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RECOMMENDATION

on the draft Council decision on the conclusion, on behalf of the Union, of the Arrangement between the European Union, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
(05707/2010 – C7-0217/2009 – 2009/0073(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Philip Claeys

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.)

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the draft Council decision on the conclusion, on behalf of the Union, of the Arrangement between the European Union, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

(05707/2010– C7-0217/2009 – 2009/0073(NLE))

(Consent)

The European Parliament,

- having regard to the draft arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (10701/2009),
 - having regard to the proposal for a Council decision (COM(2009)0255),
 - having regard to the draft Council decision (05707/2010),
 - having regard to Articles 62, first paragraph, point 2, point (a) and 66 and Article 300(2) and (3) of the EC Treaty, pursuant to which the Council consulted Parliament (C7-0217/2009),
 - having regard to the Commission Communication to 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 Articles 77(2)(b) and 74 and Article 218(6), second paragraph, point (a), point (v) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 81 and 90(8) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A7-0172/2010),
1. Consents to the conclusion of the arrangement;
 2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States, the Swiss Confederation and the Principality of Liechtenstein.

EXPLANATORY STATEMENT

The aim of the proposal for a Council decision which is the subject of this consent procedure is the signature and conclusion, on behalf of the European Union, of an Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of those states' participation in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, called FRONTEX.

FRONTEX was established in 2004, pursuant to Articles 62(2)(a) and 66 of the EC Treaty and took up its responsibilities on 1 May 2005. This agency is conceived as an important instrument of the common European strategy towards illegal immigration and is also further elaborated in this sense. The most important task of FRONTEX is that it provides coordination of operational cooperation between the Member States in the field of management of external borders. In this regard, cooperation at the southern maritime borders, targeted at illegal immigration from Africa, has shown clear results. For example, in 2009 there were 7,200 attempts of illegal entry on the Spanish coast, the lowest figure during the last decade, compared to the next lowest year in 2000 with over 15,000 attempts¹. Other tasks of the agency include giving assistance to Member States in the training of national border guards, carrying out risk analysis, following up the development of research relevant for the control and surveillance of external borders, helping Member States in circumstances requiring increased technical and operational assistance at external borders and *last but not least* providing Member States with the necessary support in organising joint return operations. For example, from 2006 until the end of 2009, FRONTEX coordinated 61 joint return flights involving a total of 2.859 returnees².

Article 21(3) of the FRONTEX regulation³ provides for countries associated with the implementation, application and development of the Schengen *acquis* to participate in the agency. The modalities of their participation are to be specified in further arrangements to be concluded between the European Union and those countries.

The Swiss Confederation already forms part of the Schengen area. In a referendum on 5 June 2005, Swiss voters agreed, by a 55 % majority, to join the Schengen area. 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* entered into force on 1 March 2008⁴.

The Principality of Liechtenstein does not form part of the Schengen area yet. Article 16 of the above-mentioned agreement between the European Union and the Swiss Confederation

¹ 'Spain asks for more resources, clearer rules and specialist offices for Frontex', 3 February 2010, available on: <http://www.montesquieu-institute.eu>

² See answer of Commissioner Barrot on behalf of the Commission of 9 February 2010 to written question E-0127/2010 by Frank Vanhecke.

³ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349, 25.11.2004, p. 1, as amended.

⁴ For the text of the agreement see OJ L 53, 27.2.2008, p. 52; for the entry into force see OJ L 53, 27.2.2008, p. 18.

provides that Liechtenstein may accede to this agreement through a protocol. The protocol was signed on 28 February 2008, but has not been concluded yet¹. However, in order to avoid separate negotiations, the arrangement on the participation in FRONTEX has been negotiated with the Swiss Confederation and the Principality of Liechtenstein in parallel. The text of the arrangement stipulates that, as regards Liechtenstein, the arrangement shall only apply as from the date when the protocol is put into effect².

Due to the entry into force of the Treaty of Lisbon on 1 December 2009, the role of the European Parliament in the procedure for the conclusion of the arrangement has changed. Under the Treaty of Nice the European Parliament had to be consulted on the conclusion of this international agreement, in accordance with Articles 62 (2) (a), 66 and 300 (2) EC Treaty. As the conclusion of this agreement was pending on 1 December 2009, the new rules of the Treaty of Lisbon apply. Under Articles 77 (2) (b), 74 and 218 (6) (a) (v) TFEU the Council shall conclude the agreement after obtaining the consent of the European Parliament. Therefore, the original Commission proposal, COM(2009)255 of 4 June 2009, had to be modified. The proposal for a Council decision on the conclusion of the arrangement was referred to Parliament again and the Council requested Parliament to give consent³.

As stated above, the present proposal seeks to associate the Swiss Confederation and the Principality of Liechtenstein with FRONTEX and to lay down the modalities of their participation in this agency.

More specifically, the arrangement contains provisions on

- limited voting rights of representatives of the Swiss Confederation and the Principality of Liechtenstein on the FRONTEX management board
- financial contributions of both countries to FRONTEX' budget
- protection and confidentiality of data
- the legal status of FRONTEX in both countries
- the liability of FRONTEX
- the recognition by both countries of the jurisdiction of the European Court of Justice over FRONTEX
- privileges and immunities of FRONTEX and its staff
- access of nationals of both countries to be engaged under contract by FRONTEX.

¹ Council Decisions of 28 February 2008 on the signature, on behalf of the European Community and the European Union, and on the provisional application of certain provisions of the Protocol 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 development of the Schengen *acquis*, OJ L 83, 26.3.2008, p. 2 and 5; see also Draft Proposals for Council Decisions on the conclusion, on behalf of the European Community and the European Union, of the Protocol 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 development of the Schengen *acquis* (COM(2006)752-3 and COM (2006)752-4).

² Article 9 (5) of the arrangement, see Council document 10701/09.

³ Council document 5707/10, together with the text of the arrangement, Council document 10701/09 + COR1 + COR2 + COR3 + COR4.

Two joint declarations of the contracting parties, on voting rights and civil liability, are attached to the arrangement.

The specific situation of Denmark, the United Kingdom and Ireland is referred to in recitals 4, 5 and 6 of the Council decision¹. A comparable arrangement was concluded with the Republic of Iceland and the Kingdom of Norway in 2007².

The rapporteur welcomes the conclusion of this arrangement which enables these two countries to contribute to closer coordination in checks and surveillance at the external borders between the competent administrative services of the participating States. The rapporteur hopes that the Member States will do everything within their power to complete the necessary ratification procedures as quickly as possible in order to associate the Swiss Confederation and the Principality of Liechtenstein with FRONTEX.

¹ Council document 5707/10.

² Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of the participation by those States in the European Agency for the Management of Operational Coordination at the External Borders of the Member States of the European Union, OJ L 188, 20.7.2007, p. 19.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	31.5.2010
Result of final vote	+: 35 -: 0 0: 5
Members present for the final vote	Jan Philipp Albrecht, Sonia Alfano, Rita Borsellino, Simon Busuttil, Philip Claeys, Carlos Coelho, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Tanja Fajon, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Teresa Jiménez-Becerril Barrio, Monica Luisa Macovei, Véronique Mathieu, Louis Michel, Antigoni Papadopoulou, Georgios Papanikolaou, Birgit Sippel, Wim van de Camp, Axel Voss, Renate Weber, Tatjana Ždanoka
Substitute(s) present for the final vote	Alexander Alvaro, Elena Oana Antonescu, Edit Bauer, Andrew Henry William Brons, Michael Cashman, Anna Maria Corazza Bildt, Ioan Enciu, Franziska Keller, Krisztina Morvai, Mariya Nedelcheva, Raúl Romeva i Rueda, Cecilia Wikström