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RESOLUTION OF STANDING COMMITTEE 1

(Constitutional Affairs, Affairs of the Office of the Prime Minister, Home Affairs,
Organisation of the State and the Civil Service)

(Author BRUNI)

adopted at the sitting of 9 March 2016

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)**

in accordance with Article 144(1) and (6) of the Rules of Procedure

Notified to the President's Office on 14 March 2016

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Having examined, in accordance with Article 144(1) and (6) of the Rules of Procedure, 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,

Whereas:

The proposal lays down the general principles designed to ensure a European integrated border management of the EU's external borders, with a view to managing migration effectively and ensuring a high level of security within the Union, while safeguarding the free movement of persons therein;

The draft regulation – comprising 82 articles – is part of a package of measures presented by the Commission in order to better ensure the protection of the EU's external borders. Throughout the current migration crisis, it has become clear that the Schengen area without internal borders is only sustainable if the external borders are effectively secured and protected,

Whereas, in particular:

The proposed regulation establishes a European Border and Coast Guard, represented by a European Border and Coast Guard Agency - built from Frontex - and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks;

The task of the European Border and Coast Guard is to implement the European integrated border management in accordance with the principle of shared responsibility;

The key role of the European Border and Coast Guard Agency is to establish an operational and technical strategy for the implementation of an integrated border management at Union level, to oversee the effective functioning of border control at the external borders of Member States, to carry out vulnerability assessments and to ensure that deficiencies in the management of the external border by national authorities are addressed, to provide increased operational and technical assistance to Member States [through joint operations and rapid border interventions], and to ensure the practical execution of measures in case of a situation requiring urgent action at the external borders, as well as to organise, coordinate and conduct return operations and return interventions;

The European Border and Coast Guard Agency will need to have effective tools to be able to determine whether a Member State is able to implement applicable EU legislation, and to determine whether there are

weaknesses in the border management of a Member State so as to avoid situations where increases in migration flows put in jeopardy the functioning of the Schengen area;

The role of the European Border and Coast Guard Agency is reinforced compared to that of Frontex;

The proposal attributes the following tasks to the Agency:

a) establishing a monitoring and risk analysis centre with the capacity to monitor migratory flows towards and within the European Union;

b) liaison officers of the Agency to be deployed to Member States so that the Agency can ensure proper and effective monitoring not only through risk analysis, information exchange and the European Border Surveillance System (Eurosur), but also through its presence on the ground;

c) assessment of the capacity of Member States to face challenges at their external borders, including by means of an assessment of the equipment and resources of Member States as well as of their contingency planning;

d) introduction of new procedures to deal with situations requiring urgent action where a Member State does not take the necessary corrective action in line with the vulnerability assessment;

e) setting-up and deployment of European Border and Coast Guard Teams for joint operations and rapid border interventions, the setting-up of a technical equipment pool, assisting the Commission in coordinating the activities of the migration management support teams at hotspot areas, and a strengthened role in operations associated with screening of migrants (identification, registration and collection of information), return, risk analysis, training and research, in particular on fundamental rights, where the Agency, in its activities to support Member States, is aware of situations that might involve humanitarian emergencies;

f) mandatory pooling of human resources by establishing a rapid reserve pool which will be a standing corps composed of a small percentage of the total number of border guards in the Member States on a yearly basis,

Having also considered that:

The role of the Agency on return is strengthened through the establishment of a Return Office within the Agency, which should provide Member States with all necessary operational reinforcement to effectively return illegally staying third-country nationals;

The Agency is responsible for coordinating operational cooperation between Member States and third countries in border management, as well as cooperation with the authorities of third countries on return, including as regards the acquisition of travel documents;

Lastly, the mandate of the Agency to process personal data is strengthened by also allowing for the processing of personal data in the organisation and coordination of joint operations, pilot projects, rapid border interventions, return operations, return interventions and in the framework of the migration management support teams, as well as in the exchange of

information with Member States, the European Asylum Support Office, Europol, Eurojust and other Union Agencies,

The Committee approves the proposed regulation, on the basis of the following observations:

The legal basis has been correctly identified as Article 77(2)(b) and (d) of the Treaty on the Functioning of the European Union (TFEU), which establishes the ordinary legislative procedure for adopting measures relating to checks on external borders and the gradual establishment of an integrated management system for external borders, and Article 79(2)(c) TFEU, which establishes the ordinary legislative procedure for adopting measures in respect of illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

With regard to the principle of subsidiarity, the proposed regulation recognises that in order to address the current migration crisis and meet requirements associated with internal security, the management of external borders requires coordinated action at EU level, on the basis of the principle of solidarity and burden sharing. On that basis, the approval of the regulation will also enable a swifter restoration of the correct functioning of the Schengen area, the principles of which are built on the free movement of persons and therefore require that checks at the external borders of the EU be efficient and effective. However, we must remember that responsibility for the external border of a Member State represents one of the fundamental aspects of national sovereignty. During negotiations, it would therefore be valuable to ensure that the extent of the jurisdictions and responsibilities of the Member States and the Agency is appropriately defined, specifically distinguishing between ordinary management and management in exceptional situations. The scope of the rules must therefore be specifically stated, so as to avoid the risk that tasks might overlap or be fragmented because the corresponding provisions are not sufficiently clearly defined. The new regulation must, rather, provide an integrated functional and organisational framework for the bodies with corresponding responsibility;

With regard to the principle of proportionality - and on the basis of the principle of solidarity - the system must ensure that the necessary support is provided for those Member States in which migratory pressure is greater. Considering the need to achieve this objective, we must then determine whether the measures are proportionate, with particular reference to the possibility of direct intervention by the Agency in emergency situations. Such intervention must, in any case, allow for greater involvement by the Member States concerned, including during vulnerability assessments, a situation in which an implementing act from the Commission is required. On this basis, the mechanism for imposing such intervention or requiring intervention by the Agency in place of the Member State in the management of the Member State's borders, as laid down in Article 18, is problematic. Indeed, this provision seems to address the possibility that the Member State does not intend to cooperate in effective border management, a situation that

does not meet the objective of the proposed regulation, namely the creation of a system involving shared management of the EU's external borders, in the areas with greater migratory pressure, as has moreover been requested by Italy.

We also believe it necessary, alongside support in managing the EU's border, to develop specific European support mechanisms for the internal management of migrants, to ensure their reception and integration within the social fabric of the Member States in which they are placed or to which they are transferred.

We would also welcome an assessment of the appropriateness of greater coordination with the Common Security and Defence Policy (CSDP), considering the significant areas of commonality with the defence sector, such as the mandatory rapid intervention force, shared ownership of equipment and resources such as vehicles, ships, helicopters and aircraft, and the essential goals of border security and protection, and an assessment as to whether it might be appropriate to explicitly exclude those national defence roles specifically within the purview of the Armed Forces.

Finally, we believe it would be valuable to assess the aspects associated with determining the policy for the Agency's activities, considering the widely differing positions adopted by the Member States in terms of managing migratory flows within the EU, including with respect to the questions of renunciation of sovereignty provided in the proposed regulation, and considering the duality between the eastern and Mediterranean dimensions of European neighbourhood policy. In this regard, we hope to see a full European commitment to the southern borders as well, despite the fact that the base of operations for the Agency has been confirmed as Warsaw.

OPINION OF STANDING COMMITTEE 14

(EUROPEAN UNION POLICIES)

(Author: ROMANO)

9 March 2016

Having examined the document in question,

Whereas the proposed regulation represents a significant innovation in European policy on the management of the EU's external borders, in that it provides for the replacement of the current agency Frontex by a new agency, called the 'European Border and Coast Guard Agency', with increased and strengthened powers, and in that it creates a 'European Border and Coast Guard', involving shared responsibility by the new European Agency and the national border authorities for European integrated border management of the EU's external borders, with a view to managing migratory pressure effectively, including return procedures, and ensuring a high level of security within the Union, while safeguarding the free movement of persons therein;

Whereas the new European Border and Coast Guard Agency is assigned the following tasks: – establishing an operational and technical strategy for the implementation of an integrated border management at Union level; – overseeing the effective functioning of border control at the external borders of Member States; – carrying out vulnerability assessments and ensuring that deficiencies in the management of the external border by national authorities are addressed; – providing increased operational and technical assistance to Member States through joint operations and rapid border interventions, and ensuring the practical execution of measures in case of a situation requiring urgent action at the external borders; – as well as organising, coordinating and conducting return operations and return interventions;

Whereas, in particular:

On the basis of Article 12, the Agency shall undertake vulnerability assessments of the individual Member States, assessing the technical equipment, systems, capabilities, resources and contingency plans of the Member States, in order to assess the capacity and readiness of Member States to face upcoming challenges, including present and future threats and pressures at the external borders, to identify, especially for those Member States facing specific and disproportionate pressures, possible immediate consequences at the external borders and subsequent consequences on the functioning of the Schengen area. On the basis of that

assessment, the Agency shall adopt a decision setting out the necessary corrective measures to be taken by the Member State concerned within a given time-limit. Where a Member State does not comply with the decision, the matter shall be referred to the European Commission, which may adopt a decision by means of an implementing act, identifying the measures to be implemented by the Agency and requiring the Member State concerned to cooperate with the Agency in the implementation of those measures (Article 18);

On the basis of Article 14, a Member State may request that the Agency launch ‘joint operations’ to face present or future threats at the external borders resulting from irregular immigration or cross-border crime. At the request of a Member State faced with a situation of specific and disproportionate pressures, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State illegally, the Agency may deploy a ‘rapid border intervention’ for a limited period of time. In the case of a request for a ‘rapid border intervention’, the Agency shall take a decision within two days and shall draw up an operational plan together with the host Member State within a further three days, and shall deploy the rapid intervention team within a further three days (Article 16);

On the basis of Article 17, relating to ‘hotspots’ – border areas managed by ‘migration management support teams’ made up jointly by the forces of the Member State concerned, the Agency, the European Asylum Support Office (EASO) and Europol – the Member State may request additional operational and technical reinforcement from the Agency, which may involve screening migrants (identification, registration, and debriefing), the provision of information about the possibility of requesting international protection or relocation, or return operations;

On the basis of Article 19, each Member State shall contribute to the creation of a ‘rapid reserve pool’ of at least 3 % of the staff of Member States without land or sea external borders and 2 % of the staff of Member States with land or sea external borders, in order to create a standing corps of a minimum of 1 500 border guards, placed at the immediate disposal of the Agency and which can be deployed from each Member State within three working days from when the operational plan is approved;

In addition to providing personnel for the above-mentioned rapid reserve pool, the Member States shall also contribute to the creation of European Border and Coast Guard Teams to be employed in joint operations, and shall deploy national experts for secondment to the Agency for an indicative period of 12 months. These contributions by Member States shall be planned on the basis of annual bilateral agreements between the Agency and Member States, but may be denied if the Member State is faced with an exceptional situation substantially affecting the discharge of national tasks (Article 19);

In the context of its role and, in particular, rapid intervention and joint operations, the Agency has the task of assisting the Member States, ‘taking into account that some situations may involve humanitarian emergencies and rescue at sea’ (Articles 7 and 14). In this regard, the Agency shall also provide training on fundamental rights, access to international protection, and search and rescue (Article 35);

In terms of management and organisational aspects, the proposed regulation establishes that the host Member State shall issue instructions to the teams in accordance with the operational plan agreed with the Agency (Article 20). The Agency shall fully meet the costs relating to participation by the personnel of the Member States in the European Border and Coast Guard Teams, in relation to travel costs, vaccinations, insurance, daily subsistence allowances and accommodation, and technical equipment (Article 23). The revenue of the Agency shall consist of funding from the European Union, fees for services provided and voluntary contributions from Member States (Article 75). The seat of the Agency shall be Warsaw, Poland (Article 55);

With regard to return procedures, Article 26 creates a Return Office within the Agency, which coordinates or provides operational support for the return activities of the Member States, in order to achieve an integrated system of return management, with the participation of relevant authorities of third countries, in accordance with the respect of fundamental rights and general principles of Union law as well as international law. The Member States shall provide monthly reporting to the Agency about their return operations and any need for assistance or coordination. On request, the Agency may provide operational assistance, deploying ‘European Return Intervention Teams’ or organising return operations. For this purpose, on the basis of Article 37, the Agency may lease or acquire, itself or in co-ownership with a Member State, technical equipment to be deployed during such operations, including vehicles, ships or aircraft;

The proposed regulation also provides for increased cooperation with third countries, including the possibility of carrying out joint operations at the external borders involving one or more Member States and neighbouring third countries, the possibility of direct cooperation with the competent authorities of third countries on return operations and the acquisition of travel documents, and the possibility of deploying liaison officers to third countries with a view to contributing to the prevention of and fight against irregular immigration and the return of illegally staying third-country nationals (Articles 53 and 54);

Having evaluated the report from the Government, drafted in accordance with Article 6(4) and (5) of Law No 234 of 24 December 2012,

The Committee hereby approves the proposed regulation, to the extent of its remit, subject to the following observations:

The legal basis has been correctly identified as Article 77(2)(b) and (d) of the Treaty on the Functioning of the European Union (TFEU), which

establishes the ordinary legislative procedure for adopting measures relating to checks on external borders and the gradual establishment of an integrated management system for external borders, and Article 79(2)(c) TFEU, which establishes the ordinary legislative procedure for adopting measures in respect of illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

With regard to the principle of subsidiarity, there can be no doubt that, in order to address the current migration crisis and to meet requirements associated with internal security, there is a need for urgent implementation of strong action at European Union level that can ensure participation by all Member States in the management of the EU's borders, on the basis of the principle of solidarity and burden sharing.

The proposed regulation therefore meets the two requirements of the principle of subsidiarity, namely the need for action at European level and the provision of added value.

On that basis, moreover, rapid approval of the proposed regulation cannot be delayed because of the effects that such a delay could have on the swiftest possible restoration of the correct functioning of the Schengen area, the principles of which are built on the free movement of persons and therefore require that checks at the external borders of the EU be efficient and effective;

With regard to the principle of proportionality, and specifically because the basis underpinning the principle of solidarity is to ensure that the necessary support is provided for those Member States in which migratory pressure is greater, the mechanism for imposing intervention or requiring intervention by the Agency in place of the Member State in the management of the Member State's borders, as laid down in Article 18, is problematic. Indeed, this provision seems to address the possibility that the Member State does not wish to cooperate in effective border management, a situation that does not meet the objective of the proposed regulation, namely the creation of a system involving shared management of the EU's external borders, in the areas with greater migratory pressure, as has long been requested by Italy.

There is therefore a need for a careful assessment of the implications of this provision in terms of the principle of proportionality, seeking, where possible, the consent of the Member State concerned, and in relation to Article 72 TFEU, which provides that the maintenance of law and order and the safeguarding of internal security are responsibilities exclusively incumbent upon Member States;

Specifically because of these concerns, we believe it necessary to ensure that the vulnerability assessment introduced under Article 12 of the proposal, which then results in an implementing act on the part of the

European Commission in accordance with Article 18, provide for greater involvement by the Member State concerned;

We consider it desirable to strengthen participation by the Member States in the mechanism for shared border management and especially participation by those Member States that are not subject to significant pressure at their borders. We should note in this regard that, on the basis of the most recent data published in the European Commission Communication of 10 February 2016 on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration (COM(2016) 85), the response to requests for personnel made to the Member States by Frontex and EASO has not been fully satisfactory.

On that basis, we believe that the mandatory system for creation of the ‘rapid reserve pool’ provided under Article 19(5) should require much greater involvement by those Member States that are not currently subject to significant migratory pressure at their borders. The figure of 2 % or 3 % of the staff of the Member States depending on whether they have external borders could thus be supplemented by a quantification based on the effective involvement of the Member State in addressing current migratory pressures.

Moreover, with regard to the contribution to ‘joint operations’ described in Article 19(3), and in relation to secondment of national experts to the Agency as covered in Article 19(8), we believe it necessary to establish more stringent procedures, with set time-limits, for concluding and implementing the required bilateral agreements with the Agency, and minimum participation quotas, in all cases on the basis of the migratory pressure existing at the borders of the Member States in question;

We also believe it necessary, alongside support in managing the EU’s border, to develop specific European support mechanisms for the internal management of migrants, to ensure their reception and integration within the social fabric of the Member States in which they are placed or to which they are transferred.

Furthermore, we believe it desirable to strengthen EU policies relating to direct cooperation with third countries. On this point, we welcome the specific requirements laid down in Articles 53 and 54 of the proposed regulation in respect of joint operations at borders and the deployment of liaison officers to assist in return operations. We do, however, hope that the European Union will effectively pursue the programme commitments stated in relation to the cohesive, coordinated integration, into the common European policy on migration, of all of the policies and instruments it has available: from development aid for third countries, to policies on economic and social cohesion within the European Union, the European Neighbourhood Policy (ENP), the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), in addition to the full involvement of the European External Action Service (EEAS);

We would also welcome an assessment of the appropriateness of greater coordination with the Common Security and Defence Policy (CSDP), considering the significant areas of commonality with the defence sector, such as the mandatory rapid intervention force, shared ownership of equipment and resources such as vehicles, ships, helicopters and aircraft, and the essential goals of border security and protection, and an assessment as to whether it might be appropriate to explicitly exclude those national defence roles specifically within the purview of the Armed Forces;

Finally, we believe it would be valuable to assess the aspects associated with determining the policy for the Agency's activities, considering the widely differing positions adopted by the Member States in terms of managing migratory flows within the EU, including with respect to the questions of renunciation of sovereignty provided in the proposed regulation, and considering the duality between the eastern and Mediterranean dimensions of European neighbourhood policy. In this regard, we hope to see a full European commitment to the southern borders as well, despite the fact that the base of operations for the Agency has been confirmed as Warsaw.