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COVER NOTE

from: Speaker of the Polish Senate, Bogdan Borusewicz
date of receipt: 4 May 2010
to: Miguel Ángel Moratinos, President of the Council of the European Union

Subject: **Proposal for a Regulation of the European Parliament and the Council 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 European Union (FRONTEX)**
- Reasoned opinion in accordance with Article 6 of the Protocol (No 2) on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached a translation of the above letter.

Warsaw, 29 April 2010

**SPEAKER OF THE SENATE
OF THE REPUBLIC OF POLAND
Bogdan Borusewicz**

**Mr Miguel Ángel Moratinos
President of the
Council of the European Union**

Sir,

I have the honour to inform you that, having examined the proposal for a Regulation of the European Parliament and of the Council 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 European Union (Frontex) (COM (2010) 61) at its 53rd session held on 29 April 2010, the Senate found the proposal to be not fully compliant with the principle of subsidiarity under Article 5(3) of the Treaty on European Union.

Pursuant to the procedure provided for in Protocol No 2 of the Treaty on European Union and the Treaty on the Functioning of the European Union as regards application of the subsidiarity and proportionality principles, I hereby submit a reasoned opinion stating why the Senate considers that the proposal does not comply with the subsidiarity principle.

(Complimentary close)

Bogdan Borusewicz

OPINION
OF THE SENATE OF THE REPUBLIC OF POLAND

of 29 April 2010

on the non-compliance with the subsidiarity principle of the proposal for a Regulation of the European Parliament and of the Council 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 European Union (FRONTEX) COM (2010) 61

Having examined the proposal for a Regulation of the European Parliament and of the Council 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 European Union (Frontex) (COM (2010) 61), the Senate finds that the proposal does not comply with the subsidiarity principle under Article 5(3) of the Treaty on European Union. The following provisions are in breach of that principle:

- 1) the second subparagraph of Article 3(1), as amended by the draft Regulation, insofar as it allows Frontex to independently initiate joint operations at the external borders of the European Union – since Member States have a better understanding of local needs for the protection of their borders, the legal situation should continue to be that Frontex initiates operations at the request of the Member State concerned;

- 2) Article 3a, as amended by the draft Regulation, whereby the operational plan for activities at the external borders shall be drawn up by the Executive Director of Frontex – on account of its better knowledge of the local situation and conditions for conducting operations, the operational plan for activities at the external borders should be drawn up by the host Member State, only in cooperation with Frontex;
- 3) Article 3b(1), as amended by the draft Regulation, whereby the Management Board of Frontex shall take decisions concerning the border guards to be deployed to Frontex Support Teams – since Frontex operations must not destabilise the national border protection system, the Member State should have an influence on the number and profile of guards it deploys; this matter can only be discussed between Frontex and the Member State concerned;
- 4) Article 3c, as amended by the draft Regulation, whereby the host Member State on whose territory Frontex is operating shall be obliged to consider the views of the Frontex coordinating officer – respect for the host Member State’s sovereignty and the operational effectiveness resulting from its better knowledge of local conditions mean that the host Member State should have the deciding vote regarding operations on its territory;
- 5) Article 7, as amended by the draft Regulation, insofar as Frontex shall be entitled to unilaterally decide on the equipment that is to be made available for Frontex operations by the host Member State and the acquisition or leasing of equipment – since Frontex has no competence of its own regarding border protection and Frontex operations always take place on the territory of one of the Member States, Member States should have the final say on these matters.

SPEAKER OF THE SENATE
Bogdan BORUSEWICZ