





## Discussion paper on the European Border and Coast Guard

Informal SCIFA, Amsterdam 15-16 February 2016

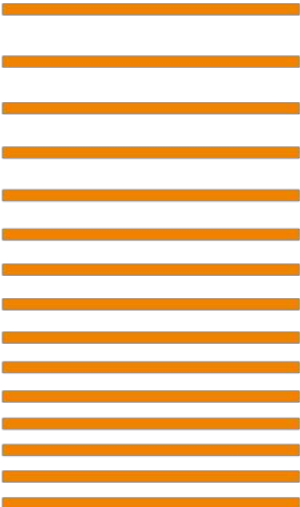
### 1. Mandatory contribution



The existing measures at EU and national level regarding external border control assured a satisfactory level of control until a few years ago. However, the unprecedented migratory and refugee crisis the EU and its Member States are now facing, and with the increased risks for public policy and internal security posed by terrorism, the existing mechanisms at the EU level are no longer sufficient to guarantee efficient integrated border management at the EU's external borders. Measures such as efficient implementation of the Dublin system, combined with the relocation schemes adopted by the Council and the setting up of hotspots may, if fully implemented, at least partly address this situation, but further measures are necessary.



For this reason, the capacity of the future European Border and Coast Guard Agency should be considerably stronger than that of Frontex. The new Agency should, as an important element in this regard, have at its disposal the necessary technical equipment and operational assistance to support the Member States with their task of controlling the external borders of the European Union, in particular when they face challenges resulting from illegal immigration or cross-border crime.

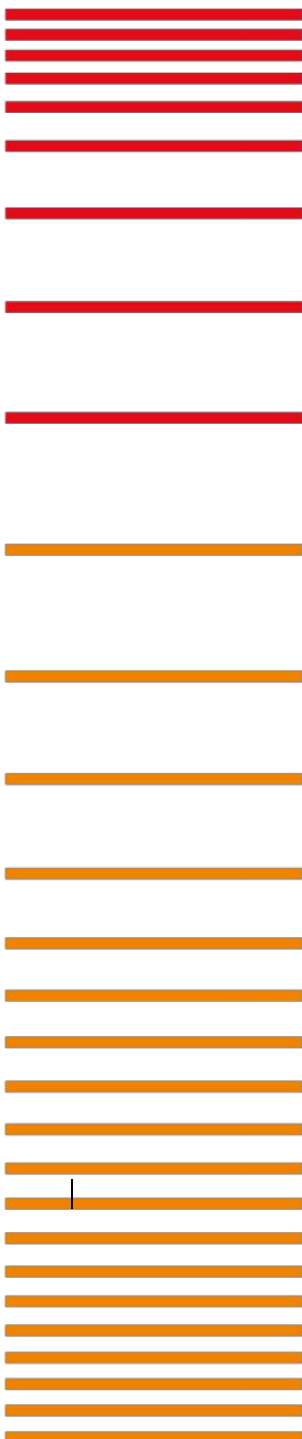


In the proposal of the Commission on the European Border and Coast Guard, European Border and Coast Guard Teams are envisaged as one of the most important measures to ensure the capacity of the new Agency. Part of these teams will be a rapid reserve pool, a standing corps placed at the immediate disposal of the Agency. The Commission proposes that each Member State shall make available, on a yearly basis, a number of border guards commensurate to at least 3% of the staff of the Member States without land or sea external borders and 2% of the staff of Member States with land or sea external borders. This should amount to a total of a minimum of 1500 border guards.

During several meetings at Working Party level, in SCIFA and at the informal ministerial meeting of JHA Ministers in Amsterdam on 25 January 2016, the Member States emphasized that they are uncomfortable with a mandatory contribution of 2 or 3% of their border guards. The main concern is the mandatory nature of the provisions - Member States shall ensure that the border guards assigned to the rapid reserve pool on request are immediately and without exception made available to the Agency. Member States have argued that they might in a concrete case be in a situation where they do not have enough border guards to guard their own borders, especially in times of extraordinary pressure of illegal migration. Member States also expressed the view that it might not be possible to calculate the number of staff to make available based on a percentage rule, considering the structure and different tasks of the organization(s) that is (are) responsible for border management in their countries. At the same time, Member States did agree that the operational capacity of the new Agency needs to be enforced as compared to Frontex.

Given the clear mandate laid down by the European Council of December 2015 to reach a Council position on the proposal by June 2016, the Presidency has decided to ask SCIFA for steering on this issue of mandatory contribution.

Against this background, the Presidency would like to suggest the following options for the mandatory deployment of staff to the rapid reserve pool. The Presidency would request delegations to express their views on the following options or provide the Presidency with alternatives:

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- 1) *In order to strengthen the operational capacity and flexibility of the Agency, to which number should the mandatory contribution to the Rapid Reserve Pool add up?*
  - 2) *What should be the profile of the officers. Should it only be Border Guards or should it also cover 'other relevant staff'?*
  - 3) *How should this mandatory contribution look like?*

Suggestions for consideration:

- a) *Member States without land or sea external borders should at least make available 3% of their relevant officers (the border guard and/or relevant staff), the other Member States at least 2%. The exact method of calculation would need to be established.*
- b) *Member States without land or sea external borders should at least make available 3% of their relevant officers (border guard and/or other relevant staff), the other Member States at least 2%, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. This should be based on a risk assessment and, where available, a vulnerability assessment. If this situation occurs, the Member State concerned should deploy at least 1% (no land or sea external borders) or 0,7 % (other Member States) of its officers to the Agency.*
- c) *The mandatory contribution should be based on a distribution key. Delegations are invited to consider possible criteria for establishing such a distribution key.*

2. Mandate of the Agency in the fight against cross-border crime and terrorism

As the Council requested, in the proposal of the Commission the mandate of the Agency has been enhanced to fight cross-border crime and terrorism at the EU external borders. In the proposal it is explicitly mentioned that the Agency should carry out risk analysis which covers all aspects relevant to integrated border management, in particular: border control, return, irregular secondary movements of third country nationals within the European Union, the prevention of cross-border crime including facilitation of irregular immigration, trafficking of human beings and terrorism, and the situation in third countries. In the discussion in the Frontiers Working Party several Member States expressed concerns about the role and mandate of the Agency in the field of cross-border crime and terrorism. Member States are specifically concerned that these tasks overlap with the tasks of Europol. In this context the role/mandate of the Agency should be clear.

In the light of these considerations the Presidency would ask Member States for their views on the following question:

1. *To what extent should the mandate of the Agency be broadened to aspects of cross border crime, in particular the fight against drugs, THB and terrorism?*