the rights of aliens and international protection, including asylum related aspects. Such a pool, which would have as its main task to advise asylum seekers and other persons who are particularly vulnerable such as pregnant women, children and victims of trafficking, should be deployed on a systematic basis in the conduct of Frontex's operations and work in connection with relevant national asylum services as well as non-governmental organisations with relevant expertise.

The expanded external mandate of Frontex is a matter of concern from a human rights perspective and should require a series of safeguards in order to ensure compliance with EU fundamental rights obligations. The rapporteur highly recommends that a clear reference be included in the legislative proposal to the respect for the principle of non-refoulement according to Article 19 of the Charter of Fundamental Rights and for the right for everyone to leave any country, including his own according to Article 12(2) of the ICCPR and Article 2(2) of the protocol 4 of the ECHR. The proposal of the Commission ensures that liaison officers (ILOs) have to perform their tasks in compliance with EU law and fundamental rights and be deployed "to third countries in which border management practices respect minimum human rights standards". However, these safeguards should definitely apply to these Liaison Officers (ILOs). In this respect, the rapporteur underlines the necessity to clarify their function which can't be assimilated to advisory functions which sometimes are carried out by national ILOs and to assure them high qualified training in fundamental rights and access to international protection. Moreover, the enhanced cooperation with third countries which is formalised by bilateral working arrangements between Frontex and third countries requires a human rights assessment in the third country concerned prior to the conclusion of such arrangements.

According to the opinion of the European Data Protection Supervisor, "a specific legal basis addressing the issue of the processing of personal data by Frontex and providing for clarification of the circumstances under which such processing by the Agency could take place, subject to strong data protection safeguards (...) is needed". The inclusion of both adequate legal basis and safeguards into this legislative proposal is therefore considered as essential for the rapporteur taking account of the extended internal and external roles and responsibilities of the Agency and notably in terms of respect for the non-refoulement principle.

With regard to working arrangements between FRONTEX and third countries' authorities, the Commission proposal only refers to the prior approval by the Commission without any democratic scrutiny by the European Parliament. As FRONTEX is a Union body subject to the principles of full democratic scrutiny and transparency it will be appropriate and legitimate that the European Parliament be fully informed about such working arrangements. Besides, greater transparency and access to documents such as reports on risks analysis, evaluations of joint operations and requested human rights assessments prior to conclusion of agreements should be shared with Parliament.

AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation – amending act Recital 4

Text proposed by the Commission

(4) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, the rights to the protection of personal data, right to asylum, non-refoulement, non discrimination, the rights of the child and right to an effective remedy. This Regulation should be applied by the Member States in accordance with these rights and principles.

Amendment

(4) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (*the "Charter"*), notably human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, the rights to the protection of personal data, right to asylum, non-refoulement, non discrimination, the rights of the child and right to an effective remedy. This Regulation *endorses the provisions of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted¹, of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally*

staying third-country nationals², as well as of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status³ and of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers⁴. This Regulation should be applied by the Member States in accordance with these rights and principles.

¹ OJ L 304, 30.9.2004, p. 12–23

² OJ L 348, 24.12.2008, p. 98–107

³ OJ L 326, 13.12.2005, p. 13–34

⁴ OJ L 31, 6.2.2003, p. 18–25

Justification

Frontex shall respect the provisions of the directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted in the frame of its management border activities in line with its international protection obligations.

Amendment 2

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The Agency should fully enforce both the provisions of the Charter with due regard to respect for, and the protection of, the human rights of migrants and the Geneva Convention Relating to the Status of Refugees of 1951. All the Agency's actions should comply with relevant international law and obligations relating to access to international protection;

Amendment 3

Proposal for a regulation – amending act Recital 7

Text proposed by the Commission

(7) Efficient management of the external borders through checks and surveillance contributes to combat **illegal** immigration and trafficking in human beings and to reduce the threats to the internal security, public policy, public health and international relations of the Member States.

Amendment

(7) Efficient management of the external borders through **effective** checks and **efficient** surveillance contributes to combat **irregular** immigration and trafficking in human beings and to reduce the threats to the internal security, public policy, public health and international relations of the Member States.

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout)

Justification

The rapporteur proposes to replace the word "illegal" by "irregular" when it refers to "illegal" immigration and migrants in order to adapt the wording of this regulation with the wording used in the other relevant legislation relating to this subject.

Amendment 4

Proposal for a regulation – amending act Recital 10

Text proposed by the Commission

(10) The mandate of the Agency should **therefore** be revised in order to strengthen in particular the operational capabilities of the Agency while ensuring that all measures taken are proportionate to the objectives pursued and fully respect fundamental rights and the rights of refugees and asylum seekers, including in particular the prohibition of refoulement.

Amendment

(10) The **challenges described above, including the increasing complexity and diversity of migration channels, mean that** the mandate of the Agency should be revised in order to strengthen in particular the operational capabilities of the Agency while ensuring that all measures taken are proportionate to the objectives pursued and fully respect fundamental rights and the rights of refugees and asylum seekers, including in particular the prohibition of refoulement.

Amendment 5

Proposal for a regulation – amending act Recital 19

Text proposed by the Commission

(19) The Agency should provide training, including on fundamental rights, 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** present in the Member States for officers of the competent national services. The Agency may organise training activities in cooperation with Member States on their territory. Member States should integrate the results of the Agency's work in this perspective in the national training programs of their border guards.

Amendment

(19) The Agency should provide training on fundamental rights, **international law and the structure of national asylum authorities** 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 **irregularly** present in the Member States for officers of the competent national services. The Agency may organise training activities in cooperation with Member States on their territory. Member States should integrate the results of the Agency's work in this perspective in the national training programs of their border guards.

Amendment 6

Proposal for a regulation – amending act Recital 21

Text proposed by the Commission

(21) In most Member States, the operational aspects of return of third-country nationals illegally present in the Member States fall within the competencies of the authorities responsible for controlling the external borders. As there is a clear added value in performing these tasks at Union level, the Agency should, in full compliance with the Union's return policy, accordingly provide the necessary assistance and coordination for organising joint return operations of Member States and identify best practices on the acquisition of travel documents and define a Code of Conduct to be followed during the removal of third-country

Amendment

(21) In most Member States, the operational aspects of return of third-country nationals illegally present in the Member States fall within the competencies of the authorities responsible for controlling the external borders. As there is a clear added value in performing these tasks at Union level, the Agency should, in full compliance with the Union's return policy, accordingly provide the necessary assistance and coordination for organising joint return operations of Member States and identify best practices on the acquisition of travel documents and define a Code of Conduct to be followed during the removal of third-country

nationals illegally present in the territories of the Member States. No ***Union financial means should be made available for*** activities ***and*** operations that are not ***carried out*** in conformity with the Charter of Fundamental Rights.

nationals illegally present in the territories of the Member States. No activities ***or*** operations that are not in conformity with the Charter of Fundamental Rights ***should be carried out or financed by the Union. In the event of a violation of the Charter of Fundamental Rights, return operations should be suspended and the violation investigated.***

Amendment 7

Proposal for a regulation – amending act Recital 23

Text proposed by the Commission

(23) Cooperation with third countries regarding matters covered by Regulation (EC) No 2007/2004 is increasingly important. To establish a solid cooperation model with relevant third countries the Agency should have the possibility to launch and finance projects of technical assistance and to deploy liaison officers in third countries. The Agency should have the possibility to invite representatives of third countries to participate in its activities, after having provided the necessary training. Establishing cooperation with third countries is relevant also with regards to promoting the European standards of border management, including the respect of fundamental rights and human dignity.

Amendment

(23) Cooperation with third countries regarding matters covered by Regulation (EC) No 2007/2004 is increasingly important. To establish a solid cooperation model with relevant third countries the Agency should have the possibility to launch and finance projects of technical assistance and to deploy liaison officers in third countries. The Agency should ***also*** have the possibility to invite representatives of third countries to participate in its activities, after having provided the necessary training. Establishing cooperation with third countries is relevant also with regards to promoting the European standards of border management, including the respect of fundamental rights and human dignity.

Amendment 8

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

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

Text proposed by the Commission

2. While considering that the responsibility for the control and surveillance of external

Amendment

2. While considering that the responsibility for the control and surveillance of external

borders lies with the Member States, the Agency shall facilitate and render more effective the application of existing and future European Union measures relating to the management of external borders, in particular the Schengen Borders Code, and in accordance with relevant Union law, International law, obligations related to access to international protection, and fundamental rights. It shall do so by ensuring the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States.

borders lies with the Member States, the Agency shall facilitate and render more effective the application of existing and future European Union measures relating to the management of external borders, in particular the Schengen Borders Code, ***as well as of the Charter of Fundamental Rights and the Geneva Convention Relating to the Status of Refugees of 1951***, and in accordance with relevant Union law, International law, obligations related to access to international protection, and fundamental rights. It shall do so by ensuring the coordination of Member States' actions in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and surveillance of the external borders of the Member States ***while applying the provisions of the Charter of Fundamental Rights with due regard to respect for and the protection of the human rights of migrants. In the event of a breach of international law or the Charter of Fundamental Rights, in particular Articles 1, 4, 6, 18 and 19 thereof, the suspension of the operation where the breach was detected shall be mandatory.***

Justification

In the framework of its obligations as EU Agency, Frontex must equally implement EU measures relating to the management of external borders and the principles enshrined in the Charter of Fundamental Rights.

Amendment 9

Proposal for a regulation – amending act

Article 1 – point 3 - point a

Regulation (EC) No 2007/2004

Article 2 – paragraph 1 – point c

Text proposed by the Commission

(c) carry out risk analyses, including the evaluation of the capacity of Member States to face threats and pressure at the

Amendment

(c) carry out risk analyses, including the evaluation of the capacity of Member States to face threats and pressure at the

external borders;

external borders *and incorporate the findings of the UN High Commissioner for Refugees (UNHCR) and the UN High Commissioner for Human Rights, especially with regard to the situation of persons in need of international protection, and regularly report to the European Parliament, the Commission and the Member States;*

Justification

It is important that Frontex includes independent and comprehensive findings on the human rights situation of migrants in countries of transit in its risk analysis process.

Amendment 10

Proposal for a regulation – amending act

Article 1 – point 3 - point b

Regulation (EC) No 2007/2004

Article 2 – paragraph 1a

Text proposed by the Commission

1a. All border guards and other personnel of the Member States, as well as the staff of the Agency shall, prior to their participation in operational activities organised by the Agency, have received training in relevant EU and international law, including fundamental rights and access to international protection.

Amendment

1a. All border guards and other personnel of the Member States, as well as the staff of the Agency **and its liaison officers**, shall, prior to their participation in operational activities organised by the Agency **or, in the case of liaison officers, to their deployment in a third country**, have received training in relevant EU and international law, including fundamental rights and access to international protection.

Justification

There should be an explicit requirement for Frontex liaison officers deployed in third countries to receive training in EU and international law, including fundamental rights and access to international protection

Amendment 11

Proposal for a regulation – amending act

Article 1 – point 4

Regulation (EC) No 2007/2004

Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The Agency may itself initiate joint operations and pilot projects in cooperation with Member States.

Amendment

The Agency may itself initiate joint operations and pilot projects in cooperation with ***the*** Member States ***involved and in agreement with the host Member State and inform the European Parliament via the Agency's general report in accordance with Article 20(2)b.***

Justification

The Agency may initiate joint operations only after obtaining the agreement of the host Member State.

Amendment 12

Proposal for a regulation – amending act

Article 1 – point 4

Regulation (EC) No 2007/2004

Article 3 – paragraph 1 – subparagraph 5

Text proposed by the Commission

The Agency may also terminate joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled.

Amendment

The Agency may also terminate, ***after obtaining the agreement of the host Member State***, joint operations and pilot projects if the conditions to conduct these initiatives are no longer fulfilled. ***The Member States involved may ask the Agency for a joint operation or pilot programme to be terminated.***

Justification

The host Member State must have a decisive say and role in the termination of operations.

Amendment 13

Proposal for a regulation – amending act

Article 1 – point 4

Regulation (EC) No 2007/2004

Article 3 – paragraph 4

Text proposed by the Commission

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

Amendment

4. The Agency shall evaluate the results of the joint operations and pilot projects and transmit the detailed evaluation reports within 60 days following the end of the activity to the Management Board **and the European Parliament**. The Agency shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and efficiency of future operations and projects to be included in its general report provided for in Article 20(2)(b). **The evaluation reports shall cover compliance with fundamental rights of the joint operations and pilot projects, including on the basis of the monitoring carried out by independent observers.**

Justification

Evaluations should not be confined to the question of whether a specific operation has met its operational objectives but include an independent assessment of compliance with fundamental rights, which is part of the legal framework governing Frontex operations.

Amendment 14

Proposal for a regulation – amending act

Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3a – paragraph 1 – subparagraph 2 - introductory part

Text proposed by the Commission

The operational plan shall **include** the following:

Amendment

The operational plan shall **cover all aspects considered necessary for conducting joint operations and pilot projects, including** the following:

Justification

The operational plan must refer specifically to all essential elements for conducting joint operations and pilot projects.

Amendment 15

Proposal for a regulation – amending act

Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3a – paragraph 1 – subparagraph 2 – point e

Text proposed by the Commission

(e) the composition of the teams of guest officers;

Amendment

(e) the composition of the teams of guest officers ***and the deployment of other personnel;***

Justification

The operational plan must contain a detailed reference to the way in which the teams of guest officers and other personnel will be deployed.

Amendment 16

Proposal for a regulation – amending act

Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3a – paragraph 1 – subparagraph 2 – point h

Text proposed by the Commission

(h) a reporting and evaluation scheme containing detailed provisions on incident reporting, benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(4).

Amendment

(h) a reporting and evaluation scheme containing detailed provisions on incident reporting, benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(4). ***The incident reporting scheme shall include information concerning credible allegations of breaches of, in particular, this Regulation or the Schengen Borders Code, including fundamental rights, during joint operations and pilot projects and shall be transmitted immediately by the Agency to the relevant national public authorities and to the Management Board.***

Justification

Incident reporting and evaluation is crucial to the proper enforcement of the applicable legal framework for Frontex operations. It must be clarified that incidents include allegations of breaches of the SBC and fundamental rights, as currently set out in proposed recital 17.

Amendment 17

Proposal for a regulation – amending act

Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3a – paragraph 1 – subparagraph 2 - point i

Text proposed by the Commission

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

Amendment

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

Justification

Maritime operations must be based on the relevant legislation applicable.

Amendment 18

Proposal for a regulation – amending act

Article 1 – point 5

Regulation (EC) No 2007/2004

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

Text proposed by the Commission

Amendment

(ia) provisions regarding cooperation with third countries, where necessary, and within the framework of the provisions laid down in the relevant operational cooperation agreements.

Justification

The manner of cooperation with the third countries in each case must be included in the operational plan and be in line with the relevant operational cooperation agreements.

Amendment 19

Proposal for a regulation – amending act

Article 1 – point 5

Regulation (EC) No 2007/2004

Article 3b – paragraph 3

Text proposed by the Commission

3. Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least thirty days before the intended deployment. The autonomy of the home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected.

Amendment

3. Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least thirty days before the intended deployment. The autonomy of the home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected. ***The contribution of each Member State in terms of border guards for each operation shall be determined by annual bilateral agreements between the Agency and the Member State concerned.***

Justification

The precise modalities concerning the contribution of each Member State to each operation must be determined by annual bilateral agreements between the Agency and the Member State in question.

Amendment 20

Proposal for a regulation – amending act

Article 1 – point 7

Regulation (EC) No 2007/2004

Article 5 - paragraph 1

Text proposed by the Commission

The Agency shall establish and further develop common core curricula for border guards' training and provide training at European level for instructors of the national border guards of Member States, including with regard to fundamental rights and access to international protection.

Amendment

The Agency shall establish and further develop common core curricula for border guards' training and provide training at European level for instructors of the national border guards of Member States, including with regard to fundamental rights and access to international protection. ***The***

Member States shall integrate the common core curricula in the training of their national border guards.

European Parliament shall be informed of the contents of the common core curricula. Member States shall integrate the common core curricula in the training of their national border guards. ***In developing, implementing and evaluating the common core curricula, the Agency should work closely with the Fundamental Rights Agency, as well as with UNHCR.***

Justification

The European Parliament should have access to information related to trainings. An enhanced cooperation in capacity building initiatives such as trainings with the Fundamental Rights Agency and the UNHCR could be considered as a clear added value.

Amendment 21

Proposal for a regulation – amending act

Article 1 – point 8

Regulation (EC) No 2007/2004

Article 7 – paragraph 1 – subparagraph 1 - indent 1

Text proposed by the Commission

– in case of acquisition, the Agency agrees formally with one Member State that the latter will provide for the registration of the equipment;

Amendment

– in case of acquisition, the Agency agrees formally with one Member State that the latter will provide for the registration of the equipment ***in accordance with the legislation in force of that Member State;***

Justification

National legislation in each case must be respected for the registration of new equipment.

Amendment 22

Proposal for a regulation – amending act

Article 1 – point 8

Regulation (EC) No 2007/2004

Article 7 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. The Agency shall finance the deployment of the equipment which forms

Amendment

5. The Agency shall finance the deployment of the equipment which forms

part of the minimum number of equipment provided by a given Member State for a given year. The deployment of equipment which does not form part of the minimum number of equipment shall be co-financed by the Agency up to a maximum of 60% of the eligible expenses.

part of the minimum number of equipment provided by a given Member State for a given year. The deployment of equipment which does not form part of the minimum number of equipment shall be co-financed by the Agency up to a maximum of 60% of the eligible expenses. ***The operational cost of the equipment shall be met by the Agency.***

Justification

It is important for all Member States that the operational cost of the equipment should be covered by the Agency.

Amendment 23

Proposal for a regulation – amending act

Article 1 – point 10 – point a a (new)

Regulation (EC) No 2007/2004

Article 8e – paragraph 1 – point – g a (new)

Text proposed by the Commission

Amendment

(aa) The following point shall be added:

"(ga) provision for the immediate reporting of incidents by the Agency to the Management Board and the relevant national public authorities."

Justification

The Agency must immediately inform the Management Board and the relevant national public authorities when an incident occurs.

Amendment 24

Proposal for a regulation – amending act

Article 1 – point 10 – point b

Regulation (EC) No 2007/2004

Article 8e – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) a reporting and evaluation scheme containing ***detailed provisions on incident reporting***, benchmarks for the evaluation

(h) a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the

report and final date of submission of the final evaluation report in accordance with Article 3(4).

final evaluation report in accordance with Article 3(4).

Justification

Incident reporting is mentioned separately in the previous point.

Amendment 25

Proposal for a regulation – amending act

Article 1 – point 10 – point b

Regulation (EC) No 2007/2004

Article 8e – paragraph 1 – point i

Text proposed by the Commission

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

Amendment

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

Justification

Sea operations must be based on the applicable legislation in this area.

Amendment 26

Proposal for a regulation – amending act

Article 1 – point 12

Regulation (EC) No 2007/2004

Article 9 – paragraph 2

Text proposed by the Commission

2. The Agency shall develop a Code of Conduct for the return of illegally present third country nationals by air which shall apply during all joint return operations coordinated by the Agency, describing common standardized procedures which should simplify the organisation of joint return flights and assure return in a humane manner and in full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of

Amendment

2. The Agency shall develop a Code of Conduct for the return of illegally present third country nationals by air which shall apply during all joint return operations coordinated by the Agency, describing common standardized procedures which should simplify the organisation of joint return flights and assure return in a humane manner and in full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of

inhuman or degrading treatment or punishment, right to liberty and security, the rights to the protection of personal data and non discrimination.

inhuman or degrading treatment or punishment, right to liberty and security, the rights to the protection of personal data and non discrimination. ***The Code of Conduct should allow for the suspension of a return where there are clear grounds for believing that the return would lead to a violation of fundamental rights.***

Justification

The possibility to suspend a removal where this would violate fundamental rights constitutes an essential procedural guarantee.

Amendment 27

Proposal for a regulation – amending act

Article 1 – point 12

Regulation (EC) No 2007/2004

Article 9 – paragraph 3

Text proposed by the Commission

3. The Code of Conduct will in particular pay attention to the obligation set out in Article 8(6) of Directive 2008/115/EC to provide for an effective forced-return monitoring system. The monitoring of joint return operations should be carried out independently and should cover the whole joint return operation from the predeparture phase until the hand-over of the returnees in the country of return. Furthermore, observations of the monitor, which shall cover the compliance with the Code of Conduct and in particular fundamental rights, shall be made available to the Commission and form part of the internal Final Return Operation Report. In order to ensure transparency and a coherent evaluation of the forced-return operations, reports of the monitor shall be included in an annual reporting mechanism.

Amendment

3. The Code of Conduct will in particular pay attention to the obligation set out in Article 8(6) of Directive 2008/115/EC to provide for an effective forced-return monitoring system. The monitoring of joint return operations should be carried out independently and should cover the whole joint return operation from the predeparture phase until the hand-over of the returnees in the country of return. ***Monitors should have access to all relevant facilities, including detention centres and aircraft, and receive the necessary training to perform their duties.*** Furthermore, observations of the monitor, which shall cover the compliance with the Code of Conduct and in particular fundamental rights, shall be made available to the Commission and form part of the internal Final Return Operation Report. In order to ensure transparency and a coherent evaluation of the forced-return operations, reports of the monitor shall be included in an annual ***public*** reporting mechanism.

Justification

In order to be able to comprehensively and effectively monitor forced returns, monitors should have unimpeded access to all relevant facilities. The quality and effectiveness of monitoring is also dependent on the ability of monitors to receive appropriate training.

Amendment 28

Proposal for a regulation – amending act

Article 1 – point 16

Regulation (EC) No 2007/2004

Article 13

Text proposed by the Commission

The Agency may cooperate with Europol, the European Asylum Support Office, the Fundamental Rights Agency, other European Union agencies and bodies, and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty and the provisions on the competence of those bodies.

Amendment

The Agency may cooperate with Europol, the European Asylum Support Office, the Fundamental Rights Agency, other European Union agencies and bodies, and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the Treaty and the provisions on the competence of those bodies. ***The European Parliament shall be informed of any such arrangements concluded by the Agency.***

Amendment 29

Proposal for a regulation – amending act

Article 1 – point 16

Regulation (EC) No 2007/2004

Article 14 – paragraph 1

Text proposed by the Commission

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate the operational cooperation between Member States and third countries, *in the framework of the European Union external relations policy, including with regard to human rights.*

Amendment

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate the operational cooperation between Member States and third countries, *within the framework of the European Union external relations policy, in particular through the European Neighbourhood Policy and within the framework of the Union for the*

Mediterranean, including with regard to human rights.

Amendment 30

Proposal for a regulation – amending act

Article 1 – point 16

Regulation (EC) No 2007/2004

Article 14 – paragraph 2

Text proposed by the Commission

2. The Agency may deploy liaison officers, which should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of Member States' liaison officers set up pursuant to Council Regulation No 377/2004. Liaison officers shall only be deployed to third countries in which border management practices respect **minimum human rights standards**. **Priority** for deployment should be given to those third countries, which on the basis of risk analysis constitute a country of origin or transit regarding illegal migration. On a reciprocal basis the Agency may receive liaison officers posted by those third countries also, for a limited period of time. The Management Board shall adopt, on a proposal of the Executive Director, the list of priorities on a yearly basis in accordance with the provisions of Article 24.

Amendment

2. The Agency may deploy liaison officers, which should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of Member States' liaison officers set up pursuant to Council Regulation No 377/2004. Liaison officers shall only be deployed, **following the approval of the Management Board**, to third countries in which border management practices respect **fundamental rights and international protection obligations**. **Within the framework of the EU's external policy, priority** for deployment should be given to those third countries, which on the basis of risk analysis constitute a country of origin or transit regarding illegal migration. On a reciprocal basis the Agency may receive liaison officers posted by those third countries also, for a limited period of time. The Management Board shall adopt, on a proposal of the Executive Director, the list of priorities on a yearly basis in accordance with the provisions of Article 24.

Amendment 31

Proposal for a regulation – amending act

Article 1 – point 16

Regulation (EC) No 2007/2004

Article 14 – paragraph 3

Text proposed by the Commission

3. The tasks of the liaison officers shall include, in compliance with European Union law and in accordance with fundamental rights, the establishment and maintaining of contacts with the competent authorities of the third country to which they are assigned to with a view to contribute to the prevention of and fight against illegal immigration and the return of illegal migrants.

Amendment

3. The tasks of the liaison officers shall include, in compliance with European Union law and in accordance with fundamental rights, ***with special regard to the right of everyone to leave a country, including his or her own,*** the establishment and maintaining of contacts with the competent authorities of the third country to which they are assigned with a view to contribute to the prevention of and fight against illegal immigration and the return of illegal migrants.

Justification

Regarding the activities of liaison officers (ILOs) deployed in third countries, the Regulation should include a clear reference to the right for everyone to leave any country, including his own according to Article 12(2) of the ICCPR and Article 2(2) of the protocol 4 of the ECHR.

Amendment 32

Proposal for a regulation – amending act

Article 1 – point 16

Regulation (EC) No 2007/2004

Article 14 – paragraph 4

Text proposed by the Commission

4. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the Union's external relations policy. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation. The Agency may also invite representatives of third countries, other European Union agencies and bodies or international organisations to participate in its activities referred to in Articles 3, 4 and 5. These representatives shall receive the appropriate training from the Agency prior to their participation.

Amendment

4. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the Union's external relations policy. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation ***with a view to improving their capacities, inter alia in the field of human rights. The Agency shall ensure that assistance to operations within the framework of these projects is not provided to third countries where there are clear grounds for believing that such operations would lead to violations of fundamental rights.*** The Agency may also invite representatives of third countries, other European Union

agencies and bodies or international organisations to participate in its activities referred to in Articles 3, 4 and 5 **following an understanding with the host Member State**. These representatives shall receive the appropriate training from the Agency prior to their participation, **in particular in relation to fundamental rights**.

Justification

EU funding should not be granted to third countries when it can be foreseen that joint operations could lead to breaches of fundamental rights, to reflect the principle stated in the Impact Assessment accompanying the European Commission proposal.

Amendment 33

Proposal for a regulation – amending act

Article 1 – point 16

Regulation (EC) No 2007/2004

Article 14 – paragraph 5

Text proposed by the Commission

5. When concluding bilateral agreements with third countries as referred to in Article 2 (2) Member States shall, where appropriate, include provisions concerning the role and competencies of the Agency, in particular regarding the exercise of executive powers by members of the teams deployed by the Agency during the activities referred to in Article 3.

Amendment

5. When concluding bilateral agreements with third countries **on cooperation at an operational level** as referred to in Article 2 (2), Member States shall, where appropriate, include provisions concerning the role and competencies of the Agency, in particular regarding the exercise of executive powers by members of the teams deployed by the Agency during the activities referred to in Article 3. **The text of those bilateral agreements shall be transmitted to the European Parliament and the Commission.**

Justification

Member States' bilateral agreements with third countries including provisions concerning the role and competencies of Frontex should be open to scrutiny by the European Parliament and be made available to the European Commission in order to ensure that they are in line with Member States' obligations under EU law and fundamental rights as established in this Regulation.

Amendment 34

Proposal for a regulation – amending act

Article 1 – point 16

Regulation (EC) No 2007/2004

Article 14 – paragraph 6

Text proposed by the Commission

6. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty.

Amendment

6. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty, ***and in particular of the Charter of Fundamental Rights and international law, with special regard to respect for the non-refoulement principle. Those arrangements shall guarantee compliance with international human rights and humanitarian law by third countries.***

Justification

As EU Agency, Frontex has the obligation to fully respect and promote fundamental rights in the conduct of its activities (Article 51 of the Charter of Fundamental Rights). These fundamental principles shall equally apply to when concluding cooperation agreements with third countries.

Amendment 35

Proposal for a regulation – amending act

Article 1 – point 16

Regulation (EC) No 2007/2004

Article 14 – paragraph 7

Text proposed by the Commission

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

Amendment

7. The activities referred to in paragraphs 2 and 6 shall be subject to receiving a prior favourable opinion of the Commission. ***The European Parliament shall be informed about cooperation agreements between the Agency and the authorities of third countries.***

Justification

Frontex is an EU body subject to the principles of full democratic scrutiny and transparency. These working arrangements have to be consistent with the EU external policy and the Commission has to justify the reasons for giving a favourable opinion.

Amendment 36

Proposal for a regulation – amending act

Article 1 – point 23

Regulation (EC) No 2007/200404

Article 33 – paragraph 2b

Text proposed by the Commission

2b. The evaluation shall include a specific analysis *on* the way the Charter of Fundamental Rights *was respected* pursuant to the application of *the* Regulation.

Amendment

2b. The evaluation shall include a specific analysis *of* the way *in which the rights enshrined in* the Charter of Fundamental Rights *were guaranteed* pursuant to the application of *this* Regulation. *An annual evaluation of that analysis shall be annexed to the Agency's general report.*

PROCEDURE

Title	Amendment of Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)
References	COM(2010)0061 – C7-0045/2010 – 2010/0039(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	AFET 11.3.2010
Rapporteur Date appointed	Barbara Lochbihler 30.3.2010
Discussed in committee	14.10.2010 10.1.2011
Date adopted	13.1.2011
Result of final vote	+: 43 -: 5 0: 0
Members present for the final vote	Gabriele Albertini, Michael Gahler, Marietta Giannakou, Ana Gomes, Heidi Hautala, Richard Howitt, Anna Ibrisagic, Ioannis Kasoulides, Tunne Kelam, Maria Eleni Koppa, Andrey Kovatchev, Eduard Kukan, Krzysztof Lisek, Sabine Lösing, Ulrike Lunacek, Barry Madlener, Mario Mauro, Kyriakos Mavronikolas, Francisco José Millán Mon, Alexander Mirsky, Andreas Mölzer, María Muñoz De Urquiza, Annemie Neyts-Uyttebroeck, Norica Nicolai, Justas Vincas Paleckis, Ioan Mircea Pașcu, Vincent Peillon, Alojz Peterle, Cristian Dan Preda, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Jacek Saryusz-Wolski, Werner Schulz, Ernst Strasser, Charles Tannock, Zoran Thaler, Kristian Vigenin, Graham Watson
Substitute(s) present for the final vote	Kinga Gál, Liisa Jaakonsaari, Georgios Koumoutsakos, Barbara Lochbihler, Norbert Neuser, Jacek Protasiewicz, Judith Sargentini, Marietje Schaake, Indrek Tarand, Janusz Władysław Zemke