European Border and Coast Guard

2015/0310(COD) - 06/06/2016 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Artis PABRIKS (EPP, LV) on the 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.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows :

Strengthening the Agency's tasks: Members called for the strengthening of the Agency's mission so as to ensure a European integrated border management at the external borders **with a view to monitoring efficiently the crossing of the external borders**, and to addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension and to ensuring a high level of internal security within the Union, in full respect for fundamental rights, while safeguarding the free movement of persons therein.

European integrated border management shall consist of the following components:

border control, including measures to facilitate legitimate border crossings and measures related to the prevention and detection of cross-border crime, such as the criminal smuggling of persons, trafficking in human beings and terrorism, where appropriate;

search and rescue operations for persons in distress at sea;

the identification, provision of initial information to and onward referral of persons arriving at the external borders who are in need of, or wish to apply for, international protection.

The European Border and Coast Guard shall implement the European integrated border management as a **shared responsibility of the Agency and of the national authorities** responsible for border management, including coast guards to the extent that they carry out maritime border surveillance operations and any other border control tasks. Nonetheless, Member States shall retain primary responsibility for the management of their section of the external border.

European integrated border management strategy: according to Members, the Commission should present a legislative proposal for a European integrated border management strategy setting out general guidelines, the objectives to be met and the key actions to be taken in order to establish a fully functioning European integrated border management system.

Cooperation with other agencies: the report called for cooperation on coast guard functions, in particular by means of enhanced collaboration between national authorities, the Agency, the European Fisheries Control Agency and the European Maritime Safety Agency.

Vulnerability assessments: Members recalled that the vulnerability assessment should be a preventive measure carried out by the Agency on a continuous basis, complementing the Schengen evaluation and monitoring mechanism set up pursuant to Council Regulation (EU) No 1053/2013. The vulnerability assessment is intended to **allow the Agency to assess the capacity and preparedness of Member States to tackle upcoming challenges**, including present and future threats and pressures at the external borders, to identify, especially for those Member States facing specific and disproportionate pressures, possible

immediate consequences at the external borders and subsequent consequences on the functioning of the Schengen area, and to assess their capacity to contribute to the rapid reaction pool.

Elements to be monitored shall include the **capacity to handle the potential arrival of large numbers of persons**, many of whom may be in need of international protection, humanely and with full respect for fundamental rights, and the availability of technical equipment, systems, capabilities, resources, infrastructure and adequately skilled and trained personnel in sufficient numbers.

The vulnerability assessment shall be based on information provided by the Member State and by the liaison officer, on information derived from Eurosur.

The results of the vulnerability assessment shall be transmitted on a regular basis and at least every six months to the European Parliament and the Council.

Emergency response measure in case of migratory pressure in a Member State: where Member States face disproportionate migratory challenges characterised by large influxes of mixed migratory flows the Member States should be able to rely on the increased operational and technical reinforcement in **hotspot areas** (an area at an external border where a Member State faces disproportionate migratory pressures and where relevant Union Agencies assist the Member State in an integrated manner) by the migration management support teams composed of teams of experts deployed from Member States by the Agency and the European Asylum Support Office, and from Europol or other Guard Agency and the European Asylum Support Office, and from Europol or other relevant Union Agencies. In hotspot areas the different agencies and Member States should operate within their respective mandates and powers.

Implementing measures by the Council: in cases where a Member State does not take the necessary corrective action in line with the vulnerability assessment or in the event of disproportionate migratory pressure at the external borders, **rendering the control at the external border ineffective** to an extent which risks putting in jeopardy the functioning of the Schengen area as an area without internal border control, a unified, rapid and effective response should be delivered at Union level. For this purpose, and to ensure better coordination at Union level, the Commission should identify the measures to be implemented by the Agency.

For the adoption of such measures, taking into account sovereignty-related aspects and the political sensitivity thereof, which touch on national executive and enforcement powers, **implementing powers should be conferred on the Council**, which should act on a proposal from the Commission.

Organisation of returns: the Agency should provide the necessary assistance to Member States in organising joint return operations and return interventions of irregular migrants, **without entering into the merits of return decisions** issued by the Member States, and in full respect for fundamental rights.

It is stated that forced return escorts shall remain subject to the disciplinary measures of their home Member State in the course of a return operation or return intervention.

The Agency shall not coordinate, organise or propose return operations or return interventions to any third country where risks of fundamental rights violations or serious deficiencies have been identified.

The Executive Director shall, in close cooperation with the Fundamental Rights Officer, **withdraw the financing** of a joint operation, or a rapid border intervention, a pilot project, migration management support teams, return operation, return intervention or working arrangement or suspend or terminate, in whole or in part such activities, 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.

Respect du principe de non-refoulement : l'existence éventuelle d'un accord entre un État membre et un pays tiers n'exempte pas l'Agence ou les États membres des obligations qui leur incombent au titre du droit de l'Union et du droit international, eu égard en particulier au respect du principe de non-refoulement, lorsqu'ils savent ou sont censés savoir que les défaillances systémiques de la procédure d'asile et des conditions d'accueil des demandeurs d'asile dans ce pays tiers constituent des motifs sérieux de croire que le demandeur d'asile court un risque grave.

Respecting the principle of non-refoulement: the possible existence of an arrangement between a Member State and a third country does not absolve the Agency or the Member States from their obligations under Union or international law, in particular as regards compliance with the principle of non-refoulement, where they are aware or ought to be aware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that third country amount to substantial grounds for believing that the asylum seeker would face a serious risk of being subjected to inhuman or degrading treatment.

Respecting fundamental rights: the European Border and Coast Guard and the Agency should fulfil their tasks in full respect for fundamental rights, in particular the Charter of Fundamental Rights of the European Union (the Charter), the Convention Relating to the Status of Refugees and obligations related to access to international protection, in particular the principle of non-refoulement, etc.

Given the increased number of its tasks, the Agency should further **develop and implement a strategy to monitor and ensure the protection of fundamental rights**. To that end it should provide its Fundamental Rights Officer with adequate resources and staff corresponding to its mandate and size.

Financial resources: in order to guarantee the autonomy of the Agency, it should be granted an autonomous budget whose revenue comes essentially from a contribution from the Union. The Agency shall finance 100 % of the necessary training for border guards included in the rapid reaction pool referred to in the Regulation.

Obligation to make the accounts more transparent: the Agency shall be accountable to the European Parliament and the Council. The Agency should be as transparent as possible about its activities, without jeopardising the attainment of the objective of its operations. It should make public all relevant information on all of its activities, and should ensure that the public and any interested party are rapidly given information with regard to its work.

The Agency shall adopt internal rules requiring the members of their bodies and their staff members to avoid any situation liable to give rise to a conflict of interest.

Various measures: a number of amendment have been adopted to enhance the following measures: (i) the protection of personal data used by the Agency; (ii) the filing of complaints as regards the violation of fundamental rights by the Agency. Where a border guard or a seconded national expert is found to have violated fundamental rights or international protection obligations, the Agency shall request the Member State to remove that border guard or seconded national expert immediately from the activity of the Agency or the rapid reaction pool; (iii) on governance, so that the European Parliament and the Council shall, by common accord, appoint the Executive Director and the Deputy Executive Director for a period of five years.

Report: the Agency shall submit a report to the European Parliament on an annual basis of the number of technical equipment that each Member State has committed to the technical equipment pool. This report shall list the Member States that invoked the exceptional situation referred to the Regulation in the previous year and include the reasons and information provided by the Member State concerned.