



EUROPEAN COMMISSION

*Brussels, 30.06.2016
C(2016) 3567 final*

Dear Chair,

The Commission would like to thank the Poslanecká sněmovna for its Opinion on the Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC {COM(2015) 671 final}, the Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders {COM(2015) 670 final} as well as on the Proposal for a Regulation of the European Parliament and of the Council on a European travel document for the return of illegally staying third-country nationals {COM(2015) 668 final}.

These proposals form part of a broad Border package of ambitious and comprehensive measures designed to better manage migration and to improve internal security of the European Union while safeguarding the free movement of persons in the Schengen area in the context of the current migratory crisis.

In 2015, 1,822,337 irregular border crossings were detected in the EU. This number remains high – in the period January – April 2016, it reached 299,776. The unprecedented scale of this massive influx of migrants followed by the secondary movements within the EU that it has triggered have clearly demonstrated that the existing rules and mechanisms we currently have at our disposal are not sufficient to deal with the challenges posed by the migratory crisis. The draft Regulation responds to the necessity to reinforce the way in which the EU's

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external borders are managed as highlighted in the European Agenda on Migration¹ and confirmed by the European Council of 15 October 2015.

The Commission is pleased that the Poslanecká sněmovna welcomes and supports these proposals. It is essential that the proposal is agreed and legally adopted by June 2016 at the very latest so that it can start functioning during the summer, to ensure that the European Union can deliver on the joint responsibility of protecting the external border.

The proposal of the reinforcement of checks against relevant databases at external borders replies to the call expressed in the Council conclusions of 9 and 20 November 2015. The increased threats to internal security after the Paris attacks have indeed made the existing legal framework no longer sufficient and proportionate to the identified level of threats.

Moreover, the Commission fully shares the opinion that the proposal on a European Travel Document represents only an element of the overall policy aiming at a more effective readmission policy. This policy which the Commission is currently implementing is also described in the Communication from the Commission "EU Action Plan on return" {COM(2015) 453 final}.

The Commission is pleased to have this opportunity to provide the requested clarifications regarding its proposal for a Regulation on the European Border and Coast Guard.

The proposal has as its legal basis Article 77(2)(b) and (d) and Article 79(2)(c) of the Treaty on the Functioning of the European Union (TFEU). These articles provide for the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to adopt measures necessary for the gradual establishment of an integrated management system for external borders as well as measures in the area of illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation.

The maintenance of law and order and the safeguarding of internal security, including at the external border, remain a responsibility of the Member States, as provided for in Article 72 of the TFEU.

The Commission believes that the strengthened mandate of the European Border and Coast Guard Agency, its new tasks and responsibilities remain in the remit of external border management and do not interfere with the competences of the Member States as regards national security and the maintenance of public order.

Discussions between the Commission, the Parliament and the Council concerning the proposals in question are advancing and the Commission hopes it will be adopted by June..

In response to the more technical clarifications requested in the Opinion the Commission would like to refer to the attached annex.

¹ COM(2015) 240 final

The Commission hopes that the clarifications provided in this reply address the issues raised by the Poslanecká sněmovna and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Dimitris Avramopoulos
Member of the Commission*

ANNEX

The Commission has carefully considered the issues raised by the Poslanecká sněmovna in its Opinion and is pleased to offer the following clarifications as requested in point 4 thereof:

*The unprecedented scale of the migratory crisis has shown that it is impossible for the Member States to deal with the challenge acting on their own. Therefore, the proposal on the European Border and Coast Guard sets up a European Border and Coast Guard to ensure the implementation of the integrated border management as a **shared responsibility** of its two pillars: the European Border and Coast Guard Agency ('the Agency') and the national border management authorities. The Member States retain the primary responsibility for the control of their external border while forming part of a strengthened European framework. This proposal enables the Agency to guarantee that the actions of Member States at the external borders are coherent and consistent with a sound policy that benefits the European Union as a whole.*

*As regards the **presence of the Agency on the territory of the Member States on the basis of a Commission implementing decision**, it is important to clarify that Article 18 of the proposed Regulation clearly lays down that its provisions will only be triggered as a very last resort in a limited number of duly justified and well-defined cases when their consequences risk putting in jeopardy the functioning of the Schengen area. These cases are:*

- 1) when a Member State fails to implement the necessary corrective measures following a vulnerability assessment (Article 12) or*
- 2) when the Agency identifies that the external borders of a Member State are exposed to such a disproportionate migratory pressure that it is impossible for it to cope on its own but that the Member State has not requested assistance at EU level, thus placing at risk the whole Schengen area.*

The decision for triggering Article 18 is taken by the Commission in line with the examination procedure as defined in Article 5 of Regulation (EU) No 182/2011², which means that the adoption of such decision requires a favourable opinion by qualified majority of a Committee composed of representatives of the Member States.

The sovereignty of the Member State concerned is guaranteed by this procedure: the Executive Director of the Agency and the Member State concerned have to draw up the operational plan of the activity defined in the Commission implementing decision. The Member State concerned has to cooperate in the implementation of the measures defined in the Commission Decision.

² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers

In this context, the provisions of Article 39(4) of the proposed Regulation clearly explain that members of the teams sent by the Agency may only perform tasks and exercise powers under the instructions of the host Member State and – as a general rule – in the presence of border guards or other relevant staff from the host Member State. Consequently, in the absence of cooperation on the part of the Member State concerned and agreement on to the operational plan, the Agency would eventually not be able to intervene on the territory of the Member State concerned.