

## SOURCE Legal Card – Commission proposal for a European Border and Coast Guard (EBCG)

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### BACKGROUND

- In December 2015, the Commission launched a **proposal for a Regulation on the ‘European Border and Coast Guard’** (EBCG) in [Communication COMM\(2015\) 671](#).
- **The proposal builds on the [Frontex Regulation \(amended in 2011\)](#)**, already stipulating ‘European Border Guard Teams’ as the main operational units of the Agency. [A Commission-funded study](#) explored different scenarios in 2014, and the Commission hinted at proposing the EBCG in its [European Agenda on Migration](#) in May 2015.
- This proposal touches on **the competence division between the EU and its Member States for border control and the mandatory nature of Member States’ contributions** to the Agency’s operations.
- The **legal bases** are Articles 77(2)(b) and (d) and 79(2)(c) of the Treaty on the Functioning of the European Union (TFEU). The proposal will be taken up by the legislative process involving the European Parliament and the Council under the **Ordinary Legislative Procedure** (Article 294 TFEU).
- The proposal **aims to repeal** Regulation (EC) 2007/2004 ([Frontex Regulation](#)), [Regulation \(EC\) 836/2007](#) (on Rapid Border Intervention Teams (RABITs)), and [Council Decision 2005/267/EC](#) on ‘ICO-Net’, an ‘information and coordination network for Member States’ migration management services’. The 2011 [amending Frontex Regulation \(EU\) 1168/2011](#) would also be superseded. In addition, the [Regulation \(EU\) 656/2014](#) on the rules for Frontex external sea borders surveillance and the [Regulation \(EU\) 1052/2013](#) on EUROSUR are not formally affected.

## THE MAIN ELEMENTS

- [Frontex](#) will become the ‘**European Border and Coast Guard Agency**’, forming the EBCG together with the Member States’ border and coast guard services (Article 3(1)). The Agency and the Member States ‘shall be subject to a duty to cooperate in good faith’ and the national authorities shall provide the Agency with all information necessary (Articles 8 and 9).
- The risk analysis competence of the Agency is enlarged to **cross-border crimes**, including terrorism (Article 10(3)).
- The Agency shall place **liaison officers in Member States** who ‘shall take instructions only from the Agency’, and the Agency shall carry out a ‘**vulnerability assessment**’ of the ‘technical equipment, systems, capabilities, resources and contingency plans of the Member States regarding border control’ (Articles 11 and 12).
- Following the vulnerability assessment or in other situations ‘**requiring urgent action**’, the Executive Director may decide ‘corrective measures’. If not followed, the Commission may adopt an Implementing Act (see Article 291 TFEU) containing Agency measures to be taken in a Member State. This concerns the controversial ‘**right to intervene**’. The Member State ‘shall comply’ and ‘immediately cooperate’ with the Agency (Article 18). An **operational plan** needs to be agreed between the Agency and the host member state of an operation (Articles 15 & 16).
- The Agency will have a ‘**rapid reserve pool**’ of **EBCG Teams**, being a ‘standing corps’ of minimum 1,500 national border guards to which Member States ‘shall make available’ 2-3% of their national border and coast guard staff. They should be deployable within three working days (Article 19). Pools are also foreseen for ‘forced return monitors’, ‘forced return escorts’ and ‘return specialist’ (Articles 28-30) and for technical equipment (Article 38, already stipulated in the current Frontex Regulation).
- Notwithstanding the legislative procedure, **the budget of Frontex continues to increase substantially** to 238 million EUR for 2016, from 143 million EUR in 2015.

## THE MAIN ELEMENTS (CONTINUED)

- A **'Return Office'** will be set up to 'coordinate at technical and operational level the return activities of the Member States'. The Agency can propose return operations at its own initiative. It can coordinate **'mixed return operations'** with returnees from one third country (if member to the European Convention on Human Rights) to another third country. It will also be competent to support 'consular cooperation' and 'the acquisition of travel documents' (Articles 26-32).
- For **EU research and innovation funding**, the Agency will have competences to be directly involved in the EU framework programmes (currently ['Horizon 2020'](#)), including 'managing some stages of programme implementation' (Article 36).
- The Agency will have larger competences on **personal data processing**, including of persons suspected of cross-border crimes such as terrorism (Article 46).
- Other EU legal acts could be amended as well, most notably to give the **EBCG Agency access to the [Schengen Information System \(SIS\)](#) and the [Eurodac database](#)** containing the fingerprints of asylum applicants.
- The Agency will cooperate with the [European Fisheries Control Agency](#) and the [European Maritime Safety Agency](#), especially on the surveillance of the maritime domain (Article 52).
- The Agency will have the **explicit competence for operations on third country territory** (Article 53).
- Following a [recommendation by the European Ombudsman](#), the Agency will set up a **'Complaint Mechanism'** administered by the Fundamental Rights Officer to 'monitor and ensure the respect for fundamental rights in all the activities'. However, all 'complaints which are anonymous, malicious, frivolous, vexatious, hypothetical or inaccurate shall be excluded'. Complaints regarding border guards will be forwarded to their home Member States (Article 72).



## REFERENCES

- Commission, Proposal for a Regulation of the 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, ([EBCG Proposal](#)) COMM(2015) 671 final, Strasbourg, 15 December 2015.
- Parliament and Council, Regulation (EC) No 562/2006 of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders ([Schengen Borders Code – SBC](#)), *OJ* L105/1, 13 April 2006.
- Council, Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ([Frontex founding Regulation](#)), *OJ* L349/1, 25 November 2004.
- Parliament and Council, Regulation (EC) No 863/2007 establishing a mechanism for the creation of Rapid Border Intervention Teams ([RABIT Regulation](#)), *OJ* L 199/30, 31 July 2007.
- Parliament and Council, Regulation (EU) No 1168/2011 of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU ([Amended Frontex Regulation](#)), *OJ* L 304/1, 22 November 2011.
- Parliament and Council, Regulation (EU) No 656/2014 of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex at the external borders of the Member States of the EU ([Regulation on Frontex sea border surveillance operations](#)), *OJ* L 189/93, 27 June 2014.
- Parliament and Council, Regulation (EU) No 1052/2013 of 22 October 2013 establishing the European Border Surveillance System ([EUROSUR Regulation](#)), *OJ* L 295/11, 6 November 2013.
- For analysis see: Sergio Carrera and Leonhard den Hertog, [A European Border and Coast Guard: What's in a name?](#), *CEPS Paper in Liberty and Security in Europe*, No 88, March 2016.



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