Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the creation of a European network of immigration liaison officers (recast)

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(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 74 and Article 79(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) Council Regulation (EC) No 377/2004[(2)] has been substantially amended. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

(2) The sharp increase of mixed migratory flows in 2015 and 2016 has put migration, asylum and border management systems under pressure. This has posed a challenge for the Union and Member States, showing the need to strengthen Union policy in the field of migration with a view to achieving a coordinated and effective European response.

(3) The objective of Union policy in the field of migration is to replace irregular and uncontrolled migratory flows with safe and well-managed pathways, through a comprehensive approach aimed at ensuring, at all stages, the efficient management of migration flows in accordance with Chapter 2 of Title V of the Treaty on the Functioning of the European Union (TFEU).

(4) Respect for human rights is a fundamental principle of the Union. The Union is committed to protecting the human rights and fundamental freedoms of all migrants, regardless of their migratory status, in full compliance with international law. As such, measures taken by immigration liaison officers when implementing this Regulation, in particular in cases involving vulnerable people, should respect fundamental rights in accordance with relevant international and Union law, including Articles 2 and 6 of the Treaty on European Union (TEU) and the Charter of Fundamental Rights of the European Union.

(5) To ensure the effective implementation of all aspects of Union policies on immigration, consistent dialogue and cooperation should be pursued with key third countries of origin and transit of migrants and of applicants for international protection. Such

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/1240 of the European Parliament and of the Council. (See end of Document for details)*

cooperation, in line with the comprehensive approach set out in the European Agenda on Migration, should provide for better management of immigration, including departures and returns, support capacity to gather and share information, including on applicants' access to international protection and, where possible and relevant, on reintegration, and prevent and counter illegal immigration, smuggling of migrants and trafficking in human beings.

(6) Protection tools include measures contained in the Global Approach to Migration and Mobility (GAMM). Legal immigration strategies and channels between the Union and third countries should also include labour migration, visas for students and family reunification, without prejudice to the national competences of Member States.

(7) In light of the increasing demand for analysis and information to support evidence-based policy making and operational responses, there is a need for immigration liaison officers to ensure that their insight and knowledge contribute fully to the establishment of a comprehensive situational picture on third countries.

(8) Information on the composition of migratory flows should, where possible and relevant, include information on declared migrants' age, gender profile and family and on unaccompanied minors.

(9) The deployment of the current European Migration Liaison Officers to the key third countries of origin and transit, as called for in the conclusions of the special meeting of the heads of state and government on 23 April 2015, was a first step towards enhancing the engagement with third countries on migration-related issues and stepping up cooperation with immigration liaison officers deployed by Member States. Building on this experience, longer-term deployments of immigration liaison officers by the Commission to third countries should be foreseen to support development, implementation and maximise the impact of Union action on migration.

(10) The objective of this Regulation is to ensure better coordination and optimise utilisation of the network of liaison officers deployed to third countries by the competent authorities of Member States, including, where appropriate, by law enforcement authorities, as well as by the Commission and Union agencies, in order to respond more effectively to the Union priorities of preventing and combating illegal immigration and related cross-border criminality such as smuggling of migrants and trafficking in human beings, facilitating dignified and effective return, readmission and reintegration activities, contributing to integrated management of the Union's external borders, as well as supporting management of legal immigration, including in the area of international protection, resettlement and pre-departure integration measures undertaken by Member States and the Union. Such coordination should fully respect the existing chain of command and reporting lines between immigration liaison officers and their respective deploying authorities as well as among immigration liaison officers themselves.

(11) Building on Regulation (EC) No 377/2004, this Regulation aims to ensure that immigration liaison officers better contribute to the functioning of a European network of immigration liaison officers primarily by establishing a mechanism through

which Member States, the Commission and Union agencies can more systematically coordinate the tasks and roles of their liaison officers deployed in third countries.

(12) Given that liaison officers dealing with migration-related issues are deployed by different competent authorities and that their mandates and tasks may overlap, efforts should be made to enhance cooperation among officers operating within the same third country or region. Where immigration liaison officers are deployed to the Union's diplomatic missions in a third country by the Commission or Union agencies, they should facilitate and support the immigration liaison officers' network in that third country. Where appropriate, such networks may be extended to liaison officers deployed by countries other than Member States.

(13) The establishment of a robust mechanism that ensures better coordination and cooperation among all liaison officers dealing with immigration issues as part of their duties is essential in order to minimise information gaps and duplication of work and maximise operational capabilities and effectiveness. A Steering Board should provide guidance in line with Union policy priorities, taking into account the Union's external relations, and should be given the necessary powers, in particular to adopt biennial work programmes for the activities of networks of immigration liaison officers, agree on tailored ad hoc actions for immigration liaison officers addressing priorities and emerging needs not already covered by the biennial work programme, allocate resources for agreed activities and be accountable for their execution. Neither the tasks of the Steering Board nor those of the facilitators of immigration liaison officer networks should affect the competence of deploying authorities with regard to tasking their respective immigration liaison officers. When carrying out its tasks, the Steering Board should take into account the diversity of networks of immigration liaison officers as well as the views of the Member States most concerned as regards relations with particular third countries.

(14) A list of immigration liaison officers deployed to third countries should be established and updated regularly by the Steering Board. The list should include information related to the location, composition and activities of different networks, including the contact details and a summary of the duties of the deployed immigration liaison officers.

(15) Joint deployment of liaison officers should be promoted with the aim of enhancing operational cooperation and information sharing between Member States, as well as to respond to needs at Union level, as defined by the Steering Board. Joint deployment by at least two Member States should be supported by Union funds encouraging engagement and providing added value to all Member States.

(16) Special provision should be made for a wider Union capacity-building action for immigration liaison officers. Such capacity-building should comprise the development of common core curricula and pre-deployment training courses, including on fundamental rights, in cooperation with relevant Union agencies, and the reinforcement of the operational capacity of networks of immigration liaison officers. Such curricula should be non-compulsory and supplementary to national curricula established by deploying authorities.

(17) Networks of immigration liaison officers should avoid duplicating the work of Union agencies and other Union instruments or structures, including the work of local Schengen cooperation groups, and should bring added value to what they already achieve in terms of collecting and exchanging information in the area of immigration, in particular by focusing on operational aspects. Those networks should act as facilitators and providers of information from third countries to support Union agencies in their functions and tasks, in particular where Union agencies have not yet established cooperative relations with third countries. Closer cooperation between networks of immigration liaison officers and relevant Union agencies should be established to that effect. Immigration liaison officers should at all times be aware that their actions might have operational or reputational consequences for local and regional networks of immigration liaison officers. They should act accordingly when carrying out their tasks.

(18) Member State authorities should ensure that, where appropriate and in accordance with Union and national law, information obtained by liaison officers deployed to other Member States and strategic and operational analytical products of Union agencies in relation to illegal immigration, dignified and effective return and reintegration, cross-border criminality or international protection and resettlement effectively reach immigration liaison officers in third countries and that the information provided by immigration liaison officers is shared with the relevant Union agencies; in particular the European Border and Coast Guard Agency, European Union Agency for Law Enforcement Cooperation (Europol) and the European Asylum Support Office (EASO) within the scope of their respective legal frameworks.

(19) In order to ensure the most effective use of information collected by the networks of immigration liaison officers, such information should be available through a secure web-based information exchange platform in accordance with applicable data protection legislation.

(20) Information collected by immigration liaison officers should support the implementation of the technical and operational European integrated border management referred to in Regulation (EU) 2016/1624 of the European Parliament and of the Council[(3)] and contribute to the development and maintenance of national border surveillance systems in accordance with Regulation (EU) No 1052/2013 of the European Parliament and of the Council[(4)].

(21) It should be possible to use the available resources of the Regulation (EU) No 515/2014 of the European Parliament and of the Council[(5)] to support the activities of a European network of immigration liaison officers as well as to pursue the joint deployment of immigration liaison officers by Member States.

(22) Any processing, including the transfer, of personal data by Member States within the framework of this Regulation should be conducted in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council[(6)]. The Commission and Union agencies should apply Regulation (EU) 2018/1725 of the European Parliament and of the Council[(7)] when processing personal data.

(23) The processing of personal data within the framework of this Regulation should be for the purposes of assisting the return of third-country nationals, facilitating the resettlement of persons in need of international protection and implementing Union and national measures in respect of admission for the purpose of legal migration and for the prevention and combating of illegal immigration, smuggling of migrants and trafficking in human beings. A legal framework that recognises the role of immigration liaison officers in this context is therefore necessary.

(24) Immigration liaison officers need to process personal data to facilitate the proper implementation of return procedures, the successful enforcement of return decisions, and reintegration where relevant and possible. The third countries of return are not often subject to adequacy decisions adopted by the Commission under Article 45 of Regulation (EU) 2016/679, and have often not concluded or do not intend to conclude a readmission agreement with the Union or otherwise provide for appropriate safeguards within the meaning of Article 46 of Regulation (EU) 2016/679. Despite the extensive efforts of the Union in cooperating with the main countries of origin of illegally staying third-country nationals subject to an obligation to return, it is not always possible to ensure that such third countries systematically fulfil the obligation established by international law to readmit their own nationals. Therefore, readmission agreements, concluded or being negotiated by the Union or the Member States and providing for appropriate safeguards for the transfer of data to third countries pursuant to Article 46 of Regulation (EU) 2016/679, cover a limited number of such third countries. In the situation where such agreements do not exist, personal data should be transferred by immigration liaison officers for the purposes of implementing the return operations of the Union in accordance with the conditions laid down in Article 49 of Regulation (EU) 2016/679.

(25) As an exception from the requirement for an adequacy decision or appropriate safeguards, the transfer of personal data to third-country authorities under this Regulation should be allowed for implementing the return policy of the Union. It should therefore be possible for immigration liaison officers to use the derogation provided for in Article 49(1)(d) of Regulation (EU) 2016/679 subject to the conditions set out in that Article for the purposes of this Regulation, namely for the dignified and effective return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States in accordance with Directive 2008/115/EC of the European Parliament and of the Council[(8)].

(26) In the interests of the persons concerned, immigration liaison officers should be able to process the personal data of persons in need of international protection subject to resettlement and of persons wishing to migrate legally to the Union, in order to confirm their identity and nationality. Immigration liaison officers operate in a context in which it is likely that they gain important insights into the activities of criminal organisations involved in smuggling of migrants and trafficking in human beings. Therefore, they should also be able to share personal data processed in the course of their duties with law enforcement authorities and within networks of immigration liaison officers, provided that the personal data in question is necessary either for the prevention and tackling