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*Mr Stanisław KARCZEWSKI
Marshal of the Senat
Ul. Wiejska 6
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Dear President,

The Commission would like to thank the Senat 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}.

This proposal is an essential element of a broader Border package of ambitious and comprehensive measures designed to better manage migration and to improve the internal security of the European Union while safeguarding the free movement of persons in the Schengen area in the context of the on-going migratory crisis.

The unprecedented scale of the massive influx of migrants and the secondary movements within the EU it has triggered have clearly demonstrated that the existing rules and mechanisms are not sufficient. The proposed Regulation responded to the need to reinforce the way in which the EU's 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 Senat welcomes the Commission's proposal and supports this initiative aimed at strengthening the protection of the EU's external borders.

On 21 June 2016 the co-legislators reached a political agreement on the file, which was confirmed by the European Parliament plenary vote on 6 July 2016. The compromise on the European Border and Coast Guard will ensure a truly European integrated management of our borders, based on the principle that the 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.

¹ COM(2015) 240 final.

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 is already working closely with Frontex to ensure that the implementation of this Regulation starts as soon as possible.

The Commission takes seriously the concerns expressed by the Senat as regards the sovereign rights of a Member State in the context of the possibility for the Agency to intervene on its territory in line with Article 18 of the proposal as well as the decision-making procedure for triggering the implementation of this provision.

In this respect, a Member State facing challenges at its external borders which prevent it from exercising effective border control has the possibility, according to the agreed text, to request the Agency to provide it with increased operational and technical assistance or to launch a joint operation or a rapid border intervention in line with Articles 15 and 17, respectively.

Moreover, triggering Article 19 would only be possible if the Council adopts an implementing decision on the basis of a Commission proposal.

The sovereignty of the Member State concerned is respected by the decision-making procedure as stipulated in Article 19 and designed in such a way that the direct intervention of the Agency – in practice – can only be implemented with the cooperation of the Member State concerned.

The proposal provides that the Executive Director and the Member State concerned shall agree on an operational plan of the activities defined in the Council implementing decision (Article 19(1)). In this context, Article 40 (3) of the proposal states that members of the teams deployed 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.

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

Yours faithfully,

Věra Jourová

Member of the Commission