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on: 26-27 June 2012

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No. Cion prop.: doc. 18666/11 FRONT 203 CODEC 2462 COMIX 849

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Subject: Proposal for a Regulation of the European Parliament and of the Council  
establishing the European Border Surveillance System (EUROSUR)

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At its meeting on 26 and 27 June 2012, the Working Party on Frontiers/Mixed Committee carried out the second reading of the above proposal. The text of the Presidency proposal as submitted for the purpose of the second reading set out in doc. 11437/12 FRONT 98 CODEC 1681 COMIX 384 is reproduced in the Annex. Delegations' comments are set out in footnotes.

2011/0427 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**Establishing the European Border Surveillance System (EUROSUR)**

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)(d) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The establishment of a European Border Surveillance System (hereinafter referred to as 'EUROSUR') is necessary in order to strengthen the information exchange and operational cooperation between national authorities of Member States as well as with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Council Regulation (EC) No 2007/2004 of 26 October 2004<sup>1</sup> (Frontex), hereinafter referred to as 'the Agency'. EUROSUR (...) provides these authorities and the Agency with the infrastructure and tools needed to improve their situational awareness and reaction capability when detecting and preventing (...) **illegal** migration and cross-border crime as well as protecting and saving lives of migrants at the external borders of the Member States of the Union.
- (2) Member States (...) establish national coordination centres (...) to improve the cooperation and information exchange **for border surveillance** between them and with the Agency. It is essential for the proper functioning of EUROSUR that all national authorities with a responsibility for external border surveillance under national law (...) cooperate via national coordination centres.
- (3) This Regulation should not hinder Member States from making their national coordination centres also responsible for coordinating the information exchange and cooperation with regard to the surveillance of air borders and for checks at border crossing points.

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<sup>1</sup> OJ L 349, 25.11.2004, p. 1.

- (4) This Regulation forms part of the European model of integrated border management of the external borders and of the Internal Security Strategy of the European Union. EUROSUR also contributes to the development of the Common Information Sharing Environment for the surveillance of the EU maritime domain (CISE), providing a wider framework for maritime situational awareness through information exchange among public authorities across sectors in the Union.
- (5) According to point (i) of Article 2(1) of Regulation 2007/2004, the Agency **shall (...)** provide the necessary assistance to the development and operation of EUROSUR, and, as appropriate, to the development of CISE, including interoperability of systems.
- (6) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, notably human dignity, prohibition of torture and inhuman or degrading treatment or punishment, right to liberty and security, right to the protection of personal data, non-refoulement, non-discrimination and rights of the child. This Regulation should be applied by Member States **and the Agency** in accordance with these rights and principles.
- (7) Any exchange of personal data using the communication network for EUROSUR should be conducted on the basis of existing national and Union legal provisions and should respect their specific data protection requirements. The Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>2</sup> and, in the framework of police and judicial cooperation, the Council Framework Decision 2008/977/JHA 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters<sup>3</sup> are applicable in cases in which more specific instruments, such as Regulation (EC) No 2007/2004, do not provide a full data protection regime.

**(7bis) This Regulation is without prejudice to existing and future legislation on access to documents adopted in accordance with Article 15(3) TFEU.**

- (8) Since the establishment of EUROSUR cannot be sufficiently achieved by Member States alone and can therefore, by virtue of the scale and impact of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality this Regulation does not go beyond what is necessary in order to achieve its objective.

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<sup>1</sup> OJ L 281, 23.11.1995, p. 31.

<sup>2</sup> OJ L 8, 12.1.2001, p. 1.

<sup>3</sup> OJ L 350, 30.12.2008, p. 60.

- (9) In order to implement a gradual geographical roll-out of EUROSUR, the obligation to designate and operate national coordination centres should apply in three successive stages, first to the Member States located at the southern sea external borders and at the eastern land external borders, at a second stage to the remaining Member States (...).
- (10) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is therefore not bound by it or subject to its application (...). Given that this Regulation builds upon the Schengen *acquis*, under Title V of Part Three of the Treaty on the Functioning of the European Union, Denmark shall, in accordance with Article 4 of that Protocol, decide within six months after adoption of this Regulation whether it will implement it in its national law.
- (11) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which the United Kingdom is not participating, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*<sup>1</sup>. The United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application (...).
- (12) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which Ireland is not participating, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*<sup>2</sup>. Ireland is therefore not taking part in adoption of this Regulation and is not bound by it or subject to its application (...).
- (13) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*<sup>3</sup>.
- (14) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Agreement between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*<sup>4</sup>.

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<sup>1</sup> OJ L 131, 1.6.2000, p. 43.

<sup>2</sup> OJ L 64, 7.3.2002, p. 20.

<sup>3</sup> OJ L 176, 10.7.1999, p. 36.

<sup>4</sup> OJ L 53, 27.2.2008, p. 52.

- (15) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>1</sup>.
- (16) **The** implementation of this Regulation (...) **is without** prejudice **to** the division of competence between the Union and the Member States, and does not affect 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 Organised Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention relating to the Status of Refugees, the Convention for the Protection of Human Rights and Fundamental Freedoms and other relevant international instruments.
- (17) **The** implementation of this Regulation does not affect the rules for the surveillance of sea external borders in the context of operational cooperation coordinated by the Agency, as laid down in Council Decision 2010/252/EU of 26 April 2010<sup>2</sup>.
- (18) Geographic information such as maps, geographic coordinates and geo-data should be in line with Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).**<sup>3</sup>

HAVE ADOPTED THIS REGULATION<sup>4</sup>:

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<sup>1</sup> OJ L 160, 18.6.2011, p. 19.

<sup>2</sup> OJ L 111, 4.5.2010, page 20.

<sup>3</sup> **EL** expressed some concerns on this new recital while a large majority of delegations could support it.

<sup>4</sup> **DE** entered a financial reservation in the whole revised text of the Regulation.

TITLE I  
GENERAL PROVISIONS

*Article 1*

**Subject matter**

This Regulation establishes a common framework<sup>1</sup> for the exchange of information and cooperation between Member States and the Agency in order to improve the situational awareness and **to increase the reaction capability when detecting and preventing illegal migration and cross-border crime<sup>2</sup> as well as protecting lives of migrants<sup>3</sup>** at the external borders of the Member States and of the European Union, hereinafter referred to as the European Border Surveillance System (EUROSUR).

*Article 2*

**Scope<sup>4</sup>**

1. This Regulation shall apply to the surveillance of land and sea external borders<sup>5</sup> of the Member States, including (...) monitoring, detection, identification, tracking, prevention and interception<sup>6</sup> of illegal border crossings.
2. This Regulation shall not apply to (...)<sup>7</sup> procedural and legal measures taken **during and** after interception.
3. Member States and the Agency shall comply with fundamental rights, including data protection requirements, when applying this Regulation. They shall give priority to the special needs of children, victims of trafficking, persons in need of urgent medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation.

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<sup>1</sup> ES supported by PT proposed adding "in the field of border surveillance".

<sup>2</sup> NL entered a positive scrutiny reservation on the revised text of Article 1, in particular on "cross-border crime" addition. DE noted that there should be a clarification regarding the Agency's mandate.

<sup>3</sup> FR supported by EL and IT suggested deleting "protecting lives of migrants" as this does not take part of the EUROSUR's objectives. DE shared the doubts of FR, EL and IT delegations. SE supported by NO and FI was in favour of keeping "protecting lives of migrants".

<sup>4</sup> LV commented that the capability of neighbouring countries to get involved in EUROSUR and eliminate risks should be clearly regulated and not in the scope of Article 2. RO noted that the scope of integrated border management control should be broader including the border crossing points.

<sup>5</sup> PL suggested replacing "to the surveillance of land and sea external borders" with "to the control of external borders".

<sup>6</sup> NO proposed either deleting "of illegal border crossings", or adding "in the framework of EUROSUR".

<sup>7</sup> EL suggested retaining the word "operational" as in the original Commission's proposal. Cion clarified that if "operational" has to be maintained then the addition "during and" should be deleted.

### Article 3

#### Definitions

For the purposes of this Regulation, the following definitions shall apply<sup>1</sup>:

- (a) 'situational awareness' means the ability to monitor, detect, identify, track and understand cross-border activities in order to find reasoned grounds for control<sup>2</sup> measures on the basis of combining new information with existing knowledge;
- (b) 'reaction capability' means the ability to perform actions aimed at countering illegal **migration and cross-border crime<sup>3</sup> (...), as well as protecting lives of migrants at the external borders<sup>4</sup>**, including the means and timelines to react adequately to unusual circumstances;
- (c) 'situational picture' means a graphical interface to present **near** real-time data, information and intelligence received from different authorities, sensors, platforms and other sources, which is shared across communication and information channels with other authorities in order to achieve situational awareness and support the reaction capability along the external borders and the pre-frontier area;
- (d) 'cross-border crime<sup>5</sup>' means any serious<sup>6</sup> **(...) crime with a cross border dimension** committed at **or nearby<sup>7</sup>** the external borders of Member States **(...)**;
- (e) 'external border section<sup>8</sup>' means the whole or a part of the external land or sea border of a Member State as defined by national legislation or as determined by the national coordination centre<sup>9</sup> or any other responsible national authority<sup>10</sup>;
- (f) 'pre-frontier area' means the geographical area beyond the external border of Member States<sup>11</sup> **(...)**.

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<sup>1</sup> FR asked clarifying "cross-border crime" in provisions (b) and (d).

<sup>2</sup> ES proposed replacing "control" with "surveillance".

<sup>3</sup> NL asked clarifying "cross-border crime".

<sup>4</sup> NO suggested replacing "external borders" with "border area".

<sup>5</sup> PT commented that the definition on cross-border crime needs to be clarified and harmonized.

<sup>6</sup> SI proposed deleting "serious".

<sup>7</sup> ES suggested replacing "nearby" with "next to". EL commented that the addition "nearby" created concerns and confusion.

<sup>8</sup> SE suggested to define "border section" instead of "external border section" in line with the wording in Article 13.

<sup>9</sup> LV suggested deleting "or any other responsible national authority".

<sup>10</sup> EL proposed adding "without prejudice to the provisions of the United Nation's Convention on the Law of the Sea - UNCLOS (1982)".

<sup>11</sup> LV asked for a definition of the "pre-frontier area" to be included, by taking into account Article 3 of Regulation 1931/2006 on Local Border Traffic.

- (fa) 'crisis situations' means any natural and<sup>1</sup> man-made disasters, accidents and any other crisis situation occurring at or nearby the external borders of Member States, which may have a significant impact on the control<sup>2</sup> of the external borders<sup>3</sup>.

TITLE II  
FRAMEWORK  
CHAPTER I  
*Components*

*Article 4*

**EUROSUR framework**

1. For the exchange of information and cooperation in the field of border surveillance<sup>4</sup> **and, without prejudice to existing information exchange and cooperation mechanisms,** Member States and the Agency shall use the framework of EUROSUR, consisting of the following components:
  - (a) national coordination centres (...);
  - (b) national situational pictures;
  - (c) communication network;
  - (d) European situational picture;
  - (e) common pre-frontier intelligence picture;
  - (f) common application of surveillance tools.
2. The national coordination centres shall provide the Agency via the communication network with (...)the information from their national situational pictures which is required for the establishment and maintenance of the European situational picture and of the common pre-frontier intelligence picture.
3. The Agency shall give the national coordination centres via the communication network unlimited access to the European situational picture and to the common pre-frontier intelligence picture.
4. The components listed in paragraph 1 shall be established and maintained in line with the principles outlined in the annex.

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<sup>1</sup> EL suggested adding "or".

<sup>2</sup> ES proposed replacing "control" with "surveillance".

<sup>3</sup> NL entered a scrutiny reservation on this provision.

<sup>4</sup> PL supported by NO suggested replacing "surveillance" with "control".

## Article 5

### National Coordination Centre

1. Each Member State (...) shall designate, operate and maintain a National Coordination Centre for border surveillance<sup>1</sup>, which shall coordinate and exchange information between all authorities with a responsibility for external border surveillance<sup>2</sup> at national level as well as with the other national coordination centres and the Agency. The Member State shall notify the establishment of the centre to the Commission, which shall forthwith inform the other Member States and the Agency<sup>3</sup>.
2. Without prejudice to Article 16, the national coordination centre shall be the single point of contact for the exchange of information and cooperation with other national coordination centres and with the Agency **within the framework of Eurosur**.
3. The national coordination centre shall *inter alia*:
  - (a) ensure the timely information exchange and cooperation between all national authorities with a responsibility for external border surveillance and with (...) law enforcement **and other relevant**<sup>4</sup> authorities at national level as well as with other national coordination centres and the Agency;
  - (b) contribute to an effective and efficient management of resources and personnel<sup>5</sup>;
  - (c) establish and maintain the National Situational Picture in accordance with Article 9;
  - (d) support the planning and implementation of (...) national border surveillance activities;
  - (e) **coordinate** (...) the national border surveillance system, (...) in accordance with national law;

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<sup>1</sup> **PL** suggested replacing "surveillance" with "control". **PT** was in favour of keeping the word "surveillance" throughout the text and not replacing it with "control" as **PL** proposed. **NO** commented that the replacement of the word "surveillance" in Article 4 could be possible but it noted that in Article 5 "surveillance" should be retained. **ES** supported by **FR** was in favour of keeping "surveillance". **Cion** explained that in the future this should be a border control system and proposed not including border checks for the moment, as those could be added in the future.

<sup>2</sup> **PL** suggested replacing "surveillance" with "control".

<sup>3</sup> **CH** and **AT** expressed doubts regarding this provision in relation to Article 21 (4). **LU** commented that in case of full membership, it could not provide for the necessary means in order to properly participate and noted that in the EUROSUR proposal the air borders are not covered. **Cion** explained that if **CH**, **LU** and **AT** decide to participate in EUROSUR this could only be feasible by a full membership.

<sup>4</sup> **EL** questioned on added value of this addition. **Cion** explained that this addition covers the authorities responsible for search and rescue operations.

<sup>5</sup> **RO** supported by **IT** and **BE** proposed adding "as in national legislation". **Cion** made a distinction between the obligations of a NCC and the way to abide to those and clarified that the way to abide is subject to each Member State and its national structures.

- (f) **contribute to (...)** regularly **measuring** the effects of national border surveillance activities<sup>1</sup>;
- (g) coordinate operational measures with other Member States, without prejudice to the competences of the Agency **and of<sup>2</sup> the other<sup>3</sup> Member States**.
4. The national coordination centre shall operate twenty four hours a day and seven days a week.

#### *Article 6*

#### **The Agency**

1. The Agency shall
- (a) **establish**, administer **and maintain** the communication network for EUROSUR in accordance with Article 7<sup>4</sup>;
- (b) establish and maintain the European situational picture in accordance with Article 10;
- (c) establish and maintain the common pre-frontier intelligence picture in accordance with Article 11;
- (d) facilitate the common application of surveillance tools in accordance with Article 12.
2. For the purposes of paragraph 1, the Agency shall operate twenty four hours a day and seven days a week.

#### *Article 7*

#### **Communication network**

- 1<sup>5</sup>. The Agency shall establish and maintain a communication network in order to provide communications and analytical tools and allow for the (...) exchange of non-classified sensitive and classified information **in a secured manner and** in near real time with and between the national coordination centres. The network shall be operational twenty four hours a day and seven days a week and allow for:
- (a) bilateral and multilateral information exchange in near real time;

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<sup>1</sup> SE suggested deleting this provision. Cion was not in favour of this proposal.

<sup>2</sup> FR proposed deleting "of".

<sup>3</sup> FR suggested deleting "other".

<sup>4</sup> EL made a general comment regarding the need to avoid confusion about the cost of the network and the imagery services and asked to make clear in the text that costs arising from the joint use of the network should be covered by the Agency.

<sup>5</sup> A large majority of delegations could support the new compromise text by the Presidency.

- (b) audio and video conferencing;
  - (c) secure handling, storing, **transmission and** processing of non-classified sensitive information;
  - (d) secure handling, storing, transmission and processing of EU classified information up to the level of RESTREINT UE/EU RESTRICTED or equivalent national classification levels, ensuring that classified information is handled in a separate and duly accredited part of the communication network.
- 2. The Agency shall provide technical support and ensure that the communication network is interoperable with any other<sup>1</sup> communication and information system managed by the Agency.
  - 3. The Agency and the national coordination centres shall exchange, process and store non-classified sensitive and classified information in the communication network in compliance with rules and standards which apply the basic principles and common standards of or are equivalent to the Commission Decision 2001/844/EC amending its internal Rules of Procedure<sup>2</sup>.
  - 4. Member States' authorities, agencies and other bodies using the communication network shall ensure that equivalent security rules and standards as those applied by the Agency are complied with for the handling of classified information.

## *CHAPTER II*

### *Situational Awareness*

#### *Article 8*

#### **Situational pictures**

- 1. The national situational pictures, the European situational picture and the common pre-frontier intelligence picture shall be produced through the collection, evaluation, collation, analysis, interpretation, generation, visualisation and dissemination of information **and intelligence**<sup>3</sup>.
- 2. The pictures referred to in paragraph 1 shall consist of the following layers:

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<sup>1</sup> **SE** asked to insert the word "relevant". **NL** asked to clarify the use of "relevant" in the Handbook. All delegations could support the new compromise text by the Presidency with the addition suggested by SE.

<sup>2</sup> OJ L 317, 3.12.2001, p.1.

<sup>3</sup> **NL** entered a positive scrutiny reservation on the addition of intelligence in this provision. **FR** asked Commission about the legal basis for including intelligence in this draft Regulation and noted that the word "intelligence" has a very precise meaning in French. **SI** also expressed concerns on this addition. **Cion** explained that "intelligence" in EUROSUR meant basically "processed analysed information". **The Presidency** concluded that a large majority of delegations could accept the addition of the word "intelligence".

- (a) an events layer, containing information on incidents concerning (...) **illegal** migration, cross-border crime and crisis situations, **which may have a significant impact on the control<sup>1</sup> of the external borders**;
- (b) an operational layer, containing information on the status and position of own assets, areas of operation and environmental information<sup>2</sup>;
- (c) an analysis layer, containing strategic information, analytical products, intelligence as well as imagery and geo-data.

#### *Article 9*

#### **National Situational Picture**

1. The national coordination centre shall establish and maintain a national situational picture, in order to provide all authorities with responsibilities in border **control<sup>3</sup> (...)** at national level with effective, accurate and timely information which is relevant for the prevention of **(...) illegal** migration and **combating<sup>4</sup>** cross-border crime **as well as for the protection of lives of migrants** at the external borders of the Member State concerned.
2. The national situational picture shall be composed of information collected from the following sources **such as**:
  - (a) national border surveillance<sup>5</sup> system **(...)** in accordance with national law;
  - (b) stationary and mobile sensors operated by national authorities with a responsibility for external border surveillance;
  - (c) patrols on border surveillance and other monitoring missions;
  - (d) local, regional and other coordination centres;
  - (e) other relevant national authorities and systems;
  - (f) the Agency;
  - (g) national coordination centres in other Member States and in third countries;

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<sup>1</sup> **ES** and **SI** asked to replace "control" by "surveillance". **DE** and **EL** asked for clarifications on the precise meaning of the words "significant impact". **NO** suggested to insert a coma after cross border crime.

<sup>2</sup> **SI** reiterated its position on this provision.

<sup>3</sup> **ES** and **FR** preferred to keep the word "surveillance" instead of "control" as in the original Commission proposal while **PL** and **NO** were in favour of the new text.

<sup>4</sup> **RO** suggested to move the word "combating" and put it before "illegal migration".

<sup>5</sup> **PL** asked to replace "surveillance" by "control" in letters a) and b).

- (ga) **information provided in the framework of bilateral or multilateral agreements and regional networks**<sup>1</sup>;
- (h) regional networks with neighbouring third countries (...);
- (i) ship reporting systems **within their given legal limitations** (...);
- (j) other relevant European and international organisations;
- (k) other sources<sup>2</sup>.
3. The events layer of the national situational picture shall consist of the following sub-layers<sup>3</sup>:
- (a) a sub-layer on (...) **illegal** migration, which shall contain information on incidents concerning illegal border crossings of migrants occurring at or nearby<sup>4</sup> the external borders of the Member State concerned, on facilitations of irregular<sup>5</sup> border crossings and on any other relevant (...) **illegal** migration incident, such as a search and rescue mission for persons attempting to cross the border illegally.
- (b) a sub-layer on cross-border crime<sup>6</sup>, which shall contain information on incidents concerning (...) any (...) serious (...) crime (...) **with a cross border dimension** at or nearby the external borders of the Member State concerned;
- (c) a sub-layer on crisis situations, which shall contain information with regard to natural and man-made disasters, accidents and any other crisis situation occurring at or nearby the external borders of the Member State concerned, which may have a significant impact on the control<sup>7</sup> of the external borders;

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<sup>1</sup> **NO** could support this addition but asked if it made sense to keep "regional networks" in (h). **PL**, supported by **DE**, asked to add the following words at the end of this subparagraph: "...taking into account the limitations of information exchange included in the mentioned agreements". **ES** could not agree with this new letter (ga) and pointed out that it was already covered by letter (k), therefore **ES** asked for its deletion. **Cion** suggested to make a cross reference to Articles 18 and 18a. **The Presidency** concluded that it would reflect on a new text for this subparagraph.

<sup>2</sup> **RO** sought clarifications on the scope of "other sources" while for **SE** this subparagraph was superfluous because it is a non exhaustive list.

<sup>3</sup> **PL** asked to amend this introductory phrase as follows: "The events layer of the national situational picture shall **contain incidents identified at European Union external borders including border crossing points and** consist of the following sub-layers:".

<sup>4</sup> **ES** asked to replace "nearby" by "next to".

<sup>5</sup> **EL** and **NO** pointed out that "irregular" should also be replaced by "illegal" for consistency reasons.

<sup>6</sup> **PT** requested to, either provide in the text for a definition of "cross-border crime", either insert a cross reference to other international instruments in force in which cross-border crime is defined. **SI** asked for the deletion of the word "serious" while **NO** insisted in keeping that term. **NL** entered a scrutiny reservation on this provision.

<sup>7</sup> **ES** asked to replace "control" by "surveillance".

- (d) a sub-layer on other events, which shall contain information on unidentified and suspect (...) craft<sup>1</sup> and persons<sup>2</sup> present at or nearby the external borders of the Member State concerned, as well as any other event which may have a significant impact on the control<sup>3</sup> of the external borders;
- 4<sup>4</sup>. **The national coordination centre shall attribute a single indicative impact level, ranging from 'low' and 'medium' to 'high' impact to each incident in the events layer of the national situational picture (...). All events (...) to which a 'medium' to 'high' impact level is attributed shall be shared with the Agency.**
5. The operational layer of the national situational picture shall consist of the following sub-layers:
- (a)<sup>5</sup> a sub-layer on own assets, **personnel and areas of operation**, which shall contain information on position, time, (...) status and type of own assets, (...) patrol schedules **and the authorities involved in the operation (...)**; where own assets are deployed on a multi-task mission which includes military tasks, the national coordination centre can decide not to share such information with other national coordination centres and the Agency (...);
- (b) (...)**
- (c) a sub-layer on environmental information, which shall contain or give access to information on terrain and weather conditions at the external borders of the Member State concerned.
- 5a<sup>6</sup>. The information on own assets in the operational layer shall be classified as EU Restricted.**
6. The analysis layer of the national situational picture shall consist of the following sub-layers:

<sup>1</sup> EL sought clarifications on the purpose of replacing "platforms" by "craft". NO explained that the word "craft" was suggested because it meant any mean of transportation and therefore it could be applied to sea and land borders.

<sup>2</sup> NL entered a scrutiny reservation on the words "suspect persons".

<sup>3</sup> ES asked to replace "control" by "surveillance".

<sup>4</sup> NL entered a scrutiny reservation on this provision as they considered necessary to introduce common criteria. The Presidency concluded that a large majority of delegations could support the compromise text.

<sup>5</sup> RO said that it could not agree to this provision. NO sought clarifications on what sort of information is required on a day to day basis and when the operation is initiated. Cion stressed that this information is only for the national situational picture (NSP) and therefore only Member States' authorities would know where are the patrols. Cion underlined that military assets should not be included in the NSP when they are engaged on military missions whereas if they are engaged in purely law enforcement and border surveillance missions or multitask missions where the primary mission is about law enforcement and border surveillance, the national coordination centre should know where the patrols are operating.

<sup>6</sup> PL proposed to add a new sentence at the end of this paragraph: "...The Members States on the basis of 'need to know' rule shall decide which information gathered in the operational layer of their national situational picture is exchanged via the network referred to in Article 7.". Cion considered that the PL wording was already covered in Article 10.

- (a) an information sub-layer, which shall contain key developments and indicators relevant for the analysis of **(...) illegal** migration and cross-border crime.
  - (b) an analytical sub-layer, which shall **(...) include** analytical reports, risk rating trends, regional monitors and briefing notes **on illegal migration and cross border crime**, relevant for the concerned Member State;
  - (c) an intelligence **(...)** sub-layer, which shall contain **analysed information on illegal migration and cross border crime relevant for the attribution of (...)** the impact levels **(...)** to the external **(...)** border sections **such as migrant profiles, routes** and facilitation analysis.
  - (d) an imagery and geo-data sub-layer, which shall **(...) include** reference imagery, background maps, intelligence validation **(...)**, change analysis (earth observation imagery) as well as change detection, geo-referenced data and border permeability maps.
7. The information contained in the analysis layer and on environmental information in the operational layer of the national situational picture may<sup>1</sup> be based on the information provided in the European situational picture and in the common pre-frontier intelligence picture.
8. **(...)**
9. **(a)** The national coordination centres of neighbouring Member States shall<sup>2</sup> share with each other directly and in near real time the situational picture of neighbouring external border sections relating to:
- (...)** incidents concerning **(...) illegal** migration and cross-border crime and other significant events contained in the events layer;
- (b)** **The national coordination centres of neighbouring Member States may share with each other directly and in near real time the situational picture of neighbouring external border sections relating to<sup>3</sup>:**
- (...)** - the positions of own patrols contained in the operational layer, when the primary mission of the patrol is to prevent **(...) illegal** migration and cross-border crime;
- (...)** - the planning schemes, schedules and communication codes for the following day of patrols operating in the neighbouring external border sections;
- (...)**

<sup>1</sup> NL and NO preferred "shall" instead of "may".

<sup>2</sup> EL, IT, RO and SE preferred "may" instead of "shall" as in letter b). Cion was against such change. HU welcomed the new compromise text and withdrew its reservation on Article 9.9.

<sup>3</sup> NO asked to keep under letter (b) the tactical risk analysis reports as contained in the analysis layer as proposed by the Commission.

## Article 10

### European Situational Picture

1. The Agency shall establish and maintain a European situational picture in order to provide the national coordination centres with information and analysis which is relevant for the prevention of (...) **illegal** migration and **combating**<sup>1</sup> cross-border crime **as well as for the protection of lives of migrants** at the external borders of the Member States.
2. The European Situational Picture shall be composed of information collected from the following sources:
  - (a) national situational pictures **as authorised by the national coordination centre, including basic information received under Article 9(5a)(...);**
  - (b) the Agency;
  - (c) other relevant **Union (...) agencies, bodies** and international organisations **as referred to in Article 17;**
  - (ca) information provided in the framework of bilateral or multilateral agreements and regional networks, as authorised by the national coordination centres**<sup>2</sup>;
  - (d) other sources<sup>3</sup>.
3. The events layer of the European situational picture shall include information relating to:
  - (a) incidents regarding (...) **illegal** migration and cross-border crime as well as crisis situations and (...) other events contained in the events layer of the national situational picture, which **have** been assigned with a medium or high impact level by the national coordination centre;
  - (b) incidents regarding (...) **illegal** migration and cross-border crime as well as crisis situations and other events contained in **the** Common Pre-Frontier Intelligence Picture, **which have been assigned with a medium or high impact level by the Agency (...);**
  - (c) incidents regarding (...) **illegal** migration and cross-border crime in the operational area of a joint operation coordinated by the Agency.
4. In the European situational picture the Agency shall (...) **take into account** the impact level that was assigned to a specific incident in the national situational picture by the national coordination centre.

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<sup>1</sup> **RO** suggested to move the word "combating" and put it before "illegal migration".

<sup>2</sup> **ES** and **IT** **ES** could not agree with this new letter (ca) and pointed out that it was already covered by letter (d), therefore **ES** and **IT** asked for its deletion. **Cion** was against this deletion.

<sup>3</sup> **RO** stressed the need to clearly specify which are other sources. **The Presidency** suggested to include examples in the Handbook.

5. The operational layer of the European situational picture shall consist of the following sub-layers:
- (a) a sub-layer on own assets, which shall contain information on the position, time, (...) status and type of assets participating in the Agency joint operations or at the disposal of the Agency, and the deployment plan, including the area of operation, patrol schedules and communication codes;
  - (b) a sub-layer on **joint**<sup>1</sup> operations, which shall contain information on the joint operations coordinated by the Agency, including the mission statement, location, status, duration, information on the Member States and other actors involved, daily and weekly situational reports, statistical data and information packages for the media;
  - (c) a sub-layer on environmental information, which shall include information on terrain and weather conditions at the external borders of the Member States.

**5bis. The information on own assets in the operational layer of the European situational picture shall be classified as EU Restricted<sup>2</sup>.**

6. The analysis layer of the European situational picture shall consist of the following sub-layers:
- (a) an information sub-layer, which shall contain key developments and indicators relevant for the analysis of (...) **illegal** migration and cross-border crime;
  - (b) an analytical sub-layer, which shall (...) **include (...) analytical reports**, risk rating trends, regional monitors **and** briefing notes **on illegal migration and cross border crime<sup>3</sup> (...)**;
  - (c) an intelligence (...) sub-layer, which shall contain **analysed information on illegal migration and cross border crime relevant for the attribution of (...)** the impact levels (...) to the external (...) border sections **such as migrant profiles, routes** and facilitation analysis.
  - (d) an imagery and geo-data sub-layer, which shall (...) **include** reference imagery, background maps, intelligence validation (...), change analysis (earth observation imagery) as well as change detection, geo-referenced data and border permeability maps.

**7. (...)**

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<sup>1</sup> **NO** and **SE** asked if operations carried out by two or more Member States should be included in this sub-layer. Following other questions by delegations, **the Presidency** concluded that it would reflect on a new drafting.

<sup>2</sup> **SE** entered a scrutiny reservation on this new provision. **BE** maintained its reservation.

<sup>3</sup> **NL** entered a scrutiny reservation on the reference to cross-border crime in (b) and (c). **NO** asked to include the tactical risk analysis reports as in Article 9 (9).

Article 11

**Common Pre-Frontier Intelligence Picture**

1. The Agency shall establish and maintain a common pre-frontier intelligence picture in order to provide the national coordination centres with information and analysis on the pre-frontier area which is relevant for the prevention of (...) **illegal** migration and **combating (...) cross border**<sup>1</sup> crime **as well as for the protection of lives of migrants** at the external borders of the Member States and in neighbouring third countries.
2. The common pre-frontier intelligence picture shall be composed of information collected from the following sources:
  - (a) national coordination centres, **including information and reports provided by Member States' liaison officers in accordance with Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officer's network**<sup>2</sup>;
  - (b) (...)
  - (c) the Agency, **including information and reports provided by Frontex liaison officers**;
  - (d) other relevant European and international organisations;
  - (e) third countries;
  - (e)bis** **information provided in the framework of bilateral or multilateral agreements and regional networks, as authorised by the national coordination centres**<sup>3</sup>;
  - (f) other sources.
3. The common pre-frontier intelligence picture may contain information which is relevant for air border surveillance (...) and checks at border crossing points.
4. The events, **operational and analysis** layers of the common pre-frontier intelligence picture shall **be structured in the same manner as in the European Situational Picture** (...).
5. The Agency shall assign a single indicative impact level to each incident in the events layer of the common pre-frontier intelligence picture. The Agency shall inform the national coordination centres on any incident in the pre-frontier area (...).
6. (...)

<sup>1</sup> RO suggested to move the word "combating" and put it before "illegal migration".

<sup>2</sup> AT, ES, NL, PT and RO preferred the original Commission proposal. RO, NL and FI preferred to have a reference to information provided by liaison officers (not only immigration) in a separate item.

<sup>3</sup> ES reiterated its position against this new subparagraph as in Articles 9 and 10. A large majority of delegations could support the new Presidency compromise text.

7. (...)

## Article 12

### Common application of surveillance tools

- 1<sup>1</sup>. The Agency shall **coordinate** (...) the common application of surveillance tools, such as satellites and ship reporting systems, by Member States in order to supply the national coordination centres and itself with surveillance information on the external borders and on the pre-frontier area on a regular, reliable and cost-efficient basis.
2. The Agency **shall** (...) provide a national coordination centre upon **its** request with information on the external borders of the requesting Member State and on the pre-frontier area which is derived from<sup>2</sup>:
  - (a) selective monitoring of designated third country ports and coasts which have been identified through risk analysis and intelligence as embarkation or transit points for vessels used for (...) **illegal** migration **or** (...) cross-border crime;
  - (b) tracking of a vessel over high seas which is suspected of or has been identified as being used for (...) **illegal** migration **or** (...) cross-border crime;
  - (c) monitoring of designated areas in the maritime domain in order to detect, identify and track vessels suspected of or used for (...) **illegal** migration **or** (...) cross-border crime;
  - (d) environmental assessment of designated areas in the maritime domain and at the external land border in order to optimise monitoring and patrolling activities;
  - (e) selective monitoring of designated pre-frontier areas at the external (...) borders, which have been identified through risk analysis and intelligence as potential departure or transit areas for (...) **illegal** migration **or** (...) cross-border crime.
3. The Agency **shall** (...) provide the information referred to in paragraph 1 by combining and analysing data collected from the following systems, sensors and platforms:
  - (a) ship reporting systems within their given legal limitations (...);

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<sup>1</sup> **EL** recalled its position regarding Frontex coverage of all costs involved by the use of the common application of surveillance tools. **PT** noted that the wording in Article 6 should be changed in line with the new wording in this paragraph. **The Presidency** concluded that a majority of delegations could support the new Presidency compromise text.

<sup>2</sup> **NO** would like to enable neighbouring Member States or other relevant Member States to receive this information.

- (b) satellite imagery;
- (c) sensors mounted on any **craft**<sup>1</sup>(...), including manned and unmanned aerial vehicles.
- 4. The Agency may refuse a request from a national coordination centre on the basis of technical and financial limitations as well as for other justified reasons. **The Agency shall notify the national coordination centre with the reasons for such a refusal.**
- 5. The Agency may use on its own initiative the surveillance tools referred to in paragraph 2 for collecting information which is relevant for the common pre-frontier intelligence picture.

#### Article 12a

#### Processing of personal data<sup>2</sup>

- 1. **The National Situational Picture may be used for processing personal data in accordance with Directive 95/46/EC<sup>3</sup> and the national legislation.**
- 2. **The European Situational Picture and the Common Pre-Frontier Intelligence Picture may not be used for processing personal data:**
  - (a) **except for the [names or] registration numbers of vehicles, vessels and other craft, which shall be processed in accordance with Regulation (EC) No 45/2001<sup>4</sup> and with Directive 95/46/EC<sup>5</sup>;**
  - (b) **to the extent allowed by Article 11c of Regulation (EC) No 2007/2004.**

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<sup>1</sup> The Presidency would check the word "craft" in line with Article 9

<sup>2</sup> **BE, DE and NL** entered a scrutiny reservation. **DE** preferred to keep the Commission original proposal and said that in general it was not necessary to process personal data in the framework of EUROSUR. **BE** and **DE** asked for the opinion of the Council Legal Service. **SE** supported this new Article subject to some comments on the specific drafting. The **CLS** explained that paragraph 1 reflected the current state of play and was declaratory. As for the second paragraph, the CLS said that the reference to the processing of personal data in the ESP and the CPFIP was something new and that letters (a) and (b) were cumulative. In both paragraphs the CLS asked to include the reference to Council Framework Decision 2008/977/JHA as in recital 7.

<sup>3</sup> OJ L 281, 23.11.1995, p. 31.

<sup>4</sup> OJ L 8, 12.1.2001, p. 1.

<sup>5</sup> **ES** asked to include the word "or" to make it clearer that letters (a) and (b) were not cumulative.

*CHAPTER III*  
*Reaction Capability*

*Article 13*

**Determination of external border sections**

Each Member State shall divide its external land and sea borders into border sections **(...) which shall be notified to the Agency**<sup>1</sup>.

*Article 14*

**Attribution of impact levels to external border sections**<sup>2</sup>

- 1<sup>3</sup>. Based on the Agency's risk analysis and **(...) in agreement with** the Member State concerned, the Agency shall attribute **or change** the following impact levels to each of the external land and sea border sections of Member States:
- (a) low impact level in case the incidents related to **(...) illegal** migration **or** **(...)** cross-border crime occurring at the border section in question have an insignificant impact on border security<sup>4</sup>;
  - (b) medium impact level in case the incidents related to **(...) illegal** migration **or** **(...)** cross-border crime occurring at the border section in question have a moderate impact on border security;
  - (c) high impact level in case the incidents related to **(...) illegal** migration **or** **(...)** cross-border crime occurring at the border section in question have a significant impact on border security.

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<sup>1</sup> **ES** supported by **FR, IT** and **SE**, asked to include the words "For the purpose of this Regulation.." at the beginning of the Article. **EL** maintained its reservation on this Article. **PL** preferred the original Commission proposal. **FR** asked that Member States should also notify the Commission on their border sections. **The Presidency** concluded that the new wording received broad support by delegations which also had expressed positive views on the addition requested by **ES**.

<sup>2</sup> **BG, EL** and **SE** have a scrutiny reservation on this Article.

<sup>3</sup> A large majority of delegations supported the Presidency compromise text for paragraph 1.

<sup>4</sup> **RO** requested to provide in the Handbook for criteria determining the impact level for border security.

2. The national coordination centre shall regularly assess whether there is a need to **change (...)** the impact level of any of the border sections **by taking into account the information contained in the national situational picture.** The **Member State via its** national coordination centre may **request (...)** the Agency to change the impact level by providing substantiated information on the altered conditions at the external border section concerned<sup>1</sup>.
3. The Agency shall visualise **(...)** the impact levels attributed to the external borders in the European situational picture.

*Article 15*

**Reaction corresponding to impact levels<sup>2</sup>**

1. The Member States shall ensure that the surveillance and patrolling activities carried out at the external border sections correspond to the attributed impact levels in the following manner:
  - (a) where a low impact level is attributed to an external border section, the **national authorities with a responsibility for external border surveillance (...)** shall **(...)** ensure that sufficient patrols are being kept in the border area in readiness for tracking, identification and interception<sup>3</sup>;
  - (b) where a medium impact level is attributed to an external border section, the national coordination centre shall **coordinate at national level(...)** the **(...) sufficient** allocation of additional personnel and resources **to national authorities with a responsibility for external border surveillance operating at the affected border section<sup>4</sup>**;
  - (c) where a high impact level is attributed to an external border section, the national coordination centre shall ensure that the **concerned national authorities with a responsibility for external border surveillance operating at the concerned external border section (...)** are given all necessary support at national level **(...)**; the national coordination centre<sup>5</sup> may also request the Agency for support in accordance with the provisions of Regulation (EC) No 2007/2004<sup>6</sup>.
2. The national coordination centre shall **as soon as possible** inform the Agency about the measures taken at national level pursuant to point (...) (c) of paragraph 1 (...).

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<sup>1</sup> **IT, PT and SI** requested the deletion of the last sentence in paragraph 2. **NL** asked to include a sentence saying that if there is a request for a change by a Member State, such request should be properly analysed. The Presidency concluded that delegations agreed on the first sentence and that Member States would always have the possibility to request for a change in the impact level.

<sup>2</sup> **EL** has a scrutiny reservation on this Article.

<sup>3</sup> A large majority of delegations could support the new wording suggested by the Presidency.

<sup>4</sup> A large majority of delegations could support the new wording suggested by the Presidency.

**RO** was against the word "coordinate". **NL** maintained its reservation on this provision.

<sup>5</sup> **ES** supported by **BG, IT, PT SE and SI** asked to replace NCC by "Member State" in accordance with Frontex Regulation.

<sup>6</sup> **BG, DE, NL, SE and SI** maintained their reservations on this provision.

3. Where a medium or high impact level is attributed to an external border section which is adjacent to the border section of another Member State or a third country, the national coordination centre shall (...) **contact** (...) the national coordination centre of the neighbouring country<sup>1</sup> **in order to coordinate the necessary cross border measures.**
4. Where a national coordination centre<sup>2</sup> submits a request according to point (c) of paragraph 1, the Agency (...) **shall** support that centre in particular by
  - (a) giving priority treatment for the common application of surveillance tools;
  - (b) coordinating the deployment of European Border Guard Teams in accordance with Regulation (EC) No 2007/2004;
  - (c) ensuring the deployment of technical equipment at the disposal of the Agency in accordance with Regulation (EC) No 2007/2004;
  - (d) coordinating any additional support offered by Member States<sup>3</sup>.
5. The Agency shall evaluate **together with Member States** the attribution of impact levels and the corresponding measures taken at national and Union level in its risk analysis reports.

TITLE III  
**SPECIFIC PROVISIONS**

*Article 16*

**Allocation of tasks to other centres in the Member States<sup>4</sup>**

1. Member States may entrust regional, local, functional or other (...) **authorities**, which are in the position to take operational decisions, with ensuring the situational awareness and reaction capability in the respective area of competence, including the tasks and competences referred to in points (b), (d) and (e) of Article 5(3).
2. The decision of the Member State referred to in paragraph 1 shall not affect the national coordination centre in its ability to cooperate and exchange information with other national coordination centres and the Agency.

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<sup>1</sup> **EL** asked to add "or the competent authority". A large majority of delegations supported the Presidency compromise text for this paragraph.

<sup>2</sup> **ES** supported by **BG, IT, PT SE** and **SI** asked to replace NCC by "Member State" in accordance with Frontex Regulation.

<sup>3</sup> **FR** and **SE** considered that this provision was not in line with the Frontex mandate and therefore requested its deletion.

<sup>4</sup> **LV** entered a scrutiny reservation on this Article and preferred the original Commission proposal.

3. In pre-defined cases **as determined at national level** the national coordination centre may authorise **an authority (...)** referred to in paragraph 1 to communicate and exchange information with the regional **(...) authorities** or the national coordination centre of another Member State or third country on condition that it regularly informs its own national coordination centre about the communication and information exchange.<sup>1</sup>

#### Article 17

### Cooperation of the Agency with third parties

1. The Agency shall make use of existing information, capabilities and systems available in other **(...) Union agencies, bodies and international organisations<sup>2</sup> (...)**, within the respective legal frameworks.
2. In accordance with paragraph 1, the Agency shall cooperate in particular with the following **Union agencies, bodies (...), and international organisations<sup>3</sup>**:
- (a) European Police Office (Europol) **(...)** in order to exchange information on cross-border crime to be included in the European Situational Picture;
  - (b) the EU Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency when providing the common application of surveillance tools;
  - (c) the European Commission and EU agencies which can provide the Agency with information relevant for maintaining the European Situational Picture and the Common Pre-Frontier Intelligence Picture;
  - (d) international organisations which can provide the Agency with information relevant for maintaining the European Situational Picture and the Common Pre-Frontier Intelligence Picture.
- 2a. In accordance with paragraph 1, the Agency may cooperate with the Maritime Analysis and Operations Centre - Narcotics (MAOC-N) and the Centre de Coordination pour la lutte antidrogue en Méditerranée (CeCLAD-M) in order to exchange information on cross-border crime to be included in the European Situational Picture.**
3. Information between the Agency and the **(...) Union agencies, bodies and international organisations<sup>4</sup>** referred to in paragraphs 2 **and 2a** shall be exchanged via the network referred to in Article 7 or other communication networks which fulfil the criteria of availability, confidentiality and integrity.

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<sup>1</sup> A large majority of delegations supported the new compromise text suggested by the Presidency.

<sup>2</sup> EL asked to identify the international organisations concerned and mentioning them in the text.

<sup>3</sup> EL asked to identify the international organisations concerned and mentioning them in the text.

<sup>4</sup> EL asked to identify the international organisations concerned and mentioning them in the text.

4. The cooperation between the Agency and the **(...) Union agencies, bodies and international organisations**<sup>1</sup> referred to in paragraphs **2 and 2a** shall be regulated in working arrangements in accordance with Regulation (EC) No 2007/2004 and the respective legal basis of **(...) the Union agency, body or international organisation**. As regards the handling of classified information, these arrangements shall provide that the **(...) Union agencies, bodies and international organisations (...)** concerned comply with equivalent security rules and standards as those applied by the Agency.
5. The agencies and centres referred to in paragraphs **2 and 2a** may use information received in the context of EUROSUR within the limits of their legal framework and in compliance with fundamental rights, **including data protection requirements**.

### *Article 18*

#### **Cooperation with neighbouring third countries**

1. The exchange of information and cooperation with neighbouring third countries on preventing **(...) illegal** migration and cross-border crime may take place on the basis of bilateral or multilateral agreements between one or several Member States and one or several neighbouring third countries concerned. The national coordination centres of the Member States shall be the contact point<sup>2</sup> for the exchange of information between the network referred to in Article 7 and the **(...)** neighbouring third countries.
2. Any exchange of information under paragraph 1 of this Article and under point (h) of Article 9(2), which **provides** a third country **(...) with** information **that could be used** to identify persons or groups of persons who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of fundamental rights, shall be prohibited.
3. Any exchange of information under paragraph 1 of this Article and under point (h) of Article 9(2) shall be done in compliance with the conditions of the bilateral and multilateral agreements concluded with neighbouring third countries.

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<sup>1</sup> **EL** asked to identify the international organisations concerned and mentioning them in the text.

<sup>2</sup> **ES** and **IT** reiterated their position that the decision on the contact point for the exchange of information with the regional networks of neighbouring third countries should be taken by Member States at national level. **SE** suggested to add at the end of the first paragraph "within the EUROSUR framework".

4. Prior approval of any other Member State, which provided information in the context of EUROSUR and which is not part of any of the agreements referred to in paragraph 1 and of the networks referred to in point (h) of Article 9(2), shall be required before that information can be shared with any third country under that agreement or network.
5. Any exchange of information with third countries of information derived from service for the common application of surveillance tools is subject to the legislation and rules governing those tools and systems as well as to the relevant provisions of Directive 95/46/EC and Regulation (EC) No 45/2001.

*New Article 18bis*

Cooperation with the UK and Ireland<sup>1</sup>

1. The exchange of information and cooperation with the United Kingdom and Ireland on preventing illegal migration and cross-border crime at the external borders may take place on the basis of bilateral or multilateral agreements between the United Kingdom and Ireland and one or several neighbouring Member States. These agreements may include one or several neighboring third countries. The national coordination centres of the Member States shall be the contact point for the exchange of information between the network referred to in Article 7 and the United Kingdom and Ireland.
2. The agreements referred to in paragraph 1 shall include provisions on financial costs arising from the participation of the United Kingdom and Ireland in the implementation of those agreements.
3. Prior approval of any other Member State, which provided information in the context of EUROSUR and which is not part of any of the agreements referred to in paragraph 1, shall be required before that information can be shared with the United Kingdom and Ireland under that agreement.

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<sup>1</sup> FI, NL and NO supported the Presidency compromise text. BE, DE, FR, EL, IT, and PT supported in general the idea of establishing a cooperation with UK and IE in the context of EUROSUR but expressed reservations and doubts regarding the legal basis and the form of this cooperation (bilateral and multilateral agreements) and they asked the CLS for its opinion. ES entered a substantial scrutiny reservation and expressed strong concerns on this new provision because of legal and operational reasons. ES called to avoid creating differences among Schengen countries resulting from bilateral and multilateral agreements with the UK and IE and asked UK to provide further information on its substantial surveillance capacity in the area of the southern maritime borders as referred to in doc. 10093/11. The CLS recalled the two Council decisions whereby UK and IE were authorised to participate in some Schengen matters but which excluded external border policy, for that reason the UK and IE are not taking part in the adoption of this Regulation. For the CLS the only way to cooperate in the context of EUROSUR would be to provide for a similar solution as the one in Article 18. The Presidency concluded that a number of delegations supported the new provision with ES having a strong reservation and other delegations have scrutiny reservations.

## Article 19

### Handbook

The European Commission shall, in close cooperation with the Member States and the Agency, make available a Practical Handbook for the implementation and management of EUROSUR (hereinafter 'Handbook'), providing technical and operational guidelines, recommendations and best practices. The European Commission shall adopt the Handbook in the form of a recommendation<sup>1</sup>.

## Article 20

### Monitoring and evaluation

1. The Agency shall ensure that procedures are in place to monitor the technical and operational functioning of EUROSUR against the objectives of achieving an adequate situational awareness and reaction capability at the external borders<sup>2</sup>.
2. The Agency shall submit a report **to the Commission**<sup>3</sup> on the functioning of EUROSUR on 1 October 2015 and every two years thereafter.
3. The Commission shall provide an overall evaluation of EUROSUR to the European Parliament and the Council on 1 October 2016 and every four years thereafter. This evaluation shall include an examination of results achieved against objectives and an assessment of the continuing validity of the underlying rationale, the application of this Regulation in the Member States and by the Agency, and the compliance with fundamental rights. That evaluation shall be accompanied, where necessary, by appropriate proposals to amend this Regulation.
4. Member States shall provide the Agency with the information necessary to draft the report referred to in paragraph 2. The Agency shall provide the Commission with the information necessary to produce the evaluation referred to in paragraph 3.

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<sup>1</sup> **EL, PL and SI** expressed concerns about the fact that Member States will be excluded from the adoption of the Handbook.

<sup>2</sup> **NL and EL** asked to reinforce the Member States' role in the evaluation process.

<sup>3</sup> **FR** asked to add "and Member States" and that the report will be classified "EU RESTREINT". **ES** asked that Frontex should send the report to the Council.

*Article 21*

**Entry into force and applicability**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall apply from 1 October 2013.
3. Article 5(1) shall apply to the Member States located at the southern (...) and eastern (...) external borders of the Union (Bulgaria, Cyprus, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovak Republic, Slovenia<sup>1</sup> and Spain) from 1 October 2013.
4. Article 5(1) shall apply to the remaining Member States (...) as from 1 October 2014<sup>2</sup>.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>1</sup> **SI** maintained its reservation because it was not clear at which borders they would have to implement EUROSUR by 1 October 2013 in light of Croatia's accession.

<sup>2</sup> **CZ** entered a positive scrutiny reservation. CZ asked Cion about the implications of this new wording for them. The Presidency concluded that the new compromise text for Article 21 was largely supported subject to reservations by CZ and SI.

## Annex

The following principles shall be taken into account when setting, operating and maintaining the different components of the EUROSUR framework:

- (a) *Principle of communities of interest:* The national coordination centres and the Agency shall form particular communities of interest for sharing information and cooperation in the framework of EUROSUR. Communities of interest shall be used to organise different national coordination centres and the Agency to exchange information in pursuit of shared objectives, requirements and interests.
- (b) *Principles of coherent management and of using existing structures:* The Agency shall ensure the coherence between the different components of the EUROSUR framework, including providing guidance and support to the national coordination centres and promoting the interoperability of information and technology. To the extent possible, the EUROSUR framework shall make use of existing systems and capabilities. In this context, EUROSUR shall be established in full compatibility with the initiative for a Common Information Sharing Environment for the surveillance of the EU maritime domain (CISE), thereby contributing to and benefit from a coordinated and cost-efficient approach for cross-sectoral information exchange in the Union.
- (c) *Principles of information sharing and of information assurance<sup>1</sup>:* Information made available in the EUROSUR framework shall be available to all national coordination centres and the Agency, unless specific restrictions have been laid down or agreed upon. The national coordination centres shall guarantee the availability, confidentiality and integrity of the information to be exchanged at national, (...) European **and international** level. The Agency shall guarantee the availability, confidentiality and integrity of the information to be exchanged at European **and international** level.
- (d) *Principles of service-orientation and of standardisation:* The different EUROSUR capabilities shall be implemented using a service-oriented approach. The Agency shall ensure that, to the extent possible, the EUROSUR framework is based on internationally agreed standards.
- (e) *Principle of flexibility:* Organisation, information and technology shall be designed to enable the EUROSUR stakeholders to react to changing situations in a flexible and structured manner.

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<sup>1</sup> FR reiterated its position concerning the need to include in this point that information will be exchanged on the need to know principle and voluntary exchange of information within a same community. FR also would like to include that the recorded data in the processing can not be reused without the consent for transmission from the competent authority of the Member State from which the data were obtained, in compliance with its national law.