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NOTE

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Subject : Draft Council Conclusions on the main elements of the Commission proposal for a Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

Delegations will find attached the above-mentioned draft Council conclusions resulting from the meetings of the Permanent Representatives Committee and the Mixed Committee at the Level of Senior Officials, held on 26 November 2003.

Draft Council Conclusions
on
the main elements of the Commission proposal for a Council Regulation
establishing a European Agency for the Management of Operational Cooperation
at the External Borders of the Member States of the European Union¹

The Seville European Council on 21-22 June 2002 welcomed the Plan for the management of the external borders of the Member States of the European Union and urged the introduction without delay, within the framework of the Council, of the Common Unit for External Border Practitioners, composed of Member States' heads of border control, to coordinate the measures contained in the Plan.

The Thessaloniki European Council, at its meeting on 19 and 20 June 2003, invited the Commission to examine in due course, drawing on experience by the Common Unit activities, the necessity of creating new institutional mechanisms, including the possible creation of a Community operational structure, in order to enhance operational cooperation for the management of external borders.

At its meeting on 16 and 17 October 2003, the Brussels European Council welcomed the Commission's intention to submit a proposal for the creation of a Border Management Agency, in order to enhance operational cooperation for the coordination of the management of external borders, in time for the Council to reach a political agreement on its main elements by the end of the year.

The Council now welcomes the proposal presented by the Commission on 11 November 2003 and agrees on the following elements:

¹ UK entered a general scrutiny reservation.

The Agency and its tasks

1. While considering that the responsibility for the management of the external borders lies with the Member States, the Council considers that the creation of an Agency is the most appropriate way to organise and develop the indispensable coordination of operational cooperation at the external borders.

2. In order to promote solidarity between Member States, the Council agrees that the Agency, building upon the achievements of the External Borders Practitioners Common Unit and the ad hoc Centres for cooperation in the integrated management of the external borders, should:
 - coordinate the operational cooperation between Member States in the field of management of the external borders;
 - assist Member States on training of national border guards, including the establishment of common training standards;
 - carry out risk analyses;
 - follow up on the development of research relevant for the control and surveillance of the external borders;
 - assist Member States in circumstances requiring increased technical and operational assistance at the external borders;
 - provide Member States with the necessary technical support in organising joint return operations.

Possible extensions of the tasks of the Agency should be decided, at an appropriate moment, according to the procedure provided by the appropriate legal basis in the treaties.

3. In matters covered by activities of the Agency and to the extent required for the fulfilment of its tasks, the Agency should facilitate the operational cooperation between Member States and third countries, in the framework of the European Union external relations policy in the Justice and Home Affairs field.

Institutional elements

4. The development of the policy and legislation on external border control and surveillance remains a responsibility of the EU institutions, in particular the Council. More in general, a close coordination between the Agency and these EU institutions should be guaranteed.
5. In order to deal with the specific aspects of control and surveillance of the different types of borders - land, sea and air - the Agency, building upon the experiences of the ad hoc Centres should be entitled to set up specialised, decentralised branches in the respective Member States that will constitute an integrated part of the Agency. The Agency can organise training activities in cooperation with Member States on their territory.
6. The establishment of the Agency constitutes a measure building upon the Schengen acquis, aiming at the facilitation of the application of existing and future measures relating to the management of the external borders.

Therefore, the Council agrees that:

- Iceland and Norway should participate in the Agency. Any necessary arrangements regarding their participation should be developed under the relevant provisions of the Association Agreement of May 1999;

- with a view to the current particular position of Ireland and the United Kingdom in the context of the management of the external borders, solutions should be found for continuing and developing cooperation at operational level between these two Member States and the Schengen States.²

The Council considers that Denmark, in accordance with Article 5 of the Protocol on the Position of Denmark annexed to the Treaty on the European Union and to the Treaty establishing the European Community, will decide within a period of six months after the Council has adopted the regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders, whether it will implement it in its national law or not.

7. Without prejudice to the previous point³, the Council considers that each Member State should have a representative in the Management Board of the Agency, which should consist of the operational heads of the national law enforcement authorities responsible for border management. In order to allow for an efficient functioning of the Management Board, the Board should take decisions by a majority to be defined. However, the participation of Member States in common operational activities, such as joint operations and pilot projects, will take place on a voluntary basis.

² E entered a reservation.

IRL entered a reservation and suggested replacing this paragraph by the following: "Ireland and the United Kingdom shall participate in the Agency to the maximum extent possible in the light of their participation in the management of the European Union external borders and their particular position as regards participation in elements of the Schengen acquis."

UK entered a reservation and suggested replacing this paragraph by the following: "with a view to the current particular position of Ireland and the United Kingdom in the context of the management of the external borders, these Member States should participate in the Agency with a view to continuing and developing their cooperation at operational level."

NL, P and S entered a scrutiny reservation on the UK suggestion.

³ **IRL and UK** suggested deleting "without prejudice to the previous point".

8. As regards the other elements of its structure, the Council agrees that wherever possible and appropriate, the provisions on the Agency should consider the precedents offered by other Community agencies.

Budget

9. The Council takes note of the budget estimated by the Commission for the Agency and considers that a more in-depth examination is required, in particular as regards the human resources required in order to allow the Agency to be fully operational, efficient and effective.

Timing

10. The Agency should be in a position to start its activities from 1 January 2005 onwards.
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