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NOTE

from: Presidency
to: JHA Counsellors
(EU-Iceland/Liechtenstein/Norway/Switzerland)

No. Cion prop.: 18666/11 FRONT 203 CODEC 2462 COMIX 349 (COM(2011) 873 final)
No. prev. doc 13659/12 FRONT 119 CODEC 2106 COMIX 496

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

Following discussions at the Working Party on 25 January, 23 February, 3 April, 22 May, 5/6 June, 26/27 June, 19 July, 5 September and 28 September 2012 on the above-mentioned proposal, the Presidency has further reflected on possible ways forward as regards issues raised by delegations.

In the light of the comments submitted by delegations on different issues, of the explanations provided by the Commission and the Council Legal Service and of the linguistic suggestions made by the jurist linguists, the Presidency submits to delegations the revised Presidency compromise text of this proposal, set out in the Annex, for the purpose of further discussions.

Changes to the Commission proposal which are supported by a large majority of delegations are marked in **bold**. Additional proposed changes to the text as submitted or outstanding issues are marked **in bold** and underlined or marked for deletion (**...**), where applicable. Linguistic changes submitted by the Jurist Linguists are marked **in bold** and *italic*.

In particular, the Presidency invites delegations to further reflect on:

- Recital 1 of the Preamble and Article 1, on the scope of the Regulation.
- Article 9 on the National Situational Picture, where some minor changes are proposed.
- Article 10, on the European Situational Picture, where some minor changes are proposed.
- Article 12(2)(b) and (c) , on Common application of surveillance tools, where the reference to transportation means has been amended as “vehicles, vessels and other craft”.
- Article 15 (1)(c) and (3), on Reaction corresponding to impact levels, where some minor changes are proposed.
- Article 18 (5), on Cooperation with neighbouring third countries, where some minor changes are proposed for consistency purposes.
- Article 18a, on cooperation with the UK and Ireland.
- Para (a) of the Annex.

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 (...) ¹ (...), 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 **at the external borders of the Member States of the European Union for the purpose of (...) detecting, (...) preventing and combating (...) illegal migration and cross-border crime (...) and consequently contributing to better protecting and saving *the* lives of migrants (...).**
- (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.

¹ *Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union* (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 (EC) No 2007/2004, the Agency (...) is *to* (...) 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, the right to life, (...), the prohibition of torture and inhuman or degrading treatment or punishment, the right to liberty and security, (...)* protection of personal data, non-refoulement, non-discrimination and *the* 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 data¹, 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 data² and, (...)the Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters³ are applicable in cases in which more specific instruments, such as Regulation (EC) No 2007/2004, do not provide a full data protection regime.
- (7a) 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 *objective of this Regulation, namely 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, *as set out in that Article*, this Regulation does not go beyond what is necessary in order to achieve (...) *this* objective.

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 8, 12.1.2001, p. 1.

³ 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 **two (...)** successive stages, first to the Member States located at the southern (...)and (...) eastern (...) external borders **of the Member States and**, 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, (...) 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 (...) not bound by it or subject to **its** application (...). Given that this Regulation builds upon the Schengen *acquis*, (...) Denmark shall, in accordance with Article 4 of that Protocol, decide within **a period of** six months after (...) **the Council has decided on** this Regulation whether it will implement it in its national law.
- (11) This Regulation constitutes a development of **the** provisions of the Schengen *acquis* (...) in which the United Kingdom (...) **does not take part**, 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*¹ ²(...), the United Kingdom is therefore not taking part in **its** adoption (...) and is not bound by it or subject to **its** application (...).
- (12) This Regulation constitutes a development of **the** provisions of the Schengen *acquis*(...) in which Ireland (...) **does not take part**, 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*³, (...) Ireland is therefore not taking part in **its** adoption (...) and is not bound by it or subject to **its** application (...).
- (13) As regards Iceland and Norway, this Regulation constitutes a development of **the** provisions of the Schengen *acquis*, (...) **within the meaning of** the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the **latter's'** association (...) with the implementation, application and development of the Schengen *acquis*⁴ **which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement.**
- (14) As regards Switzerland, this Regulation constitutes a development of **the** provisions of the Schengen *acquis*(...) **within the meaning of** by 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*⁵ **which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC OJ L 53, 27.2.2008, p.1. .**

¹ OJ L 131, 1.6.2000, p. 43.

² OJ L 131, 1.6.2000, p. 43.

³ OJ L 64, 7.3.2002, p. 20.

⁴ OJ L 176, 10.7.1999, p. 36.

⁵ OJ L 53, 27.2.2008, p. 52.

- (15) As regards Liechtenstein, this Regulation constitutes a development of *the* provisions of the Schengen *acquis*(...) *within the meaning of* 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*¹ *which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU*².
- (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 2010³.
- (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).**

HAVE ADOPTED THIS REGULATION:

¹ OJ L 160, 18.6.2011, p. 21.

² **OJ L 160, 18.6.2011, p. 19.**

³ OJ L 111, 4.5.2010, p. 20.

TITLE I
GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a common framework 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 at the external borders of the Member States (...) of the European Union**, hereinafter referred to as the (...) "EUROSUR", **for the purpose of detecting, preventing and combating illegal migration and cross-border crime and consequently contributing to better protecting and saving the lives of migrants.**

Article 2

Scope

1. This Regulation shall apply to the surveillance of land and sea external borders of the Member States, including (...) monitoring, detection, identification, tracking, prevention and interception of illegal border crossings **in the context of EUROSUR.**
2. This Regulation shall not apply to (...) 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.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'situational awareness' means the ability to monitor, detect, identify, track and understand cross-border activities in order to find reasoned grounds for **reaction (...)** 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 (...)** at, along or in the proximity of the external borders of the Member States (...), including the means and timelines to react adequately (...);

- (c) 'situational picture' means a graphical interface to present **near** real-time data **and** information (...) 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 **of the Member States** and the pre-frontier area;
- (d) 'cross-border crime' means any serious (...) crime **with a cross border dimension** committed at, (...) **along or in the proximity of** the external borders of *the* Member States(...);
- (e) 'external border section' 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 or any other responsible national authority;
- (f) 'pre-frontier area' means the geographical area beyond the external borders of *the* Member States (...).
- (fa) '**crisis situations**' means any **natural and/or (...) man-made disasters, accidents and any other (...) serious incident (...) occurring at, (...) along or in the proximity of the external borders of the Member States (...), which may have a significant impact on the control of the external borders.**

TITLE II
FRAMEWORK
CHAPTER I
Components

Article 4

EUROSUR framework

1. For the exchange of information and cooperation in the field of border surveillance **and, without prejudice to existing information exchange and cooperation mechanisms**, Member States and the Agency shall use the **EUROSUR** framework (...), 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 (...) 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.

Article 5

National Coordination Centre

1. Each Member State (...) shall designate, operate and maintain a National Coordination Centre (...), 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 Agency.
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 **in the context of EUROSUR**.
3. The national coordination centre shall *inter alia*:
 - (a) ensure the timely information exchange and **contribute to the** cooperation between all national authorities with a responsibility for external border surveillance and with (...) 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 personnel **in accordance with national law**;
 - (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;
 - (f) **contribute to** (...) regularly **measuring** the effects of national border surveillance activities;
 - (g) coordinate operational measures with other Member States, without prejudice to the competences of the Agency **and of 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 (...) and maintain** 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) **coordinate (...)** 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. 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;
 - (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 **relevant** 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 (...) Commission Decision 2001/844/EC, *ECSC, Euratom of 29 November 2001* amending its internal Rules of Procedure¹.
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.
2. The pictures referred to in paragraph 1 shall consist of the following layers:
 - (a) an events layer, containing information on incidents concerning (...) **illegal** migration, cross-border crime and crisis situations;
 - (b) an operational layer, containing information on the status and position of own assets **and** areas of operation, **without prejudice to the legal limitations based on national law** and environmental information;
 - (c) an analysis layer, containing strategic information, analytical products (...) **and analysed information**, as well as imagery and geo-data.

¹ OJ L 317, 3.12.2001, p.1.

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 (...) **control and in particular surveillance of external borders** at national level with effective, accurate and timely information which is relevant for **the purpose of detecting, preventing (...) and combating (...) illegal** migration and cross-border crime at the external borders of the Member State concerned.
2. The national situational picture shall be composed of information collected from (...) sources **such as**:
 - (a) national border surveillance 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, **including liaison officers and contact points**;
 - (f) the Agency;
 - (g) national coordination centres in other Member States (...);
 - (ga) (...) **bilateral or multilateral agreements and regional networks as referred to in Articles 18 and 18a**;(...);
 - (i) ship reporting systems **within their given legal limitations** (...);
 - (j) other relevant European and international organisations.(...)
3. The events layer of the national situational picture shall consist of the following sub-layers:
 - (a) a sub-layer on (...) **illegal** migration, which (...) contains information on incidents concerning illegal border crossings of (...) **third country nationals and** occurring at, **along or in the proximity of** the external borders of the Member State concerned, on facilitations of **illegal** (...) border crossings and on any other relevant (...) **illegal** migration incident (...);

- (b) a sub-layer on cross-border crime (...);
 - (c) a sub-layer on crisis situations (...);
 - (d) a sub-layer on other events, which (...) contains information on unidentified and suspect (...) **vehicles, vessels and other craft** and persons present at, (...) **along or in the proximity of** 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. **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 incidents (...) 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 **and operational areas**, which (...) contains information on position, (...) status and type of own assets, (...) **and on the authorities involved**; 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 (...) contains or gives access to information on terrain and weather conditions at the external borders of the Member State concerned.
- 5a. 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:
- (a) an information sub-layer, which (...) contains key developments and indicators relevant for the analysis of (...) **illegal** migration and cross-border crime.
 - (b) an analytical sub-layer, which (...) **includes** analytical reports, risk rating trends, regional monitors and briefing notes **on illegal migration and cross border crime**, relevant for the (...) Member State *concerned*;
 - (c) an intelligence (...) sub-layer, which (...) contains **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 (...) **includes** reference imagery, background maps, (...) validation **of analysed information(...)** *and* 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. (...)
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:
- (...) incidents concerning (...) **illegal** migration and cross-border crime and other significant events contained in the events layer.
- (...)
- 9a 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:**
- (a) 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;
- (b) the planning schemes, schedules and communication codes for the following day of patrols operating in the neighbouring external border sections;
- (c) tactical risk analysis reports as contained in the analysis layer.

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 **purpose of detecting, preventing (...) and combating (...) illegal** migration and cross-border crime at the external borders of the Member States.
2. The European situational picture shall be composed of information collected from (...) sources **such as:**
- (a) national situational pictures **as authorised by the national coordination centre, in compliance with the provisions of this Article (...);**

- (b) the Agency;
 - (c) other relevant **Union (...) agencies, bodies** and international organisations **as referred to in Article 17**;
- (...)
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 (...);
 - (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 (...);
 - (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.
 5. The operational layer of the European situational picture shall consist of the following sub-layers:
 - (a) a sub-layer on own assets, which (...) contains 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 operations, which (...) contains 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 (...) includes 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.**

6. The analysis layer of the European situational picture shall consist of the following sub-layers:
 - (a) an information sub-layer, which (...) contains key developments and indicators relevant for the analysis of (...) **illegal** migration and cross-border crime;
 - (b) an analytical sub-layer, which (...) **includes (...) analytical reports**, risk rating trends, regional monitors **and** briefing notes **on illegal migration and cross border crime (...)**;
 - (c) an intelligence (...) sub-layer, which (...) contains **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 (...) **includes** reference imagery, background maps, (...) validation **of analysed information(...)** *and* change analysis (earth observation imagery) as well as change detection, geo-referenced data and border permeability maps.
7. (...)

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 **purpose of detecting, preventing (...) and combating (...) illegal** migration and (...) **cross border** crime 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 (...) sources **such as**:
 - (a) national coordination centres, **including information and reports received from Member States' liaison officers via the competent national authorities**;
 - (b) (...)
 - (c) the Agency, **including information and reports provided by Frontex liaison officers**;
 - (d) other relevant European and international organisations;
 - (e) third countries;
 - (ea) (...) **bilateral or multilateral agreements and regional networks as referred to in Articles 18 and 18a, as authorised by the national coordination centres**;
 - (...)

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. (...)
7. (...)

Article 12

Common application of surveillance tools

1. The Agency shall **coordinate** (...) the common application of **available** surveillance tools, (...) 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:
 - (a) selective monitoring of designated third country ports and coasts which have been identified through risk analysis and (...) **information** as embarkation or transit points for **vehicles**, vessels **and other craft** used for (...) **illegal** migration **or** (...) cross-border crime;
 - (b) tracking of a **vehicle**, vessel **and other craft** 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 **vehicles**, vessels **and other craft** 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 (...) **information** 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 (...);
 - (b) satellite imagery;
 - (c) sensors mounted on any **vehicles, vessels or other craft** (...), 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 **operational** reasons. **The Agency shall notify in due time 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

1. **Where the National Situational Picture is used for processing of personal data, it shall be processed in accordance with Directive 95/46/EC¹, Council Framework Decision 2008/977/JHA and the relevant national provisions on data protection.**
2. **The European Situational Picture and the Common Pre-Frontier Intelligence Picture may only be (...) used for processing personal data:**
 - (a) **(...) concerning the (...) registration numbers of vehicles, vessels and other craft, which shall be processed in accordance with Regulation (EC) No 45/2001², Directive 95/46/EC and Council Framework Decision 2008/977/JHA, or (...)**
 - (b) **(...) in accordance with paragraph 3 of Article 11c of Regulation (EC) No 2007/2004.**

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 8, 12.1.2001, p. 1.

CHAPTER III
Reaction Capability

Article 13

Determination of external border sections

For the purpose of this Regulation, each Member State shall divide its external land and sea borders into border sections (...) **which shall be notified to the Agency.**

Article 14

Attribution of impact levels to external border sections

1. 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;
 - (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.
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 Agency in agreement with the Member State concerned shall change the impact level accordingly. (...)**
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

1. The Member States shall ensure that the surveillance (...) 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 **surveillance activities are on a sufficient level of (...)** readiness for tracking, identification and interception;
 - (b) where a medium impact level is attributed to an external border section, the **national authorities with a responsibility for external border surveillance shall be notified by the national coordination center and shall ensure that the appropriate surveillance activities are being taken at the affected border sections; when taking those additional measures the national coordination centre shall be notified accordingly(...)**;
 - (c) where a high impact level is attributed to an external border section, **the Member State concerned shall be notified by** the national coordination centre **and** shall ensure that the **national authorities with a responsibility for external border surveillance operating at the external border section concerned (...)** are given the (...) necessary support at national level (...); the **Member State concerned (...)** may also request the Agency for support in accordance with (...) Regulation (EC) No 2007/2004.
2. **When a Member State requests the support of the Agency, pursuant to point (c) of paragraph 1,** the national coordination centre shall **as soon as possible** inform the Agency about the measures taken at national level (...).
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 **another (...)** country **with which relevant bilateral or multilateral agreements are in place as referred to in Articles 18 and 18bis,** the national coordination centre shall (...) **contact (...)** the national coordination centre of **the neighbouring Member State or the competent authority** of the neighbouring country **and shall endeavour to coordinate the necessary cross border measures.**
4. Where a **Member State (...)** submits a request according to point (c) of paragraph 1, the Agency (...) **shall** support that **Member State (...)** 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;

(...)

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 authorities (...) in the Member States

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 *paragraph 3 of Article 5*(...).
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.
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 **the competent authorities of a third country** on condition that it regularly informs its own national coordination centre about (...) *such* communication and information exchange.

Article 17

Cooperation of the Agency with third parties

1. The Agency (...) **may** make use of existing information, capabilities and systems available in other (...) **Union agencies, Union bodies and international organisations** (...), within the respective legal frameworks.
2. In accordance with paragraph 1, the Agency (...) **may** cooperate in particular with the following (...) **Union agencies, Union bodies, and international organisations**:
 - (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 (...) **Union 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, Union bodies and international organisations** referred to in paragraphs 2 and 2a shall be exchanged via the *communication* network referred to in Article 7 or other communication networks which fulfil the criteria of availability, confidentiality and integrity.
4. The cooperation between the Agency and the (...) **Union agencies, Union bodies and international organisations** 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, Union body or international organisation concerned**. As regards the handling of classified information, these arrangements shall provide that the (...) **Union agencies, Union bodies and international organisations** (...) concerned comply with equivalent security rules and standards as those applied by the Agency.
5. The **Union agencies and Union bodies** (...) 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 for the exchange of information (...) **with** neighbouring third countries **within EUROSUR**.
2. Any exchange of information under paragraph 1 of this Article and under point (...) ga) of *paragraph 2 of* Article 9 (...), 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 (...) ga) of *paragraph 2 of* Article 9(...) shall be done in compliance with the conditions of the bilateral and multilateral agreements concluded with neighbouring third countries.

4. Prior approval of any other Member State **or of the Agency**, 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 (...) ga) of *paragraph 2 of* Article 9(...), shall be required before that information can be shared with any third country under that agreement or network; **The Member States and the Agency shall be bound by the request not to exchange that information with the third country concerned.**
5. Any exchange of information with third countries (...) *acquired via (...)* 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, (...) Regulation (EC) No 45/2001 **and Council Framework Decision 2008/977/JHA.**

New Article 18a

Cooperation with the UK and Ireland

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 neighbouring third countries. The national coordination centres of the Member States shall be the contact point for the exchange of information with the corresponding authority of the United Kingdom and of Ireland within EUROSUR.**
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 or of the Agency, 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.**

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.

Article 20

Monitoring and (...) reporting

1. The Agency **and the Member States concerned**, 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.
2. The Agency shall submit a report **to the Commission and to the Council** on the functioning of EUROSUR on 1 October 2015 and every two years thereafter.
3. The Commission shall provide an overall **report on (...) EUROSUR** to the European Parliament and the Council on 1 October 2016 and every four years thereafter. This **report (...)** shall include **the (...)** results achieved against objectives and an **overall view (...)** 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 **report (...)** 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 **(...) report** referred to in paragraph 3.

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)¹ shall apply to the Member States located at the southern (...) and eastern (...) external borders of the **Member States** (Bulgaria, Cyprus, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovak Republic, Slovenia and Spain) from 1 October 2013.
4. Article 5(1) shall apply to the remaining Member States (...) as from 1 October 2014.

¹ As regards Croatia the Presidency in consultation with the CLS and the Commission suggests the following:

1) If the accession of Croatia takes place before the adoption of the Eurosur regulation, then Croatia can be listed among the Member States in Article 21(3).

2) However, if the accession of Croatia will not take place before the adoption of the Eurosur regulation, a recital should be introduced which would be along the lines:

"As regards Croatia, this Regulation constitutes a provision of the Schengen acquis within the meaning of article 4 (1) of the Act of accession. Given that Croatia is located at the southern external border of the EU, Croatia should be included among the Member States referred to in article 21(3)."

In addition, based on the Treaty of accession, the Commission would propose a technical adaptation of Article 21 (3) to include Croatia among the Member States in Article 21 (3).

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

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 **on a need to know and a responsibility to share basis** 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:* 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.
