



## European Agenda on Migration: Securing Europe's External Borders

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#### What does today's Borders Package include?

The Commission has presented an ambitious set of measures aimed at securing the EU's borders, managing migration more effectively and improving the internal security of the European Union, while safeguarding the principle of free movement of persons.

The package includes:

- A Regulation **establishing a European Border and Coast Guard**
- A targeted **revision of the Schengen Borders Code**
- A Regulation on a **European travel document for the return of illegally staying third-country nationals**
- A revised **EUROSUR Handbook**
- The 8th **bi-annual report on the Schengen area**

#### A European Border and Coast Guard

##### What is the European Border and Coast Guard?

The proposed Regulation would establish a **European Border and Coast Guard** combining the independent resources of the European Border and Coast Guard Agency ('Agency') and the Member State authorities responsible for border management. The European Border and Coast Guard will **share responsibility** for implementing an integrated border management approach. The European Border and Coast Guard will ensure the effective application of strong common border management standards and provide operational support and intervention where necessary to promptly respond to emerging crises at the external border.

The proposal significantly **reinforces the mandate of Frontex** (the European Agency for the Management of Operational Cooperation at the External Borders of the EU) in the fields of external border management and return, and renames it, to reflect its new mandate, as the European Border and Coast Guard Agency.

##### What will be the Agency's role in the European Integrated Border Management?

The proposal presented by the Commission would enhance the activities of the agency as regards monitoring and crisis prevention, reaction to situations requiring urgent action, support for return operations in cooperation with third countries and processing of personal data.

Integrated border management means going beyond checks and patrols at the external border. It includes measures in and with **third countries**, and responsibilities 'behind the border', such as **return of third country nationals irregularly staying in** the EU to their countries of origin. Effective border management also requires robust and regular **risk analysis**, improved inter-agency cooperation and the use of state-of-the-art technology, all of which will be in the new Agency's expanded mandate.

The new European Border and Coast Guard Agency will be a **centre of expertise**, a practical support to national border guard authorities, and a guarantor that the system will perform effectively. The Commission's proposal provides for a toolbox of measures to empower the Agency to act in a manner that effectively responds to current challenges, drawing on the recommendations made by the Management Board of Frontex in November 2015<sup>[1]</sup>.

##### How will the new European Border and Coast Guard help secure Europe's borders?

Since 2005 the role of Frontex, has been to promote, coordinate and develop integrated border management. However, until now Frontex had only been granted a limited role in supporting Member States to manage their external borders. The crisis has shown that the limitations of Frontex – limited resources in terms of staff and equipment, an inability to initiate and carry out return or border

management operations and the absence of an explicit role to conduct search and rescue operations – have hindered its ability to effectively address significant increases of migratory pressure. The new European Border and Coast Guard Agency will **reinforce Member States' capacities at the external borders** through joint operations and rapid border interventions. Its strengthened mandate will include **monitoring and supervisory responsibilities**, as well as the **capacity to intervene in urgent situations** either at the request of a Member State or when a Member State is unable or unwilling to act. When such urgent interventions are needed, the new Agency will be able to draw on a **pool of resources** which are placed at its disposal by the Member States and are available for immediate deployment. The role of the Agency to contribute to **search and rescue operations** will also be significantly strengthened.

### **How will mandatory vulnerability assessments be carried out?**

On the basis of a **request from the Agency**, Member States will provide information on their capacities to carry out border control at their section of the external border. These capacities could include the availability of staff, technical equipment and financial resources. The information received by the liaison officers of the Agency posted in the Member States and the information acquired from EUROSUR will also feed in the vulnerability assessment.

The outcome of this assessment will aim to provide a clear picture of the preparedness of the Member States to face current or upcoming challenges at their external borders and will show the capacities of the Member States to contribute to the rapid reserve pool.

As a follow up to the vulnerability assessment the Agency will be able to **adopt a decision setting out corrective measures** which need to be taken by the Member State concerned. That Member State should address the weaknesses identified in the functioning of its national border management system. It will be obliged to implement this decision within a defined timeframe. In cases where the Member State in question fails to put in place these measures, the issue will be referred to the Agency's Management Board for a further decision which could include, at a final stage, direct intervention by the Agency aimed at eliminating any risks to the proper functioning of the Schengen area.

### **How will the decision be taken for the Agency to make an emergency intervention?**

The decision to launch an emergency intervention without a Member State request is taken only as a last resort, when the Union's interests require it. The new Agency will be entrusted to carry out mandatory **vulnerability assessments** on the capacities of the Member States to face current or upcoming challenges at their external borders.

When deficiencies are identified following a vulnerability assessment, the Agency will in a first instance **recommend** to the concerned Member State the appropriate corrective measures to address the existing gaps. The Member State will have to implement them within a set time-limit. If it fails to do so, then the Commission may adopt an **implementing decision** entrusting the Agency with the task of carrying out appropriate operational measures.

The Commission may take such action when the control of the external border is considered to be ineffective to an extent which risks the functioning of the Schengen area.

### **How will the Commission implementing decision for immediate interventions be adopted?**

The Commission implementing decision will be adopted in line with the examination procedure laid down in the Comitology Regulation (Regulation (EU) No 182/2011) where the Commission will consult a Committee of representatives from the Member States on its proposal for such a decision. The draft Regulation also provides for a possibility to have this decision adopted in line with an emergency procedure for exceptional cases where the measures described in the draft decision need to be immediately addressed.

The Commission could adopt such decision for immediate intervention by the Agency in cases where:

- a Member State fails to implement the corrective measures defined by the Agency following the outcome of a vulnerability assessment identifying certain gaps in its national border management system which need to be addressed, or
- there is such a sharp and disproportionate increase of pressure at the external borders the proper functioning of the Schengen area is put at risk.

### **How will the new Coast Guard function?**

National coastguards will be part of the European Border and Coast Guard to the extent that they carry out border control tasks. The draft Regulation provides for **improved coordination at national and EU level**. The mandates of the European Fisheries Control Agency and the European Maritime Safety Agency will be aligned to the new European Border and Coast Guard. The three Agencies will be able to launch joint surveillance operations, including joint operation of Remotely Piloted Aircraft Systems

(drones) in the Mediterranean Sea. This will notably improve information on vessels used for irregular migration and cross-border crime which have been detected during maritime surveillance operations aimed at fisheries control or oil spill detection. This pragmatic cross-sector cooperation will allow border management agencies to draw on additional capacities and knowledge.

### **What will change regarding the budget and staff of the new Agency?**

The Frontex budgets for 2015 and 2016 have been considerably reinforced in order to address the migratory crisis, in particular by tripling the financial resources for joint operations Poseidon and Triton, extending the Agency's support to the Member States in the area of returns and providing the necessary resources to implement hotspots.

Given the necessity that the European Border and Coast Guard Agency continues with its work in external border management at the same level of intensity, including as regards its role in search and rescue and in the area of return, it is essential that the 2016 level is maintained as the basis for the annual EU contribution to the European Border and Coast Guard Agency.

Today's proposals will entail a gradual increase of the Agency budget from the €143 million originally planned for 2015 up to €238 million in 2016 to €281 million in 2017, reaching €322 million in 2020 when all additional staff will be recruited.

In order to implement its new tasks the Agency should reach 1000 staff members by 2020, compared to 402 staff members at the start of 2016.

### **Where exactly can the Agency intervene?**

This proposal would apply to the Schengen Member States, the Schengen associated states and those EU Member States which have not yet acceded to the Schengen area, but are bound to do so. The Agency will be able to intervene at the external borders of these States.

### **Will the Agency have a mandate to work in third countries?**

Yes, the Agency will have an enhanced role as regards cooperation with third countries, in particular neighbouring countries and countries of origin and transit for irregular migration. The Agency will deploy liaison officers to third countries and will cooperate with their relevant authorities, including in the field of return and as regards the acquisition of travel documents. It will have the possibility to carry out joint operations at the external borders involving a Member State and a neighbouring third country, including on the territory of third countries subject to their agreement.

### **How will the reserve of European border guards be composed?**

The Agency needs to have at its disposal a sufficient number of well-trained experts with the appropriate profiles as well as the relevant technical equipment. Currently, contributions of assets and experts to Frontex are, in principle, provided on a voluntary basis. This method of working, in combination with the current migration crisis, has recently led to shortages which have prevented Frontex from performing its operational tasks at maximum capacity. Such deficiencies must be avoided.

To secure the capacity of the Agency to perform its tasks in responding to emergency situations, a **rapid reserve pool of experts** will be created as a standing corps put at the disposal of the Agency. The Agency will be able to call on this pool within a very limited timeframe in circumstances requiring immediate response. Member States will have to make available at least 1500 border guards to be deployed by the Agency in rapid border interventions within days.

### **Under what authority and legal framework will the European Border Guards act?**

During the deployment of European Border and Coast Guard teams, the host Member State shall issue instructions to the teams in accordance with the agreed operational plan. Members of the teams shall perform their tasks in respect of EU and international law and fundamental rights obligations, and the national law of the host Member State. As a general rule, European Border and Coast Guard teams will act only in the presence of host Member State staff. Any disciplinary action against them would be subject to the disciplinary measures of the home Member State.

### **What will the pool of equipment consist of and who contributes?**

The draft Regulation sets up a technical equipment pool for the Agency. The Agency will be able to acquire alone or in co-ownership with a Member State the technical equipment necessary to carry out joint operations, rapid border interventions and other operational activities.

Based on its needs and in line with its annual work programme, the Agency will define the equipment to be included in the pool. The Member States will have to contribute upon request unless they need the requested equipment for the management of their section of the external border in the face of an exceptional situation. To guarantee that the basic needs of the Agency are covered, the draft

Regulation obliges the Member States to provide to the Agency the equipment purchased under the EU's Internal Security Fund.

### **Who pays for Member States' staff and equipment during joint operations?**

Costs arising from the deployment of Member States' staff and equipment for joint operations carried out at the external borders of another Member State are reimbursed in full by the Agency, apart from the basic salary of border guards.

### **How will the Agency assist with return operations?**

A **Return Office** will be set up within the Agency to coordinate all return related tasks and to provide Member States with technical and operational reinforcement to effectively return illegally staying third country nationals. The Agency will provide financing, coordination and organisation for return operations as well as cooperating with relevant third-country authorities. **European Return Intervention Teams**, composed of escorts, monitors and return specialists, will be available to Member States facing particular pressure. In urgent situations Rapid European Return Intervention Teams could be deployed at the request of a Member State or on the Agency's own initiative.

The Agency will have new tools for to assist Member States' return activities, but the Member States concerned will remain responsible for these activities, including for decisions on who has the right to asylum and the issuing of return decisions. The Agency's activities in the field of return will be carried out in strict compliance with the Charter of Fundamental Rights of the European Union and Protocol 4 to the European Convention of Human Rights. Rights and obligations of migrants are always assessed and determined individually, including against the risk of *non-refoulement*.

### **How will the new European Border and Coast Guard ensure respect for fundamental rights?**

Given the stronger role and enhanced operational tasks of the Agency the proposal establishes a number of **fundamental rights safeguards** for the European Border and Coast Guard Agency. These include the need to have a Fundamental Rights Strategy, the establishment of a Consultative Forum on fundamental rights, and a complaint mechanism by which any person who considers himself or herself to have been the subject of a breach of fundamental rights during activities carried out by the Agency, or any third party intervener, may make a complaint to the European Border and Coast Guard Agency.

A dedicated **Fundamental Rights Officer** in the Agency will receive complaints in a structured manner and refer these to the Executive Director and the Member States concerned. Member States will be required to provide information on the outcome and follow up to the complaint. This administrative process will be without prejudice to any judicial remedies. Moreover, in cases of violations of fundamental rights or international protection obligations which are of a serious nature or are likely to persist, the Executive Director of the Agency would be able to decide not only on the suspension or termination of the operational activities led by the Agency, but also on the withdrawal of financial support for the operation in question.

### **How does the European Earth observation programme Copernicus contribute to border and coast guard efforts?**

The EU earth observation system Copernicus provides vital information to help monitor developing emergency situations and enable security and rescue services to respond quickly. Two recent agreements allow FRONTEX and the European Maritime Safety Agency (EMSA) to use the satellite data from Copernicus to support their work. Another agreement with the European Satellite Centre SATCEN will be signed early in 2016, to complete the [Copernicus security service](#). Copernicus has already made an important contribution to improving security. The border agency cooperation network EUROSUR has used this data, together with information from ship reporting systems, to catch smugglers and save lives at sea. In October 2015, 350 lives were saved when Copernicus observation helped spot four flimsy rubber dinghies leaving the coast of Libya, and in September 2014, 38 people, including 3 children, were spotted in the Mediterranean and rescued thanks to the Copernicus system.

Targeted Revision of the Schengen Border Code

### **Why is this revision of the Schengen Borders Code necessary?**

The Commission's proposal responds to an explicit request in the Council conclusions of 9 and 20 November 2015, which invited the Commission to "present a proposal for a targeted revision of the Schengen Borders Code to provide for systematic controls of EU nationals, including the verification of biometric information, against relevant databases at external borders of the Schengen area, making full use of technical solutions in order not to hamper the fluidity of the movement".

Effective controls at the external Schengen borders is essential for maintaining the internal Schengen area of free movement. These controls are part of the measures needed to manage threats to the internal security of Member States. As recent terrorist attacks have demonstrated, EU citizens can also

be perpetrators of attacks, and their right to free movement can be exploited to avoid detection, in particular when returning from foreign conflict zones. Controls at the external borders will allow us to identify such persons and minimise risks to the internal security of the Schengen area.

### **What changes does the Commission propose?**

The proposed amendment introduces the **obligation to carry out systematic checks at the external borders** on all persons, including those enjoying the right of free movement under Union law (i.e. EU citizens and members of their families who are not EU citizens), in order to verify that such persons do not represent a threat to public order and internal security. Systematic checks of EU citizens are today possible only in relation with the authenticity and validity of their travel documents.

Third-country nationals are already subject to document and security checks against relevant databases upon entry, but Member States have some leeway in carrying out security checks upon exit. The proposal explicitly imposes the obligation to carry out such checks **on third country nationals upon exit**.

Checks on all third country nationals and EU citizens will now be mandatory both when entering and when exiting the European Union. The systematic checks against databases will include consultation of the Schengen Information System, the Interpol Stolen and Lost Travel Documents Database and relevant national systems.

The proposal also reinforces the need to **check against biometric identifiers** (facial image and fingerprints) as security elements in the passport of EU citizens in order to make them more secure and establish a reliable link between the holder and the passport. Therefore in case of doubts on the authenticity of the passport or on the legitimacy of the holder, border guards should verify these biometric identifiers.

### **Will this proposal lead to lengthy queues at the external borders?**

Technological developments allow border agencies to check against relevant databases without delaying the process of crossing the border, as the controls on documents and persons can be carried out in parallel. Where there is evidence that a systematic consultation of databases on all EU citizens could have a disproportionate impact on the flow of traffic at the border, Member States can decide to carry out **only targeted checks against databases** at some land and sea border crossings provided that a **risk assessment** shows this does not lead to risks related to internal security, public policy, international relations of the Member States or a threat to the public health.

### **How will the protection of fundamental rights be ensured?**

The systematic checks in the databases are done on a 'hit/no hit' basis. Using the databases like this means that personal data rights are only impacted to a very limited extent, and justified by the security objectives.

A European travel document on return

### **Why is the current travel document not sufficient?**

The effective return of third country nationals who do not fulfil the conditions for entry, stay or residence in the EU is an essential component of maintaining public trust in the Common European Asylum System. Ensuring the return of irregular migrants is a cornerstone of a successful and sustainable migration policy. Every year in Europe, almost half a million return decisions are issued to migrants who have no right to enter or stay. Nonetheless, only 40% of these decisions were enforced in 2014.

One of the main obstacles to effective returns is the lack of valid travel documents for the returnee. This situation could be addressed by a replacement travel document issued by the competent authorities of the Member States. However, to be valid and used in practice, this document needs to be recognised by third countries. A model for a standard travel document for the expulsion of third-country nationals exists since 1994,<sup>[2]</sup> yet its use by Member States remains low. It is recognised in 15 out of the 17 EU Readmission agreements in force (the only exceptions are Pakistan and Sri Lanka) but its security features and standards are subject to criticism by third countries with whom a readmission agreement is under negotiation because it is vulnerable to falsification and fraud. The new proposals will improve the effectiveness of negotiations with third countries to take back their illegally-staying nationals, and will improve the application of existing readmission agreements.

### **What will the new document look like?**

The new travel document will set a uniform European format with enhanced technical and security features and will be valid for a single journey only. It will include basic information on the returnees such as name, surname, date of birth, sex, nationality. The security features will follow those already applied to other EU official documents<sup>[3]</sup> (e.g. type of paper, watermarks), but will not include

biometrics.

### **Will this Regulation affect the fundamental rights of irregular migrants?**

This travel document builds upon and complies with the fundamental rights standards and procedures for returning illegally staying third-country nationals set by the Return Directive<sup>[4]</sup>. The Return Directive and the Readmission agreements ensure the full respect of the fundamental rights of the returnees as general principles of Union law as well as international law, including the principle of *non-refoulement*, refugee protection and human rights obligations. The new European travel document for return does not affect these rights and principles, which must be ensured during the whole return procedure.

### **In which circumstances should this travel document be used?**

The objective of the proposed Regulation is to harmonise the format as well as the technical and security specifications of the European travel document for return without regulating the conditions under which it should be issued. The Commission believes that Member States could consider issuing a European travel document to all third country nationals who have received a return decision and do not have valid documents proving their nationality. Moreover, a European travel document could also be issued for a third-country national whose nationality has been confirmed by the competent authorities of a third country but has not received a valid travel document within a reasonable deadline.

### **What is in the revised EUROSUR Handbook?**

The EUROSUR Handbook adopted by the Commission provides guidance to Member States' authorities on the management of the European Border Surveillance System (EUROSUR), which provides a common framework for information exchange and cooperation among border surveillance authorities. Since EUROSUR became operational at the end of 2013, it has contributed to saving migrants' lives on many occasions, for instance by detecting small vessels in areas not covered by regular patrolling.

The national coordination centres for border surveillance, established by the EUROSUR Regulation, play a crucial role and Member States should make better use of them. The EUROSUR Handbook describes in particular the tasks of the national coordination centres, and how they are supposed to coordinate their reaction to irregular migration and cross-border crime at the different border sections.

### **What is the Schengen biannual report?**

In its Communication 'Schengen governance - strengthening the area without internal border control', the Commission announced its intention to present an overview on the functioning of Schengen to the EU institutions twice a year ([IP/11/1036](#) and [MEMO/11/606](#)). The Commission's bi-annual reports provide the basis for a debate in the European Parliament and in the Council. They serve as a form of 'health check' of the Schengen area and contribute to the strengthening of cooperation between the Schengen countries.

This report addresses the two major challenges faced in the Schengen area — the refugee crisis and the terrorist threat. The Commission reports on the lessons learned and emphasises the need to fully and correctly implement the measures already contained in the European Agenda on Migration and the European Agenda on Security. An essential prerequisite in addressing effectively the current crisis is strengthened protection of the EU's external borders. There are a number of other instruments available (e.g., 'hotspots', RABITS and joint operations) which were designed to help the Member States facing significant pressure, and those Member States should not hesitate to make full use of them. In parallel the report refers to the new measures proposed by the Commission today which will further strengthen external border control.

### **For more information**

Press release: [A European Border and Coast Guard to protect Europe's External Borders](#)

[Proposal for a regulation establishing a European Border and Coast Guard](#)

[Proposal for a regulation on a targeted modification of the Schengen Borders Code](#)

[Proposal for a regulation on a European travel document for the return of illegally staying third country nationals](#)

[Revised EUROSUR Handbook](#)

[8th bi-annual report on the functioning of the Schengen area](#)

[European Agenda on Migration](#)

<sup>[1]</sup> These followed an external evaluation of FRONTEX carried out in line with its current legal basis and finalised in June 2015

<sup>[2]</sup> Council Recommendation of 30 November 1994 concerning the adoption of a standard

travel document for the expulsion of third-country nationals (OJ C 274, 19.6.1996, p. 18).

[3] Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (OJ L 53, 23.2.2002, p. 4).

[4] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

MEMO/15/6332