



Council of the
European Union

Brussels, 19 February 2016
(OR. en)

6319/16

**Interinstitutional File:
2015/0310 (COD)**

LIMITE

**FRONT 81
SIRIS 21
CODEC 186
COMIX 129**

NOTE

From: Presidency
To: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

No. prev. doc.: 6180/16 FRONT 71 SIRIS 15 CODEC 171 COMIX 109

Subject: 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

Delegations will find attached a series of Presidency compromise suggestions on Section 3 of Chapter II of the Proposal, coming as a result of the discussions that took place during the last meeting of the Working Party meeting on 12 February 2016, as well as the meeting of the JHA Counsellors on 18 February 2016.

The suggested compromise wordings, vis-à-vis the Commission proposal, are highlighted in bold, underline and strikethrough. It is noted that the Presidency is still seeking a compromise with regard to the text in square brackets in Article 16(10) and 19(5).

SECTION 3

EXTERNAL BORDER MANAGEMENT

Article 13

Actions by the Agency at the external borders

1. Member States may request the Agency for assistance in implementing their obligations with regard to the control of the external borders. The Agency shall also carry out measures as referred to in Article 18.
2. The Agency shall organise the appropriate technical and operational assistance for the host Member State and it may take one or more of the following measures:
 - (a) coordinate joint operations for one or more Member States and deploy European Border and Coast Guard Teams;
 - (b) organise rapid border interventions and deploy European Border and Coast Guard Teams from the rapid reserve pool, and additional European Border and Coast Guards Teams as appropriate;
 - (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with neighbouring third countries;
 - (d) deploy European Border and Coast Guard Teams in the framework of the migration management support teams at hotspot areas;
 - (e) deploy its own experts as well as members of the teams who had been seconded by the Member States to the Agency to support the competent national authorities of the Member States involved for the appropriate duration;
 - (f) deploy technical equipment.

3. The Agency shall finance or co-finance the activities set out in paragraph 2 with grants from its budget in accordance with the financial rules applicable to the Agency.

Article 14

Initiating joint operations and rapid border interventions at the external borders

1. Member States may request the Agency to launch joint operations to face upcoming challenges, including present or future threats at ~~their~~ external borders resulting from ~~irregular~~ **illegal** immigration or cross-border crime, or to provide increased technical and operational assistance when implementing their obligations with regard to the control of the external borders.
2. 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 **cross the external border** ~~enter the territory~~ of that Member State illegally, the Agency may deploy a rapid border intervention for a limited period of time on the territory of that host Member State.
3. The Executive Director shall evaluate, approve and coordinate proposals for joint operations made by Member States. Joint operations and rapid border interventions shall be preceded by a thorough, reliable and up-to-date risk analysis, thereby enabling the Agency to set an order of priority for the proposed joint operations and rapid border interventions, taking into account the impact level to external border sections in accordance with Regulation (EU) No 1052/2013 and the availability of resources.
4. The Executive Director shall, on the advice of the Supervisory Board based on the results of the vulnerability assessment, and taking into account the Agency's risk analysis and the analysis layer of the European situational picture established in accordance with Regulation (EU) No 1052/2013, recommend to the Member State concerned to initiate and carry out joint operations or rapid border interventions. The Agency shall put its technical equipment at the disposal of the host or participating Member States.

5. The objectives of a joint operation or rapid border intervention may be achieved as part of a multipurpose operation which may involve coast guard functions including ~~the rescue of persons in distress at sea or other coast guard functions,~~ cross border crime prevention including the fight against migrant smuggling or trafficking in human beings, ~~drug trafficking control operations,~~ and migration management including identification, registration, debriefing and return.

Article 15

Operational plan for joint operations

1. In preparation of a joint operation the Executive Director, in cooperation with the host Member State, shall draw up a list of technical equipment and staff needed taking into account the host Member State's available resources. On the basis of those elements, the Agency shall define a package of operational and technical reinforcement as well as capacity building activities to be included in the operational plan.
2. The Executive Director shall draw up an operational plan for joint operations at the external borders. The Executive Director and the host Member State, in consultation with the participating Member States, shall agree on the operational plan detailing the organisational and procedural aspects of the joint operation.
3. The operational plan shall be binding on the Agency, the host Member State and the participating Member States. It shall cover all aspects considered necessary for carrying out the joint operation, including the following:
 - (a) a description of the situation, with *modus operandi* and objectives of the deployment, including the operational aim;
 - (b) the foreseeable duration of the joint operation;
 - (c) the geographical area where the joint operation will take place;

- (d) a description of the tasks and special instructions for the European Border and Coast Guard Teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
- (e) the composition of the European Border and Coast Guard Teams as well as the deployment of other relevant staff;
- (f) command and control provisions, including the names and ranks of the border guards of the host Member State responsible for cooperating with the members of the teams and the Agency, in particular the names and ranks of those border guards who are in command during the period of deployment, and the place of the members of the teams in the chain of command;
- (g) the technical equipment to be deployed during the joint operation, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;
- (h) detailed provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities;
- (i) a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the final evaluation report;
- (j) regarding sea operations, specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation takes place, including references to **national**, international and Union law regarding interception, rescue at sea and disembarkation. In that regard the operational plan shall be established in accordance with Regulation (EU) No 656/2014 of the European Parliament and of the Council;¹

¹ Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union (OJ L 189, 27.6.2014, p. 93).

(k) modalities of cooperation with third countries, other Union agencies, bodies and offices or international organisations;

(l) procedures ~~setting out a referral mechanism~~ whereby persons in need of international protection, victims of trafficking in human beings, unaccompanied minors and persons in a vulnerable situation are directed to the competent national authorities for appropriate assistance;

(m) procedures setting out a mechanism to receive and transmit to the Agency a complaint against border guards or other staff of the host Member State and members of the European Border and Coast Guard Teams alleging breaches of fundamental rights in the context of the joint operation or rapid border intervention.

(n) where relevant, logistical arrangements including information on working conditions and the environment of the area where the joint operations are foreseen.

4. Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State, after consultation of the participating Member States. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

Article 16

Procedure for launching a rapid border intervention

1. A request by a Member State to launch a rapid border intervention shall include a description of the situation, possible aims and envisaged needs. If required, the Executive Director may immediately send experts from the Agency to assess the situation at the external borders of the Member State concerned.
2. The Executive Director shall immediately inform the Management Board of a Member State's request to launch a rapid border intervention.

3. When deciding on the request of a Member State, the Executive Director shall take into account the findings of the Agency's risk analyses and the analysis layer of the European situational picture established in accordance with Regulation (EU) No 1052/2013 as well as the outcome of the vulnerability assessment referred to in Article 12 and any other relevant information provided by the Member State concerned or another Member State.
4. The Executive Director shall take a decision on the request for launching a rapid border intervention within two working days from the date of the receipt of the request. The Executive Director shall simultaneously notify the Member State concerned and the Management Board in writing of the decision. The decision shall state the main reasons on which it is based.
5. If the Executive Director decides to launch a rapid border intervention, he or she shall deploy European Border and Coast Guard Teams from the rapid reserve pool in accordance with Article 19(5), and where necessary, he or she shall decide on the immediate reinforcement by one or more European Border and Coast Guard Teams, in accordance with Article 19(6).
6. The Executive Director together with the host Member State shall draw up an operational plan as referred to in Article 15(3) immediately and in any event no later than three working days from the date of the decision.
7. As soon as the operational plan has been agreed upon, the Executive Director shall request **in writing** the Member States to immediately deploy the border guards that form part of the rapid reserve pool. The Executive Director shall indicate the profiles and numbers of border guards, required from each Member State from among those identified in the **existing** rapid reserve pool.

8. In parallel, and where necessary, to secure the immediate reinforcement of the European Border and Coast Guard Teams deployed from the rapid reserve pool, the Executive Director shall inform the Member States of the requested number and profiles of border guards which are to be additionally deployed. This information shall be provided, in writing to the national contact points and shall indicate the date on which the deployment is to take place. A copy of the operational plan shall also be provided to them.
9. If the Executive Director is absent or indisposed, the decisions related to the deployment of the rapid reserve pool and any additional deployment of European Border and Coast Guard Teams shall be taken by the Deputy Executive Director.
10. Member States shall ensure that the border guards assigned to the rapid reserve pool are immediately [and without exception] made available to the Agency. Member States shall also make additional border guards available for the deployment of European Border and Coast Guard Teams at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.
11. Deployment of the rapid reserve pool shall take place no later than ~~three~~ **five** working days after the date on which the operational plan is agreed between the Executive Director and the host Member State. Additional deployment of European Border and Coast Guard Teams, shall take place where necessary, within ~~five~~ **seven** working days of the deployment of the rapid reserve pool.

12 In case the rapid reserve pool is deployed, the Executive Director shall, in consultation with the Management Board, immediately consider the priorities with regard to the Agency's ongoing and foreseen joint operations at other sections of the external borders in order to provide for possible reallocation of resources to the areas of external borders where the a strengthened deployment is most needed.

Article 17

Migration management support teams

1. Where a Member State faces disproportionate migratory pressures at particular hotspot areas of its external border characterised by large influxes of mixed migratory flows, that Member State may request the operational and technical reinforcement by migration management support teams. That Member State shall submit a request for reinforcement and an assessment of its needs to the Agency. **The Agency shall inform the and other relevant Union Agencies and in particular the European Asylum Support Office and Europol.**
2. The Executive Director, in coordination with other relevant Union Agencies, shall assess the request for assistance of a Member State and the assessment of its needs for the purpose of defining a comprehensive reinforcement package consisting of various activities coordinated by the relevant Union Agencies to be agreed upon by the Member State concerned.
 - 2a. **The Commission shall, in cooperation with the host Member State, the Agency and the other relevant Union Agencies and in particular the European Asylum Support Office and Europol, establish the modalities of cooperation at the hotspot area, including on the coordination of the activities of the migration management support teams.**
3. The operational and technical reinforcement provided by the European Border and Coast Guard Teams, the European Return Intervention Teams and experts from the Agency's staff in the framework of the migration management support teams, may include:
 - (a) the screening of third-country nationals arriving at the external borders, including the identification, registration, and debriefing of those third-country nationals and, where requested by the Member State, the fingerprinting of third-country nationals;
 - (b) the provision of information to persons in clear need of international protection or to applicants or potential applicants for relocation;
 - (c) technical and operational assistance in the field of return, including the preparation and organisation of return operations.

4. ~~The Agency shall assist the Commission in the coordination of the activities of the migration management support teams, in cooperation with the other relevant Union Agencies.~~

Article 18

Situation at the external borders requiring urgent action

1. Where a Member State does not take the necessary **corrective** measures in accordance with a decision of the Management Board referred to in Article 12(6) or in the event of **a specific and** disproportionate **migratory** pressure at the external border **where a Member State has not requested sufficient support by means of operations as mentioned in Articles 14, 16 or 17 of this Regulation, thus**, rendering the control of the external borders ineffective to such an extent that it risks putting in jeopardy the functioning of the Schengen area, the **Council Commission, based on a proposal from the Commission after consulting the Agency**, 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. **The eCommission shall consult the Agency before making its proposal. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 79(2).**

On duly justified imperative grounds of urgency relating to the functioning of the Schengen area, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 79(5).

2. For the purposes of paragraph 1, the **decision Commission** shall provide for one or more of the following measures to be taken by the Agency:

(a) organise and coordinate rapid border interventions and deploy European Border and Coast Guard Teams from the rapid reserve pool, and additional European Border and Coast Guards Teams as appropriate;

- (b) deploy European Border and Coast Guard Teams in the framework of the migration management support teams at hotspot areas;
 - (c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with neighbouring third countries;
 - (d) deploy technical equipment;
 - (e) organise return interventions.
3. The Executive Director shall, within two working days from the date of adoption of the ~~Commission Council~~ decision, [and on the advice of the Supervisory Board], determine the actions needed to be taken for the practical execution of the measures identified in the ~~Commission Council~~ decision, including the technical equipment as well as the number and profiles of the border guards and other relevant staff needed to meet the objectives of that decision.
 4. In parallel and within the same two working days, the Executive Director shall **draw up an submit a draft** operational plan ~~to the Member State concerned~~. The Executive Director and the Member State **concerned shall agree on the operational plan draw up the operational plan** within two working days from the date of its submission.
 5. The Agency shall, without delay and in any case within ~~three~~ **five** working days from establishment of the operational plan, deploy the necessary technical equipment and staff from the rapid reserve pool referred to in Article 19(5) for the practical execution of the measures set out in the ~~Council Commission~~ decision. Additional technical equipment and European Border and Coast Guard Teams shall be deployed as necessary at a second stage and in any case within five working days from the deployment of the rapid reserve pool.
 6. The Member State concerned shall comply with the ~~Council Commission~~ decision and for that purpose it shall immediately cooperate with the Agency and take the necessary action to facilitate the implementation of that decision and the practical execution of the measures set out in that decision and in the operational plan agreed upon with the Executive Director.

7. The Member States shall make available the border guards and other relevant staff determined by the Executive Director in accordance with paragraph 2. The Member States may not invoke the exceptional situation referred to in Article 19(3) and (6).

8a. If the Member State concerned does not comply with the Council decision and does not cooperate with the Agency as provided for under paragraph 6, the Council may, as a last resort and as a measure to protect the common interests within the area without internal border control, recommend that one or more Member States decide to reintroduce border control at all or specific parts of their internal borders for a period of up to six months. That period may be prolonged, no more than three times, for a further period of up to six months if the absence of cooperation persists.

Article 19

Composition and deployment of European Border and Coast Guard Teams

1. The Agency shall deploy border guards and other relevant staff as members of the European Border and Coast Guard Teams to joint operations, rapid border interventions and in the framework of the migration management support teams. The Agency may also deploy experts from its own staff.
2. On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles and the overall number of border guards **and other relevant staff** to be made available for the European Border and Coast Guard Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall numbers. Member States shall contribute to the European Border and Coast Guard Teams through a national pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.

3. The contribution by Member States as regards their border guards **and other relevant staff** to specific joint operations for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 21 working days before the intended deployment.
4. As regards rapid border interventions, on a proposal by the Executive Director of the Agency, the Management Board shall decide by a three-quarter majority on the profiles and the minimum number of border guards **that correspond to these profiles** to be made available for a rapid reserve pool of European Border and Coast Guard Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall number of border guards of the rapid reserve pool. Member States shall contribute to the rapid reserve pool via a national expert pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.
5. The rapid reserve pool shall be a standing corps placed at the immediate disposal of the Agency and which can be deployed from each Member State within **three five** working days from when the operational plan is agreed upon by the Executive Director and the host Member State. For that purpose, each Member State shall, on a yearly basis, make available to the Agency a number of border guards **and other relevant staff** [commensurate to 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,] and which shall amount to a minimum of 1 500 border guards, corresponding to the profiles identified by the decision of the Management Board.
6. Where necessary, the deployment of European Border and Coast Guard Teams from the rapid reserve pool shall be immediately complemented by additional European Border and Coast Guard Teams. For that purpose, Member States shall, at the request of the Agency, immediately communicate the number, names and profiles of border guards from their national pool which they are able to make available within five working days from the start of the rapid border intervention. Member States shall make the border guards available for deployment at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.

7. Member States shall ensure that the border guards and other relevant staff which they contribute match the profiles and the numbers decided upon by the Management Board. The duration of the deployment shall be determined by the home Member State but in any case it shall not be less than 30 days.
8. The Agency shall contribute to the European Border and Coast Guard Teams with competent border guards **or other relevant staff** seconded by the Member States as national experts to the Agency. The contribution by Member States as regards the secondment of their border guards **or other relevant staff** to the Agency for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the border guards available for secondment, unless that would seriously affect the discharge of national tasks. In such situations Member States may recall their seconded border guards.

Such secondments may be for 12 months or more but in any case it shall not be less than three months. The seconded border guards shall be considered as members of the teams and they shall have the tasks and powers of the members of the teams. The Member State having seconded the border guards **or other relevant staff** shall be considered as the home Member State.

Other staff employed by the Agency on a temporary basis who are not qualified to perform border control functions shall only be deployed during joint operations for coordination **and other** tasks **which do not require full border-guard training** and shall not form part of the European Border and Coast Guard Teams.

9. The Agency shall inform the European Parliament on an annual basis of the number of border guards **and other relevant staff** that each Member State has committed to the European Border and Coast Guard Teams in accordance with this Article.

Article 20

Instructions to the European Border and Coast Guard Teams

1. During deployment of European Border and Coast Guard Teams, the host Member State shall issue instructions to the teams in accordance with the operational plan.
2. The Agency, through its Coordinating Officer, may communicate its views to the host Member State on the instructions given to European Border and Coast Guard Teams. In that case, the host Member State shall take those views into consideration and follow them to the extent possible.
3. In cases where the instructions issued to the European Border and Coast Guard Teams are not in compliance with the operational plan, the Coordinating Officer shall immediately report to the Executive Director, who may, where appropriate, take action in accordance with Article 24(2).
4. Members of the teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights, including access to asylum procedures, and human dignity. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, they shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
5. Members of the teams shall remain subject to the disciplinary measures of their home Member State. The home Member State shall provide for appropriate disciplinary or other measures in accordance with its national law in case of violations of fundamental rights or international protection obligations in the course of a joint operation or rapid border intervention.

Article 21

Coordinating officer

1. The Agency shall ensure the operational implementation of all the organisational aspects, including the presence of staff members of the Agency during the joint operations, pilot projects or rapid border interventions.
2. The Executive Director shall appoint one or more experts from the staff of the Agency to be deployed as coordinating officer for each joint operation or rapid border intervention. The Executive Director shall notify the host Member State of the appointment.
3. The coordinating officer shall act on behalf of the Agency in all aspects of the deployment of the European Border and Coast Guard Teams. The role of the coordinating officers shall be to foster cooperation and coordination amongst host and participating Member States. In particular, the coordinating officer shall:
 - (a) act as an interface between the Agency and the members of the European Border and Coast Guard Teams, providing assistance, on behalf of the Agency, on all issues relating to the conditions for their deployment with the teams;
 - (b) monitor the correct implementation of the operational plan, **including on the protection of fundamental rights**;
 - (c) act on behalf of the Agency in all aspects of the deployment of the European Border and Coast Guard Teams and report to the Agency on all those aspects;
 - ~~(d) report to the Agency on aspects relating to the provision of sufficient guarantees by the host Member State to ensure the protection of fundamental rights throughout the joint operation or rapid border intervention;~~
 - (e) report to the Executive Director where the instructions issued to the European Border and Coast Guard Teams by the host Member States are not in compliance with the operational plan.

4. In the context of joint operations or rapid border interventions, the Executive Director may authorise the coordinating officer to assist in resolving any disagreement on the execution of the operational plan and deployment of the teams.

Article 22

National contact point

Member states shall appoint a The national coordination centre established in accordance with Regulation (EU) No 1052/2013 shall be the national contact point for communication with the Agency on all matters pertaining to the **operational activity of the Agency.European Border and Coast Guard Teams.**

Article 23

Costs

1. The Agency shall fully meet the following costs incurred by Member States in making available their border guards for the purposes of deploying European Border and Coast Guard Teams, including the rapid reserve pool:
 - (a) travel costs from the home Member State to the host Member State and from the host Member State to the home Member State;
 - (b) costs related to vaccinations;
 - (c) costs related to special insurance needs;
 - (d) costs related to health care;
 - (e) daily subsistence allowances, including accommodation costs;
 - (f) costs related to the Agency's technical equipment.

2. Detailed rules concerning the payment of the daily subsistence allowance of members of the European Border and Coast Guard Teams shall be established and updated as necessary by the Management Board.

Article 24

Suspension or termination of joint operations and rapid border interventions

1. The Executive Director shall terminate, after informing the Member State concerned, joint operation, ~~or~~ rapid border intervention **or migration management support teams** if the conditions to conduct those-activities are no longer fulfilled.
2. The Executive Director may withdraw, **after informing the Member State concerned,** the financing of joint operation, ~~or~~ rapid border intervention **or migration management support teams** or suspend or terminate it if the operational plan is not respected by the host Member State.
3. The Executive Director shall withdraw, **after informing the Member State concerned,** the financing of joint operation, ~~or~~ rapid border intervention **or migration management support teams**, or suspend or terminate, in whole or in part, joint operation, ~~or~~ rapid border intervention **or migration management support teams** if he or she considers that there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist. **The Exucutive Director shall inform the Management Board of such a decision.**
4. **In case the Executive Director decides to suspend or terminate the deployment of a migration management support team, he shall inform the other relevant aAgencies present participating in the funtion of that hotspot.**

Article 25

Evaluation of joint operations and rapid border interventions

The Executive Director shall evaluate the results of the joint operations and rapid border interventions and transmit the detailed evaluation reports within 60 days following the end of those operations and projects to the Management Board, together with the observations of the Fundamental Rights Officer. The Agency shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future joint operations and rapid border interventions, and it shall include it in its consolidated annual activity report.
