

Brussels, 28 OCT. 2010
C/2010/ 7311

Dear President,

The Commission welcomes the opinion issued by the Senate of the Czech Republic concerning the Commission proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of operational cooperation at the external borders of the Member States of the European Union (Frontex) – {COM (2010) 61 final}.

The opinion of the Senate of the Czech Republic expresses disagreement with the reinforcement of the Agency through the establishment of the so called Frontex Joint Support Teams and with the possibility for the Agency to lease or acquire its own technical equipment.

In this context, the Commission would like to add the following clarifications. The proposal of the Commission has taken into account the results of the Commission's own evaluation report of the activities of the Frontex Agency (COM (2008) 67 final), and an independent evaluation carried out on behalf of the Frontex Management Board.

In addition, the Stockholm programme adopted by the European Council on 10-11 December 2009, called upon the Commission to present a proposal no later than early 2010, "... to clarify the mandate and enhance the role of Frontex, taking account of the results of the evaluation of the Agency and the role and responsibilities of the Member States in the area of border control".

On the basis of the aforementioned evaluation reports, and the invitation in the Stockholm Programme, the Commission carried out an impact assessment in accordance with its own internal procedures to examine the various possibilities to strengthen the Frontex Agency. The impact assessment (SEC (2010) 149) accompanies the Commission proposal to amend Regulation No 2007/2004.

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As regards the technical equipment, the Commission identified, inter alia, that the voluntary nature underlying the provision of resources, and the reliance on Member States for this purpose, meant that the amount of resources available for joint operations would remain at the current level, which is clearly insufficient compared to the identified needs. Without sufficient equipment at its disposal, Frontex would not be able to provide adequate and timely assistance at specific sections of the EU borders. Also, the Agency would not be able to plan its operations since the availability of equipment would remain unclear at the beginning of a given year.

The Commission is of the opinion that the current system entails a lack of predictability which has a negative impact on the capacity of the Agency to plan operations and allocate resources between operations in the most optimal way. The complete dependence on Member States' contributions means that the Agency can never be sure that it is able to implement an operation identified as necessary based on its risk analysis. Each potential operation has to adapt, in terms of planning and objectives, to the resources eventually made available by Member States.

A similar result can be expected as regards human resources, where the Agency has already exhausted all possibilities to solve the current problems and cannot take any further measures in this regard without a change in the legal basis: unpredictability remains regarding which Member States will contribute and the Agency is not in a position to coordinate timely and efficient joint operations.

As a result, the Commission has proposed to strengthen, amongst other, the availability of human and technical resources for the operational cooperation coordinated by the Frontex Agency through the establishment of a semi-compulsory mechanism regarding the availability of technical equipment and through the inclusion of a legal basis in the Regulation to establish in a legally sound manner the current practice of the Agency regarding the Frontex Joint Support Teams. The purchase or leasing by the Agency of technical equipment is to be understood as an additional possibility with very limited financial resources. As such it can not replace the overall mechanism regarding technical equipment put at the disposal by the Member States. Moreover, before the Agency could start the purchase of technical equipment an in-depth cost-benefit analysis will be necessary and the necessary financial resources will need the approval of the Management Board of the Agency.

Yours sincerely,