



Council of the
European Union

Brussels, 9 November 2018
(OR. en)

13828/18

LIMITE

JAI 1090
MIGR 176
FRONT 380
RELEX 922
COMIX 607
CODEC 1874

**Interinstitutional File:
2018/0153(COD)**

NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	9036/18
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the creation of a European network of immigration liaison officers (recast) - Mandate for negotiations with the European Parliament

1. On 17 May 2018, the Commission submitted a proposal for a Regulation on the creation of a European network of immigration liaison officers (recast)¹. The aim of the proposal is to ensure a better coordination and cooperation of liaison officers deployed by Member States, the Commission and Union Agencies to third countries and dealing with immigration-related issues.
2. The proposal was examined by the Integration, Migration and Expulsion (IMEX) Working Party on 10 July, 4 September and 9 October, as well as by JHA Counsellors on 30 October 2018.

¹ 9036/18

3. The Presidency made efforts to take into account concerns and suggestions expressed by Member States. As such, the Presidency compromise text of the Regulation aims at addressing the following issues:

a. strengthening links with prevention and combatting of illegal migration, smuggling of migrants and trafficking in human beings

Immigration Liaison Officers (ILO) operate in a context in which they are likely to come across important insights on the activities of criminal organisation involved in smuggling and trafficking in human beings. Given that the Union continues to intensify its fight against people smuggling, the Presidency compromise text now enables ILOs to collect information on smuggling of migrants and share it with other ILOs as well as with law enforcement authorities of Member States (Art 3(4)(d), Art 10(3)(d)). In addition, new Art (3)(2)(-a) allows ILOs to collect information to support the European integrated border management at the external borders with a view to managing migration efficiently and ensuring a high level of internal security.

b. safeguarding the competence of deploying authorities to define the scope and assignment of tasks of their respective immigration liaison officers

The Presidency text introduces a number of provisions, most notably a new Article 1(2), to ensure that the existing chain of command and reporting lines between ILOs and their deploying authorities remain uninterrupted. The new provisions warrant that ILOs will remain responsible directly to their back-offices and that activities of the new coordination body, the Steering Board, will respect this principle. The Presidency believes that this supports the objective of the Regulation, while avoiding conflicting priorities or confusing communication.

c. clarifying the functioning of the Steering Board, including the voting rules

One of the more challenging aspects of the new Regulation was to set out voting arrangements for the Steering Board. The issue was discussed extensively by the IMEX Working Party and JHA Counsellors. Following a close analysis of comments made by delegations and EU legislation which created similar bodies (e.g. EBCG Regulation² and eu-LISA Regulation³), the Presidency suggests that a decision of the Board should be taken by an absolute majority of its members (Art 7.7). In addition, the Board's rules of procedures may set out voting arrangements in greater detail. This compromise proposal follows the request by a large majority of Member States to ensure that all members of the Board are treated equally, regardless of the number of ILOs they deploy. At the same time, in order to recognise the important contribution of some Member States who deploy large numbers of ILOs, recital (11) instructs the Board to take into account the diversity of ILO networks and the views of most concerned Member States when carrying out its tasks.

In addition to voting arrangements, the Presidency compromise text aimed at defining other important aspects of the Steering Board's functioning such as appointing members and their substitutes as well as clarifying its tasks (Art 7 and 8).

² Art 67(1) of Regulation (EU) 2016/1624 on the European Border and Coast Guard
³ Art 16(1) of Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

d. facilitating the work of ILOs

The Presidency made efforts to further facilitate the work of ILOs by clarifying the rules for appointment of network facilitators, who should be selected among ILOs deployed by the Commission or the Union Agencies, wherever possible. The Presidency also believes that the new provision in Article 9(1) concerning the role of facilitators in uploading data to the information exchange platform will make the work of ILOs more efficient.

4. There were some requests made by a few delegations, which the Presidency could not take into account:

a. extending the application of the Regulation to liaison officers deployed within the EU

The proposal for the Regulation concerns ILOs deployed to third countries. However, two delegations requested that the scope be extended to officers deployed to other Member States. The Presidency could not take this on board for two main reasons: (i) there is a number of other instruments and measures that already enable efficient cooperation between Member States, including through Europol and EBCG; and (ii) the proposal is a recast of existing Regulation 377/2004 – extending the scope so significantly would require a complete overhaul of the text, which is not possible under the recast legislative technique.

b. granting the States associated with the implementation, application and development of the Schengen acquis a right to vote in the Steering Board

The Schengen associated states requested to grant their members on the Steering Board a right to vote on decisions concerning their respective ILOs. The Presidency believes that a close cooperation with the Schengen associated states and their strong involvement in the implementation of the Regulation is important. However, granting the Schengen associated states a right to vote is contrary to the fundamental principle of institutional and decisional autonomy of the EU. The right to vote is inherently linked to the membership of the European Union and non-Member States cannot enjoy the same rights and prerogatives as Member States. The exceptional cases in which the Schengen associated states have been granted limited voting rights, e.g. in the EBCG Regulation, were justified by special circumstances, which are not present in the given case. At the same time, in order to foster as close a cooperation as possible, the Presidency compromise text includes provisions which ensure the right of the Schengen associated states to express their views on all issues discussed by the Steering Board and guarantee that their opinions will be duly taken into account by the Board when it takes decisions directly concerning their ILOs (Article 7).

c. setting out further details concerning the functioning of local ILO networks and the Steering Board

One delegation suggested that the Regulation should specify in greater detail the functioning of the Board, especially by setting out specific rules on inviting observers to its meetings. The Presidency is of the opinion that such detail rules should be set out in the Board's rules of procedures and not in the legislative text. Another request concerned local ILO networks in third countries, in particular the need to detail out the rules regarding initiating the first meeting of each local network and the selection of networks' facilitators. The Presidency believes that this could create too much of an administrative burden for the local networks and the Board. The aim of the Presidency is to ensure that ILO networks can function in an efficient manner without overregulating their activities, which could reduce the time of liaison officers and the Board members available for core tasks. In case such detailed rules turn out to be necessary in the future, they can be set out by the Board in its rules of procedures.

5. On 1 October 2018, the United Kingdom notified the Council that, pursuant to Article 5(2) of Protocol 19 to the Treaties on the Schengen Acquis, it does not wish to take part in the adoption and application of this Regulation. As a result, before the Regulation can be adopted, the Council needs to determine in a decision, acting by a qualified majority on a proposal from the Commission, the extent to and conditions under which the Regulation will cease to apply to the UK. That decision should be taken in accordance with the following criteria: the Council shall seek to retain the widest possible measure of participation of the Member State concerned without seriously affecting the practical operability of the various parts of the Schengen acquis, while respecting their coherence. The Commission should submit its proposal as soon as possible and the Council should, if needed after convening two successive meetings, act within four months of the Commission proposal.

Once the proposal is submitted by the Commission, the Presidency intends to examine it as soon as possible at the level of JHA Counsellors and prepare it for Council's adoption.

6. In the light of the above, the Presidency invites COREPER to agree on the compromise proposal set out in Addendum 13828/18/ADD1, with a view to granting the Presidency a mandate to start negotiations with the European Parliament.
