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A European Border and Coast Guard and effective management of Europe's external  
borders

## I. INTRODUCTION

The creation of the Schengen **area** of free movement **without internal** borders was a historic achievement and one that remains emblematic of the European values which tore down walls and united a continent. The speed with which people, goods and services can travel across the borders of our Member States also helps drive our competitiveness as the world's largest economic area, creating jobs and growth. However, with the decision to share a common internal area of free movement comes a shared responsibility to provide high and consistent standards of border management and security at the external borders. Indeed, we can only have a Schengen area without internal borders if its external borders are effectively secured and protected.

Citizens' confidence in our collective ability to manage our common external borders has been put to the test by the events of this year and in particular by the unprecedented rise in flows of migrants and refugees. The crisis has exposed weaknesses and gaps in existing border management mechanisms, which have proved insufficient to guarantee effective and integrated border management. Some Member States have not been able to meet their obligations in terms of ensuring effective border control and the identification and registration of irregular migrants. And the crisis has shown that the limitations of Frontex - inadequate 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 and remedy the situation.

Between January and November 2015, almost 1.5 million<sup>1</sup> illegal border crossings were detected, representing an all-time peak<sup>2</sup> of arrivals in the EU. Third-country nationals have been able to cross the external borders of the EU illegally and then continue their journey across the EU, without having been first identified, registered and subject to adequate security checks. The scale of these huge secondary movements of migrants within the EU has fundamentally put into question the coherence of the Schengen area, and, as a result, some Member States have chosen to reintroduce temporary controls at their internal borders - a situation that cannot and should not endure in the long term. Security concerns following the terrorist attacks of this year, and the phenomenon of foreign terrorist fighters, have only added to citizens' concerns.

It has become increasingly clear that the challenges these movements represent cannot be adequately dealt with by individual Member States acting in an uncoordinated manner. We need Union standards and a unified system of shared responsibility for external border management.

The European Agenda on Migration identified the need to move to a shared management of the external borders, in line with the objective of the "gradual introduction of an integrated management system for external borders" set out in Article 77 of the Treaty on the Functioning of the European Union. In his State of the Union speech in September, European Commission President Jean-Claude Juncker announced that the Commission would present ambitious steps in this respect before the end of the year in the form of a fully operational European Border and Coast Guard, as was subsequently confirmed in the 2016 Commission Work Programme<sup>3</sup>.

The exact figure for the period January-October is 1 284 549 illegal border crossings. The data is available from Frontex Risk Analysis Network (FRAN) and covers the Schengen area including the Schengen candidate countries. It includes the third country nationals detected at external borders (except temporary external borders) when entering or attempting to enter illegally between the border crossing points (BCPs). For November (data covers period up to 26 November 2015), the data originates from the Joint Operations Reporting Application (JORA) and from the Croatian Ministry of Interior (<http://www.mup.hr/219696.aspx>); estimates have been used for routes where no data was yet available.. For the period 2009-2014, the total number of detected illegal border crossings was 813 044. COM(2015) 610 final

This objective has also been signaled by the European Parliament<sup>4</sup> and endorsed in the clear orientations set out by the European Council on 23 September and 15 October<sup>5</sup>.

This Communication, and the measures which accompany it, provide for a strong and unified policy on the management of the EU's external borders based on the principle of shared responsibility. A permanent integrated system for border management will ensure the Union and its Member States are prepared in face of exceptional situations at the external borders and able to react effectively and in time should they arise. It will be underpinned by a steady crisis prevention mechanism relying on constant monitoring of the capacities of the Member States, including through a robust and regular risk analysis.

The benefits of an area of free movement without internal borders have been shared for many years now. But a chain is only as strong as its weakest link. It is time to make effective management of the external borders a truly common responsibility. It is time for a decisive step towards an integrated management system for external borders.

## **II. THE EUROPEAN BORDER AND COAST GUARD AND THE PRINCIPLE OF SHARED RESPONSIBILITY**

Today the Commission is proposing to establish a genuine European integrated border management designed in a way that meets the new challenges and political realities faced by the EU, both as regards migration and internal security.

A **European Border and Coast Guard** will be set up to ensure the effective application of strong common border management standards and to provide for operational support and intervention where necessary to promptly respond to emerging crises at the external border. The European Border and Coast Guard will bring together a European Border and Coast Guard Agency built from Frontex and the Member States' authorities responsible for border management, who will continue to exercise the day-to-day management of the external border. National coastguard authorities are also part of the European Border and Coast Guard in so far as they perform maritime border surveillance. The role of the Agency to contribute to **search and rescue operations** will now be significantly strengthened.

The new European Border and Coast Guard Agency ('the Agency') will be at the heart of making a more integrated system of border management work. It needs to 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>6</sup>.

For the European Border and Coast Guard to be effective, it needs to work in all phases of border management. Firstly, common standards need to be set which meet the test of robust border management capable of reacting at times of crises. The integration of national and Union levels within the European Border and Coast Guard should make the work of constantly improving standards part of the core work of border guard authorities, including coastguards to the extent that they carry out border control tasks, at all levels. The relevant national authorities will perform their regular tasks in

In its resolution of 10 September the European Parliament stressed the need to ensure effective management of external borders. At the informal meeting of Heads of State or Government of 23 September, leaders stressed the need to strengthen controls at the external borders and the European Council conclusions of 15 October explicitly call for the establishment of an integrated management system for the external borders. These followed an external evaluation of FRONTEX carried out in line with its current legal basis and finalised in June 2015

line with these standards and a strong EU level will help ensure uniform implementation across Member States. Secondly, there needs to be a system where deficiencies are identified well in advance so that remedial action is taken. Finally, it is essential to have a strong and responsive system to ensure crises are adequately addressed whenever needed. In exceptional situations, the assistance rendered to frontline Member States must be regarded as a responsibility which the EU and the Member States need to share and shoulder together. In this respect, the European Border and Coast Guard needs to be able to intervene when the national border guards of the frontline Member States are not, for whichever reasons, effectively coping with the challenges they face on their own.

### III. A SINGLE SYSTEM OF INTEGRATED EXTERNAL BORDER MANAGEMENT

#### III.1 EFFECTIVE IMPLEMENTATION OF INTEGRATED BORDER MANAGEMENT

Integrated border management goes beyond border control performed solely at the external border. It includes measures in third countries, measures with neighbouring third countries, and measures within the area of free movement, including return of irregular migrants from the EU to their countries of origin. Proper border management is also supported by a number of elements such as strong and regular risk analysis, improved inter-agency cooperation and the use of state-of-the-art technology.

As a first step, it is necessary to ensure that the rules in place are fully and duly implemented. Implementation of these rules is also essential in normal circumstances when there is no increased pressure but the area of free movement needs to be equally secured.

To ensure the constant monitoring of the management of the external borders in the Member States, the Commission is proposing to reinforce the obligations of cooperation and information sharing between the Agency and national authorities. In particular, a monitoring and risk analysis centre will be set up in the Agency to monitor the migratory flows towards and within the European Union. This tool will go hand in hand with a reliable and up-to-date risk analysis. The use of the Common Integrated Risk Analysis Model (CIRAM) developed by the Agency, in close cooperation with the Member States, will be made compulsory.

To support the development of an integrated approach and to further strengthen the regular monitoring of the management of the external borders by the Member States, liaison officers should be seconded by the Agency to specific Member States determined on the basis of risk analysis and in consultation with the Management Board. Cooperating with the national border guard authorities (as well as the coastguards to the extent that they carry out border control tasks) and acting as an interface between them and the Agency, these liaison officers will be fully integrated into the national authorities' work and information systems and able to ensure the Agency is fully informed in real time. They will identify possible weaknesses in the national border management systems and will prepare recommendations to address them. This will help identify necessary preventive steps in a common and proactive way and help prevent potential shortcomings from becoming a problem.

To guarantee an efficient implementation of the European integrated border management, the Agency will develop a broad overview of the capacity of Member States, including as regards allocation of staff and equipment at the external border. To help identify and address weaknesses, the Commission is proposing to significantly strengthen the Agency's existing 'vulnerability test' by transforming it into a mandatory mechanism of vulnerability assessment. It will be designed in a way so as to complement the Schengen evaluation mechanism<sup>7</sup> and will ensure that the specific needs of those

Council Regulation (EU) No 1053/2013 of the European Parliament and of the Council of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive

sections of the external border exposed to threats, such as disproportionate migratory pressures, can be adequately met. The information necessary for carrying out this vulnerability assessment will be complemented by the seconded liaison officers who will be feeding in data collected during their work on the ground.

By assessing the resources and equipment of the Member States as well as their contingency planning, the Agency will determine whether they are well prepared to meet potential challenges and to identify existing weaknesses. Following the outcome of this assessment, if necessary, the Agency will determine any corrective actions needed to address emerging or existing gaps. The decisions of the Agency will be binding on the Member State. If the necessary corrective action is not taken within the time limits set by the Agency, the European Commission may authorise the Agency to take further action, including the deployment of European Border and Coast Guard Teams (see below).

### **III.2 CRISIS PREVENTION AND INTERVENTION AT THE EXTERNAL BORDER**

The situation at the external border must not be allowed to deteriorate to the extent of jeopardizing the functioning of the Schengen area.

In cases of urgent or exceptional migratory pressure, Member States can already avail themselves of the possibility to request the deployment of Agency resources. **Member States may request joint operations and rapid border interventions**, and deployment of the European Border and Coast Guard Teams to support these.

However, the refugee crisis has exposed two fundamental problems with the existing structures, This is because the deployment of Agency resources relies, firstly, on the willingness of Member States to send resources to the external border at a given moment in time and, secondly, on a formal request from a frontline Member State. The structure and mandate of the new European Border and Coast Guard is designed to mitigate both issues. On the one hand these weaknesses were exposed notably in the case of Greece where Frontex asked Member States to supply 743 guest officers to work at the external border in Greece and to this day only 447 have been provided. On the other hand, and despite several political calls to do so, some Member States have not activated the available border intervention mechanisms, leaving Frontex unable to intervene.

#### ***A reserve of European Border Guards***

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. As the body assigned to implement the European integrated border management, 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. Similarly, the Agency will have at its disposal **a technical equipment pool** where Member States will be required to make available at immediate notice

Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

operational equipment acquired at a 90% co-financing rate under the additional allocations of **specific actions**<sup>8</sup> of the Internal Security Fund. This will ensure that the current situation where frontline Member States face shortages of essential fingerprinting equipment but Frontex is unable to supply them since it relies on Member States to make these resources available, is put to an end.

### *The right to intervene*

In urgent situations, the Agency must be able to step in to ensure that action is taken on the ground even where there is no request for assistance from the Member State concerned or where that Member State considers that there is no need for additional intervention.

On the one hand, such action could be necessary due to a disproportionate increase in the pressure at that section of the external border where the national border guard authorities (and coastguards to the extent that they have border control tasks) are not able to cope with the crisis which has developed. On the other hand, the requirement of urgent action at a particular section of the external border could be due to a deficiency in the border management system of a Member State which the Agency had identified as a result of a vulnerability assessment and had recommended corrective measures which the Member State concerned failed to implement within the set time limits.

When deficiencies are identified and in order to take **timely corrective action** and to avoid reaching a crisis situation, the Agency will in a first instance be empowered to **recommend** Member States launch joint operations or rapid border interventions.

Where deficiencies persist and national action is not forthcoming, the Commission will be able to adopt an implementing decision determining that the situation at a particular section of the external borders requires urgent action and entrusting the Agency with the task of carrying out appropriate operational measures. This will allow the Agency to **intervene immediately in crises situations** by deploying European Border and Coast Guard Teams at the external border.

### *Implementing the hotspot approach and working with third countries*

The development of the hotspot approach, initially introduced by the European Agenda on Migration, will become a key task of the Agency, which will be able to deploy European Border and Coast Guard Teams in the framework of the migration management teams at hotspots.

Furthermore, the Commission proposal provides for an enhanced role for the Agency as regards **cooperation with third countries** where it can coordinate operational cooperation between Member States and neighbouring third countries in the field of border management, including by deploying liaison officers to third countries or launching joint operations on Union territory or on the territory of third countries. This will notably remedy the situation which is currently faced in the cooperation with the Western Balkan countries where, despite the agreement of the third countries in question, Frontex is unable to provide operational assistance as it does not have the mandate to send border guard teams to countries such as Serbia and the former Yugoslav Republic of Macedonia.

## **III.3 COASTGUARD FUNCTIONS**

Coastguards have a crucial role to play in securing maritime borders and in rescue at sea. The current crisis has demonstrated the need for a more coordinated response from the relevant Union Agencies

According to Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing a part of the Internal Security Fund (OJ L 150, 20.5.2014, p. 143), specific actions are designed as 'top-up funding', i.e. additional amounts added to the Member States' basic national 7-year allocations on a competitive basis depending on their willingness to implement, under their national programmes, actions which correspond to specific EU priorities.'

and the wide range of national authorities performing coastguard functions<sup>9</sup>. Better coordination can both bring results in terms of addressing crises at sea and helping those authorities to work efficiently. This should include better coordination and pooling of relevant coastguard functions at EU level.

There are currently more than 300 civilian and military authorities in the Member States responsible for carrying out coastguard functions in a wide range of areas such as maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and environmental protection. A **functional approach** is needed so that the national coastguards will be part of the European Border and Coast Guard to the extent that they carry out border control tasks. The Commission therefore proposes to bring together the existing bodies and agencies carrying out coastguard tasks more closely. At EU level, this will be achieved by aligning the mandates of the European Maritime Safety Agency and the European Fisheries Control Agency with the provisions of the new Agency. The result will be a more coordinated effort to support the respective national authorities and improve their cooperation through streamlined sharing of information and capacity building as well as providing surveillance and communication services based on state-of-the-art technology.

This will mean that the Agency will, for example, be able to access new information on vessels used for illegal immigration and cross-border crime which have been detected during maritime surveillance operations whose primary mission is not border control, but fisheries control and oil spill detection. Furthermore, the three EU Agencies will be able to launch multi-purpose surveillance operations together, for instance by jointly operating Remotely Piloted Aircraft Systems (drones) in the Mediterranean Sea. This pragmatic cross-sector cooperation to pool resources and information will allow border management to draw from capacities which are not strictly border control related.

#### **III.4 STRENGTHENED ROLE FOR THE AGENCY IN THE FIELD OF RETURN**

Improving the effectiveness of return procedures has been recognised as a key objective of migration management. An enhanced role for the European External Border Agency in the field of return will improve the capacity of the EU to successfully return illegally staying third-country nationals. As set out in the EU Action Plan on Return<sup>10</sup>, the Agency should be able to initiate return operations and to assist Member States with the acquisition of travel documents.

The Agency will coordinate all the tasks related to return and will provide Member States with all the necessary technical and operational reinforcement to effectively return illegally staying third country nationals. For these purposes, a dedicated **Return Office will be created within the structure of the Agency** to cooperate with the Member States in conducting identification and return procedures, including through financing and co-financing, coordinating and organising return operations as well as cooperating with relevant third-country authorities in the area of return.

The Agency will also play a key and direct role in return interventions. **European Return Intervention Teams**, composed of escorts, monitors and return specialists, will be able to be deployed to Member States subject to particular pressure on their return system. In urgent situations Rapid European Return Intervention Teams could be deployed either upon the request of a Member State or on the Agency's own initiative.

There are over 300 different national authorities carrying out coastguard functions. They are responsible for a wide range of missions, including but not limited to maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and environmental protection. The European Border Agency, the European Fisheries Control Agency and the European Maritime Safety Agency support the national authorities in the exercise of most of these functions. COM(2015) 453 final.

### III.5 FUNDAMENTAL RIGHTS AND A COMPLAINT MECHANISM FOR THE AGENCY

Given the stronger role and enhanced operational tasks of the Agency, it is important to have an adequate complaint mechanism in case a person considers himself or herself to have been subject to a violation of fundamental rights in the course of operational engagement by the Agency. Both the European Parliament and the European Ombudsman have stressed the importance of such a mechanism.

Under the mechanism 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.

### IV UNIFORM IMPLEMENTATION OF THE SCHENGEN RULES

The uniform implementation of all the rules in the field of border management needs to be regularly monitored. With the establishment of the European Border and Coast Guard, the coherent application of the Schengen rules as well as the harmonised performance of border management tasks across Member States becomes even more important.

The laws governing the Schengen area constitute a dynamic set of rules which have developed over time and are incorporated in legal acts as well as in a number of 'soft law' documents such as handbooks, guidelines, catalogues, best practices. Their full and correct application by the Member States is regularly verified through the Schengen evaluation mechanism serving as a quality control tool. Schengen evaluations are carried out on the basis of multi-annual and annual programmes adopted by the Commission. Following evaluation missions, the 'Scheval' teams put forward recommendations to the Member States to address possible identified deficiencies in their national border management systems.

In this context, the Schengen evaluation reports have often signalled as a weakness in the implementation process the fact that a considerable part of the Schengen rules are included in non-binding documents. Combining 'soft law' measures and legally binding rules has not always proven efficient especially due to the fact that 'soft law' could often be interpreted and implemented differently.

To avoid possible discrepancies and to guarantee that the European Border and Coast Guard performs its tasks in a consistent manner, it is important to ensure that the Schengen rules are applied in the same way across the EU. To achieve uniform and more harmonised implementation of the existing rules and better consolidate the Schengen *acquis* as a 'single rulebook' of measures for border management, the Commission will work towards replacing the 'soft law' provisions by legally binding measures.

### V. TARGETED MODIFICATION OF THE SCHENGEN BORDERS CODE

Control at the external borders remains one of the main safeguards of the area without controls at the internal borders. One of the purposes of such controls is to prevent any threat to the internal security and public policy of the Member States. As recent terrorist attacks have demonstrated, the threat can come also from persons enjoying the right of free movement under Union law. Controls at the external borders need to be reinforced in order to be able to identify such persons and minimise risks to the

internal security of the Schengen area. This is also confirmed in the conclusions of the eighth biannual report on the functioning of the Schengen area.

To address this need, the Commission is proposing a targeted modification to the Schengen Borders Code<sup>11</sup> as regards **checks of EU citizens** against databases such as the Schengen Information System, the Stolen and Lost Travel Documents Database as well as relevant national systems. As requested by the Justice and Home Affairs Council of 9 and 20 November 2015, this initiative will 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 movement"<sup>12</sup>.

The proposed amendments will make systematic checks of EU citizens against databases at all external borders (air, sea and land) - which are today possible based on a risk assessment - compulsory. The systematic checks will verify the identity and the nationality of the person and the validity and authenticity of the travel document. Moreover, they will verify that the persons entering the Schengen area do not represent a threat to public order and internal security. The new rules also contain an element of flexibility - where at the land and sea borders systematic checks of EU citizens could have a disproportionate effect on the flow of traffic, Member States may carry them out on a targeted basis based on a risk assessment.

## VI. A EUROPEAN TRAVEL DOCUMENT FOR RETURN

Ensuring the effective return of third country nationals who are staying illegally in Europe is an essential component of a comprehensive, sustainable and credible EU migration policy.

The current EU system to return irregular migrants is not sufficiently effective and the lack of valid travel documents issued by the countries of destination of the returnees is one of the main obstacles to successful return and readmission. At present, Member States may issue a European substitute document<sup>13</sup> for those illegally staying third-country nationals who do not possess a valid travel document. However, due to its inadequate security features and standards, among other reasons, its recognition by third countries is unsatisfactory. There is a clear need to improve the recognition of the EU travel document by third countries in view of ensuring successful return while reducing the administrative burden on competent consular authorities of third countries.

Following up on the announcement made in the EU Action Plan on Return, the Commission is proposing to establish a new European travel document for the return of third-country nationals, based on a uniform format and using enhanced technical and security features that can ensure a wider acceptance by third countries. The recognition of this travel document should be promoted in the context of readmission agreements or other arrangements with third countries, as well as in the context of return-related cooperation with third countries not covered by formal agreements.

The proposed Regulation on a European travel document for return defines the format and the security features of this document, while the common standards and procedures for carrying out the return of illegally staying third-country nationals is regulated by the Return Directive<sup>14</sup> and shall be conducted in full respect of fundamental rights, in particular of the principle of *non-refoulement*.

Article 7(2) Schengen Borders Code  
Conclusions of the Council of the EU and of the Member States meeting within the Council on Counter-Terrorism, 20 November 2015;  
OJC274, 19.9.1996, p. 18  
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).

## VII. EUROSUR

EUROSUR is a common framework for information exchange and cooperation among all national authorities with responsibility for the surveillance of the external land and sea borders. Since it became operational at the end of 2013, it has considerably improved the situational awareness at the external borders and in the pre-frontier area and it has contributed to saving migrants' lives on many occasions. This is largely owed to the efforts of Frontex, as also outlined in the report presented this month by Frontex to the European Parliament and to the Council on the implementation of the EUROSUR components falling under its responsibility.

The Commission has today adopted a revised **EUROSUR Handbook**, providing guidance to Member States authorities on the implementation and management of EUROSUR<sup>15</sup>.

With thousands of people arriving every day at certain sections of the external border, it is clear that Member States also need to be able to react quickly and in a coherent manner. While the legislative proposal for the European Border and Coast Guard creates a stronger Agency, the national coordination centres for border surveillance, established in accordance with the EUROSUR Regulation, play a crucial role and Member States should make better use of them in strengthening their reaction capability.

The EUROSUR Handbook describes in detail the tasks of these national coordination centres, including their cooperation with other national authorities and how to manage resources and personnel and the national border surveillance systems. The Handbook defines how national coordination centres and Frontex exchange information on incidents, patrols and intelligence and coordinate their reaction at the different border sections. Finally, the Handbook provides technical guidelines for the management of the EUROSUR communication network and of classified information.

## VIII. CONCLUSION

The measures adopted today constitute a necessary step forward towards effective **European integrated border management**.

The Commission calls on the European Parliament and the Council to give the highest priority to these proposals, and in particular to the draft Regulation on the **European Border and Coast Guard**, so that the confidence of citizens in Europe's external borders can be restored and the future integrity of the Schengen area of free movement without internal borders can be guaranteed.

Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 23 October 2013 establishing the European Border Surveillance System (Eurosir), OJ L295, 6.11.2013, p. 11.