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NOTE

From: Presidency
To: JHA Counsellors/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)
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 Presidency compromise suggestions with regard to draft Articles 18 and 19 of the aforementioned proposal for the purpose of the meeting of JHA Counsellors on 4 March 2016. The Presidency intends to include the results of that meeting in a text to be submitted to Coreper on 9 March 2016 with a view to obtaining agreement in principle on a number of provisions.

It is noted that the new (vis-à-vis doc. 6483/16) proposed changes are highlighted in bold, underline and strikethrough.

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 **the Agency for** sufficient support by means of **operations actions** as mentioned in Articles 14, 16 or 17 of this Regulation **or is not sufficiently cooperating on the implementation of these measures**, 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 ~~e~~Commission 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. **In order to mitigate the risk of putting in jeopardy the Schengen area** ~~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~~ three 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~~ seven 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 or staff involved in return-related tasks 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).
8. If the Member State concerned does not comply within 30 days with the Council decision and does not **sufficiently** cooperate with the Agency as provided for under paragraph 6, that Member State shall without delay inform the Commission and Council in writing of its reasons. The Council may, **where the overall functioning of the area without internal border control is at risk as a result of those circumstances**, as a last resort and as a measure to protect the common interests within the area without internal border control, and insofar as those circumstances constitute a serious threat to public policy or internal security within the area without internal border control or within parts thereof, **taking into account the principles of proportionality and necessity**, 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 **sufficient** cooperation persists. The Council's recommendation shall be based on a Commission proposal.
- In the event that the recommendation referred to in this paragraph is not implemented by a Member State, that Member State shall without delay inform the Commission in writing of its reasons.

In such a case, the Commission shall present a report to the European Parliament and to the Council assessing the reasons provided by the Member State concerned and the consequences for protecting the common interests of the area without internal border control.

Article 26 (2) subparagraphs 2 to 4 and Article 26(4) and (5) of Regulation **1051/2013** **562/2006** shall apply accordingly.

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 **and other relevant staff** 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 or 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 or other relevant staff, corresponding to the profiles identified by the decision of the Management Board.
- 5a. Each Member State shall **be responsible for the contribution of** contribute a fixed percentage of border guards or other relevant staff to the number of border guards established in paragraph 5, according to as enlisted in annex I.
- 5b. *[The Management Board may, based on a proposal of the Executive Director, decide to deviate from these fixed percentages regarding Member States contribution, as long as the total number of border guards and other relevant staff stays the same.]*

- 5c. Member States shall make the border guards **and/or other relevant** staff from the Rapid Reserve Pool available for deployment at the request of the Agency. In case a **vulnerability assessment and the** risk analyses **and if available, a vulnerability assessment,** show that a Member State **is faced with a situation-pressure at the external border** that would substantially affect the discharge of national tasks, the contribution **for the deployment of the rapid border intervention of the Member State concerned** shall be half of the fixed percentage of Member States contribution in annex I. **A host Member State where a rapid border intervention is taking place shall not contribute to the deployment from its fixed percentage contribution of the rapid reserve pool. The Management Board, based on a proposal of the Executive Director, shall decide how the shortage arisen shall be filled.**
- 5d **The Commission shall be empowered to adopt delegated acts in accordance with article xx to amend Annex I in order to modify the fixed percentage of Member States contribution.**
- It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts.**
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 and other relevant staff from their national pool which they are able to make available within five seven working days from the start of the rapid border intervention. Member States shall make the border guards or other relevant staff 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 ease principle 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 or other relevant staff available for secondment, unless that would seriously affect the discharge of national tasks. In such situations Member States may recall their seconded border guards **or other relevant staff**.

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 and other relevant staff 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.

Table of contributions, on the basis of the percentage that will be provided by each Member State, to the minimum total number of 1,500 border guards and other relevant staff, according to Art. 19(5a) - this percentage is also expressed numerically.

Austria	34	2,3%
Belgium	30	2,0%
Bulgaria	40	2,7%
Croatia	65	4,3%
Cyprus	8	0,5%
Czech Republic	20	1,3%
Denmark	29	1,9%
Estonia	18	1,2%
Finland	30	2,0%
France	170	11,3%
Germany	225	15,0%
Greece	50	3,3%
Hungary	65	4,3%
Italy	125	8,3%
Latvia	30	2,0%
Lithuania	39	2,6%
Luxembourg	8	0,5%
Malta	6	0,4%
Netherlands	50	3,3%
Poland	100	6,7%
Portugal	30	2,0%
Romania	75	5,0%
Slovakia	35	2,3%
Slovenia	35	2,3%
Spain	111	7,4%
Sweden	34	2,3%
Liechtenstein	*	
Norway	20	1,3%
Iceland	2	0,1%
Switzerland	16	1,1%
Total	1500	100,0%

- Liechtenstein will contribute through proportional financial support