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NOTE

From: Presidency
To: Delegations

Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) n° 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council
- Presidency compromise proposals

With a view to the JHA Counsellors meeting on 27 November 2018, delegations will find attached Presidency compromise suggestions in relation to Articles 72 to 79.

Changes vis-à-vis the previous compromise suggestions contained in 14057/18 are highlighted in **bold/underline** and **~~bold/strikethrough~~**, whereas older changes vis-à-vis the original Commission proposal are underlined and ~~strikethrough~~.

New recital (related to Article 72(2))

The assistance to third countries should complement the Agency's support for Member States in the application of Union measures relating to the management of the external borders and the enforcement of return decisions.

New recital (related to Article 74)

The bi- and multilateral agreements concluded by Member States with third countries in the areas covered by Integrated Border Management may contain security sensitive information. When notified to the Commission, they should be handled accordingly.

SUB SECTION 2
COOPERATION WITH THIRD COUNTRIES

Article 72
Cooperation with third countries

1. In line with Article 3 (g), the Member States and the Agency shall cooperate with third Countries for the purpose of integrated border management and migration policy, including returns.
2. Based on the policy priorities set out in accordance with Article 8 (4), the Agency shall provide technical and operational assistance to third countries within the framework of the external action policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement.
3. The Agency and Member States shall comply with Union law, including norms and standards which form part of the Union acquis, also when cooperation with third countries takes place on the territory of those countries.

Article 73
Cooperation of Member States with third countries

1. For the purposes of this Regulation, Member States may ~~continue~~ ~~cooperat~~~~ion~~ at an operational level and exchange information with one or several third countries. Such cooperation and exchange of information shall take place on the basis of bilateral or multilateral agreements or through regional networks established on the basis of those agreements.

2. When concluding the bilateral and multilateral agreements referred to in paragraph 1, Member States ~~shall~~may include provisions concerning information exchange and cooperation ~~in the framework for the purpose of EUROSUR, in accordance with~~ If such agreements include such provisions they shall comply with- Article 76(2) and Article 90.
3. The agreements referred to in paragraph 1 shall comply with Union and international law on fundamental rights and on international protection, including the Charter of Fundamental Rights of the European Union, the Convention for the Protection of Human Rights and Fundamental Freedom and the Convention Relating to the Status of Refugees, in particular the principle of non-refoulement. When implementing such agreements, also having regard to Article 8, Member States shall ~~continuously~~ regularly assess and take into account the general situation in the third country.

Article 74

Cooperation between the Agency and third countries

1. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation and to the extent required for the fulfilment of its tasks.
2. When doing so, ~~it the Agency~~ shall act within the framework of the external action policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement, with the support of, and in coordination with, Union delegations and, where relevant, CSDP missions and operations, **in full respect of their mandate.**
3. In circumstances requiring the deployment of border management and return teams from the European Border and Coast Guard [standing corps]¹ to a third country where the team members will exert executive powers, a status agreement shall be concluded by the Union with the third country concerned. The status agreement shall cover all aspects that are necessary for carrying out the actions. It shall in particular set out the scope of the operation, civil and criminal liability and the tasks and powers of the members of the teams. The status agreement shall ensure the full respect of fundamental rights during these operations.
4. Where available, ~~it the Agency~~ shall also act within the framework of working arrangements concluded with those authorities in accordance with Union law and policy, in accordance with 77(6). Those working arrangements shall specify the scope, nature and purpose of the cooperation and be related to the management of operational cooperation and may include provisions concerning the exchange of sensitive non-classified information and cooperation in the framework of EUROSUR in accordance with Article 75 (3). Any working arrangements on exchanging classified information shall be concluded in accordance with Article 77(6). The Agency shall comply with Union law, including norms and standards, which form part of the Union acquis.

¹ **Impact of the composition of the standing corps to be clarified later when the negotiation on standing corps have been finalised.**

5. The Agency shall contribute to the implementation of international agreements and of non-legally binding arrangements on return **matters** concluded by the Union with third countries within the framework of the external action policy of the Union and regarding matters covered by this Regulation.
6. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting in and in relation to third countries. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation and in accordance with the financial rules applicable to the Agency.
7. The Agency shall inform the European Parliament **and the Council** of activities conducted pursuant to this Article.
8. ~~The Agency~~ shall include an assessment of the cooperation with third countries in its annual reports.

Article 75

Technical and operational assistance provided by the Agency to third Countries

1. As provided for in Article 72 (3), in circumstances requiring increased technical and operational assistance, the Agency may coordinate operational cooperation between Member States and third countries and provide **operational support such assistance** to third countries in the context of the European integrated border management **including returns**.
2. The Agency shall have the possibility of carrying out actions ~~at the external borders of a third country on the territory of a third country~~, subject to the agreement of that third country, ~~including on the territory of that third country~~.
3. Operations **on the territory of a third country** shall be included in the annual work programme referred to in Article 100 and carried out on the basis of an operational plan agreed between the Agency and the third country concerned and in consultation with the participating Member States. In case of **such** operations ~~carried out at on~~ the ~~common border between~~ **territory of the third country** and one or more Member States, the operational plan shall have the agreement of the Member State or Member States neighbouring the third country concerned bordering the operational area. ~~Operational plans may include provisions concerning information exchange and cooperation in the framework of EUROSUR in accordance with Article 76.~~
- 3a. Without prejudice to the deployment of the members of the European Border and Coast Guard [standing corps]² in accordance with Articles 55 to 58, the participation of Member States in **joint** operations on the territory of third countries shall be on voluntary basis.

² **Ibid.**

- 3b. Operational plans referred to in paragraph 3 may include provisions concerning information exchange and cooperation for the purpose of EUROSUR in accordance with Articles 76(2) and 90.
4. The Agency may provide assistance to return activities of third countries and ensure the coordination or the organisation of return operations, during which a number of returnees are returned from this third country to another third country. Such return operations may be organised with participation of one or more Member States ('mixed return operations') or as national return operations, in particular when this is justified by the priorities of the irregular migration policy of the Union. The participating Member States and the Agency shall ensure that the respect of fundamental rights and the proportionate use of means of constraints are guaranteed during the whole removal operation, notably with the presence of forced return monitors and of third-country forced return escorts.

Article 76

Information exchange with third Countries in the framework of EUROSUR

1. The national coordination centres of the Member States **referred to in Article 21** and, when relevant, the Agency shall be the contact points for the exchange of information and cooperation with third countries ~~in the framework~~ for the purpose of EUROSUR.
2. The provisions for the exchange of information ~~in the framework~~ for the purpose of EUROSUR referred to in Article ~~72-73~~ (2) shall detail:
 - (a) the specific situational pictures shared with third countries;
 - (b) the data originating from third countries which can be shared in the European Situational Picture and the procedures for sharing these data;
 - (c) the procedures and conditions by which EUROSUR Fusion Services can be provided to third countries' Authorities;
 - (d) the modalities of cooperation and information exchange with third countries observers for the purpose of EUROSUR.
3. Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 1 of Article 73 shall not be shared with a third country under that agreement without the prior approval of the Agency or of that Member State. The Member States and the Agency shall be bound by the refusal to share that information with the third country concerned.

Article 77

Role of the Commission with regard to cooperation with third countries

1. The Commission shall negotiate the status agreement referred to in Article 74 (3) in accordance with Article 218(3) TFEU.
2. The Commission, ~~after consulting in cooperation with~~ the Member States and the Agency, shall draw up model provisions **for the bilateral and multilateral agreements referred to in Article 71(2) and Article 73** for the exchange of information in the framework of EUROSUR **as provided for in Article 76 (2) in accordance with Article 71(2), and Article 73(2).**

The Commission, after consulting the Agency, shall draw up a model for the working arrangements referred to in Article 74.
3. The Member States concerned shall notify existing bilateral and multilateral agreements referred to in Article 73 (1) to the Commission, ~~which shall verify whether their provisions comply with this Regulation.~~
4. Before a new bilateral or multilateral agreement referred to in Article 73 (1) is concluded, the Member State(s) concerned shall **notify it to consult** the Commission **as to the compatibility of the draft agreement, which shall verify review whether its provisions comply** with this Regulation, and inform **The Commission shall respond within a reasonable time period limit agreed with the Member State** accordingly ~~concerned~~.
5. Once a new agreement is concluded, the Member State concerned shall notify it to the Commission, which shall inform ~~the European Parliament,~~ the Council and the Agency thereof.
6. Before any working arrangements **with between the Agency and third parties or competent authorities of** third countries are ~~approved concluded~~ by the Management Board, the Agency shall notify them to the Commission, which shall give its prior approval. Once working arrangements are concluded, the Agency shall notify them to the Commission, which shall inform ~~the European Parliament and~~ the Council thereof.
7. The Agency shall notify the operational plans referred to in Article 75 (3) to the Commission. The decision to deploy liaison officers to third countries in accordance with Article 78 shall be subject to receiving the prior opinion of the Commission. The European Parliament shall be kept fully informed of those activities without delay.

Article 78

Liaison officers of the Agency in third countries

1. The Agency may deploy experts from its statutory staff³ as liaison officers, who should enjoy the highest possible protection when carrying out their duties in third countries. They shall form part of the local or regional cooperation networks of immigration liaison officers and security experts of the Union and of the Member States, including the network set up pursuant to **Regulation (EC) No 377/2004**. By decision of the management board the Agency may lay down specific profiles of liaison officers, such as return liaison officers, depending on the operational needs with regard to the third country concerned.
2. Within the framework of the external action policy of the Union, priority for the deployment of liaison officers shall be given to those third countries which, on the basis of a risk analysis, constitute a country of origin or transit regarding illegal immigration. The Agency may receive liaison officers posted by those third countries on a reciprocal basis. The management board shall, on a proposal of the executive director, adopt the list of priorities on a yearly basis. The deployment of liaison officers shall be approved by the management board upon the opinion of the Commission.
3. The tasks of the Agency's liaison officers shall include, in compliance with Union law and respecting fundamental rights, establishing and maintaining contacts with the competent authorities of the third country to which they are assigned with a view to contributing to the prevention of and fight against illegal immigration and **the returns of returnees**, including by providing technical assistance in identification of third-country nationals and the acquisition of travel documents. Those liaison officers shall coordinate closely with Union delegations, with Member States in accordance with **Regulation (EC) No 377/2004** and, where relevant, CSDP missions and operations.

Article 79

Observers participating in the Agency's activities

1. The Agency may, with the agreement of the Member States concerned, invite observers of Union institutions, bodies, offices, agencies or international organisations and CSDP missions and operations to participate in its activities, in particular joint operations and pilot projects, risk analysis and training, to the extent that their presence is in accordance with the objectives of those activities, may contribute to the improvement of cooperation and the exchange of best practices, and does not affect the overall safety and security of those activities. The participation of those observers in risk analysis and training may take place only with the agreement of the Member States concerned. As regards joint operations and pilot projects, the participation of observers shall be subject to the agreement of the host Member State. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive appropriate training from the Agency prior to their participation.

³ **Ibid.**

2. The Agency may, with the agreement of the Member States concerned, invite observers from third countries to participate in its activities at the external borders referred to in Article 37 , return operations referred to in Article 51, return interventions referred to in Article 54 and training referred to in Article 62, to the extent that their presence is in accordance with the objectives of those activities, may contribute to improving cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member States concerned regarding the activities referred to in Articles 37, 43, 51 and 62 and only with the agreement of the host Member State regarding those referred to in Articles 37 and 54. Detailed rules on the participation of observers shall be included in the operational plan. Those observers shall receive appropriate training from the Agency prior to their participation. They shall be required to adhere to the codes of conduct of the Agency while participating in its activities.
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