



## EUROPEAN COMMISSION

Brussels, 2.8.2016  
C(2016) 5145 final

*Dear President,*

*The Commission would like to thank the Senát for its Opinion expressing general support for 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 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}.*

*These proposals form part of a broader 'Border Package' which provides for a set of ambitious and comprehensive measures designed to make the management of external borders apt to the current challenges, namely the migratory crisis and increased terrorist threats. These measures respond to the need to reinforce the way in which the EU's external borders are managed as highlighted in the European Agenda on Migration {COM(2015) 240 final} and confirmed by the European Council of 15 October 2015. They also address the security threats in the EU in the aftermath of the Paris attacks of November 2015, as requested by the Council of the EU on 20 November 2015.*

*Concerning the targeted amendment to the Schengen Borders Code, the Commission would like to underline that detecting and preventing travel to and from conflict zones with the intention to support terrorist organisations was identified as a priority in 2014. The Commission has consistently supported the strengthening of the Schengen framework by issuing recommendations to enhance border checks within the current legal framework.*

*The current proposal replies to the call expressed in the Council conclusions of 9 and 20 November 2015 in view of the increased threats to internal security, especially after the Paris terrorist attacks. It extends the systematic verification of persons against all relevant databases upon entry and exit to all travellers, including EU citizens and other persons enjoying the right of free movement under Union law. The proposal does not impede the freedom of movement and takes due account of the need to ensure the fluidity of traffic flows. To that end a possibility of derogation on land and sea borders is foreseen, if a risk assessment prepared by a Member State demonstrates that targeted checks instead of systematic ones will not lower the security level.*

*The Commission is convinced that the proposed measures, together with the other measures outlined in the Security Agenda, will contribute to ensuring the security of the EU citizens.*

*Mr Milan ŠTĚCH  
President of the Senát  
Valdštejnské náměstí 17/4  
CZ – 118 01 PRAGUE 1*

*The Commission welcomes the positive opinion of the Senát as regards the need for a strengthened protection of the EU's external borders, effective implementation of common rules and better identification of migrants as important elements in addressing the migratory crisis and its consequences. The Commission welcomes the Senát's support for strengthening the role and the mandate of the EU Border and Coast Guard Agency with a view to effectively dealing with the current challenges.*

*The Commission would like to recall that this proposal is also a part of the overall comprehensive approach to address the migratory crisis as described in the European Agenda on Migration. This approach is structured around four pillars which include, along with the measures in the area of border management, initiatives to reduce the incentives for illegal migration, to improve the European asylum system and to create new paths for legal migration. In this respect, the current proposal should not be regarded as an isolated effort to reduce migratory pressure in the EU. It should rather be seen as a key element of the overall package of measures which – when applied together – will make a positive difference in the EU's efforts to effectively address the current crisis and to manage migration better in all its aspects. In response to the more technical comments in the Opinion, the Commission would like to refer to the attached annex.*

*While the co-legislators are still negotiating on the amendment to the Schengen Borders Code, on 21 June 2016 they reached a political agreement on the European, Border and Coast Guard Regulation, confirmed by the European Parliament plenary vote on 6 July 2016. The Commission is already working closely with Frontex to ensure that the implementation of this Regulation starts as soon as possible.*

*The compromise reached on the European Border and Coast Guard will ensure a truly European integrated management of our borders, based on the principle that security of our common EU external borders is a responsibility shared amongst all EU Member States. There should no longer be shortages of staff or equipment for operations at the external borders. The enhanced Agency will support, monitor and, when necessary, reinforce the national border guards, focusing primarily on early detection and prevention of weaknesses in the management of the external borders.*

*Whilst Member States will remain the key actors for managing their borders, the European Border and Coast Guard will work as a safety net: in exceptional situations, when a Member State is unable to cope with the situation on its own, the European Border and Coast Guard will be able to step in, drawing on pools of resources – both staff and technical equipment – provided and to be mandatory deployed by the Member States.*

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

*Yours faithfully,*

*Věra Jourová*

*Member of the Commission*

## ANNEX

*The Commission has carefully considered each of the issues raised by the Sénat in its Opinion and is pleased to offer the following clarifications.*

*Firstly, as regards the decision-making procedure on direct intervention by the Agency, the Commission would like to clarify that triggering Article 18 by the Commission could only be possible if a Committee composed of representatives of the Member States delivers a favourable opinion by a qualified majority in line with the examination procedure as defined in Article 5 of Regulation (EU) No 182/2011<sup>1</sup>. The lack of such a positive opinion would make it impossible for the Commission to decide on a direct intervention by the Agency.*

*Secondly, with the establishment of a rapid reserve pool, the Regulation aims to address one of the major weaknesses of the current system. To date, Frontex has relied on the voluntary contributions by the Member States which, particularly in the context of the current crisis, have proven insufficient and have often prevented Frontex from performing effectively. The final text of the Regulation ensures that a standing corps of at least 1500 experts will be made available to the Agency via a fixed contribution agreed upon with each Member State. To achieve a compromise, the Presidency of the Council held individual meetings with each Member State to discuss what figures would be realistic regarding their contributions to the rapid reaction pool. The concrete figures agreed upon with each Member State during the negotiation process are included in an annex as part of the Regulation.*

*Thirdly, the Commission agrees with the Sénat that the cooperation of the host Member State of a joint operation is indispensable for the success of the Agency's work. Such cooperation is provided for in the Regulation as the operational plan for the Agency's activities has to be agreed upon by that Member State. Moreover, 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.*

*Lastly, the Commission would like to point out that measures pertaining to the identification and registration of persons who illegally crossed the EU's external borders are not necessarily the primary task of the Agency, but a part of all the other activities which it is able to carry out in the field of border management within its mandate. Articles 8 and 9 of the Regulation provide for regular exchange of information between the Agency and the Member States, including information on national security and organised crime – where relevant and appropriate – whilst respecting the applicable data protection and confidentiality rules.*

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<sup>1</sup> 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.