



EUROPEAN COMMISSION

Brussels, 31.07.2022

C(2022) 5153 final

Dear President,

The Commission would like to thank the Senat for its Opinions on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders {COM(2021) 891 final} and on the proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum {COM(2021) 890 final}.

Following the European Council Conclusions of 21 and 22 October 2021, underlining that the EU would not accept any attempt by third countries to instrumentalise migrants for political purposes, the Commission proposed the necessary changes to the EU's legal framework giving better tools, underpinned by adequate financial support, to ensure an immediate and appropriate response in line with EU law and international obligations, including respect for fundamental rights.

The Commission welcomes the Senat's view that the proposal for a Regulation addressing situations of instrumentalisation in the field of migration and asylum provides for a stable and ready to use permanent framework to deal with any such situation that the Union might face in the future, which will render unnecessary the use of ad-hoc measures under 78(3) of the Treaty on Functioning of the European Union to address situations of instrumentalisation of migrants. The proposal for a Regulation addresses the specific situation of instrumentalisation of migrants, which is not covered, by the Crisis and Force Majeure Regulation proposal nor the Asylum and Migration Management Regulation proposal, so that the new Regulation is not a duplication of other existing proposals. It complements the proposals accompanying the New Pact on Migration and Asylum, and the legislative measures that constitute the Common European Asylum System package reform. In particular, the proposal does not derogate from the Reception Conditions Directive recast, which addresses the provisions and conditions that may be used to restrict the freedom of movement of migrants, and detention provisions, where applicable. The Commission recalls that the purpose of

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Article 4 of the proposal for a Regulation is to equip Member States faced with a situation of instrumentalisation of migrants with the necessary tools to ensure swift return of those who do not qualify for international protection. Article 4 provides Member States with a possibility, in limited circumstances, to carry out a simplified return procedure by derogating from Article 41a of the proposal for an Asylum Procedure Regulation¹ and from the application of the proposal for a Return Directive recast². This is limited to third country nationals or stateless persons whose application for international protection was rejected on the basis of the emergency asylum management procedure and subject to the safeguards set out in Article 4(a) and (b). The proposal on instrumentalisation of migrants also provides for the possibility for a Member State to request a range of measures of support and solidarity measures from other Member States (such as capacity building or outreach to third countries), to enable the impacted Member States to address the situation according to their identified needs. The Commission will coordinate these measures.

The Commission shares the view that ensuring efficient external border controls and a high level of security in the entire European Union should be a top priority. The proposal concerning the amendment of the Schengen Borders Code is an important step in this direction. The Commission takes note of the Senat's concerns regarding the use of border surveillance measures. The Commission is fully committed to ensure that the guarantees currently provided for in the Schengen Borders Code are complied with.

The Commission is also committed to preserve Schengen as the area where internal border controls are reintroduced as a last resort measure and maintained only as long as necessary. The Commission will continue to work with the Council and the European Parliament to that end, also taking into account the recent case-law of the Court of Justice of the European Union³.

The Commission hopes that these clarifications bring reassurance to the Senat of the Commission's objective to deliver on making Schengen stronger and more resilient and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Ylva Johansson
Member of the Commission*

¹ COM(2020) 611 final

² COM(2018) 634 final

³ Judgment in joint cases C-368/20 and C-369/20.