Council of the European Union

Brussels, 20 March 2019
(OR. en)

7735/19

Interinstitutional File: 2018/0330(COD)

FRONT 116
SIRIS 52
CODEC 749
COMIX 170

NOTE

From:	Mr Jiří Buriánek, European Committee of the Regions
On:	12 March 2019
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council - Opinion of the European Committee of the Regions

Delegations will find attached a copy of the above-mentioned Opinion. The opinion is available in all EU languages on the following website:

https://cor.europa.eu/EN/our-work/Pages/OpinionTimeline.aspx?opId=CDR-6213-2018

European Committee of the Regions

CIVEX-VI-039

133rd plenary session, 6-7 February 2019

OPINION

Proposal for a Regulation on the European Border and Coast Guard

THE EUROPEAN COMMITTEE OF THE REGIONS

- recognises that the effective control of the EU's external borders is an important integral part of a comprehensive EU policy on migration, and in this context the proposed reinforcement of the European Border and Coast Guard may be necessary; underlines however, as stated in the recent CoR opinion on the asylum and migration fund, that the growth of financial and operational resources for border protection must be matched by corresponding efforts to enhance the other aspects of the EU's migration policy in order to guarantee a balanced approach;
- emphasises the fact that the temporary reintroduction of border controls at internal borders severely jeopardises the ability of neighbouring regions to cooperate with each other, and moreover has severe impacts on regional economies, and that therefore, effective external border controls are essential;
- recognises as necessary that obligations are laid on the Member States to contribute to the Agency's joint operations, but is concerned about the proposal to create a standing corps of up to 10 000 operational staff, as the deployment of national border guards and national staff to the Agency may result in a possible brain drain; underlines that the creation of such new structures must not place an additional burden on local and regional authorities, especially in border regions; or endanger the performance of tasks carried out at the external borders by existing national, regional or local structures, and therefore proposes a more realistic and gradual establishment of the standing corps in Annex I;
- stresses that an effective return policy is a key element of a comprehensive approach to migration and that the Agency must, therefore, be able to support Member States in the area of returns, in compliance with international and EU law, ensuring that the principle of *non-refoulement* is respected;
- stresses the multi-actor framework in which border management takes place and the role that the local and regional level can have within this framework, as reflected in Article 22. Notes, in this context, that the local and regional authorities concerned (such as those managing border and coastal regions) should be properly involved in the exchange of information, especially as regards the national coordination centres (Article 21) and in the preparation of national strategies for integrated border management (Article 8).

COR-2018-06213-00-01-AC-TRA (EN) 1/13
Rue Belliard/Belliardstraat 101 | 1040 Bruxelles/Brussel | BELGIQUE/BELGIË | Tel. +32 22822211
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EN

Rapporteur-general

Anna Magyar (HU/EPP), Vice-President of the County Council of Csongrád Megye

Reference document

COM(2018) 631 final
Proposal for a regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council
A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018

Opinion of the European Committee of the Regions – Proposal for a Regulation on the European Border and Coast Guard

I. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1
COM(2018) 631 final, Article 2 (16)
Definitions

Text proposed by the Commission	*CoR amendment*
'operational staff' means border guards, return escorts, return specialists and other relevant staff constituting the "European Border and Coast Guard standing corps". In accordance with the ***three*** categories defined under Article 55(1), operational staff is either employed by the European Border and Coast Guard Agency as statutory staff (category 1), seconded to the Agency by the Member States (category 2) or provided for short term deployment by the Member States (**category** 3). Operational staff is to act as members of border management teams, migration management support teams or return teams ***having*** executive powers. Operational staff also includes the statutory staff responsible for the functioning of the central unit of ETIAS;	'operational staff' means border guards, return escorts, return specialists and other relevant staff constituting the "European Border and Coast Guard standing corps". In accordance with the ***four*** categories defined under Article 55(1), operational staff is either employed by the European Border and Coast Guard Agency as statutory staff (category 1), seconded to the Agency by the Member States (category 2) or provided for short term deployment ***or for rapid reaction interventions*** by the Member States (**categories** 3 ***and 4***). Operational staff is to act as members of border management teams, migration management support teams or return teams. ***Category 2, category 3 and category 4 staff may exercise*** executive powers. Operational staff also includes the statutory staff responsible for the functioning of the central unit of ETIAS;

Reason

Amendment 2
COM(2018) 631 final, Article 3 (a)
European Border and Coast Guard Agency

Text proposed by the Commission	*CoR amendment*
(a) border control, including measures to facilitate legitimate border crossings and, where appropriate, measures related to the prevention ***and*** detection of cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism, and measures related to the referral of persons who are in need of, or wish to apply for, international protection;	(a) border control, including measures to facilitate legitimate border crossings and, where appropriate, measures related to the prevention, detection ***and stopping*** of cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism, and measures related to the referral of persons who are in need of, or wish to apply for, international protection;

Reason
The main border management activities must also include providing an operational solution to combatting cross-border crime.

Amendment 3

COM(2018) 631 final, Article 8 (4), (6) and (7)

Multiannual strategic policy cycle for European Integrated Border Management

Text proposed by the Commission	*CoR amendment*
(4) ***B***ased on the strategic risk analysis for European Integrated Border Management referred to in Article 30(2), the Commission shall be empowered to adopt delegated acts in accordance with Article 118 developing a multiannual strategic policy for European Integrated Border Management. That delegated act shall define policy priorities and provide the strategic guidelines for the following four years in relation to the components set out in Article 3. (…) (6) In order to implement the delegated act referred to in paragraph 4, the Member States shall establish their national strategies for integrated border management through close cooperation between all national authorities responsible for the management of borders and return. Those national strategies shall be in line with Article 3, the delegated act referred to in paragraph 4 and the technical and operational strategy referred to in paragraph 5. (7) Forty-two months after the adoption of the delegated act referred to in paragraph 4, the Commission shall carry out, with the support of the Agency, a thorough evaluation of its implementation. The results of the evaluation shall be taken into account for the preparation of the following cycle.	(4) ***By [tbc] the Commission shall present the European Parliament and the Council with a draft multiannual strategic policy for the first multiannual strategic policy cycle*** based on the strategic risk analysis for European Integrated Border Management referred to in Article 30(2). ***Within [tbc] of its presentation by the Commission, a meeting between the European Parliament, the Council and Commission shall be convened to discuss the draft multiannual strategic policy. Following that discussion,*** the Commission shall be empowered to adopt delegated acts in accordance with Article 118 developing a multiannual strategic policy for European Integrated Border Management. That delegated act shall define policy priorities and provide the strategic guidelines for the following four years in relation to the components set out in Article 3. (…) (6) In order to implement the delegated act referred to in paragraph 4, the Member States shall establish their national strategies for integrated border management through close cooperation between all national authorities responsible for the management of borders and return ***and in consultation with relevant regional and local authorities of the sub-national territories concerned***. Those national strategies shall be in line with Article 3, the delegated act referred to in paragraph 4 and the technical and operational strategy referred to in paragraph 5. (7) Forty-two months after the adoption of the delegated act referred to in paragraph 4, the Commission shall carry out, with the support of

	the Agency, a thorough evaluation of its implementation. The results of the evaluation shall be taken into account for the preparation of the following cycle. ***The Commission shall communicate the evaluation to the Council, to the European Parliament and to the European Committee of the Regions.***

Reason
The national strategies for integrated border management should be consulted with LRAs of those territories that are highly concerned by ongoing, foreseeable or potential strong migratory flows or other challenges with serious consequences for the local or regional level. Furthermore, the Commission should report back to the co-legislators (Am. 23 LIBE draft opinion), as well as to the political representation of the local and regional level at the EU level.

Amendment 4

COM(2018) 631 final, Article 21 (1) and (3)

National coordination centre

Text proposed by the Commission	*CoR amendment*
(1) Each Member State shall designate, operate and maintain a national coordination centre which shall coordinate, and exchange information among all authorities with a responsibility for external border control at national level, as well as with the other national coordination centres and the Agency. Each Member State shall notify the establishment of its national coordination centre to the Commission, which shall forthwith inform the other Member States and the Agency thereof. (…) (3) The national coordination centre shall: (a) ensure the timely exchange of information and timely cooperation between all national authorities with a responsibility for external border control, as well as with other national coordination centres and the Agency; (…)	(1) Each Member State shall designate, operate and maintain a national coordination centre which shall coordinate, and exchange information among all authorities with a responsibility for external border control at national level, ***and, where appropriate with relevant regional and local authorities,*** as well as with the other national coordination centres and the Agency. Each Member State shall notify the establishment of its national coordination centre to the Commission, which shall forthwith inform the other Member States and the Agency thereof. (…) (3) The national coordination centre shall: (a) ensure the timely exchange of information and timely cooperation between all national authorities with a responsibility for external border control, ***and, where appropriate, with relevant regional and local authorities,*** as well as with other national coordination centres and the Agency; (…)

Reason
To ensure proper dissemination and exchange of information to the local and regional level, when they are concerned.

Amendment 5

COM(2018) 631 final, Article 39 (3)(m)

Operational plan for joint operations

Text proposed by the Commission	*CoR amendment*
(m) procedures setting out a mechanism to receive and transmit to the Agency a complaint against all persons participating in a joint operation or rapid border intervention, including border guards or other relevant staff of the host Member State and members of the teams alleging breaches of fundamental rights in the context of their participation in a joint operation or rapid border intervention;	(m) ***an accelerated procedure for dealing with third-country nationals who illegally enter the territory of a Member State***;
	(***n***) procedures setting out a mechanism to receive and transmit to the Agency a complaint against all persons participating in a joint operation or rapid border intervention, including border guards or other relevant staff of the host Member State and members of the teams alleging breaches of fundamental rights in the context of their participation in a joint operation or rapid border intervention;
(n) logistical arrangements including information on working conditions and the environment of the areas in which the joint operation is foreseen to take place.	(***o***) logistical arrangements including information on working conditions and the environment of the areas in which the joint operation is foreseen to take place.

Reason
It is also necessary, during a joint operation, to set out an accelerated procedure for third-country nationals who illegally enter the territory of a Member State, so that a return decision can be issued for them as soon as possible.

Amendment 6

COM(2018) 631 final, Article 55(1)

European Border and Coast Guard standing corps

Text proposed by the Commission	*CoR amendment*
1. A European Border and Coast Guard standing corps of 10 000 operational staff shall be part of the Agency. This standing corps shall be composed of the following ***three*** categories of staff in accordance with the annual availability scheme set in Annex I:	1. A European Border and Coast Guard standing corps of 10 000 operational staff shall be part of the Agency. This standing corps shall be composed of the following ***four*** categories of staff in accordance with the annual availability scheme set in Annex I:
(a) Category 1: operational staff members of the Agency recruited in accordance with Article 94 (1) and deployed in operational areas in	(a) Category 1: operational staff members of the Agency recruited in accordance with Article 94 (1) and deployed in operational areas in

accordance with Article 56; (b) Category 2: operational staff seconded from Member States to the Agency for a long term duration as part of the standing corps; in accordance with Article 57; (c) Category 3: operational staff from Member States provided to the Agency for a short term deployment as part of the standing corps in accordance with Article 58.	accordance with Article 56; (b) Category 2: operational staff seconded from Member States to the Agency for a long term duration as part of the standing corps; in accordance with Article 57; (c) Category 3: operational staff from Member States provided to the Agency for a short term deployment as part of the standing corps in accordance with Article 58; ***(d) Category 4: operational staff of the rapid reaction pool.***

Reason
Adding a fourth category of operational staff would alleviate a possible burden on LRAs in terms of deployments, while at the same time complementing the standing corps for rapid border interventions (Am. 55 and Am. 64 of draft LIBE report).

Amendment 7

COM(2018) 631 final, Article 64(6)

Technical equipment pool

Text proposed by the Commission	*CoR amendment*
[…] If the minimum number of items of technical equipment proves to be insufficient to carry out the operational plan agreed for such activities, the Agency shall revise it on the basis of justified needs and of an agreement with the Member States.	[…] If the minimum number of items of technical equipment proves to be insufficient to carry out the operational plan agreed for such activities, the Agency shall revise it ***and make sure those items are available,*** on the basis of justified needs and of an agreement with the Member States.

Reason
In order to guarantee the implementation of the operational plans, the Agency shall, where appropriate, ensure a minimum amount of technical equipment is available, after examining the needs of the individual operational plans.

Amendment 8

COM(2018) 631 final, Article 84(1) new (e)

Accreditation document

Text proposed by the Commission	*CoR amendment*
(c) a recent digitised photograph; ***and*** (d) tasks authorised to be performed during the deployment.	(c) a recent digitised photograph; (d) tasks authorised to be performed during the deployment; ***and***

	(e) a specific identification number.

Reason
Each document must contain the specific identification number of the holder of the card that is to be assigned according to the type of deployment and their role during deployment. A specific identification number will also help to speed up identification in the registration system.

Amendment 9

COM(2018) 631 final, Article 102 (4-6)

Meetings of the management board

Text proposed by the Commission	***CoR amendment***
4. Ireland shall be invited to attend the meetings of the management board.	4. Ireland shall be invited to attend the meetings of the management board ***as an observer.***
5. The United Kingdom shall be invited to attend the meetings of the management board taking place before the date of withdrawal of the United Kingdom from the Union.	5. The United Kingdom shall be invited ***as an observer*** to attend the meetings of the management board taking place before the date of withdrawal of the United Kingdom from the Union.
6. Representatives of the European Union Agency for Asylum and EUROPOL shall be invited to attend the meetings of the Management Board. The management board may also invite a representative of relevant Union institutions, bodies, offices and agencies.	6. Representatives of the European Union Agency for Asylum and EUROPOL shall be invited to attend the meetings of the Management Board ***as observers***. The management board may also invite a representative of relevant Union institutions, bodies, offices and agencies ***to act as observers.***

Reason
Only members are entitled to vote in the management board's meetings. Other entities shall be invited and may participate in the meeting as observers, without having the right to vote.

Amendment 10

COM(2018) 631 final, Article 116 (1)

Evaluation

Text proposed by the Commission	***CoR amendment***
(c) the implementation of European cooperation on coast guard functions;	(c) the implementation of European cooperation on ***border and*** coast guard functions;

Reason
Under Article 4, the Agency guarantees the existence of the European Border and Coast Guard.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

1. reiterates the need to strengthen the supportive role and mandate of the European Border and Coast Guard Agency (hereafter: Agency), notably as regards cooperation with third countries, with a view to ensuring the effective protection of the EU's external borders and in order to step up significantly the effective return of illegal migrants. At the same time, it points out that an expanded mandate brings the need to strengthen safeguards to ensure that all its actions fully respect fundamental rights and the international obligations of the EU and its Member States, in particular the principle of *non-refoulement*, and to avoid the Agency's involvement in any operation in which fundamental rights compliance could not be ensured;

2. recognises that the effective control of the EU's external borders is an important integral part of a comprehensive EU policy on migration, and in this context the proposed reinforcement of the European Border and Coast Guard may be necessary; underlines however, as stated in the recent CoR opinion on the asylum and migration fund, that the growth of financial and operational resources for border protection must be matched by corresponding efforts to enhance the other aspects of the EU's migration policy in order to guarantee a balanced approach;

3. stresses the fact that free movement of EU citizens is one of the EU's major achievements, and in an area without internal borders, undocumented migration across the external borders has serious legal, economic and security related implications for the functioning of the Schengen system;

4. emphasises the fact that the temporary reintroduction of border controls at internal borders severely jeopardises the ability of neighbouring regions to cooperate with each other, and moreover has severe impacts on regional economies, and that therefore, effective external border controls are essential;

5. underlines the fact that the effective protection of external borders contributes to the fight against human trafficking and to definitively breaking the business models of smugglers, thus preventing tragic loss of life; moreover, the effective control of external borders can contribute to preventing certain threats to internal security, public order and public health in local and regional authorities; especially in those situated along the external borders of the EU;

6. considers that the precondition for a properly-functioning migration policy is a comprehensive approach to migration that includes enhanced control of the EU's external borders as well as a functioning common European asylum system, a common approach to deal with people in need of international protection, a coherent system of legal pathways for migration and a much more consistent policy on addressing the external dimension and causes of migration;

7. stresses that an effective return policy is a key element of a comprehensive approach to migration and that the Agency must, therefore, be able to support Member States in the area of returns, in compliance with international and EU law, ensuring that the principle of *non-refoulement* is respected;

8. welcomes the enhanced mandate of the Agency to ensure comprehensive support to Member States and third countries in the field of effective and humane return operations. This may also include in specific cases the possibility to provide operational support to third countries upon request, without geographical limitations, and in order to prevent the escalation of crisis situations; such cases however require clear guarantees and safeguards concerning the respect of fundamental rights and international law, as well as appropriate mechanisms to ensure the accountability of the Agency for its actions beyond Member States' jurisdiction;

9. stresses the fact that the protection of external borders is a joint competence of the EU and Member States; the proposal should ensure that the EC oversees the coordination and control of the external borders of the Union;

10. recognises as necessary that obligations are laid on the Member States to contribute to the Agency's joint operations, but is concerned about the proposal to create a standing corps of up to 10 000 operational staff, as the deployment of national border guards and national staff to the Agency may result in a possible brain drain; underlines that the creation of such new structures must not place an additional burden on local and regional authorities, especially in border regions; or endanger the performance of tasks carried out at the external borders by existing national, regional or local structures, and therefore proposes a more realistic and gradual establishment of the standing corps in Annex I;

11. is concerned about the lack of an appropriate assessment of several aspects of the proposal's impact, including its potential territorial impact of and finds it necessary to explore the possible ways in which the supportive role of the Agency could be ensured in the most cost-effective way. Such an impact assessment should also reflect on the financial implications in both normal and crisis situations, as well as the complex legal issues which could arise in particular with regard to operations outside the EU territory;

12. stresses the multi-actor framework in which border management takes place and the role that the local and regional level can have within this framework, as reflected in Article 22. Notes, in this context, that the local and regional authorities concerned (such as those managing border and coastal regions) should be properly involved in the exchange of information, especially as regards the national coordination centres (Article 21) and in the preparation of national strategies for integrated border management (Article 8);

13. underlines that irregular migration puts significant pressures on local and regional authorities and creates challenges in targeting limited public services towards those to whom we have an international obligation to provide refuge and asylum. Underlines therefore that swift returns of unsuccessful asylum applicants and ensuring the respect of legal channels of migration are crucial;

14. believes that the protection of the external borders of the EU is a common interest, and that the objectives of the proposed legislation cannot be sufficiently achieved by the Member States and regional authorities alone, and that the proposal therefore complies with the principle of subsidiarity and proportionality.

Brussels, 6 February 2019

The President
of the European Committee of the Regions

Karl-Heinz Lambertz

The Secretary-General
of the European Committee of the Regions

Jiří Buriánek

COR-2018-06213-00-01-AC-TRA (EN) 11/13

III. PROCEDURE

Title	Proposal for a Regulation on the European Border and Coast Guard
Reference(s)	COM(2018) 631
Legal basis	Article 307 TFEU
Procedural basis	Rule 43
Date of Council/EP referral/Date of Commission letter	24 October 2018
Date of President's decision	21 December 2018
Commission responsible	CIVEX
Rapporteur-general	Anna Magyar (HU/EPP)
Analysis	21 December 2018
Discussed in commission	25 January 2019
Date adopted by commission	N/A
Result of the vote in commission (majority, unanimity)	N/A
Date adopted in plenary	6 February 2019
Previous Committee opinions	– Opinion on Asylum and Migration Fund, rapporteur-general Peter Bossman (SI/PES), COR-2018-04007-00-01-AC – Opinion on the Implementation of the European Agenda on Migration, rapporteur Dimitrios Kalogeropoulos ((EL/EPP), COR-2017-05048-00-00-AC – Opinion on the protection of children in migration, rapporteur Yoomi Renström (SE/PES), COR-2017-02782-00-01-AC – Opinion on Migration on the Central Mediterranean Route, rapporteur Hans Janssen (NL/EPP), COR-2017-01261-00-02-AC – Opinion on the Reform of the Common European Asylum System Package II and a Union Resettlement Framework, rapporteur Vincenzo Bianco (IT/PES), COR-2016-05807-00-00-AC – Opinion on the Reform of the Common European Asylum System, rapporteur Vincenzo Bianco (IT/PES), COR-2016-03267-00-00-AC – Opinion on the Partnership Framework with third countries on Migration, rapporteur Peter Bossman (SL/PES), COR-2016-04555-00-00-AC – Opinion on Legal Migration, rapporteur Olgierd Geblewicz (PL/EPP), COR-2016-03699-00-00-AC – Opinion on the Action Plan on Integration, rapporteur Karl Vanlouwe (BE/EA), COR-2016-04438-00-00-AC – Opinion on the Protection of refugees in their areas of origin: a new perspective 2016, rapporteur Hans Janssen (NL/EPP), COR-2015-06328-00-00-AC – Opinion on the European Agenda on Migration, rapporteur François Decoster (FR/ALDE), COR-2015-

	02607-00-00-AC
Date of subsidiarity monitoring consultation	-