



EUROPEAN COMMISSION

Brussels, 6.2.2014
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Dear President,

The Commission would like to thank the Senato della Repubblica for its Opinion concerning the Commission proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union {COM(2013) 197 final} and apologises for the delay in replying.

The purpose of the Commission's proposal, as with Council Decision 2010/252/EU which it aims to replace, is to establish clear rules for joint patrolling coordinated by Frontex as regards interception, search and rescue and disembarkation to ensure the efficiency of these sea operations. It ensures the protection of fundamental rights, and includes provisions on the application of the principle of non-refoulement in sea border surveillance operations.

The Commission appreciates that the Senato della Repubblica concludes that the Commission's proposal is in conformity with the principles of subsidiarity and proportionality, and that it recognises the appropriateness of the legal basis of the proposal. The Commission is also appreciative of the observations of the Senato della Repubblica whereby it acknowledges that this proposal improves the regulatory framework within which the national system for sea border surveillance operates, and whereby it considers that the proposal introduces a clear distinction between detection, interception and search and rescue. The Senato della Repubblica also acknowledges the importance of the operational plan as a binding legal instrument for all border surveillance operations and not only rapid interventions.

While expressing itself in favour of the Commission's proposal, the Senato della Repubblica raised a question concerning Article 10 of the proposal, in particular Article 10(3) concerning disembarkation after interception on the high seas which establishes that, subject to guaranteeing the protection of fundamental rights and the principle of non-refoulement (Article 4), disembarkation may take place in the third country from which the ship departed; if this is not possible, disembarkation shall take place in the host Member State. The Senato

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della Repubblica considers that such a provision undermines the principle of solidarity on which rescue operations are founded. Consequently, it considers that in such a case disembarkation should take place in the State responsible for the search and rescue region where the rescue operation takes place.

In its proposal, the Commission addresses the issue of disembarkation both in terms of interception and rescue. As regards disembarkation after interception, Article 10(2) and (3) of the proposal establishes where disembarkation should take place after interception measures are taken in accordance with Articles 6, 7 and 8. Accordingly, as regards interception in the territorial sea or in the contiguous zone (Article 10(2)), disembarkation shall take place in the coastal Member State. Further more as regards interception on the high seas (Article 10(3)), subject to guaranteeing the protection of fundamental rights and the principle of non-refoulement, disembarkation may take place in the third country from which the ship departed; if this is not possible, then disembarkation shall take place in the host Member State.

Disembarkation after rescue is dealt with in Article 10(4) of the proposal. This provision reflects the practical and legal challenges that exist when addressing the issue of disembarkation after rescue particularly in the context of sea operations coordinated by Frontex. It sets out the procedures and factors to be taken into account in finding a place of safety and it reinforces the element of cooperation needed between Member States and with the Rescue Coordination Centre responsible for the search and rescue region where the rescue operation takes place in order to ensure rapid and effective disembarkation.

Since Article 10(3) of the proposal deals only with disembarkation after interception on the high seas and not rescue, and disembarkation after a rescue operation is dealt with separately under Article 10(4) of the proposal, the Commission considers that the formulation of Article 10 does not undermine the principle of solidarity on which rescue operations are founded.

The Commission hopes that these clarifications address the concerns raised by the Senato della Repubblica and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*