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From: Presidency

To: Permanent Representatives Committee/Council / 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 - State of play

In the context of the serious migration and refugee crisis the EU is faced with, the Commission on 15 December 2015 in line with its Migration Agenda presented a Border Package, putting forward a series of measures. One of the key measures of the package is the proposal for a Regulation on the European Border and Coast Guard, supplemented by the two associated proposals for amending the Regulations on the European Maritime Safety Agency (EMSA) and on the Fisheries Control Agency (EFCA). This measure will contribute considerably to ensuring a credible response to the ongoing, unprecedented challenges for the common external borders and the integrity of the Schengen Area. The European Council on 17 December 2015 invited the Council to reach a position on the border guard proposal by June 2015, and the Presidency decided to pursue work on the Borders Package as a matter of absolute priority. The European Council in its conclusions adopted on 18 February 2016 reaffirmed the priority to be given by Member States to achieve swift progress in the negotiations on these proposals by concluding that “work should be accelerated with a view to reaching a political agreement under the Netherlands Presidency and to make the new system operational as soon as possible.”

The Presidency has allocated a significant part of its focus and resources¹ in meeting the above mandate regarding the proposal aiming at setting up a European Border and Coast Guard, consisting of the European Border and Coast Guard Agency and the national competent authorities responsible for border management. The critical importance of this proposal for encountering efficiently the aforementioned challenges can be evidenced by its primary objective, which is to ensure and implement, as a shared responsibility, the European integrated border management at the external borders with a view to managing migration effectively and ensuring a high level of security within the EU, while safeguarding the internal free movement.

The Presidency has decided to follow a thematic approach in the handling of this file. The most important issues have been dealt with from the outset at political level with a view to providing the necessary steering at the competent Working Party on Frontiers. In this vein, the SCIFA meeting of 15 January 2016 addressed the issues of shared responsibility between Member States and the Agency for the external border controls, the procedures under which the future Agency could intervene in a Member State for the sake of maintaining the integrity of Schengen, the vulnerability assessment to be carried out by the Agency and the mandatory contributions by Member States to the rapid reserve pool especially for border guards and other competent staff. Moreover, the informal JHA Ministerial held on 25 January 2016 further discussed the aforementioned issues and provided valuable guidance. Finally, the informal SCIFA on 15 February 2016 examined in detail the issue of the rapid reserve pool with a view to finding a balanced solution regarding contributions by Member States to the pool, and also discussed the scope of the Agency's mandate in the fight against cross-border crime and terrorism.

¹ In order to keep up with its mandate, the Presidency decided to have two-day meetings of the competent Working Party on Frontiers on the proposal every other week with meetings of the JHA Counsellors in between and address the issues which are ripe for agreement in principle to Coreper in due time.

Building on the above guidance, the Working Party on Frontiers has had a series of fruitful discussions on the proposal at its meetings on 8, 19, 28-29 January as well as 11-12 and 22-23 February 2016, where important provisions, such as the notions of European integrated border management, the shared responsibility, liaison officers of the Agency in the Member States, the procedure for establishing a vulnerability assessment, the migration management support teams for the functioning of the hot spots, the handling of situations at external borders requiring urgent action by the Agency and the composition of the European Border and Coast Guard teams, including the rapid reserve pools, were thoroughly discussed, with compromise suggestions submitted by the Presidency.

The Presidency has decided to divide the technical examination of this proposal on the basis of the thematic approach, among different competent Council bodies. The Working Party on Frontiers is entrusted with the leading role in these deliberations, but a number of other working parties as well as the JHA Counsellors are also involved. The part of the European Border and Coast Guard proposal which concerns the Return Office of the Agency was assigned for a first examination to the Working Party on Integration, Migration and Expulsion, with a view to reporting back to the Working Party on Frontiers.

With regard to the provisions on coast guard functions, it is necessary to ensure that the relevant provisions of the European Border and Coast Guard proposal and the proposals for amendments of the Regulations on the European Maritime Safety Agency (EMSA) and on the Fisheries Control Agency (EFCA) are in harmony. The Presidency therefore has examined these matters in a coordinated way in parallel in the Working Party on Frontiers, the Shipping Working Party and the Working Party on Internal and External Fisheries Policy.

In order to streamline the above work, the Presidency held a Counsellors meeting on 17 February 2016, during which a very significant degree of common ground between Member States was registered with regard to the coast-guard related provisions of the three above mentioned proposals, as well as on Chapters I and II Section II of the European Border and Coast Guard proposal. These chapters include articles on important issues like European integrated border management, shared responsibility, liaison officers of the Agency in the Member States and the vulnerability assessment. A few further revised compromise suggestions are submitted by the Presidency, with a view to confirming an agreement in principle on these issues.

In the light of the aforementioned work, the Presidency considers that significant progress has already been achieved with a view to swift agreement on the proposal for the purpose of the establishment of the European Border and Coast Guard and the setting up of the new Agency.

The Presidency will further accelerate its work, as requested by the European Council in its aforementioned conclusions. In the upcoming weeks, before the next JHA Council on 10 and 11 March 2016, the Presidency will work towards agreement on other important issues, such as the Right to Intervene and the Rapid Reserve Pool.
