



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION STAFF WORKING DOCUMENT

Accompanying the

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**establishing a mechanism for the creation of Rapid Border Intervention Teams and
amending Council Regulation (EC) No 2007/2004 as regards that mechanism**

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1. THE "VARIABLE GEOMETRY"

As the legal basis for the proposal for a Regulation is under Title IV of the Treaty establishing the European Community, it is affected by the "variable geometry" arising from the Protocols on the positions of the United Kingdom, Ireland and Denmark. The Community policy on integrated management of the external borders is Schengen acquis, and the present proposal for a Regulation consequently builds upon the Schengen acquis. Consideration must therefore be given to certain consequences arising from the various Protocols.

United Kingdom and Ireland

According to Articles 4 and 5 of the Protocol integrating the Schengen acquis into the framework of the European Union, "Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen acquis, may at any time request to take part in some or all of the provisions of the acquis."

This proposal constitutes a development of the Schengen acquis, in which the United Kingdom and Ireland do not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland, and Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis. The United Kingdom and Ireland are therefore not taking part in its adoption and are not bound by it or subject to its application.

Article 20(5) of Council Regulation (EC) No. 2007/2004 provides the United Kingdom and Ireland with the possibility of requesting to participate in the Agency's activities. The Management Board of the Agency shall decide on such requests on a case-by-case basis.

To the extent that the United Kingdom and Ireland make use of this possibility with regard to participation in joint operations, the relevant provisions of this Regulation pertaining to the conferral of executive powers upon guest officers participating in joint operations coordinated by the Agency shall also apply, *mutatis mutandis*, to guest officers of the United Kingdom and Ireland.

The United Kingdom and Ireland can, however, not participate in, nor request assistance from, the Rapid Border Intervention Teams, since this is considered a measure of solidarity applicable only to the Member States participating in the Schengen acquis on external borders

and the third countries associated with the implementation, application and development of the Schengen acquis.

Denmark

Under the Protocol on the Position of Denmark annexed to the Treaty on European Union , Denmark does not take part in the adoption by the Council of measures pursuant to Title IV of the Treaty establishing the European Community, with the exception of “measures determining the third countries whose nationals must be in possession of visas when crossing the external borders, or measures relating to a uniform format for visas” (former Article 100c of the Treaty establishing the European Community).

As these proposals constitute a development of the Schengen acquis and following Article 5 of the Protocol, “Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, whether it will implement this decision in its national law”.

Norway and Iceland

In accordance with Article 6 first indent of the Schengen Protocol, an Agreement has been signed on 18 May 1999 between the Council, Norway and Iceland in order to associate those two countries with the implementation, application and development of the Schengen acquis¹.

Article 1 of the Agreement provides that Norway and Iceland are to be associated with the activities of the EC and the EU in the fields covered by the provisions referred to in Annexes A (provisions of the Schengen acquis) and B (provisions of European Community acts which have replaced corresponding provisions of - or were adopted pursuant to - the Schengen Convention) to the Agreement and their further development.

According to Article 2 of the Agreement, the provisions of all acts or measures taken by the European Union amending or building upon the Schengen acquis (Annex A, B) shall be implemented and applied by Norway and Iceland.

The present proposal builds upon the Schengen acquis as defined in Annex A of the Agreement.

The matter must therefore be discussed in the “Mixed Committee” provided for in Article 4 of the Agreement to allow Norway and Iceland “to explain the problems they encounter in respect of” the measure and “to express themselves on any questions concerning the development of provisions of concern to them or the implementation thereof.”

Switzerland

As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis² which fall within the

¹ OJ L 176, 10.7.1999, p. 35.

² Doc. 13054/04.

area referred to in Article 4(1) of Council Decision 2004/860/EC³ on the signing, on behalf of the European Community, and on the provisional application of certain provisions of this Agreement.

The Agreement with Switzerland, signed on 26 October 2004, provides for provisional application of certain provisions upon signature, in particular the participation of Switzerland in the Mixed Committee dealing with the development of the Schengen acquis.

2. CONSEQUENCES FOR THE EU-10 MEMBER STATES OF THE TWO-STAGE PROCEDURE FOR IMPLEMENTING INSTRUMENTS BUILDING ON THE SCHENGEN ACQUIS

Article 3(1) of the 2003 and 2005 Acts of Accession states that the provisions of the Schengen acquis and the acts building upon it or otherwise related to it, listed in Annex I to the Acts, will be binding on and applicable in the EU-10 Member States from the date of accession. Provisions and acts referred to in the Annex, while binding on the EU-10 Member States from the date of accession, will only apply in an EU-10 Member State pursuant to a Council decision to that effect taken in accordance the Article (Article 3(2) of the 2003 and 2005 Acts of Accession).

This is the two-stage implementation procedure, whereby certain provisions of the Schengen acquis are binding and applicable from the date of accession to the Union whereas others, in particular those linked intrinsically to the removal of the checks at the internal borders, are binding from the date of accession but applicable in the EU-10 Member States only after the Council decision referred to above.

The Schengen provisions on external borders (Articles 3 to 8 of the Schengen Convention and their implementing decisions, in particular the Common Manual) are listed in the Annex and are therefore binding on and applicable to the EU-10 Member States, with the exception of Article 5(1)(d) related to the consultation of the Schengen Information System (SIS).

The provisions of this proposal relating to the consultation of the Schengen Information System (SIS) (Article 6(1)(d) and (2)) will therefore only apply in the EU-10 Member States pursuant to the Council decision referred to in Article 3(2) of the 2003 and 2005 Acts of Accession.

However, the tasks referred to in Article 6(1)(d) and (2) of the proposal shall be performed by nationals of the EU-10 Member States acting in their capacity of guest officers participating in joint operations coordinated by the Agency and members of the Rapid Border Intervention Teams also prior to the Council decision referred to in Article 3(2) of the 2003 and 2005 Acts of Accession, since these guest officers and members of the Rapid Reaction Teams will only access the Schengen Information System (SIS) and national databases on behalf of the host Member State and not on behalf of their Member State of origin. All access of officers from the EU-10 Member States, who are either serving as members of a Rapid Border Intervention Team or participating in a joint operation coordinated by the Agency, to the above-mentioned data bases will thus be regulated in full compliance with Community law and the national law of the Member States in which the operations take place.

³ OJ L 370, 17.12.2004, p. 78.

3. COMMENTS ON THE ARTICLES

Article 1

The Article describes the subject matter of this Regulation, *i. e.* the establishment of Rapid Border Intervention Teams and the definition of tasks to be performed by guest officers and members of the Rapid Border Intervention Teams during operations in a Member State other than their own.

Article 2

The Article contains a set of definitions for the purposes of this Regulation. The definitions of joint operations and pilot projects refer to the relevant provision of Council Regulation (EC) No 2007/2004. As regards the other definitions, these have been created specifically for the purpose of this Regulation. In particular, it should be noted that the term "requesting Member State" is used solely for provisions dealing with the initial stages of deployment of the Rapid Border Intervention Teams, whereas the term "host Member State" is used throughout the Regulation, both with regard to the participation of guest officers in joint operations and pilot projects and to the later stages of the deployment of the teams.

Article 3

The Article deals with the composition and deployment of the Rapid Border Intervention Teams.

Article 4

The Article sets out the rights and obligations of officers participating in the Rapid Border Intervention Teams.

Article 5

The Article sets out the rights and obligations of the host Member State during deployment of the Rapid Border Intervention Teams, in particular the issue of command over the team(s) and assistance rendered to the team(s) by the authorities of the host Member State.

Article 6

The Article lays down the principle that guest officers and members of the Rapid Border Intervention Teams shall be able to perform a series of tasks related to control of persons at, and surveillance of, the external border of a host Member State during joint operations, pilot projects on the one hand, and deployment of the Rapid Border Intervention Teams on the other hand. The Article also contains provisions on the wearing of uniforms and EU insignia as well as the carrying of service weapons.

Article 7

The Article defines the tasks to be performed by guest officers and members of the Rapid Border Intervention Teams with regard to control of persons at the external borders. The tasks are based on Article 7 of the Schengen Borders Code.

Article 8

The Article defines the tasks to be performed by guest officers and members of the Rapid Border Intervention Teams with regard to surveillance of the external borders. The tasks are based on Article 12 of the Schengen Borders Code.

Article 9

The Article provides for the issuance of a special accreditation document by the host Member State to guest officers and members of the Rapid Border Intervention Teams for identification purposes.

Article 10

The Article deals with the civil liability regarding guest officers and members of the Rapid Border Intervention Teams. The provision is based on Article 3 of Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams.

Article 11

The Article deals with the criminal liability regarding guest officers and members of the Rapid Border Intervention Teams. The provision is based on Article 2 of Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams.

Article 12

The Article amends the Regulation establishing FRONTEX for the purposes of implementing the Rapid Border Intervention Teams in the framework of the Agency.

Paragraph 1 amends the list of tasks of the Agency contained in Article 2(1) of Council Regulation (EC) No 2007/2004 to include the deployment of the Rapid Border Intervention Teams.

Paragraph 2 repeals and replaces Article 8(3) of Council Regulation (EC) No 2007/2004 for the purpose of including the Rapid Border Intervention Teams among the users of technical equipment acquired by the Agency.

Paragraph 3 introduces a series of new provisions (Articles 8 a to 8h) dealing with the implementation of the Rapid Border Intervention Teams in the framework of the Agency, in particular as regards setting up and composition of the teams, training and exercises, the procedure to be followed by the Agency for taking decisions on deployment of the teams, the agreement on an operational plan, and the appointment of a liaison officer of the Agency to be deployed together with the team(s) in host Member State.

Paragraph 4 repeals Article 10 of Council Regulation (EC) No 2007/2004. The provision will be replaced by Articles 5, 6 and 7 of the present Regulation.

Article 13

The Article deals with the entry into force of the Regulation. In accordance with practice, the Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. However, in order to give the Agency sufficient time

to prepare the setting up of the Rapid Border Intervention Teams, Article 11 containing the amendments of Council Regulation (EC) No 2007/2004 dealing with the practical implementation of the teams will only be applicable three months after the date of entry into force.