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of: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

on: 3 April 2012

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

At its meeting on 3 April 2012, the Working Party on Frontiers/Mixed Committee continued the first reading of the above proposal (Articles 5 to 9(2)). The text of Articles 5 to 9(2) is reproduced in the Annex. Delegations' comments are set out in footnotes.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Establishing the European Border Surveillance System (EUROSUR)

Article 5

National Coordination Centre

1. Each Member State with land and¹ sea external borders² shall designate, operate and maintain a³ National Coordination Centre for border surveillance, which shall coordinate and exchange information between all authorities with a responsibility for external border surveillance 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 Agency⁴.
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 Agency⁵.

¹ **CY** proposed adding "and/or".

² **EL** suggested deleting "with land and sea external borders", in order for countries without sea and land external borders to participate in EUROSUR.

³ **LV** proposed adding "Unified" before "National Coordination Centre". **SE, IT, HU** and **EL** were not in favour of the LV proposal.

⁴ **LV** suggested modifying the text as "The Member State shall notify the establishment of the centre to the Agency, which shall forthwith inform the other Member States and the Commission". **Cion** commented that the reason behind its initial proposal was to ensure that funding would be possible. **IT** was not in favour of LV proposal.

⁵ **SE** proposed clarifying the paragraph by adding at its end "within the framework of EUROSUR". **ES, PL, RO, PT** and **EE** agreed with the need for clarification and were in favour of the SE proposal.

3. The national coordination centre shall¹:
- (a) ensure the timely² information exchange and cooperation between all national authorities with a responsibility for external border surveillance and with relevant law enforcement 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 personnel³;
 - (c) establish and maintain the National Situational Picture in accordance with Article 9;
 - (d) support the planning and implementation of all⁴ national border surveillance activities;
 - (e) administer⁵ the national border surveillance system, where applicable⁶ in accordance with national law;

¹ **SK** proposed that NCC's should also cover other areas, such as first aid, fire brigade, etc. **BE** was not in favour of the **SK** proposal. **NL** suggested adding that the NCC shall "ensure that the tasks listed are being carried out" and "inter alia" before listing the different competencies. **RO** proposed that the role of the NCC in (d), (e), (f) and (g) should be supportive and adding "according to the provisions of national legislation". **PT** commented that the role of the NCC should focus on promoting coordination and information exchange.

² **LT** questioned on the meaning of "timely". **Cion** explained that "timely" means that the NCC shall ensure that information flows without any necessary delay, in particular when a quick reaction is required. This should be achieved not only between border surveillance authorities, but also with relevant enforcement authorities.

³ **FR, PL, SI, LT, IT, PT, BE, LV** asked **Cion** to clarify the provision. **Cion** explained that effective and efficient management of resources and personnel concerns making best use of patrol assets belonging to different national authorities in case of an incident where these assets are present in the operational area.

⁴ **NO** supported by **PT** proposed deleting "all". **SE** also supported **NO** and proposed replacing "all" with "relevant" in case the **NO** proposal was not acceptable. **Cion** was in favour of the **NO** proposal.

⁵ **NO** supported by **LV** suggested replacing "administer" by "coordinate". **PT** proposed deleting "administer". **SI** and **BE** asked **Cion** to clarify the meaning of "administer". **Cion** explained that administering the national border surveillance system shall be understood in a wide sense, ranging from the full technical administration to simply ensuring that information provided under different surveillance systems is depicted in the National Situational Picture. **Cion** was in favour of replacing "administer" with "coordinate".

⁶ **NO** proposed deleting "where applicable".

- (f) measure regularly the effects of national border surveillance activities¹;
 - (g) coordinate operational measures² with other Member States, without prejudice to the competences of the Agency³.
4. The national coordination centre shall operate twenty four hours a day and seven days a week.

Article 6

The Agency⁴

1. The Agency shall
- (a) administer⁵ the communication network for EUROSUR in accordance with Article 7;
 - (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 12⁶.
2. For the purposes of paragraph 1, the Agency shall operate twenty four hours a day and seven days a week.

¹ **SI, NL, IT, BE** expressed doubts and asked Cion to clarify the provision. **SE** proposed deleting it. **PT** suggested limiting this provision. **Cion** explained that the effect measurement should be seen as a method to continuously analyse how to improve situational awareness and reaction capability both at national and European level. **NO** proposed to make a reference to the activities in which the NCC is involved.

² **LV** suggested adding "at national level with competent authorities".

³ **IT** proposed adding "in accordance with national law".

⁴ **PT** asked Cion to clarify the role of EUROPOL in cross-border crime in relation to Frontex mandate. **Cion** referred to Art. 17 (2) (a) of the proposal which requires Frontex and EUROPOL to cooperate in this regard.

⁵ **PL** proposed adding "and secure the appropriate communication network for EUROSUR". **Cion** explained that this is sufficiently covered in Art. 7 of the proposal. **SE** questioned on "administer". **Cion** clarified that "administer" refers to the technical administration of the network.

⁶ **EL** suggested clarifying that the costs for the common application of surveillance tools will be covered by Frontex.

Article 7

Communication network

1. The Agency shall establish¹ and maintain a communication network in order to provide communications and analytical tools and allow for the secure² exchange of non-classified sensitive and classified information 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 for³:
 - (a) bilateral and multilateral information exchange in near real time;
 - (b) audio and video conferencing;
 - (c) secure handling, storing, ⁴processing of non-classified sensitive information⁵;
 - (d) secure handling, storing, transmission and processing of EU classified information⁶ 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 communication and information system managed by the Agency⁷.

¹ **PL** proposed adding "accredit". **Cion** explained that Frontex cannot be at the same time the technical system operator (TSO) and the security accreditation authority (SAA). **EL** suggested modifying the text as "establish, operate, maintain and cover the operational costs of a communication network".

² **FR** proposed replacing "for the secure exchange" with "for the exchange of non-classified sensitive and classified information in a secured way". **Cion** was in favour of the FR proposal.

³ **SI, SE** and **HU** questioned on personal data transmission. **Cion** reiterated that the exchange of personal data, if any, should not go beyond existing legislation, that Frontex has a limited mandate to deal with personal data and referred to recital 7 of the Preamble. **SI** asked if it is feasible for Frontex to provide for technical support for every Member State. **SE** asked whether the need for technical maintenance does not put in question the 24/7 requirement. **Cion** proposed to clarify these issues in a Handbook.

⁴ **PL** suggested adding "transmission and".

⁵ **PL** supported by **SE** proposed adding "exchange".

⁶ **PL** supported by **SE** suggested adding "exchange".

⁷ **SE** asked Cion to clarify that no personal data exchange will take place during the technical support given by Frontex to NCCs. **Cion** explained that the technical support given by Frontex to NCCs is strictly for the maintenance of the EUROSUR communication network.

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^{1,2}
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 pictures³

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, visualisation⁴ and dissemination of information.
2. The pictures referred to in paragraph 1 shall consist of the following layers:
 - (a) an events layer, containing information on incidents concerning irregular migration⁵, cross-border crime and crisis situations⁶;

¹ OJ L 317, 3.12.2001, p.1.

² **EL** proposed including a reference to the Frontex Regulation 2007/2004 as amended. **Cion** explained that the amended Frontex mandate already refers to Commission Decision 2011/844/EC and therefore such a reference is not necessary.

³ **DE** and **IT** asked whether and how often the information collected by the NCC would be available to other NCCs and Frontex. **Cion** replied that in principle the information remains in the NCC, unless it is explicitly stated otherwise, as in Art. 9, 10 and 11 of the proposal.

⁴ **NO** questioned **Cion** on "visualisation" and whether the detailed list of all steps is necessary.

⁵ **FI, EL, DE** and **SI** suggested replacing "irregular" with "illegal" migration according to Art. 79(1) TFEU. **Cion** reiterated that Art. 79 TFEU referring to "illegal migration" should apply.

⁶ **LT** supported by **LV** asked clarifying "crisis situations". **Cion** explained by referring to Art. 9 (3)(c) of the proposal.

- (b) an operational layer, containing information on the status and position of own assets¹, areas of operation and environmental information²;
- (c) an analysis layer, containing strategic information, analytical products, intelligence³ 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 surveillance⁴ at national level with effective, accurate and timely information which is relevant for the prevention⁵ of irregular migration and⁶ cross-border crime at the external borders of the Member State concerned.
2. The national situational picture shall⁷ be composed of information collected from the following sources⁸:
 - (a) national border surveillance system, where applicable⁹ in accordance with national law;
 - (b) stationary and mobile sensors operated by national authorities with a responsibility for external border surveillance¹⁰;
 - (c) patrols on border surveillance and other monitoring missions¹¹;

¹ **PL, DE and SI** expressed concerns regarding providing information on the status and positions of own assets and entered a scrutiny reservation. **Cion** referred to Art. 9 (8) of the proposal and clarified that this information should be EU Restricted. **BE** stressed that such information might be classified up to the level of EU Secret and that parallel channels might be used in this regard.

² **RO** asked for clarification and suggested that patrols should only be visible when they are linked to specific events. **EL** questioned on environmental information. **Cion** explained that environmental information applies to terrain and weather conditions and referred to Art. 9(5) (c) of the proposal.

³ **FR, SI and LV** asked for a definition of "intelligence".

⁴ **NO** suggested replacing "surveillance" with "control".

⁵ **SE and NL** proposed including the prevention of loss of migrants' lives.

⁶ **NL** suggested adding "combating".

⁷ **PL** proposed replacing "shall" with "can". **Cion** was not in favour of PL proposal.

⁸ **EL** supported by **NL** proposed adding "such as". **Cion** was in favour of EL proposal. **NO** asked whether points (b) to (k) could be regarded as being already covered by point (a).

⁹ **SI** suggested deleting "where applicable".

¹⁰ **PL** expressed doubts on this provision.

¹¹ **PL** expressed doubts on this provision. **SI** stressed that information on patrols should not be available to third countries. **Cion** confirmed that such information would not be shared.

- (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 countries¹;
- (h) regional networks with neighbouring third countries,² such as the SEAHORSE Atlantic network, SEAHORSE Mediterranean network, the Baltic Sea Region Border Control Cooperation network CoastNet, the Black Sea Border Coordination and Information Centre and other regional networks set up at the external land borders³;
- (i) ship reporting systems^{4, 5} such as the Automatic Identification System (AIS) and the Vessel Monitoring System (VMS). Data from these systems shall be acquired at national level from the national competent authorities and fisheries monitoring centres;
- (j) other relevant European and international organisations;
- (k) other sources.

3. The events layer of the national situational picture shall consist of the following sub-layers:

- (a) a sub-layer on irregular migration, which shall contain information on incidents concerning illegal border crossings of migrants occurring at or nearby the external borders of the Member State concerned, on facilitations of irregular border crossings and on any other relevant irregular 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, which shall contain information on incidents concerning trafficking in human beings, smuggling of drugs and other illicit goods, and on any other serious and organised or organised crime incident at or nearby the external borders of the Member State concerned;

¹ **UK** reiterated its position in favour of engaging in EUROSUR in this respect.

² **SE** and **LV** proposed deleting the rest of the sentence giving examples of regional networks, as these networks might change or disappear in the future. **Cion** was in favour of the **SE** and **LV** proposal.

³ **EL** suggested adding "sea external borders". **SI** proposed including a reference to bilateral agreements as a source of information.

⁴ **EL** asked clarifying that the use of ship reporting systems would not lead to additional costs or administrative burden for Member States. **FR** proposed including the reference "within their given legal limitations" as in Art. 12(3) (a) of the proposal. **Cion** was in favour of **FR** proposal.

⁵ **LV** and **SE** proposed deleting the rest of the sentence giving examples as these systems might change or disappear in the future. **Cion** was in favour of the **LV** and **SE** proposal.

- (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 of the external borders;
 - (d) a sub-layer on other events, which shall contain information on unidentified and suspect platforms and persons 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 of the external borders;
4. Each incident in the events layer of the national situational picture shall be assigned with a single indicative impact level, ranging from 'low' and 'medium' to 'high' impact. All events assigned with a 'medium' to 'high' impact level shall be shared with the Agency.
5. The operational layer of the national situational picture shall consist of the following sub-layers:
- (a) a sub-layer on own assets, which shall contain information on position, time, course, speed, status and type of own assets, and of the deployment plan, including the geographic coordinates of the area of operation, patrol schedules and communication codes; 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 except when the own assets are deployed in the neighbouring border section of another Member State;
 - (b) a sub-layer on areas of operation, which shall contain information on the mission, location, status, duration and the authorities involved in operations;
 - (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.
6. The analysis layer of the national 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 irregular migration and cross-border crime.
 - (b) an analytical sub-layer, which shall present analytical reports, risk rating trends, regional monitors and briefing notes relevant for the concerned Member State;
 - (c) an intelligence picture sub-layer, which shall contain migrant profiles, routes, information on the impact levels attributed to the external land and sea border sections and facilitation analysis.
 - (d) an imagery and geo-data sub-layer, which shall contain reference imagery, background maps, intelligence validation assessments, 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 be based on the information provided in the European situational picture and in the common pre-frontier intelligence picture.
8. The information on own assets in the operational layer shall be classified as EU Restricted.
9. The national coordination centres of neighbouring Member States shall share with each other directly and in near real time the situational picture of neighbouring external border sections relating to:
 - (a) all incidents concerning irregular migration and cross-border crime and other significant events contained in the events layer;
 - (b) the positions of own patrols contained in the operational layer, when the primary mission of the patrol is to prevent irregular migration and cross-border crime;
 - (c) the planning schemes, schedules and communication codes for the following day of patrols operating in the neighbouring external border sections;
 - (d) tactical risk analysis reports as contained in the analysis layer.
