



EUROPEAN COMMISSION

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*Dear President*

*The Commission would like to thank the Senato della Repubblica for its two Opinions respectively on the Commission proposals for: (1) an amended proposal for a Regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis {COM(2011) 559 final}, and; (2) a Regulation of the European Parliament and the Council amending Regulation (EC) No 562/2006 (the Schengen Borders Code) in order to provide for common rules on the temporary reintroduction of border controls at internal borders in exceptional circumstances {COM(2011) 560 final}. The Commission apologizes for the delay in replying. In its Communication on Migration adopted in May 2011 {COM(2011) 292 final}, the Commission set out the reasons why it is necessary to review the way we oversee the management of our external borders as well as the way in which internal border controls can be temporarily reintroduced.*

*The basic starting point and objective of the Commission is that, since the Schengen area is a benefit shared by the whole EU, any decision affecting this benefit must be taken at EU level and not individually.*

*It should be noted that the two legislative proposals which are the subject of the Senate's opinions form a package, building on the Conclusions of the European Council in June 2011, whose purpose is to strengthen the governance of the area without internal border controls (the Schengen area), and enable it to respond effectively to exceptional circumstances that put the overall functioning of Schengen cooperation at risk, without jeopardising the principle of free movement of persons.*

*At the centre of all this remains a consideration which is crucial and recognised as such by all the institutional actors at EU level: free movement of people in the Schengen area is one of the most important and tangible results of the EU integration process. Therefore, this achievement must be preserved and strengthened in an effective and credible way.*

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*The Commission welcomes the favourable assessment by the Senate of the two proposals, including the affirmation that the proposals are compatible with the subsidiarity and proportionality principles, and has addressed a number of specific remarks made by the Senate below.*

*The Opinion of the Senate notes that more flexibility could be introduced as regards the time limit for reintroducing temporary unilateral controls in situations where urgent action is required, in view of the principle of proportionality. In this regard, the Commission would like to point out that, in its legislative proposal to amend the Code, a period of five days has been chosen on the basis of experience to date with the unilateral reintroduction of internal border controls by Member States. The Commission looked at all of the instances in which border control had been temporarily reintroduced over the past five years (i.e. since the Schengen Borders Code entered into force). In a number of those instances, the period of the reintroduction of controls exceeded five days, but in none of those instances was the reintroduction responding to unforeseeable developments (where resort to this emergency procedure might have been needed).*

*The Senate's Opinion suggests that the Schengen Borders Code should define more precisely the circumstances in which a Member State may autonomously reintroduce controls at its internal borders, and expresses concern that the concepts of public policy and internal security, which are the basic conditions for activating the mechanism to reintroduce controls, may be too general in scope. In this regard, the Commission would like to point out that, in its legislative proposal to amend the Code, it has proposed that a new Article (Article 23A of the proposal) should be inserted into the text, setting out the assessment criteria to be applied in making an assessment as to whether or not it would be necessary or proportionate to resort to the reintroduction of internal border controls in order to off-set a serious threat to public policy or internal security. This assessment framework is also applicable to situations in which a Member State autonomously decides to reintroduce controls in urgent cases.*

*The Opinion of the Senate expresses the hope that the changes proposed by the Commission to the Schengen evaluation and monitoring mechanism will result in an increase in on-site visits to those sections of the Union's external borders flagged in the Frontex annual risk report. In this regard, the Commission would note that the Commission's proposal makes it clear that its scheduling of on-site visits would take into account the risk analysis provided by Frontex, and that the Commission may at any time request the agency to carry out such analysis. This would equip the mechanism with the flexibility needed to enable it to respond in a timely fashion to unforeseen developments.*

*The Senate's Opinion makes reference to the principle of solidarity and fair sharing of responsibility, and underlines the relevance of this principle insofar as the integrated management of the external borders of the European Union is concerned. In this regard, the Commission would like to point out that, in line with the terms of Article 80 of the Treaty on the Functioning of the European Union to which the opinion refers, this principle governs the policies of the Union in the area of freedom, security and justice, including as regards control of the Union's external borders. The activities of Frontex and the funding made available to Member States under the European Borders Fund are, inter alia, concrete expressions of that principle. As regards the Opinion's reference to a need to develop the presence of Frontex in the Mediterranean, the Commission would note that the activities of the agency in this region have been stepped up very*

*significantly in recent times, in particular since the launching of the joint operation EPN Hermes in early 2011.*

*The Commission hopes that this reply addresses the remarks made in the two Opinions of the Italian Senate, and looks forward to continuing the political dialogue with the Senate in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*