



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Assembleia da República 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}.

The unprecedented scale of the massive influx of migrants followed by the secondary movements within the EU that it has triggered have clearly demonstrated that the rules and mechanisms we currently have at our disposal are not sufficient to deal with the challenges posed by this migratory crisis. The Commission proposal responded 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.

The Commission is pleased that the Assembleia da República welcomes this proposal and supports most of the main novelties it brings about, such as introducing the principle of shared responsibility for the management of the external borders of the EU, the EU integrated border management and strengthening the mandate of the Agency.

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 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

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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 Regulation enters into force as soon as possible.

In response to the more technical clarifications requested in the Opinion, the Commission would like to refer the Assembleia da República to the attached annex.

The Commission hopes that these clarifications address the issues raised by the Assembleia da República and looks forward to continuing our political dialogue in the future.

Yours faithfully,

Violeta Bulc

Member of the Commission

ANNEX

The Commission has carefully considered the issues raised by the Assembleia da República and would like to offer the following clarifications:

The Regulation has as its legal basis Article 77(2)(b) and (d) and Article 79(2)(c) of the Treaty on the Functioning of the European Union (TFEU) which provide for the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to adopt measures concerning the checks to which persons crossing external borders are subject and any measure necessary for the gradual establishment of an integrated management system for external borders as well as measures in the area of illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation. The maintenance of law and order and the safeguarding of internal security remain the responsibility of the Member States, as provided for in Article 4 (2) of the TEU and in Article 72 of the TFEU.

The strengthened mandate of the European Border and Coast Guard Agency, its new tasks and responsibilities remain in the remit of external border management. The Regulation does not interfere with the national competences to ensure the territorial integrity of the Member States.

The Commission notes the concerns as to the respect of the principle of proportionality linked to the decision-making procedure on direct intervention by the Agency. The Commission would like to underline that the agreed text provides for sufficient guarantees for the sovereignty of the Member State concerned by conferring the implementing power to adopt such a decision on the Council on a proposal of the Commission. The sovereignty of the Member State concerned is furthermore respected by the procedure following the adoption of the implementing decision by the Council: the Executive Director of the Agency and the Member State concerned have to agree on the operational plan of the activity defined in the Council implementing decision. The Member State concerned has to cooperate in the implementation of the measures defined in the Council Decision.

In this context, Article 39 (3) of the Regulation clearly prescribes that 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. Consequently, the absence of cooperation of the Member State concerned and absence of agreeing to the operational plan would practically make impossible for the Agency to intervene on the territory of the Member State concerned.

With the establishment of a rapid reaction pool and a rapid technical equipment pool, the Regulation aims to address one of the major weaknesses of the current system. To date, Frontex has had to rely on the voluntary contributions by the Member States which, especially in the conditions of the current crisis, have been insufficient and have often prevented it from performing effectively. The Commission attributes a lot of importance to the mandatory character of these pools, while acknowledging the need to ensure that Member States are able to carry out border control tasks at their external borders.

Finally, the Commission would like to point out that the Regulation contains a set of measures introduced to improve crisis prevention mechanisms and to ensure preparedness of the EU to face upcoming or ongoing challenges at the external borders by, among other things, strengthening monitoring activities. For example, the proposal widens the tasks of the Agency in the field of monitoring migratory flows not only towards but also within the EU as well as its risk analysis tasks to cover all aspects of the integrated border management.