Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

REGULATION (EU) 2019/1896 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 November 2019

on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(b) and (d) and Article 79(2)(c) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) The objective of Union policy in the field of external border management is to develop and implement European integrated border management at national and Union level, which is a necessary corollary to the free movement of persons within the Union and is a fundamental component of an area of freedom, security and justice. European integrated border management is central to improving migration management. The aim is to manage the crossing of the external borders efficiently and address migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension and ensuring a high level of internal security within the Union. At the same time, it is necessary to act in full respect for fundamental rights and in a manner that safeguards the free movement of persons within the Union.

(2) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union was established by Council Regulation (EC) No 2007/2004[(4)]. Since taking up its responsibilities on 1 May 2005, it has been successful in assisting Member States with implementing the operational aspects of external border management through joint operations and rapid border interventions, risk analysis, information exchange, relations with third countries and the return of returnees.

(3) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union has been renamed the European

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/1896 of the European Parliament and of the Council. (See end of Document for details)*

Border and Coast Guard Agency (the 'Agency'), commonly referred to as Frontex, and its tasks have been expanded with full continuity in all its activities and procedures. The key roles of the Agency should be: to establish a technical and operational strategy as part of the implementation of the multiannual strategic policy cycle for European integrated border management; to oversee the effective functioning of border control at the external borders; to carry out risk analysis and vulnerability assessments; to provide increased technical and operational assistance to Member States and third countries through joint operations and rapid border interventions; to ensure the practical execution of measures in a situation requiring urgent action at the external borders; to provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea; and to organise, coordinate and conduct return operations and return interventions.

(4) Since the beginning of the migratory crisis in 2015, the Commission has taken up important initiatives and has proposed a series of measures with a view to strengthening the protection of the external borders and restoring the normal functioning of the Schengen area. A proposal for significantly enhancing the mandate of the European Agency for the Management of Operational Cooperation at the External Borders was presented in December 2015 and negotiated swiftly in 2016. The resulting regulation, Regulation (EU) 2016/1624 of the European Parliament and of the Council[(5)], entered into force on 6 October 2016.

(5) However, the Union framework in the areas of external border control, return, combating cross-border crime, and asylum still needs to be further improved. To that end, and to further underpin the current and future envisaged operational efforts, the European Border and Coast Guard should be reformed by giving the Agency a stronger mandate and, in particular, by providing it with the necessary capabilities in the form of a European Border and Coast Guard standing corps (the 'standing corps'). The standing corps should gradually but swiftly reach the strategic target of having a capacity of 10 000 operational staff, as set out in Annex I, with executive powers, where applicable, to effectively support Member States on the ground in their efforts to protect the external borders, to fight cross-border crime and to significantly step up the effective and sustainable return of irregular migrants. Such a capacity of 10 000 operational staff represents the maximum available capacity required to effectively address existing and future operational needs for border and return operations in the Union and third countries, including a rapid reaction capacity to face future crises.

(6) The Commission should carry out a review of the overall number and composition of the standing corps, including the size of individual Member States' contributions thereto, as well as of its training, expertise and professionalism. By March 2024, the Commission should, where necessary, submit appropriate proposals to amend Annexes I, II, III and IV. Where the Commission does not present a proposal, it should explain the reason therefor.

(7) The implementation of this Regulation, in particular the establishment of the standing corps, including after the Commission's review of the standing corps, should be subject to the multiannual financial framework.

(8) In its conclusions of 28 June 2018, the European Council called for further strengthening of the supportive role of the Agency, including in cooperation with third countries, through increased resources and an enhanced mandate, with a view to ensuring effective external border control and significantly stepping up the effective return of irregular migrants.

(9) It is necessary to monitor the crossing of the external borders efficiently, to address migratory challenges and potential future threats at the external borders, to ensure a high level of internal security within the Union, to safeguard the functioning of the Schengen area and to respect the overarching principle of solidarity. Those actions and objectives should be accompanied by the proactive management of migration, including the necessary measures in third countries. To that end, it is necessary to consolidate the European Border and Coast Guard and to further expand the mandate of the Agency.

(10) When implementing European integrated border management, coherence with other policy objectives should be ensured.

(11) European integrated border management, based on the four-tier access control model, comprises measures in third countries, such as under the common visa policy, measures with neighbouring third countries, border control measures at the external borders, risk analysis and measures within the Schengen area and return.

(12) European integrated border management should be implemented as a shared responsibility of the Agency and 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, as well as the national authorities responsible for return. While Member States retain the primary responsibility for the management of their external borders in their interest and in the interest of all Member States and are responsible for issuing return decisions, the Agency should support the application of Union measures relating to the management of the external borders and return by reinforcing, assessing and coordinating the actions of the Member States which implement those measures. The activities of the Agency should complement the efforts of the Member States.

(13) To ensure the effective implementation of European integrated border management and increase the efficiency of Union return policy, a European Border and Coast Guard should be established. It should be provided with the requisite financial and human resources and equipment. The European Border and Coast Guard should be composed of the Agency and the national authorities responsible for border management, including coast guards to the extent that they carry out border control tasks, as well as the national authorities responsible for return. As such it will rely upon the common use of information, capabilities and systems at national level and the response of the Agency at Union level.

(14) European integrated border management does not alter the respective competences of the Commission and the Member States in the customs area, in particular regarding controls, risk management and the exchange of information.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2019/1896 of the European Parliament and of the Council. (See end of Document for details)*

(15) The development of policy and law on external border control and return, including the development of a multiannual strategic policy for European integrated border management, remains a responsibility of the Union institutions. Close coordination between the Agency and those institutions should be guaranteed.

(16) The effective implementation of European integrated border management by the European Border and Coast Guard should be ensured by means of a multiannual strategic policy cycle. The multiannual cycle should set out an integrated, unified and continuous process for providing strategic guidelines to all the relevant actors at Union level and at national level in the area of border management and return so that those actors are able to implement European integrated border management in a coherent manner. It should also address all relevant interactions of the European Border and Coast Guard with the Commission and other Union institutions, bodies, offices and agencies, and cooperation with other relevant partners, including third countries and third parties as appropriate.

(17) European integrated border management requires integrated planning between the Member States and the Agency for border and return operations in order to prepare responses to challenges at the external borders, for contingency planning and for coordinating the long-term development of capabilities both in terms of recruitment and training and in terms of the acquisition and development of equipment.

(18) The Agency should develop technical standards for information exchange as provided for in this Regulation. In addition, for the effective implementation of Regulation (EU) 2016/399 of the European Parliament and of the Council[(6)], common minimum standards for external border surveillance should be developed. To that end, the Agency should be able to contribute to the development of common minimum standards in line with the respective competences of the Member States and the Commission. Those common minimum standards should be developed taking into account the type of borders, the impact levels attributed by the Agency to each external border section and other factors such as geographical particularities. When developing those common minimum standards, possible limitations deriving from national law should be taken into account.

(19) The technical standards for information systems and software applications should be aligned with the standards used by the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) for other IT systems in the area of freedom, security and justice.

(20) The implementation of this Regulation does not affect the division of competence between the Union and the Member States or the obligations of Member States under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations

Convention relating to the Status of Stateless Persons and other relevant international instruments.

(21) The implementation of this Regulation does not affect Regulation (EU) No 656/2014 of the European Parliament and of the Council[(7)]. Sea operations should be carried out in a way that, in all instances, ensures the safety of the persons intercepted or rescued, the safety of the units that take part in the sea operation in question and the safety of third parties.

(22) The Agency should carry out its tasks in accordance with the principle of subsidiarity and without prejudice to the responsibilities of the Member States with regard to maintaining law and order and safeguarding internal security.

(23) The Agency should carry out its tasks without prejudice to the competence of the Member States as regards defence.

(24) The extended tasks and competence of the Agency should be balanced with strengthened fundamental rights safeguards and increased accountability and liability, in particular in terms of the exercise of executive powers by the statutory staff.

(25) The Agency relies on the cooperation of Member States to be able to perform its tasks effectively. In that respect, it is important for the Agency and the Member States to act in good faith and to exchange accurate information in a timely manner. No Member State should be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.

(26) Member States should also, in their own interest and in the interest of the other Member States, contribute relevant data necessary for the activities carried out by the Agency, including for the purposes of situational awareness, risk analysis, vulnerability assessments and integrated planning. Equally, they should ensure that the data are accurate and up-to-date and are obtained and entered lawfully. Where those data include personal data, Union law on data protection should apply in full.

(27) The communication network established under this Regulation should be based on and replace the EUROSUR communication network developed in the framework of Regulation (EU) No 1052/2013 of the European Parliament and of the Council[(8)]. The communication network established under this Regulation should be used for all secured information exchanges within the European Border and Coast Guard. The level of accreditation of the communication network should be increased to the classification level of CONFIDENTIEL UE/EU CONFIDENTIAL in order to improve information assurance between the Member States and with the Agency.

(28) EUROSUR is necessary for the European Border and Coast Guard to be able to provide a framework for the exchange of information and the operational cooperation between Member States' national authorities and with the Agency. EUROSUR provides national authorities and the Agency with the infrastructure and tools needed to improve their situational awareness and to increase reaction capability at the external borders for the purpose of detecting, preventing and combating illegal immigration and cross-border crime, thereby contributing to saving the lives of migrants and ensuring their protection.