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| From: | Presidency |
| To: | Delegations |
| No. Cion doc.: | 8521/13 FRONT 38 CODEC 853 COMIX 246 |
| Subject: | Proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union |

Delegations will find attached the four-column text on the above draft Regulation with the results of the third technical meeting with the European Parliament (which took place on 15 January 2014) and Presidency draft compromise suggestions regarding Articles 9- 11. Furthermore, following the discussion at the JHA Counsellors meeting on 16 January 2014, the Presidency submits certain amended draft compromise proposals regarding Articles 4(1) and 4(3). The rest of the fourth column text remains as it was set out in doc. 5292/14.

The intention of the Presidency is to focus on the examination of Articles 4-11 at the JHA Counsellors meeting on 20 January 2014.

Proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

| COMMISSION PROPOSAL | EUROPEAN PARLIAMENT POSITION (LIBE VOTE 9.12.2013) | DRAFT COUNCIL POSITION (as results from the Coreper meeting on 13.12.2013) | COMMENTS AND COMPROMISE TEXT |
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| <p>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:</p> | | <p>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:</p> | <p><i>Identical.</i></p> |
| | <i>AM 1</i> | | |
| <p>(1) The objective of Union policy in the field of the Union external borders is to ensure the efficient monitoring of the crossing of external borders including through border surveillance. The purpose of border surveillance is to prevent</p> | <p>(1) The objective of Union policy in the field of the Union external borders is to ensure the efficient monitoring of the crossing of external borders including through border surveillance, <i>in which the saving of lives and the protection of</i></p> | <p>(1) The objective of Union policy in the field of the Union external borders is to ensure the efficient monitoring of the crossing of external borders including through border surveillance. The purpose of border surveillance is to prevent</p> | <p><u>PRES draft compromise:</u> (1) The objective of Union policy in the field of the Union external borders is to ensure the efficient monitoring of the crossing of external borders including through border surveillance, <i>while contributing to</i></p> |

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| <p>unauthorised border crossings, to counter cross-border criminality and to apprehend or take other measures against those persons who have crossed the border in an irregular manner. Border surveillance should be effective in preventing and discouraging persons from circumventing the checks at border crossing points. To this end, border surveillance is not limited to the detection of attempts at irregular border crossing but equally extends to steps such as intercepting ships suspected of trying to gain entry to the Union without submitting to border checks, as well as arrangements intended to address situations such as search and rescue that may arise during a border surveillance operation at sea and arrangements intended to bring such an operation to a successful conclusion.</p> | <p><i>fundamental rights should be a priority.</i> The purpose of border surveillance is to prevent unauthorised border crossings, to counter cross-border criminality and to apprehend or take other measures against those persons who have crossed the border in an irregular manner. Border surveillance should be effective in preventing and discouraging persons from circumventing the checks at border crossing points. To this end, border surveillance is not limited to the detection of attempts at irregular border crossing but equally extends to steps such as intercepting ships suspected of trying to gain entry to the Union without submitting to border checks, as well as arrangements intended to address situations such as search and rescue that may arise during a border surveillance operation at sea and arrangements intended to bring such an operation to a successful conclusion.</p> | <p>unauthorised border crossings, to counter cross-border criminality and to apprehend or take other measures against those persons who have crossed the border in an irregular manner. Border surveillance should be effective in preventing and discouraging persons from circumventing the checks at border crossing points. To this end, border surveillance is not limited to the detection of attempts at irregular border crossing but equally extends to steps such as intercepting <i>vessels</i> suspected of trying to gain entry to the Union without submitting to border checks, as well as arrangements intended to address situations such as search and rescue that may arise during a border surveillance operation at sea and arrangements intended to bring such an operation to a successful conclusion.</p> | <p><u><i>ensuring the protection and saving of lives.</i></u> The purpose of border surveillance is to prevent unauthorised border crossings, to counter cross-border criminality and to apprehend or take other measures against those persons who have crossed the border in an irregular manner. Border surveillance should be effective in preventing and discouraging persons from circumventing the checks at border crossing points. To this end, border surveillance is not limited to the detection of attempts at irregular border crossing but equally extends to steps such as intercepting ships suspected of trying to gain entry to the Union without submitting to border checks, as well as arrangements intended to address situations such as search and rescue that may arise during a border surveillance operation at sea and arrangements intended to bring such an operation to a successful conclusion.</p> |
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| | AM 2 | | |
| | <p><i>(1a) Article 80 of the Treaty on the Functioning of the European Union (TFEU) provides that the policies of the Union set out in Chapter 2 on border checks, asylum and immigration and their implementation are to be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States, and that, whenever necessary, Union acts under that Chapter are to contain appropriate measures to give effect to that principle.</i></p> | | <p><u>PRES draft compromise on AM 2, 3, 12 and 15:</u> <u>(1a) When disembarking intercepted or rescued persons in a Member State, the Agency and its Member States should fully respect the principle of solidarity and fair responsibility sharing in accordance with Article 80 of the Treaty on the Functioning of the European Union (TFEU).</u> <u>According to that article, the policies of the Union set out in Chapter 2 on border checks, asylum and immigration and their implementation are to be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States, and that, whenever necessary, Union acts under that Chapter are to contain appropriate measures to give effect to that principle to foster and promote burden sharing. These measures may include a system of relocation of migrants and applicants for international protection on a voluntary basis.</u></p> |

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| | | <i>(1a) The scope of application of this Regulation is limited to border surveillance operations carried out by Member States at their sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ('the Agency') established by Council Regulation (EC) No 2007/2004 of 26 October 2004¹. Investigative and punitive measures are dealt with under national criminal law and in the existing instruments of mutual legal assistance in the field of judicial cooperation in criminal matters in the Union.</i> | |
| | AM 3 | | |
| | <i>(1b) The lack of a Union burden sharing system contributes to the overburdening of the Member States bordering the Mediterranean Sea.</i> | | See PRES draft compromise on AM 2. |

¹ *OJ L 349, 25.11.2004, p. 1.*

| | <i>AM 4</i> | | |
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| <p>(2) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ('the Agency') established by Council Regulation (EC) No 2007/2004 of 26 October 2004² is responsible for the coordination of operational cooperation between Member States in the field of management of the external borders, including as regards border surveillance. The Agency is also responsible to assist Member States in circumstances requiring increased technical assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea. Specific rules with regard to border surveillance activities carried out by maritime and aerial units of one Member State at the sea border of other Member States or on the high seas in the context of operational cooperation coordinated by the Agency are necessary to further strengthen such cooperation.</p> | <p>(2) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ('the Agency') established by Council Regulation (EC) No 2007/2004 of 26 October 2004¹³ is responsible for the coordination of operational cooperation between Member States in the field of management of the external borders, including as regards border surveillance. The Agency is also responsible to assist Member States in circumstances requiring increased technical assistance at the external borders, taking into account that some situations [...] involve humanitarian emergencies and rescue at sea. Specific rules with regard to border surveillance activities carried out by maritime and aerial units of one Member State at the sea border of other Member States or on the high seas in the context of operational cooperation coordinated by the Agency are necessary to further strengthen such cooperation.</p> | <p>(2) The [...] Agency [...] is responsible for the coordination of operational cooperation between Member States in the field of management of the external borders, including as regards border surveillance. The Agency is also responsible to assist Member States in circumstances requiring increased technical assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea. Specific rules with regard to border surveillance activities carried out by maritime, <i>land</i> and aerial units of one Member State at the sea border of other Member States or on the high seas in the context of operational cooperation coordinated by the Agency are necessary to further strengthen such cooperation.</p> | <p><i>Proposal of the technical meeting to accept the Council text.</i></p> |

² OJ L 349, 25.11.2004, p. 1.

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| | AM 5 | | |
| | <i>(2a) Cooperation with neighbouring third countries is crucial to prevent unauthorised border crossings, to counter cross-border criminality and to make search and rescue operations more efficient. In accordance with Regulation (EC) No 2007/2004 and insofar as the full respect for the fundamental rights of migrants is ensured, the Agency may cooperate with the competent authorities of third countries, in particular as regards risk analysis and training, and should facilitate operational cooperation between Member States and third countries.</i> | | PRES proposes to accept EP text. |
| | AM 6 | | |
| (3) The establishment of the European Border Surveillance System (EUROSUR) established by Regulation (EU) No [...] of the European Parliament and of the Council of [...] should strengthen the information exchange and operational cooperation between Member States and with the Agency. | (3) The establishment of the European Border Surveillance System (EUROSUR) established by Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 should strengthen the information exchange and operational cooperation between Member States and with the Agency. | (3) The [...] European Border Surveillance System (EUROSUR) established by Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 ³ should strengthen the information exchange and operational cooperation between Member States and with the Agency. | PRES compromise text: (3) The European Border Surveillance System (EUROSUR) established by Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 ⁴ should strengthen the information exchange and operational cooperation between Member States |

³ OJ L 295, 6.11.2013, p. 11.

⁴ OJ L 295, 6.11.2013, p. 11.

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| <p>This ensures that the situational awareness and reaction capability of Member States improves considerably, also with the support of the Agency, for the purposes of detecting and preventing irregular migration, for combating cross-border crime and for contributing to protect and save the lives of migrants at their external borders. When coordinating border surveillance operations, the Agency should provide Member States with information and analysis concerning these operations.</p> | <p>This ensures that the situational awareness and reaction capability of Member States improves considerably, also with the support of the Agency, for the purposes of detecting and preventing irregular migration, for combating cross-border crime, <i>including human trafficking</i>, and for contributing to protect and save the lives of migrants at their external borders. When coordinating border surveillance operations, the Agency should provide Member States with information and analysis concerning these operations. <i>Member States and the Agency should introduce in EUROSUR all relevant information collected during these operations.</i></p> | <p>This ensures that the situational awareness and reaction capability of Member States improves considerably, also with the support of the Agency, for the purposes of detecting, [...] preventing <i>and combating illegal immigration [...]</i> and cross-border crime and [...] contributing to <i>ensuring the protection and saving</i> the lives of migrants at their external borders. When coordinating border surveillance operations, the Agency should provide Member States with information and analysis concerning these operations.</p> | <p>and with the Agency. This ensures that the situational awareness and reaction capability of Member States improves considerably, also with the support of the Agency, for the purposes of detecting, preventing <i>and combating illegal immigration and</i> cross-border crime and contributing to <i>ensuring the protection and saving</i> the lives of migrants at their external borders. When coordinating border surveillance operations, the Agency should provide Member States with information and analysis concerning these operations. <i><u>In accordance with that Regulation Member States and the Agency should use the EUROSUR framework to provide all relevant information collected during these operations.</u></i></p> |
| | | <p><i>(3a) This Regulation replaces Council Decision 2010/252/EU of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the Agency which was annulled by the Court of Justice of the European Union ('the Court') by its judgment of 5 September 2012 in case C-355/10.</i></p> | <p><i>Proposal of the technical meeting to accept the Council text.</i></p> |

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| | | <i>(3b) In that judgment, the Court maintained the effects of Decision 2010/252/EU until the entry into force of new rules. Therefore, as of the day of entry into force of this Regulation, the said Decision should cease to produce effect.</i> | <i>Proposal of the technical meeting to accept the Council text.</i> |
| | <i>AM 7</i> | | |
| (4) During border surveillance operations, Member States and the Agency should respect their obligations under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention relating to the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other relevant international instruments. | (4) During border surveillance operations, Member States and the Agency should respect their obligations, <i>including the principle of non-refoulement</i> , under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention relating to the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <i>the UN Convention on the Right of the</i> | (4) During border surveillance operations <i>at sea</i> , Member States [...] should respect their <i>respective</i> obligations under <i>International Law</i> , <i>in particular</i> the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention relating to the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other relevant international instruments. | As regards EP text, PRES proposes to keep the reference to the UN Convention on the Rights of the Child. The reference to the principle of non-refoulement is already mentioned in Recital (5a) and Article 4. |

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| | <i>Child</i> and other relevant international instruments. | | |
| | | <i>(4a) When coordinating border surveillance operations at sea, the Agency should fulfil its tasks in full compliance with the relevant Union law, including the Charter of Fundamental Rights of the European Union ('the Charter of Fundamental Rights') and relevant international law, in particular as referred to in Recital (4).</i> | |
| | AM 8 | | |
| (5) In accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ⁵ and general principles of Union law, any measure taken in the course of a surveillance operation should be proportionate to the objectives pursued, non-discriminatory and it should fully respect human dignity, fundamental rights and the rights of refugees and | (5) In accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and general principles of Union law, any measure taken in the course of a surveillance operation should be proportionate to the objectives pursued, non-discriminatory and it should fully respect human dignity, fundamental rights, [...] the rights of refugees and | (5) In accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ⁸ and general principles of Union law, any measure taken in the course of a surveillance operation should be proportionate to the objectives pursued, non-discriminatory and it should fully respect human dignity, fundamental rights and the rights of refugees and | <i>Proposal of the technical meeting:</i> (5) In accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ¹⁰ and general principles of Union law, any measure taken in the course of a surveillance operation should be proportionate to the objectives pursued, non-discriminatory and it should fully respect human dignity, fundamental |

⁵ OJ L 105, 13.4.2006, p. 1.

⁸ OJ L 105, 13.4.2006, p. 1.

¹⁰ OJ L 105, 13.4.2006, p. 1.

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| <p>asylum seekers, including the principle of <i>non-refoulement</i>. Member States and the Agency are bound by the provisions of the asylum <i>acquis</i>, and in particular of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status⁶ with regard to applications for asylum made in the territory, including at the border or in the transit zones of Member States.</p> | <p>asylum seekers and the principle of non-refoulement. Member States and the Agency are bound by the provisions of the asylum <i>acquis</i>, and in particular of Directive 2013/32/EU of the European Parliament and of the Council⁷ with regard to applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of Member States.</p> | <p>asylum seekers, including the principle of <i>non-refoulement</i>. Member States and the Agency are bound by the provisions of the asylum <i>acquis</i>, and in particular of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)⁹ with regard to applications for asylum made in the territory, including at the border or in the transit zones of Member States.</p> | <p>rights and the rights of refugees and asylum seekers, including the principle of <i>non-refoulement</i>. Member States and the Agency are bound by the provisions of the asylum <i>acquis</i>, and in particular of Directive 2013/32/EU of the European Parliament and of the Council¹¹ with regard to applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of Member States.</p> |
| | <p>AM 9</p> | | |
| | <p>(5a) This Regulation should be applied in full compliance with the principle of non-refoulement, according to which no one may be expelled, removed or extradited to, or forced to enter, a country where there is a real risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment</p> | | <p>PRES <u>new</u> draft compromise: (5a) This Regulation should be applied in full compliance with the principle of non-refoulement as defined in the [...] Charter and as interpreted by the case law of the Court and of the European Court of Human Rights. In accordance with that principle, no person may be expelled, removed</p> |

⁶ OJ L 326, 13.12.2005, p. 13.

⁷ **Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).**

⁹ OJ L 180, 29.6.2013, p. 60.

¹¹ **Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).**

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| | <i>or any serious violations of their human rights, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion; or from which there is a serious risk of such an expulsion, removal or extradition to another country.</i> | | <i>or extradited to, or forced to enter, a country where there is a serious risk that he or she would be subjected to the death penalty, torture, <u>persecution</u> or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion; or from which there is a serious risk of such an expulsion, removal or extradition to another country in contravention of [...] principle of <u>non-refoulement</u>.</i> |
| | <i>AM 10</i> | | |
| | <i>(5b) The possible existence of an arrangement between a Member State and a third country cannot absolve Member States from their international obligations under international and Union law under the principle of non-refoulement.</i> | | PRES considers this recital to be covered by Recital 6. |
| | <i>AM 11</i> | | |
| (6) The possible existence of an arrangement between a Member State and a third country cannot absolve Member States from those obligations whenever they are aware or ought to be aware that systemic deficiencies in the asylum procedure | (6) The possible existence of an arrangement between a Member State and a third country cannot absolve Member States from <i>their</i> obligations <i>under international and Union law, in particular as regards compliance with the principle of</i> | (6) The possible existence of an arrangement between a Member State and a third country cannot absolve Member States from those obligations whenever they are aware or ought to be aware that systemic deficiencies in the asylum procedure | <u>PRES invites M-S to further consider the last par. of the EP Amendment.</u> |

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| <p>and in the reception conditions of asylum seekers in that third country amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment or where they are aware or ought to be aware that this third country is engaged in practices in contravention of the principle of <i>non-refoulement</i>.</p> | <p><i>non-refoulement</i>, whenever they are aware or ought to be aware that [...] deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that third country do not make it possible to conduct an individual, fair and effective assessment or where they are aware or ought to be aware that this third country is engaged in practices in contravention of the principle of non-refoulement. Units deployed by Member States or the Agency should also be guided by the provisions of Union law and international law in instances where operations take place in the territorial waters of third countries and those countries apply other rules.</p> | <p>and in the reception conditions of asylum seekers in that third country amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment or where they are aware or ought to be aware that this third country is engaged in practices in contravention of the principle of <i>non-refoulement</i>.</p> | |
| | <p>AM 12</p> | | |
| | <p>(6a) In the spirit of Article 80 of the TFEU, application of Regulation (EU) No 604/2013 of the European Parliament and of the Council¹² should not prevent Member States from applying, on a voluntary basis, a system of</p> | | <p>See PRES draft compromise on AM 2.</p> |

¹² **Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).**

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| | <i>relocation of migrants and asylum seekers.</i> | | |
| | AM 13 | | |
| <p>(7) During a border surveillance operation at sea, a situation may occur where it will be necessary to render assistance to persons found in distress. In accordance with international law, every State must require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers, to render assistance to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress. Such assistance should be provided regardless of the nationality or status of the persons to be assisted or of the circumstances in which they are found.</p> | <p>(7) During a border surveillance operation at sea, a situation may occur where it will be necessary to render assistance to persons found in distress. In accordance with international law, every State must require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers, to render assistance <i>proactively and without delay</i> to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress. Such assistance should be provided regardless of the nationality or status of the persons to be assisted or of the circumstances in which they are found. <i>Accordingly, no measures, including criminal procedures and sanctions, should be taken deterring ship masters from rendering assistance to persons in distress at sea.</i></p> | <p>(7) During a border surveillance operation at sea, a situation may occur where it will be necessary to render assistance to persons found in distress. In accordance with international law, every State must require the master of a <i>vessel</i> flying its flag, in so far as he can do so without serious danger to the <i>vessel</i>, the crew or the passengers, to render assistance to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress. Such assistance should be provided regardless of the nationality or status of the persons to be assisted or of the circumstances in which they are found.</p> | <p>As regards the first part of the amendment in EP text, PRES suggests to keep the words “and without delay” but not the word “proactively”.</p> <p>As regards the second part of the amendment in EP text, PRES suggests the following draft compromise: <u><i>The shipmaster and crew should not face criminal sanctions for the sole reason of having rescued persons in distress at sea and brought them to a place of safety.</i></u></p> |

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| <p>(8) That obligation should be carried out by Member States in accordance with the applicable provisions of international instruments governing search and rescue situations and in accordance with the requirements concerning the protection of fundamental rights. This Regulation should not affect the responsibilities of search and rescue authorities, including for ensuring that coordination and cooperation is carried out in such a way that the persons rescued can be delivered to a port or a place of safety.</p> | | <p>(8) That obligation should be carried out by Member States in accordance with the applicable provisions of international instruments governing search and rescue situations and in accordance with the requirements concerning the protection of fundamental rights. This Regulation should not affect the responsibilities of search and rescue authorities, including for ensuring that coordination and cooperation is carried out in such a way that the persons rescued can be delivered to [...] a place of safety.</p> | <p><i>Proposal of the technical meeting to accept the Council text.</i></p> |
| | <p>AM 14</p> | | |
| | <p><i>(8a) Clear rules should ensure that, when persons in distress at sea are detected, the responsible Rescue Coordination Centre is easily and quickly identified. In case of doubt, e.g. when a boat is floating between different search and rescue regions, the International Coordination Centre should appoint the responsible Rescue Coordination Centre.</i></p> | | <p>PRES suggests not to accept AM 14.</p> |
| | | <p><i>(8a) The conduct of sea operations in the search and rescue regions of a third country should be subject to establishing communication channels with the search and rescue</i></p> | <p>PRES draft compromise: <u><i>(8a) When the operational area of a sea operation includes the search and rescue region of a third country, the host Member State should seek</i></u></p> |

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| | | <i>authorities of that third country when planning a sea operation thereby ensuring that those authorities would be able to respond to search and rescue cases developing within their search and rescue region.</i> | <i>to establish communication channels with the search and rescue authorities of that third country when planning a sea operation thereby ensuring that those authorities would be able to respond to search and rescue cases developing within their search and rescue region.</i> |
| | AM 15 | | |
| | <i>(8b) When disembarking intercepted or rescued persons in a Member State, the Agency and its Member States should fully respect the principle of solidarity and fair responsibility sharing in accordance with Article 80 of the TFEU.</i> | | See PRES draft compromise on AM 2. |
| | AM 16 | | |
| (9) Pursuant to Regulation (EC) No 2007/2004, border surveillance operations coordinated by the Agency are conducted in accordance with an operational plan. Accordingly, as regards sea operations, the operational plan should include specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation or pilot project takes place, including references to international and Union law, regarding | (9) Pursuant to Regulation (EC) No 2007/2004, border surveillance operations coordinated by the Agency are conducted in accordance with an operational plan. Accordingly, as regards sea operations, the operational plan should include specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation, pilot project or rapid intervention takes place, including references to international and Union | (9) Pursuant to Regulation (EC) No 2007/2004, border surveillance operations coordinated by the Agency are conducted in accordance with an operational plan. Accordingly, as regards sea operations, the operational plan should include specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation, [...] pilot project or rapid intervention takes place, including references to international and Union | PRES suggests to add the following at the end of the Council text: <i>The operational plan should include procedures ensuring that persons with international protection needs, victims of human trafficking, unaccompanied minors and other vulnerable persons are identified during the operation and provided with appropriate assistance, including access to international protection.</i> |

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| <p>interception, rescue at sea and disembarkation. In turn, this Regulation governs the issues of interception, rescue at sea and disembarkation in the context of sea border surveillance operations coordinated by the Agency.</p> | <p>law, regarding interception, rescue at sea and disembarkation. <i>It should also include rules and procedures which ensure that persons with international protection needs, victims of human trafficking, unaccompanied minors and other vulnerable persons are identified during the operation and provided with appropriate assistance, including access to international protection.</i> In turn, this Regulation governs the issues of interception, rescue at sea and disembarkation in the context of sea border surveillance operations coordinated by the Agency <i>in accordance with international law and fundamental rights.</i></p> | <p>law, regarding interception, rescue at sea and disembarkation.[...] <i>The operational plan should be established in accordance with the provisions of this Regulation governing [...] interception, rescue at sea and disembarkation in the context of sea border surveillance operations coordinated by the Agency and having regard to the particular circumstances of the operation concerned.</i></p> | |
| <p>(10) The practice under Regulation (EC) No 2007/2004 is that for each sea operation, a coordination structure is established within the host Member State, composed of officers from the host Member State, guest officers and representatives of the Agency, including the Coordinating Officer of the Agency. This coordination structure, usually called International Coordination Centre, should be used as a channel for communication between the</p> | | <p>(10) The practice under Regulation (EC) No 2007/2004 is that for each sea operation, a coordination structure is established within the host Member State, composed of officers from the host Member State, guest officers and representatives of the Agency, including the Coordinating Officer of the Agency. This coordination structure, usually called International Coordination Centre, should be used as a channel for communication between the</p> | <p><i>Identical.</i></p> |

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| officers involved in the sea operation and the authorities concerned | | officers involved in the sea operation and the authorities concerned. | |
| | <i>AM 17</i> | | |
| <p>(11) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, notably the right to life, human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, <i>non-refoulement</i>, non-discrimination, the right to an effective remedy, the right to asylum and the rights of the child.</p> | <p>(11) This Regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 of the Treaty on European Union (TEU) and by the Charter of Fundamental Rights of the European Union, <i>in particular respect for human dignity, the right to life, the prohibition of torture and of inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right to asylum and to protection against removal and expulsion,</i> non-refoulement, non-discrimination, the right to an effective remedy [...] and the rights of the child. <i>This Regulation should be applied by Member States and the Agency in accordance with those rights and principles. This Regulation also respects the human rights and fundamental freedoms laid down by the European Convention for the Protection of Human Rights and Fundamental Freedoms.</i></p> | <p>(11) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, notably the right to life, human dignity, prohibition of torture, <i>of persecution</i> and of inhuman or degrading treatment or punishment, right to liberty and security, <i>non-refoulement</i>, non-discrimination, the right to an effective remedy, the right to asylum and the rights of the child.</p> | <p>PRES suggests to accept EP text except the last sentence.</p> |

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| <p>(12) Since the objectives of the action to be taken, namely the adoption of specific rules for the surveillance of the sea borders by border guards operating under the coordination of the Agency, cannot be sufficiently achieved by the Member States due to the differences in their laws and practices, and can therefore, by reason of the multinational character of the operations, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 those objectives</p> | | <p>(12) Since the objectives of the action to be taken, namely the adoption of specific rules for the surveillance of the sea borders by border guards operating under the coordination of the Agency, cannot be sufficiently achieved by the Member States due to the differences in their laws and practices, and can therefore, by reason of the multinational character of the operations, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 those objectives.</p> | <p><i>Identical.</i></p> |
| | <p><i>AM 18</i></p> | | |
| | <p><i>(12a) This Regulation does not rule out the possibility of determining the details of joint operations at sea in specific operational plans, taking into account the specific requirements and characteristics of the context in which the Member States are operating.</i></p> | | <p><u>PRES draft compromise:</u> <u><i>(12a) This Regulation should not exclude the possibility for the operational plan to contain details adapted to the circumstances of the sea operation concerned.</i></u></p> |

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| <p>(13) In accordance with Articles 1 and 2 of Protocol No 22 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 <i>acquis</i>, 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 a period of six months after the date of adoption of this Regulation whether it will implement it in its national law</p> | | <p>(13) In accordance with Articles 1 and 2 of <i>the</i> Protocol (No 22) 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 <i>acquis</i>, [...] 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.</p> | <p><i>Proposal of the technical meeting to accept the Council text.</i></p> |
| <p>(14) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> 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 association of those two States with the implementation, application and</p> | | <p>(14) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> 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 latters' association with the implementation, application and</p> | <p><i>Proposal of the technical meeting to accept the Council text.</i></p> |

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| <p>development of the Schengen <i>acquis</i>¹³ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC¹⁴ on certain arrangements for the application of that Agreement.</p> | | <p>development of the Schengen <i>acquis</i>¹⁵ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999¹⁶ on certain arrangements for the application of that Agreement.</p> | |
| <p>(15) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> within the meaning of 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 <i>acquis</i>,¹⁷ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC of 28 January 2008 on the conclusion of that</p> | | <p>(15) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> within the meaning of 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 <i>acquis</i>,¹⁹ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC [...] ²⁰</p> | <p><i>Proposal of the technical meeting to accept the Council text.</i></p> |

¹³ OJ L 176, 10.7.1999, p. 36.

¹⁴ OJ L 176, 10.7.1999, p. 31.

¹⁵ **OJ L 176, 10.7.1999, p. 36.**

¹⁶ **OJ L 176, 10.7.1999, p. 31.**

¹⁷ OJ L 53, 27.2.2008, p. 52.

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| Agreement on behalf of the European Community. ¹⁸ | | | |
| (16) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> within the meaning of the Protocol signed 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 <i>acquis</i> , which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC ²¹ read in conjunction with Article 3 of Council Decision 2011/350/EU of 7 March 2011 on the conclusion of that protocol on behalf of the European Union. ²² | | (16) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> 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 <i>acquis</i> ²³ , which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC ²⁴ read in conjunction with Article 3 of Council Decision 2011/350/EU [...] ²⁵ | <i>Proposal of the technical meeting to accept the Council text.</i> |

¹⁹ OJ L 53, 27.2.2008, p. 52.

²⁰ OJ L 53, 27.2.2008, p. 1.

¹⁸ OJ L 53, 27.2.2008, p. 1.

²¹ OJ L 176, 10.7.1999, p. 31.

²² OJ L 160, 18.6.2011, p. 19.

²³ OJ L 160, 18.5.2011, p. 21.

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| <p>(17) This Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> 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 <i>acquis</i>.²⁶ The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.</p> | | <p>(17) This Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> 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 <i>acquis</i>.²⁷ The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.</p> | <p><i>Identical.</i></p> |
| <p>(18) This Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning the request of Ireland to take part in some of the provisions of the Schengen <i>acquis</i>.²⁸ Ireland is therefore not taking part in its adoption and is not bound by it or</p> | | <p>(18) This Regulation constitutes a development of the provisions of the Schengen <i>acquis</i> in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning the request of Ireland to take part in some of the provisions of the Schengen <i>acquis</i>.²⁹ Ireland is therefore not taking part in its adoption and is not bound by it or</p> | <p><i>Identical.</i></p> |

²⁴ ~~OJ L 176, 10.7.1999, p. 31.~~

²⁵ OJ L 160, 18.6.2011, p. 19.

²⁶ OJ L 131, 1.6.2000, p. 43.

²⁷ OJ L 131, 1.6.2000, p. 43.

²⁸ OJ L 64, 7.3.2002, p. 20.

²⁹ OJ L 64, 7.3.2002, p. 20.

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| subject to its application. | | subject to its application. | |
| HAVE ADOPTED THIS REGULATION: | | HAVE ADOPTED THIS REGULATION: | |
| CHAPTER I GENERAL PROVISIONS | | CHAPTER I GENERAL PROVISIONS | |
| <i>Article 1</i> Scope | | <i>Article 1</i> Scope | |
| This Regulation shall apply to border surveillance operations carried out by Member States at their sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union | | This Regulation shall apply to border surveillance operations carried out by Member States at their sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. | <i>Identical.</i> |
| <i>Article 2</i> Definitions | | <i>Article 2</i> Definitions | |
| For the purpose of this Regulation, the following definitions shall apply: | | For the purpose of this Regulation, the following definitions shall apply: | |
| 1. ‘Agency’ means the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Regulation (EC) No 2007/2004; | | 1. ‘Agency’ means the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Regulation (EC) No 2007/2004; | <i>Identical.</i> |
| 2. ‘sea operation’ means a joint operation, pilot project or rapid intervention carried out by Member States for the surveillance of their | | 2. ‘sea operation’ means a joint operation, pilot project or rapid intervention carried out by Member States for the surveillance of their | <i>Identical.</i> |

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| external sea borders under the coordination of the Agency; | | external sea borders under the coordination of the Agency; | |
| 3. ‘host Member State’ means a Member State in which a sea operation takes place or from which it is launched; | | 3. ‘host Member State’ means a Member State in which a sea operation takes place or from which it is launched; | <i>Identical.</i> |
| | AM 19 | | |
| 4. ‘participating Member State’ means a Member State which participates in a sea operation by providing assets or human resources, but which is not a host Member State; | 4. ‘participating Member State’ means a Member State which participates in a sea operation by providing <i>technical equipment or border guards and other staff</i> , but which is not the host Member State; | 4. ‘participating Member State’ means a Member State which participates in a sea operation by providing [...] <i>technical equipment, border guards deployed as part of the European Border Guard Teams or other relevant staff</i> but which is not a host Member State; | <i>Proposal of the technical meeting to accept Council text.</i> |
| 5. ‘participating unit’ means a maritime or aerial unit of the host Member State or of a participating Member State; | | 5. ‘participating unit’ means a maritime, land or aerial unit under the responsibility of the host Member State or of a participating Member State that takes part in a sea operation; | <i>Proposal of the technical meeting to accept Council text.</i> |
| 6. ‘International Coordination Centre’ means the coordination structure established within the host Member State for the coordination of the sea operation; | | 6. ‘International Coordination Centre’ means the coordination structure established within the host Member State for the coordination of the sea operation; | <i>Identical.</i> |
| 7. ‘National Coordination Centre’ means the national coordination centre established for the purposes of the European Border Surveillance System (EUROSUR) in accordance with Regulation (EU) No [.../...]; | | 7. ‘National Coordination Centre’ means the national coordination centre established for the purposes of the European Border Surveillance System (EUROSUR) in accordance with Regulation (EU) No 1052/2013 ; | <i>Proposal of the technical meeting to accept Council text.</i> |

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| | <i>AM 20</i> | | |
| | 7a. ‘operational plan’ means the operational plan referred to in Article 3a or Article 8e of Regulation (EC) No 2007/2004; | | <i>See point 13 Council text. Proposal of the technical meeting to accept EP text.</i> |
| 8. ‘ship’ means a boat, vessel or any other craft used at sea; | | 8. ‘ vessel ’ means any type of water craft, including boats, dinghies, floating platforms, non-displacement craft and seaplanes, used or capable of being used at sea; | <i>Proposal of the technical meeting to accept Council text (adaptation throughout the text).</i> |
| 9. ‘stateless ship’ means a ship without nationality or assimilated to a ship without nationality when the ship has not been granted by any State the right to fly its flag or when it sails under the flags of two or more States, using them according to convenience; | | 9. ‘stateless vessel ’ means a vessel without nationality or assimilated to a vessel without nationality when the vessel has not been granted by any State the right to fly its flag or when it sails under the flags of two or more States, using them according to convenience; | <i>Proposal of the technical meeting to accept Council text (adaptation throughout the text).</i> |
| 10. ‘Protocol against the Smuggling of Migrants’ means the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime signed in Palermo, Italy in December 2000; | | 10. ‘Protocol against the Smuggling of Migrants’ means the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime signed in Palermo, Italy in December 2000; | <i>Identical.</i> |

| | <i>AM 21</i> | | |
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| 11. 'place of safety' means a location where rescue operations are considered to terminate and where the survivors' safety of life including as regards the protection of their fundamental rights is not threatened, where their basic human needs can be met and from which transportation arrangements can be made for the survivors' next destination or final destination; | 11. 'place of safety' means a location where rescue operations are considered to terminate and where the survivors' safety of life <i>as well as</i> the protection of their fundamental rights is not threatened, where their basic human needs can be met and from which transportation arrangements can be made for the survivors' next destination or final destination, <i>in compliance with the principle of non-refoulement</i> ; | 11. 'place of safety' means a location where rescue operations are considered to terminate and where the survivors' safety of life [...] is not threatened, where their basic human needs can be met and from which transportation arrangements can be made for the survivors' next destination or final destination, <i>in compliance with the principle of non-refoulement</i> ; | PRES invites to further consider this issue considering that it is a political concern for EP. |
| 12. 'Rescue Coordination Centre' means a unit responsible for promoting efficient organisation of search and rescue services and for coordinating the conduct of search and rescue operations within a search and rescue region as defined in the 1979 International Convention on Maritime Search and Rescue. | | 12. 'Rescue Coordination Centre' means a unit responsible for promoting efficient organisation of search and rescue services and for coordinating the conduct of search and rescue operations within a search and rescue region as defined in the 1979 International Convention on Maritime Search and Rescue. | <i>Identical.</i> |
| | | <i>13. 'Operational plan' means the operational plan referred to in Articles 3a and 8e of Regulation (EC) No 2007/2004.</i> | PRES and EP text are identical. PRES suggests to keep text in the order proposed by EP (see paragraph 7a). |
| | | <i>14. 'contiguous zone' means a zone adjacent to the territorial sea as defined in Article 33 of the United Nations Law of the Sea Convention.</i> | <i>Proposal of the technical meeting to accept Council text.</i> |

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| CHAPTER II GENERAL RULES | | CHAPTER II GENERAL RULES | |
| <i>Article 3</i> Safety at sea | | <i>Article 3</i> Safety at sea | |
| | AM 22 | | |
| Measures taken for the purpose of a sea operation shall be conducted in a way that does not put at risk the safety of the persons intercepted or rescued and the safety of the participating units. | Measures taken for the purpose of a sea operation shall be conducted in a way that, <i>in all instances, ensures</i> the safety of the persons intercepted or rescued and the safety of the participating units. | Measures taken for the purpose of a sea operation shall be conducted in a way that does not put at risk the safety of the persons intercepted or rescued, [...] the safety of the participating units <i>or that of third parties.</i> | <i>Proposal of the technical meeting:</i> Measures taken for the purpose of a sea operation shall be conducted in a way that, <i>in all instances, ensures</i> the safety of the persons intercepted or rescued, the safety of the participating units <i>or that of third parties.</i> |
| <i>Article 4</i> Protection of fundamental rights and the principle of <i>non-refoulement</i> | | <i>Article 4</i> Protection of fundamental rights and the principle of <i>non-refoulement</i> | |
| | AM 23 | | |
| 1. No person shall be disembarked in, or otherwise handed over to the authorities of a country where there is a serious risk that such person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment or from which there is a serious risk of expulsion, removal or extradition to another country in contravention of the principle of <i>non-refoulement</i> . | 1. No person shall be disembarked in, <i>conducted towards,</i> otherwise handed over to the authorities of, <i>or forced to enter,</i> a country where there is a serious risk that such person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment <i>or any serious violations of their human rights, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political</i> | 1. No person shall be disembarked in, <i>forced to enter</i> or otherwise handed over to the authorities of a country where there is a serious risk that such person would be subjected to the death penalty, torture, <i>persecution</i> or other inhuman or degrading treatment or punishment or from which there is a serious risk of expulsion, removal or extradition to another country in contravention of the principle of <i>non-refoulement</i> . | <u>PRES new draft compromise:</u> <i>1. No person shall be disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a country where there is a serious risk that he or she would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political</i> |

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| | <i>opinion</i> , or from which there is a serious risk of expulsion, removal or extradition to another country in contravention of the principle of non-refoulement. | | <i>opinion; or from which there is a serious risk of such an expulsion, removal or extradition to another country in contravention of <u>the principle of non-refoulement.</u></i> |
| | <i>AM 24</i> | | |
| 2. Before deciding on disembarkation in a third country, the participating units shall take into account the general situation in that third country and intercepted or rescued persons shall not be disembarked in that third country when the host Member State or the participating Member States are aware or ought to be aware that this third country is engaged in practices as described in paragraph 1 | 2. Before <i>and during a sea operation, the host Member State and the participating Member States shall examine</i> the general situation in <i>the neighbouring third countries and the existence of agreements and projects on migration and asylum, carried out in accordance with Union law and through Union funds. Intercepted</i> or rescued persons shall not be disembarked in, <i>conducted towards, otherwise handed over to the authorities of, or forced to enter, a</i> third country when the host Member State, the participating Member States <i>or the Agency</i> are aware or ought to be aware that this third country is engaged in practices as described in paragraph 1. <i>Those Member States shall provide that information to the participating units. For that purpose, they shall use information from a range of sources, including in particular other Member States, the European External Action</i> | 2. <i>When considering the possibility of disembarkation in a third country, in the context of planning a sea operation, the [...] host Member State, in coordination with participating Member States and the Agency, shall take into account the general situation in that third country [...]. The assessment of the general situation in a third country may be based on information derived from Union bodies, offices and agencies, and relevant international organisations, and that assessment shall be part of the operational plan.</i> Intercepted or rescued persons shall not be disembarked in that third country when the host Member State or the participating Member States are aware or ought to be aware that this third country is engaged in practices as described in paragraph 1. | <u>PRES</u> draft compromise: <i>When considering the possibility of disembarkation in a third country, in the context of planning a sea operation, the host Member State, in coordination with participating Member States and the Agency, shall take into account the general situation in that third country. The assessment of the general situation in a third country may be based on information derived from <u>other Member States, Union bodies, offices and agencies, and relevant international organisations and it may take into account the existence of agreements and projects on migration and asylum carried out in accordance with Union law and through Union funds. That general assessment shall be part of the operational plan and it shall be provided to the participating units. That general assessment shall be updated as necessary.</u></i> Intercepted or rescued persons shall |

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| | <i>Service, the European Asylum Support Office, the Agency, the United Nations High Commissioner for Refugees and other relevant international and non-governmental organisations.</i> | | not be disembarked, <u>forced to enter, conducted to or otherwise handed over to the authorities of a</u> third country when the host Member State or the participating Member States are aware or ought to be aware that this third country is engaged in practices as described in paragraph 1. |
| | AM 25 | | |
| 3. In case of disembarkation in a third country, the participating units shall identify the intercepted or rescued persons and assess their personal circumstances to the extent possible before disembarkation. They shall inform the intercepted or rescued persons of the place of disembarkation in an appropriate way and they shall give them an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of <i>non-refoulement</i> . | 3. <i>If</i> disembarkation in a third country <i>is considered or in the cases provided for in point (b) of Article 6(1a) and point (b) of Article 7(1a),</i> the participating units shall identify the intercepted or rescued persons and assess their personal circumstances, <i>including their medical conditions and other circumstances that might make them vulnerable or subject to international protection needs, before a decision is made.</i> They shall inform the intercepted or rescued persons of the place of disembarkation <i>in a language which those persons understand or may reasonably be presumed to understand</i> and they shall give them an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of non- | 3. <i>During the operation, before</i> disembarkation in a third country <i>and taking into account the assessment of the general situation in that third country in accordance with paragraph 2,</i> the participating units shall, <i>to the extent possible and without prejudice to Article 3,</i> identify the intercepted or rescued persons, [...] assess their personal circumstances, [...] inform <i>them</i> of the place of disembarkation in an appropriate way, and [...] give them an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of <i>non-refoulement</i> . | PRES suggests the following <u>new</u> draft compromise in view of AM 26 and the last sentence of AM 29: 3. <i>During the sea operation, before</i> disembarkation in a third country <i>and taking into account the assessment of the general situation in that third country in accordance with paragraph 2,</i> the participating units shall, <i>to the extent possible and without prejudice to Article 3,</i> identify the intercepted or rescued persons, [...] assess their personal circumstances, [...] inform <i>them</i> of the place of disembarkation in an appropriate way, and [...] give them an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of <i>non-refoulement</i> , <u>unless it is not possible in the circumstances of the sea operation concerned.</u> |

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| | refoulement. <i>Further details shall be provided for in the operational plan.</i> | | <u><i>For those purposes further details shall be provided for in the operational plan including, when necessary, the availability of shore-based medical staff, interpreters and other relevant experts. Each participating unit shall include at least one person with basic first aid training.</i></u> |
| | <i>AM 26</i> | | |
| 4. The participating units shall address the special needs of children, victims of trafficking, persons in need of urgent medical assistance, persons in need of international protection and other persons in a particularly vulnerable situation throughout the sea operation. | 4. <i>Throughout the sea operation, the participating units shall address the special needs of children, victims of trafficking, persons in need of urgent medical assistance, disabled persons, persons in need of international protection and other persons in a particularly vulnerable situation throughout the sea operation. <i>For this purpose, participating units shall be able to draw on medical doctors, interpreters and other relevant experts.</i></i> | 4. The participating units shall address the special needs of children, victims of trafficking, persons in need of urgent medical assistance, persons in need of international protection and other persons in a particularly vulnerable situation throughout the sea operation. | PRES suggests to accept first and second parts of EP text. As regards the third part of EP text, see PRES draft compromise on AM 25. |
| | <i>AM 27</i> | | |
| | <i>4a. If there are grounds to believe that disembarkation of persons intercepted or rescued at sea in the proposed place would be in violation of the principle of non-refoulement, the participating units shall not share personal information</i> | | PRES invites delegations to express view on AM 27. |

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| | <i>regarding the persons with the authorities of the country of origin or with the authorities of other third countries.</i> | | |
| | <i>AM 28</i> | | |
| | <i>4b. The participating units shall treat all persons on board in a humane way.</i> | | PRES suggests to accept EP compromise text <i>4b. Participating units shall, in the performance of their duties, fully respect human dignity.</i> |
| | <i>AM 29</i> | | |
| 5. Border guards participating in a sea operation shall be trained with regard to relevant provisions of fundamental rights, refugee law and the international legal regime of search and rescue. | <i>5. All border guards and other personnel of the Member States shall receive, prior to their participation in a sea operation, training in relevant Union and international law, including fundamental rights, children's rights and access to international protection and guidelines for the purpose of identifying persons seeking protection and redirecting them towards the appropriate facilities, and the international legal regime of search and rescue. Each participating unit shall include at least one person with medical training.</i> | 5. Border guards <i>and other relevant staff</i> participating in a sea operation shall be trained with regard to relevant provisions of fundamental rights, refugee law and the international legal regime of search and rescue <i>in accordance with the second paragraph of Article 5 of Regulation (EC) No 2007/2004.</i> | As regards the last sentence of EP amendment, see PRES draft compromise on AM 25. PRES invites to further consider this issue. |

| CHAPTER III SPECIFIC RULES | | CHAPTER III SPECIFIC RULES | |
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| <i>Article 5</i> Detection | | <i>Article 5</i> Detection | |
| | AM 30 | | |
| <p>1. Upon detection, the participating units shall approach a ship suspected of crossing or intending to cross the border in an irregular manner to observe its identity and nationality and, pending further measures, it shall be surveyed at a prudent distance. The participating units shall communicate information about the ship immediately to the International Coordination Centre.</p> | <p>1. Upon detection, the participating units shall approach a ship suspected of crossing or intending to cross the border in an irregular manner to observe its identity and nationality and, pending further measures, it shall be surveyed at a prudent distance taking all due precautions. The participating units shall communicate information about the ship immediately to the International Coordination Centre, including information about the situation of persons on board, in particular whether there is an imminent risk to their lives or health. It shall transmit the information to the National Coordination Centre of the host Member State.</p> | <p>1. Upon detection, the participating units shall approach a vessel suspected of carrying persons circumventing or intending to circumvent checks at border crossing points or of being engaged in the smuggling of migrants by sea in order to observe its identity and nationality and, pending further measures, [...] shall [...] survey that vessel at a prudent distance. The participating units shall collect and report information about the vessel immediately to the International Coordination Centre.</p> | <p><u><i>Proposal of the technical meeting:</i></u> 1. Upon detection, the participating units shall approach a vessel suspected of carrying persons circumventing or intending to circumvent checks at border crossing points or of being engaged in the smuggling of migrants by sea in order to observe its identity and nationality and, pending further measures, shall survey that vessel at a prudent distance taking all due precautions. The participating units shall collect and report information about the vessel immediately to the International Coordination Centre, including, where possible, information about the situation of persons on board, in particular whether there is an imminent risk to their lives or health. The International Coordination Centre shall transmit the information to the National Coordination Centre of the host Member State.</p> |

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| | <i>AM 31</i> | | |
| 2. Where the ship is about to enter or it has entered the territorial sea or the contiguous zone of a Member State that is not participating in the sea operation, the participating units shall communicate information about the ship to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State concerned. | 2. Where the ship is about to enter or it has entered the territorial sea or, where formally proclaimed , the contiguous zone, of a Member State that is not participating in the sea operation, the participating units shall communicate information about the ship to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State concerned. | 2. Where a vessel is about to enter or it has entered the territorial sea or the contiguous zone of a Member State that is not participating in the sea operation, the participating units shall collect and report information about that vessel to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State concerned. | <u>Proposal of the technical meeting:</u> 2. Where a vessel is about to enter or it has entered the territorial sea or, where formally proclaimed , the contiguous zone of a Member State that is not participating in the sea operation, the participating units shall collect and report information about that vessel to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State concerned. |
| | <i>AM 32</i> | | |
| 3. The participating units shall communicate information about any ship suspected of being engaged in illegal activities at sea outside the scope of a sea operation to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State or Member States concerned. | 3. The participating units shall communicate information about any ship suspected of being engaged in illegal activities at sea, which are outside the scope of the sea operation, to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State or Member States concerned. When necessary and for the purposes laid down in this Regulation, the authorities of the Member States concerned and the Agency shall make use of the EUROSUR framework. | 3. The participating units shall collect and report information about any vessel suspected of being engaged in illegal activities at sea outside the scope of a sea operation to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State or Member States concerned. | <u>PRES draft compromise:</u> The participating units shall collect and report information about any vessel suspected of being engaged in illegal activities at sea outside the scope of a sea operation to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State or Member States concerned using the <u>EUROSUR communication network.</u> |

| <i>Article 6</i> Interception in the territorial sea | | <i>Article 6</i> Interception in the territorial sea | |
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| | AM 33 | | |
| 1. In the territorial sea of the host Member State or a participating Member State, the participating units shall take one or more of the following measures when there are reasonable grounds to suspect that a ship is carrying persons intending to circumvent checks at border crossing points or is engaged in the smuggling of migrants by sea: | 1. In the territorial sea of the host Member State or a participating Member State, the participating units shall take one or more of the following measures, <i>subject to the authorisation of the Member State to which the territorial sea belongs,</i> when there are reasonable grounds to suspect that a ship is carrying persons intending to circumvent checks at border crossing points or is engaged in the smuggling of migrants by sea: | 1. In the territorial sea of the host Member State or a <i>neighbouring</i> participating Member State, the participating units shall, <i>subject to the authorisation of the coastal Member State,</i> take one or more of the following measures when there are reasonable grounds to suspect that a <i>vessel may be</i> carrying persons <i>who intend</i> to circumvent checks at border crossing points or is engaged in the smuggling of migrants by sea: | PRES invites delegations to consider positively the EP amendments in Articles 6, 7 and 8 as regards the split between the interception measures. |
| (a) requesting information and documentation on ownership, registration and elements relating to the voyage, and on the identity, nationality and other relevant data on persons on board; | (a) requesting information and documentation on ownership, registration and elements relating to the voyage, and on the identity, nationality and other relevant data on persons on board, <i>including their health conditions, in order to assess if there are persons with special medical needs on board;</i> | (a) requesting information and documentation on ownership, registration and elements relating to the voyage <i>of the vessel,</i> and on the identity, nationality and other relevant data on persons on board; | |
| (b) stopping, boarding and searching the ship, its cargo and persons on board, and questioning persons on board; | (b) stopping, boarding and searching the ship, its cargo and persons on board, and questioning persons on board; | (b) stopping, boarding and searching the <i>vessel,</i> its cargo and persons on board, and questioning persons on board; | <i>Proposal of the technical meeting to accept Council text.</i> |

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| (c) making persons on board aware that they may not be authorised to cross the border and that persons directing the craft may face penalties for facilitating the voyage; | (c) making persons on board aware <i>as to why</i> they may not be authorised to cross the border and that persons directing the <i>ship</i> may face penalties for facilitating the voyage. | (c) making persons on board aware that they may not be authorised to cross the border and that persons directing the <i>vessel</i> may face penalties for facilitating the voyage; | |
| | <i>1a. If the suspicions that a ship is carrying persons intending to circumvent checks at border crossing points or is engaged in the smuggling of migrants by sea prove to be founded, the host Member State or the participating Member State to which the territorial sea belongs may take one or more of the following measures:</i> | | |
| (d) seizing the ship and apprehending persons on board; | (a) seizing the ship and apprehending persons on board; | (d) seizing the <i>vessel</i> and apprehending persons on board; | <i>Proposal of the technical meeting to accept Council text.</i> |
| (e) ordering the ship to modify its course outside of or towards a destination other than the territorial sea or the contiguous zone, including escorting the vessel or steaming nearby until the ship is heading on such course; | (b) ordering the ship to modify its course outside of or towards a destination other than the territorial sea or the contiguous zone, including escorting the <i>ship</i> or steaming nearby until <i>it</i> is heading on such course; | (e) ordering the <i>vessel</i> to alter its course outside of or towards a destination other than the territorial sea or the contiguous zone, including escorting the vessel or steaming nearby until <i>it is confirmed that the vessel is keeping to that given course;</i> | <i>Proposal of the technical meeting to accept Council text.</i> |
| (f) conducting the ship or persons on board to the host Member State or to another Member State participating in the operation, or to the coastal Member State. | (c) conducting the ship or persons on board to the host Member State or to another Member State participating in the operation, or to the coastal Member State <i>in accordance with the operational plan.</i> | (f) conducting the <i>vessel</i> or persons on board to [...] the coastal Member State. | |

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| | | <i>Any measures taken in accordance with this paragraph shall be proportionate and shall not exceed what is necessary to achieve the objectives of this Article.</i> | |
| | <i>AM 34</i> | | |
| | <i>1b. The measures described in point (b) of paragraph 1a may only be taken if the participating unit:</i> | | PRES suggests not to accept AM 34. As a draft compromise, PRES suggests to explicitly subject the application of Articles 6, 7 and 8 to Article 4. |
| | <i>(i) has ascertained that the ship is not forced to enter a third country in violation of Article 4(1) and</i> | | |
| | <i>(ii) has conducted, if applicable, the measures provided for in Article 4(3) and (4).</i> | | |
| | <i>Article 6 of Directive 2013/32/EU shall apply.</i> | | |
| 2. The host Member State or the participating Member State on whose territorial sea the interception takes place shall authorise the measures referred to in paragraph 1 and it shall instruct the participating unit appropriately through the International Coordination Centre. The participating unit shall inform the host Member State, through the International Coordination Centre, whenever the master of the ship requests that a diplomatic agent or a | | 2. The host Member State or <i>a neighbouring</i> participating Member State on whose territorial sea the interception takes place <i>may</i> authorise <i>one or more of</i> the measures referred to in paragraph 1. <i>The host Member State</i> shall instruct the participating unit appropriately through the International Coordination Centre. The participating unit shall inform the host Member State, through the International Coordination Centre, | |

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| <p>consular officer of the flag State be notified.</p> | | <p>whenever the master of the <i>vessel</i> requests that a diplomatic agent or a consular officer of the flag State be notified.</p> | |
| | <p><i>AM 35</i></p> | | |
| <p>3. Where there are reasonable grounds to suspect that a ship without nationality or one that may be assimilated to a ship without nationality is carrying persons intending to circumvent the checks at border crossing points or is engaged in the smuggling of migrants by sea, the host Member State or the participating Member State in whose territorial sea the stateless ship is intercepted shall authorise and instruct the participating unit to stop it and to take any of the measures laid down in paragraph 1.</p> | <p>3. Where there are reasonable grounds to suspect that <i>a stateless ship</i> is carrying persons intending to circumvent the checks at border crossing points or is engaged in the smuggling of migrants by sea, the host Member State or the participating Member State in whose territorial sea the stateless ship is intercepted shall authorise and instruct the participating unit to stop it and to take any of the measures laid down in paragraph 1.</p> | <p>3. Where there are reasonable grounds to suspect that a <i>stateless vessel [...]</i> is carrying persons intending to circumvent the checks at border crossing points or is engaged in the smuggling of migrants by sea, the host Member State or the <i>neighbouring</i> participating Member State in whose territorial sea the stateless <i>vessel</i> is intercepted <i>may</i> authorise <i>that it be stopped and that one or more</i> of the measures laid down in paragraph 1 <i>be taken. The host Member State shall instruct the participating unit appropriately through the International Coordination Centre.</i></p> | |
| <p>4. Any operational activities in the territorial sea of a Member State that is not participating in the sea operation shall be conducted in accordance with the authorisation of that Member State. The International Coordination Centre shall be informed of any communication with that Member State and of the subsequent course of action</p> | | <p>4. Any operational activities in the territorial sea of a Member State that is not participating in the sea operation shall be conducted in accordance with the authorisation of that Member State. <i>The host Member State shall instruct the participating unit through the International Coordination Centre based on the course of action</i></p> | |

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| authorised by that Member State. | | <i>authorised by that Member State.</i> | |
| | AM 36 | | |
| | 4a. Member States and the Agency are bound by the provisions of the asylum acquis, and in particular of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection with regard to applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of Member States. | | PRES suggests not to accept AM 36 which is covered by recital 5. |
| <i>Article 7</i> Interception on the high seas | | <i>Article 7</i> Interception on the high seas | |
| | AM 37 | | |
| 1. On the high seas, the participating units shall take one or more of the following measures when there are reasonable grounds to suspect that a ship is engaged in the smuggling of migrants by sea subject to the authorisation of the flag State in accordance with the Protocol against the Smuggling of Migrants: | 1. On the high seas, the participating units shall take one or more of the following measures when there are reasonable grounds to suspect that a ship is engaged in the smuggling of migrants by sea subject to the authorisation of the flag State in accordance with the Protocol against the Smuggling of Migrants: | 1. On the high seas, the participating units may take one or more of the following measures when there are reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea subject to the authorisation of the flag State in accordance with the Protocol against the Smuggling of Migrants, and where relevant, national and international law, and in accordance with the instructions of the host Member State: | PRES invites delegations to consider positively the EP amendments in Articles 6, 7 and 8 as regards the split between the interception measures. |

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| (a) requesting information and documentation on ownership, registration and elements relating to the voyage, and on the identity, nationality and other relevant data on persons on board; | (a) requesting information and documentation on ownership, registration and elements relating to the voyage, and on the identity, nationality and other relevant data on persons on board, <i>including their health conditions, in order to assess if there are persons with special medical needs on board;</i> | (a) requesting information and documentation on ownership, registration and elements relating to the voyage <i>of the vessel</i> , and on the identity, nationality and other relevant data on persons on board; | |
| (b) stopping, boarding and searching the ship, its cargo and persons on board, and questioning persons on board; | (b) stopping, boarding and searching the ship, its cargo and persons on board, and questioning persons on board; | (b) stopping, boarding and searching the <i>vessel</i> , its cargo and persons on board, and questioning persons on board; | <i>Proposal of the technical meeting to accept Council text.</i> |
| (c) making persons on board aware that they are may not be authorised to cross the border and that persons directing the craft may face penalties for facilitating the voyage; | (c) making persons on board aware <i>as to why</i> they [...] may not be authorised to cross the border and that persons directing the <i>ship</i> may face penalties for facilitating the voyage. | (c) making persons on board aware that they [...] may not be authorised to cross the border and that persons directing the <i>vessel</i> may face penalties for facilitating the voyage; | |
| | <i>1a. If the suspicions that a ship is engaged in the smuggling of migrants by sea prove to be founded, the participating unit may take one or more of the following measures subject to the authorisation of the flag State in accordance with the Protocol against the Smuggling of Migrants:</i> | | |

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| (d) seizing the ship and apprehending persons on board; | (a) seizing the ship and apprehending persons on board; | (d) seizing the <i>vessel</i> and apprehending persons on board; | <i>Proposal of the technical meeting to accept Council text.</i> |
| (e) ordering the ship to modify its course outside of or towards a destination other than the territorial sea or the contiguous zone, including escorting the vessel or steaming nearby until the ship is heading on such course; | <i>Deleted</i> | (e) ordering the <i>vessel</i> to <i>alter</i> its course [...] towards a destination other than the territorial sea or the contiguous zone, including escorting the vessel or steaming nearby until the <i>vessel</i> is heading on such course; | PRES invites delegations to further consider this issue considering that it is a political concern for EP, taking into account this PRES draft compromise: <u>(e) warn the vessel not to enter the territorial sea or the contiguous zone, and where necessary request</u> the vessel to alter its course towards a destination other than the territorial sea or the contiguous zone, including escorting the vessel or steaming nearby until the <i>vessel</i> is heading on such course. |
| (f) conducting the ship or persons on board to a third country or otherwise handing over the ship or persons on board to the authorities of a third country; | (b) conducting the ship or persons on board to a third country or otherwise handing over the ship or persons on board to the authorities of a third country; | (f) conducting the <i>vessel</i> or persons on board to a third country or otherwise handing over the <i>vessel</i> or persons on board to the authorities of a third country; | <i>Proposal of the technical meeting to accept Council text.</i> |
| (g) conducting the ship or persons on board to the host Member State or to another Member State participating in the operation. | (c) conducting the ship or persons on board to the host Member State or to another Member State participating in the operation. | (g) conducting the <i>vessel</i> or persons on board to the host Member State or to another <i>neighbouring</i> Member State participating in the operation. | |
| | | <i>Any measures taken in accordance with this paragraph shall be proportionate and shall not exceed what is necessary to achieve the objectives of this Article.</i> | |

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| | <i>AM 38</i> | | |
| | <i>1b. The measures described in point (b) of paragraph 1a may only be taken if the participating unit:</i> | | PRES suggests not to accept AM 38. As a draft compromise, PRES suggests to explicitly subject the application of Articles 6, 7 and 8 to Article 4. |
| | <i>(i) has ascertained that the ship is not forced to enter a third country in violation of Article 4(1) and</i> | | |
| | <i>(ii) has conducted, if applicable, the activities provided for in Article 4(3) and (4).</i> | | |
| | <i>AM 39</i> | | |
| | <i>1c. When there are reasonable grounds to suspect that a ship is engaged in trafficking of human beings and illegal immigration, assistance shall be given to victims.</i> | | PRES draft compromise is to have a recital replacing AM 39, which would read as follows and which is to be included after recital 5: <u>The application of this Regulation should be without prejudice to Directive 2011/36 of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims, in particular as regards assistance to be given to victims of trafficking in human beings.</u> |
| 2. Where the ship is flying the flag or displays the marks of registry of the host Member State or of a participating Member State, that Member State shall, after confirming | | 2. Where the <i>vessel</i> is flying the flag or displays the marks of registry of the host Member State or of a participating Member State, that Member State <i>may</i> , after confirming | |

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| <p>the nationality of the ship, authorise the measures laid down in paragraph 1.</p> | | <p>the nationality of the <i>vessel</i>, authorise <i>one or more of</i> the measures laid down in paragraph 1. <i>The host Member State shall then instruct the participating unit appropriately through the International Coordination Centre.</i></p> | |
| <p>3. Where the ship is flying the flag or displays the marks of registry of a Member State that is not participating in the sea operation or of a third country, the host Member State or a participating Member State, depending on whose participating unit has intercepted this ship, shall notify the flag State, it shall request confirmation of registry and, if nationality is confirmed, it shall request authorisation from the flag State to take any of the measures laid down in paragraph 1. The host Member State or the participating Member State shall inform the International Coordination Centre of any communication with the flag State and of the measures authorised by the flag State.</p> | | <p>3. Where the <i>vessel</i> is flying the flag or displays the marks of registry of a Member State that is not participating in the sea operation or of a third country, the host Member State or a participating Member State, depending on whose participating unit has intercepted this <i>vessel</i>, shall notify the flag State, it shall request confirmation of registry and, if nationality is confirmed, <i>it shall request that the flag State take action to suppress the use of its vessel for smuggling of migrants. If the flag State is unwilling or unable to do so either directly or with the assistance of the Member State to whom the participating unit belongs, the latter</i> shall request authorisation from the flag State to take any of the measures laid down in paragraph 1. The host Member State or the participating Member State shall inform the International Coordination Centre of any</p> | |

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| | | communication with the flag State and of the <i>intended actions or</i> measures authorised by the flag State. <i>The host Member State shall then instruct the participating unit appropriately through the International Coordination Centre.</i> | |
| | <i>AM 40</i> | | |
| 4. Where, though flying a foreign flag or refusing to show its flag, there are reasonable grounds to suspect that the ship is, in reality, of the same nationality as a participating unit, that participating unit shall verify the ship's right to fly its flag. To this end, it may approach the suspected ship. If suspicion remains after the documents have been checked, it shall proceed to a further examination on board the ship, which must be carried out with all possible consideration. The participating Member State of which the ship is allegedly flying the flag shall be contacted through the appropriate channels. | 4. Where, though flying a foreign flag or refusing to show its flag, there are reasonable grounds to suspect that the ship is, in reality, of the same nationality as a participating unit, that participating unit shall verify the ship's right to fly its flag. To this end, it may approach the suspected ship. If suspicion remains after the documents have been checked, it shall proceed to a further examination on board the ship, which shall be carried out with all possible consideration. The participating Member State of which the ship is allegedly flying the flag shall be contacted through the appropriate channels. | 4. Where, though flying a foreign flag or refusing to show its flag, there are reasonable grounds to suspect that the <i>vessel</i> is, in reality, of the same nationality as a participating unit, that participating unit shall verify the <i>vessel's</i> right to fly its flag. To this end, it may approach the suspected <i>vessel</i> . If suspicion remains [...], it shall proceed to a further examination on board the <i>vessel</i> , which must be carried out with all possible consideration. [...] | <u><i>Proposal of the technical meeting:</i></u> 4. Where, though flying a foreign flag or refusing to show its flag, there are reasonable grounds to suspect that the <i>vessel</i> is, in reality, of the same nationality as a participating unit, that participating unit shall verify the <i>vessel's</i> right to fly its flag. To this end, it may approach the suspected <i>vessel</i> . If suspicion remains, it shall proceed to a further examination on board the <i>vessel</i> , which shall be carried out with all possible consideration. |
| 5. Where, though flying a foreign flag or refusing to show its flag, there are reasonable grounds to suspect that the ship is, in reality, of the nationality of the host Member State or another participating Member | | 5. Where, though flying a foreign flag or refusing to show its flag, there are reasonable grounds to suspect that the <i>vessel</i> is, in reality, of the nationality of the host Member State or another participating Member | <i>Proposal of the technical meeting to accept Council text.</i> |

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| State, the participating unit shall verify the ship's right to fly its flag upon authorisation of that Member State. | | State, the participating unit shall verify the <i>vessel's</i> right to fly its flag [...]. | |
| 6. Where, in the cases referred to in paragraphs 4 or 5, the suspicions regarding the nationality of the ship prove to be founded, the host Member State or the participating Member State shall authorise the measures laid down in paragraph 1. | | 6. Where, in the cases referred to in paragraphs 4 or 5, the suspicions regarding the nationality of the <i>vessel</i> prove to be founded, <i>that</i> host Member State or <i>that</i> participating Member State <i>may</i> authorise <i>one or more of</i> the measures laid down in paragraph 1. <i>The host Member State shall then instruct the participating unit appropriately through the International Coordination Centre.</i> | |
| 7. Pending or in the absence of authorisation of the flag State, the ship shall be surveyed at a prudent distance. No other measures shall be taken without the express authorisation of the flag State, except those necessary to relieve imminent danger to the lives of persons or those measures which derive from relevant bilateral or multilateral agreements. | | 7. Pending or in the absence of authorisation of the flag State, the <i>vessel</i> shall be surveyed at a prudent distance. No other measures shall be taken without the express authorisation of the flag State, except those necessary to relieve imminent danger to the lives of persons or those measures which derive from relevant bilateral or multilateral agreements. | <i>Proposal of the technical meeting to accept Council text.</i> |
| | <i>AM 41</i> | | |
| 8. Where there are reasonable grounds to suspect that a ship without nationality or one that may be assimilated to a ship without nationality is engaged in the | 8. Where there are reasonable grounds to suspect that <i>a stateless ship</i> is engaged in the smuggling of migrants by sea, the participating unit may board and <i>search</i> the ship | 8. Where there are reasonable grounds to suspect that a <i>stateless vessel</i> is engaged in the smuggling of migrants by sea, the participating unit may board and <i>search</i> the <i>vessel</i> | |

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| <p>smuggling of migrants by sea, the participating unit may board and stop the ship with a view to verifying its statelessness. If suspicions prove to be founded further appropriate measures as laid down in paragraph 1 may be taken in accordance with national law and international law.</p> | <p>with a view to verifying its statelessness. If suspicions prove to be founded further appropriate measures as laid down in paragraph 1 may be taken in accordance with national law, Union law and international law.</p> | <p>with a view to verifying its statelessness. If suspicions prove to be founded <i>the participating unit shall inform the host Member State which may take, directly or with the assistance of the Member State to whom the participating unit belongs,</i> further appropriate measures as laid down in paragraph 1 [...] in accordance with national [...] and international law.</p> | |
| <p>9. A Member State that has taken any measure in accordance with paragraph 1 shall promptly inform the flag State of the results of that measure.</p> | | <p>9. A Member State that has taken any measure in accordance with paragraph 1 shall promptly inform the flag State of the results of that measure.</p> | <p><i>Identical.</i></p> |
| | <p>AM 42</p> | | |
| <p>10. The national official representing the host Member State or a participating Member State at the International Coordination Centre shall be designated under national law as an authority for the authorisation to verify the right of a ship to fly the flag of the Member State concerned or to take any of the measures laid down in paragraph 1.</p> | <p>10. The national official representing the host Member State or a participating Member State at the International Coordination Centre shall be <i>responsible to facilitate communications with the relevant authorities of the Member State concerned in seeking</i> authorisation to verify the right of a ship to fly <i>its</i> flag [...] or to take any of the measures laid down in paragraph 1.</p> | <p>10. The national official representing the host Member State or a participating Member State at the International Coordination Centre shall be <i>responsible to facilitate communications with the relevant authorities of the flag State in seeking</i> authorisation to verify the right of a <i>vessel</i> to fly the flag of the Member State concerned or to take any of the measures laid down in paragraph 1.</p> | <p><u><i>Proposal of the technical meeting:</i></u> 10. The national official representing the host Member State or a participating Member State at the International Coordination Centre shall be <i>responsible to facilitate communications with the relevant authorities of the Member State concerned in seeking</i> authorisation to verify the right of a <i>vessel</i> to fly <i>its</i> flag [...] or to take any of the measures laid down in paragraph 1.</p> |

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| <p>11. Where the grounds for suspecting that a ship is engaged in the smuggling of migrants on the high seas prove to be unfounded or the participating unit does not have jurisdiction to act, but there remains a reasonable suspicion that the ship is carrying persons intending to reach the border of a Member State and to circumvent checks at border crossing points, that ship shall continue to be monitored. The International Coordination Centre shall communicate information about the ship to the National Coordination Centre of the Member States towards which it is directed.</p> | | <p>11. Where the grounds for suspecting that a <i>vessel</i> is engaged in the smuggling of migrants on the high seas prove to be unfounded or the participating unit does not have jurisdiction to act, but there remains a reasonable suspicion that the <i>vessel</i> is carrying persons intending to reach the border of a Member State and to circumvent checks at border crossing points, that <i>vessel</i> shall continue to be monitored. The International Coordination Centre shall communicate information about the <i>vessel</i> to the National Coordination Centre of the Member States towards which it is directed.</p> | <p><i>Proposal of the technical meeting to accept Council text.</i></p> |
| <p><i>Article 8</i> Interception in the contiguous zone</p> | | <p><i>Article 8</i> Interception in the contiguous zone</p> | |
| | <p><i>AM 43</i></p> | | |
| <p>1. In the zone contiguous to the territorial sea of a Member State, which is a host Member State or a participating Member State, the measures laid down in Article 6(1) shall be taken in accordance with Article 6(2).</p> | <p>1. In the <i>formally proclaimed</i> zone contiguous to the territorial sea of a Member State, which is a host Member State or a participating Member State, the measures laid down in Article 6(1) shall be taken in accordance with Article 6(<i>1b</i>) and (2) and Article 4.</p> | <p>1. In the zone contiguous to the territorial sea of a Member State, which is a host Member State or a <i>neighbouring</i> participating Member State, the measures laid down in Article 6(1) shall be taken in accordance with Article 6(2). <i>Such authorisation may only be given for measures that are necessary to prevent the infringement of laws and regulations within that Member State's territory or territorial sea.</i></p> | <p>A possible compromise text depends on the outcome of discussions on Article 6 and 7.</p> |

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| <p>2. The measures laid down in Article 6(1) shall not be taken in the contiguous zone of a Member State that is not participating in the sea operation without the authorisation of that Member State. The International Coordination Centre shall be informed of any communication with that Member State and of the subsequent course of action authorised by that Member State.</p> | | <p>2. The measures laid down in Article 6(1) shall not be taken in the contiguous zone of a Member State that is not participating in the sea operation without the authorisation of that Member State. The International Coordination Centre shall be informed of any communication with that Member State and of the subsequent course of action authorised by that Member State. <i>If that Member State does not give its authorisation and where there is a reasonable suspicion that the vessel is carrying persons intending to reach the border of a Member State, Article 7(11) shall apply.</i></p> | |
| <p>3. Where a stateless ship is transiting the contiguous zone, Article 7(8) shall apply.</p> | | <p>3. Where a stateless <i>vessel</i> is transiting the contiguous zone, Article 7(8) shall apply.</p> | <p><i>Proposal of the technical meeting to accept the Council text.</i></p> |
| <p><i>Article 9</i> Search and rescue situations</p> | | <p><i>Article 9</i> Search and rescue situations</p> | |
| | <p><i>AM 44</i></p> | | |
| | <p><i>-1. Before a sea operation, Member States shall ensure that their participating units will comply with the obligation to render assistance to any ship or person in distress at sea, in accordance with applicable provisions of international Conventions</i></p> | | <p><u>PRES draft compromise combining AM 44 with paragraph 1:</u> <i>Member States shall observe their obligation to render assistance to any vessel or person in distress at sea and during a sea operation, they shall ensure that their participating units comply with that obligation, in</i></p> |

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| | <i>governing search and rescue and fundamental rights. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.</i> | | accordance with international law and in respect of fundamental rights. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found. |
| 1. During a sea operation, participating units shall render assistance to any ship or person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found. | 1. During a sea operation, participating units shall render assistance to any ship or person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found. | 1. During a sea operation, <i>Member States shall observe their obligation to</i> render assistance to any vessel or person in distress at sea <i>and shall ensure that their participating units comply with that obligation, in accordance with international law and in respect of fundamental rights.</i> They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found. | |
| | | <i>2. For the purpose of dealing with search and rescue situations that may occur during a sea operation, the operational plan may contain details adapted to the circumstances of the sea operation concerned and it shall contain, in accordance with relevant international law including that on search and rescue, at least the following elements:</i> | <u>PRES draft compromise (to be read together with the closing phrase added at the end of paragraph 2):</u> <i>2. For the purpose of dealing with search and rescue situations that may occur during a sea operation, the operational plan [...] shall contain, in accordance with relevant international law including that on search and rescue, at least the following provisions:</i> |

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| <p>2. When facing, in the course of a sea operation, a situation of uncertainty, alert or distress as regards a ship or any person on board, the participating unit shall forward as soon as possible all available information to the Rescue Coordination Centre responsible for the search and rescue region in which the situation occurs.</p> | <p>2. When facing, in the course of a sea operation, a situation of uncertainty, alert or distress as regards a ship or any person on board, the participating unit shall forward as soon as possible all available information to the Rescue Coordination Centre responsible for the search and rescue region in which the situation occurs.</p> | <p>(a) When facing, in the course of a sea operation, a situation of uncertainty, alert or distress as regards a <i>vessel</i> or any person on board, the participating units shall <i>consider and promptly</i> forward all available information to the Rescue Coordination Centre responsible for the search and rescue region in which the situation occurs <i>and they shall place themselves at the disposal of that Rescue Coordination Centre.</i></p> | <p>PRES draft compromise is to use the language of point 4.2.3. SAR: (a) When [...], in the course of a sea operation, <i>the participating units have reason to believe that they are facing</i> a situation of uncertainty, alert or distress as regards a <i>vessel</i> or any person on board, they [...] shall <i>promptly</i> forward all available information to the Rescue Coordination Centre responsible for the search and rescue region in which the situation occurs <i>and they shall place themselves at the disposal of that Rescue Coordination Centre.</i></p> |
| | | <p>(b) <i>The participating units shall inform the International Coordination Centre as soon as possible of any contact with the Rescue Coordination Centre and of the course of action taken by them.</i></p> | <p>PRES suggests to maintain the Council text</p> |
| | <p><i>3. To assist in determining the appropriate operating procedures, the following emergency situations shall be distinguished by the participating units:</i></p> | | <p>PRES suggests as a compromise to combine the structure of paragraphs 3 to 5, as proposed by the Commission, with the definitions from international law (SAR):</p> |
| <p>3. A ship or the persons on board shall be considered to be in a situation of uncertainty in particular when:</p> | <p>(a) [...] situation of uncertainty [...]:</p> | <p>Deleted</p> | <p><i>3. A vessel or the persons on board shall be considered to be in a situation of uncertainty in particular:</i></p> |

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| (a) doubt exists as to the safety of a ship or the persons on board; or | <i>(i) when a person has been reported as missing or a ship is overdue; or</i> | Deleted | <u><i>(a) when a person has been reported as missing or a vessel is overdue; or</i></u> |
| (b) there is lack of information concerning progress or position of a ship. | <i>(ii) when a person or a ship has failed to make an expected position or safety report.</i> | Deleted | <u><i>(b) when a person or a vessel has failed to make an expected position or safety report.</i></u> |
| 4. A ship or the persons on board shall be considered to be in a situation of alert in particular when: | <i>(b) [...] situation of alert:</i> | Deleted | <u><i>4. A vessel or the persons on board shall be considered to be in a situation of alert in particular:</i></u> |
| (a) apprehension exists as to the safety of a ship or the persons on board because of information that serious difficulties exist, but not to the extent that a distress situation is likely; or | <i>(i) when, following a situation of uncertainty, attempts to establish contact with a person or a ship have failed and inquiries addressed to other appropriate sources have been unsuccessful; or</i> | Deleted | <u><i>(a) when, following a situation of uncertainty, attempts to establish contact with a person or a vessel have failed and inquiries addressed to other appropriate sources have been unsuccessful; or</i></u> |
| (b) there is continued lack of information concerning progress or position of a ship. | <i>(ii) when information has been received indicating that the operating efficiency of a ship is impaired, but not to the extent that a distress situation is likely.</i> | Deleted | <u><i>(b) when information has been received indicating that the operating efficiency of a vessel is impaired, but not to the extent that a distress situation is likely.</i></u> |
| 5. A ship or the persons on board shall be considered to be in a situation of distress in particular when: | <i>(c) [...] situation of distress [...]:</i> | Deleted | <u><i>5. A vessel or the persons on board shall be considered to be in a situation of distress in particular:</i></u> |
| (a) positive information is received that a ship or a person on board is in danger and needs immediate assistance; or | <i>(i) when positive information is received that a person or a ship is in danger and in need of immediate assistance; or</i> | Deleted | <u><i>(a) when positive information is received that a person or a vessel is in danger and in need of immediate assistance; or</i></u> |

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| (b) attempts to establish contact with the ship fail and unsuccessful inquiries point to the probability that the ship is in distress; or | <i>(ii) when, following a situation of alert, further unsuccessful attempts to establish contact with a person or a ship and more widespread unsuccessful inquiries point to the probability that a distress situation exists; or</i> | Deleted | <u><i>(b) when, following a situation of alert, further unsuccessful attempts to establish contact with a person or a vessel and more widespread unsuccessful inquiries point to the probability that a distress situation exists; or</i></u> |
| (c) information is received which indicates that the operating efficiency of the ship has been impaired to the extent that a distress situation is likely. | <i>(iii) when information is received which indicates that the operating efficiency of a ship has been impaired to the extent that a distress situation is likely.</i> | Deleted | <u><i>(c) when information is received which indicates that the operating efficiency of a vessel has been impaired to the extent that a distress situation is likely.</i></u> |
| 6. When assessing the situation for the purposes of paragraphs 3 to 5, participating units shall take all relevant elements into account, including: | 4. When assessing the situation for the purposes of <i>paragraph 3</i> , participating units shall take all relevant elements into account and communicate their assessment to the responsible Rescue Coordination Centre , including in particular : | <i>(c) For the purpose of considering whether the vessel is in the situation of uncertainty, alert or distress participating units shall forward all relevant information and observations to the responsible Rescue Coordination Centre including:</i> | PRES draft compromise: <i>(c) <u>Participating units shall, for the purpose of considering whether the vessel is in the situation of uncertainty, alert or distress,</u> [...]take into account and forward all relevant information and observations to the responsible Rescue Coordination Centre including:</i> |
| (a) the existence of a request for assistance; | (a) the existence of a request for assistance; | <i>(i) the existence of a request for assistance, although such a request shall not be the sole factor for determining the existence of a distress situation;</i> | <i>Proposal of the technical meeting to accept the Council text.</i> |
| (b) the seaworthiness of the ship and the likelihood that the ship will not reach its final destination; | (b) the seaworthiness of the ship and the likelihood that the ship will not reach its final destination; | <i>(ii) the seaworthiness of the vessel and the likelihood that the vessel will not reach its final destination;</i> | <i>Proposal of the technical meeting to accept the Council text.</i> |

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| (c) the number of passengers in relation to the type and condition of the ship; | (c) the number of passengers in relation to the type and condition of the ship (overloading); | (iii) the number of persons on board in relation to the type and condition of the vessel ; | <i>Proposal of the technical meeting to accept the Council text.</i> |
| (d) the availability of necessary supplies such as fuel, water, food to reach a shore; | (d) the availability of necessary supplies (fuel, water, food, <i>etc</i>) to reach a shore; | (iv) the availability of necessary supplies such as fuel, water, food to reach a shore; | <i>Proposal of the technical meeting to accept the Council text.</i> |
| (e) the presence of qualified crew and command of the ship; | (e) the presence of qualified crew and command of the ship; | (v) the presence of qualified crew and command of the vessel ; | <i>Proposal of the technical meeting to accept the Council text.</i> |
| (f) the availability and capability of safety, navigation and communication equipment; | (f) the availability [...] of safety, navigation and communication equipment; | (vi) the availability and capability of safety, navigation and communication equipment; | <i>Proposal of the technical meeting to accept the Council text.</i> |
| (g) the presence of passengers in urgent need of medical assistance; | (g) the presence of passengers in urgent need of medical assistance; | (vii) the presence of persons on board in urgent need of medical assistance; | <i>Proposal of the technical meeting to accept the Council text.</i> |
| (h) the presence of deceased passengers; | (h) the presence of deceased passengers; | (viii) the presence of deceased persons on board ; | <i>Proposal of the technical meeting to accept the Council text.</i> |
| (i) the presence of pregnant women or children; | (i) the presence of pregnant women or children; | (ix) the presence of pregnant women or children; | <i>Proposal of the technical meeting to accept the Council text.</i> |
| (j) the weather and sea conditions, including weather and marine forecasts. | (j) the weather and sea conditions [...]. | (x) the weather and sea conditions, including weather and marine forecasts. | <i>Proposal of the technical meeting to accept the Council text.</i> |
| 7. Participating units shall promptly communicate their assessment of the situation to the responsible Rescue Coordination Centre. While awaiting instructions from the Rescue Coordination Centre, participating units shall take all the appropriate measures to ensure the safety of the persons concerned. | 5. [...] While awaiting instructions from the Rescue Coordination Centre, participating units shall take all the appropriate measures to ensure the safety of the persons concerned. | (d) [...] While awaiting instructions from the Rescue Coordination Centre, participating units shall take all the appropriate measures to ensure the safety of the persons concerned. | <i>Proposal of the technical meeting to accept the Council text.</i> |

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| <p>8. The existence of a distress situation shall not be exclusively dependent on or determined by an actual request for assistance. Where, despite a ship being perceived to be in a distress situation, the persons on board refuse to accept assistance, the participating unit shall inform the Rescue Coordination Centre and continue to fulfil a duty of care by surveying the ship at a prudent distance and by taking any measure necessary for the safety of the persons concerned, while avoiding to take any action that might aggravate the situation or increase the chances of injury or loss of life.</p> | <p>6. The existence of a distress situation shall not be exclusively dependent on or determined by an actual request for assistance. <i>In cases where</i>, despite a ship being perceived to be in a distress situation, the persons on board refuse to accept assistance, the participating unit shall inform the Rescue Coordination Centre and continue to fulfil a duty of care [...], taking any measure necessary for the safety of the persons concerned, while avoiding to take any action that might aggravate the situation or increase the chances of injury or loss of life.</p> | <p><i>(e)</i> [...] Where [...] a <i>vessel is considered</i> to be in a <i>situation of uncertainty, alert or distress but</i> the persons on board refuse to accept assistance, the participating unit shall inform the <i>responsible</i> Rescue Coordination Centre and <i>follow its instructions. The participating unit shall</i> continue to fulfil a duty of care by surveying the <i>vessel [...]</i> and by taking any measure necessary for the safety of the persons concerned, while avoiding to take any action that might aggravate the situation or increase the chances of injury or loss of life.</p> | <p><i>Proposal of the technical meeting to accept the Council text.</i></p> |
| <p>9. Where the Rescue Coordination Centre of the third country responsible for the search and rescue region does not respond to the notification transmitted by the participating unit, the latter shall contact the Rescue Coordination Centre of the host Member State unless another Rescue Coordination Centre is better placed to assume coordination of the search and rescue situation.</p> | <p>7. <i>In cases where</i> the Rescue Coordination Centre of the third country responsible for the search and rescue region does not respond to the notification transmitted by the participating unit, the latter shall contact the Rescue Coordination Centre of the host Member State [...].</p> | <p><i>(f)</i> Where the Rescue Coordination Centre of the third country responsible for the search and rescue region does not respond to the notification transmitted by the participating unit, the latter shall contact the Rescue Coordination Centre of the host Member State unless <i>that participating unit considers that</i> another <i>internationally recognised</i> Rescue Coordination Centre is better [...] <i>able</i> to assume coordination of the search and rescue situation.</p> | <p><u>PRES</u> suggests to keep the Council text.</p> |

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| | | | <u>PRES draft compromise</u> is to add closing provision of paragraph 2 (to replace the text deleted from Article 9(2): <u>The operational plan may contain details adapted to the circumstances of the sea operation concerned.</u> |
| 10. The participating units shall inform the International Coordination Centre as soon as possible of any contact with the Rescue Coordination Centre and of the course of action taken by them. | 8. [...] The International Coordination Centre shall be informed as soon as possible of any contact with the Rescue Coordination Centre and of the course of action taken by the participating unit . | Deleted | <i>Proposal of the technical meeting to accept the Council text.</i> |
| 11. Where the ship cannot or can no longer be considered as being in a distress situation or the search and rescue operation has been concluded, the participating unit shall, in consultation with the International Coordination Centre, resume the sea operation. | 9. Where the ship cannot or can no longer be considered as being in a distress situation or the search and rescue operation has been concluded, the participating unit shall, in consultation with the International Coordination Centre, resume the sea operation. | 3. Where [...] the search and rescue situation has been concluded, the participating unit shall, in consultation with the International Coordination Centre, resume the sea operation. | <i>Proposal of the technical meeting to accept the Council text.</i> |
| <i>Article 10</i> Disembarkation | | <i>Article 10</i> Disembarkation | |
| | AM 45 | | |
| 1. The modalities for the disembarkation of the persons intercepted or rescued in a sea operation shall be set out in the operational plan. Those modalities for disembarkation shall not have the effect of imposing obligations on Member States not participating in | 1. The modalities for the disembarkation of the persons intercepted or rescued in a sea operation shall be set out in the operational plan in accordance with Article 4 . Those modalities for disembarkation shall not have the effect of imposing obligations on | 1. The operational plan may contain details adapted to the circumstances of the sea operation concerned and it shall contain, in accordance with international law and in respect of fundamental rights, at least the following modalities for the disembarkation of | <u>PRES draft compromise</u> (to be read together with the closing phrase added at the end of paragraph 1): 1. The operational plan [...] shall contain, in accordance with international law and in respect of fundamental rights, at least the following modalities for the |

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| the sea operation unless they expressly provide authorisation for measures to be taken in their territorial sea or contiguous zone in accordance with Article 6(4) or Article 8(2). | Member States not participating in the sea operation unless they expressly provide authorisation for measures to be taken in their territorial sea or contiguous zone in accordance with Article 6(4) or Article 8(2). <i>Modalities for disembarkation may specify that disembarkation does not necessarily imply sole responsibility for the State on whose territory persons rescued at sea are disembarked.</i> | the persons intercepted or rescued in a sea operation [...]. | disembarkation of the persons intercepted or rescued in a sea operation. |
| | <i>AM 46</i> | | |
| 2. In the case of interception in the territorial sea or the contiguous zone as laid down in Article 6(2) or Article 8(1), disembarkation shall take place in the host Member State or in the participating Member State in whose territorial waters or contiguous zone the interception takes place. | 2. In the case of interception in the territorial sea or the contiguous zone as laid down in Article 6(2) or Article 8(1), disembarkation shall take place in the host Member State or in the participating Member State in whose territorial <i>sea</i> or contiguous zone the interception takes place. | (a) In the case of interception in the territorial sea or the contiguous zone as laid down in Article 6(2) <i>or (4)</i> or in Article 8(1) <i>or (2)</i> , disembarkation shall take place <i>in the coastal Member State, without prejudice to Article 6(1)(e).</i> | Proposal of the technical meeting to accept the Council text and to add the following definition in Article 2(15): <u>15. 'coastal Member State' means a Member State in whose territorial sea or contiguous zone an interception takes place.</u> |
| | <i>AM 47</i> | | |
| In the case of interception in the territorial sea or the contiguous zone as laid down in Article 6(4) or Article 8(2), disembarkation shall take place in the Member State in whose territorial waters or contiguous zone the interception takes place. | In the case of interception in the territorial sea or the contiguous zone as laid down in Article 6(4) or Article 8(2), disembarkation shall take place in the Member State in whose territorial <i>sea</i> or contiguous zone the interception takes place. | Deleted | <i>Proposal of the technical meeting to accept the Council.</i> |

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| | <i>AM 48</i> | | |
| | <i>2a. Before disembarkation, the persons intercepted or rescued in the sea operation shall receive clear information, in a language which they understand or may reasonably be presumed to understand, on where disembarkation will take place. Particular attention shall be given to unaccompanied minors.</i> | | <u>PRES</u> suggests not to accept EP text. |
| 3. Subject to the application of Article 4, in the case of interception on the high seas as laid down in Article 7, disembarkation may take place in the third country from which the ship departed. If that is not possible, disembarkation shall take place in the host Member State. | | <i>(b)</i> Subject to the application of Article 4, in the case of interception on the high seas as laid down in Article 7, disembarkation may take place in the third country from which the <i>vessel is assumed to have</i> departed. If that is not possible, disembarkation shall take place in the host Member State. | <i>Proposal of the technical meeting to accept the Council.</i> |

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| <p>4. In the case of search and rescue situations as laid down in Article 9, the participating units shall cooperate with the responsible Rescue Coordination Centre to provide a suitable port or place of safety for the rescued persons and to ensure their rapid and effective disembarkation.</p> | <p style="text-align: center;"><i>AM 49</i></p> <p>4. <i>Subject to the application of Article 4, in</i> the case of search and rescue situations as laid down in Article 9, the participating units shall cooperate with the responsible Rescue Coordination Centre to provide a suitable port or place of safety for the rescued persons and to ensure their rapid and effective disembarkation.</p> | <p>(c) In the case of search and rescue situations as laid down in Article 9 <i>and without prejudice to the responsibility of the Rescue Coordination Centre to identify the most appropriate place for disembarking the rescued persons, the host Member State and the participating Member States</i> shall cooperate with the responsible Rescue Coordination Centre to <i>identify a place of safety and, when the responsible Rescue Coordination Centre designates such a place of safety, they shall ensure that the rescued persons are rapidly and effectively disembarked.</i></p> | <p><u>PRES</u> draft compromise: (c) <i>Subject to the application of Article 4, in</i> the case of search and rescue situations as laid down in Article 9 <i>and without prejudice to the responsibility of the Rescue Coordination Centre [...]</i> the <i>host Member State and the participating Member States</i> shall cooperate with the responsible Rescue Coordination Centre to <i>identify a place of safety and, when the responsible Rescue Coordination Centre designates such a place of safety, they shall ensure that disembarkation of the rescued persons is carried out rapidly and effectively [...].</i></p> |
| <p>Without prejudice to the responsibility of the Rescue Coordination Centre, the host Member State and the participating Member States shall as soon as possible ensure that a port or place of safety is identified taking into account relevant factors, such as distances to the closest ports or places of safety, risks and the circumstances of the case.</p> | | <p>[...]</p> | <p><i>Proposal of the technical meeting to accept the Council.</i></p> |

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| <p>Where the participating unit is not released of its obligation referred to in Article 9(1) as soon as reasonably practicable, taking into account the safety of the rescued persons and that of the participating unit itself, it shall be authorised to disembark the rescued persons in the host Member State.</p> | | <p><i>If it is not possible to arrange for the participating unit to be released of its obligation, referred to in Article 9(1), as soon as reasonably practicable, taking into account the safety of the rescued persons and that of the participating unit itself, it shall be authorised to disembark the rescued persons in the host Member State.</i></p> | <p><i>Proposal of the technical meeting to accept the Council.</i></p> |
| | | <p><i>These modalities for disembarkation shall not have the effect of imposing obligations on Member States not participating in the sea operation unless they expressly provide authorisation for measures to be taken in their territorial sea or contiguous zone in accordance with Article 6(4) or Article 8(2).</i></p> | <p><i>Proposal of the technical meeting to accept the Council.</i></p> |
| | | | <p><u>PRES draft compromise</u> is to add closing provision of paragraph 1 (to replace the text deleted from Article 10(1): <i><u>The operational plan may contain details adapted to the circumstances of the sea operation concerned.</u></i></p> |
| | <p><i>AM 50</i></p> | | |
| <p>5. The participating units shall inform the International Coordination Centre of the presence of any persons within the meaning of Article 4(1), and the International Coordination Centre shall convey that information</p> | <p>5. The participating units shall inform the International Coordination Centre of the presence of any persons within the meaning of Article 4, and the International Coordination Centre shall convey that information to the</p> | <p>2. The participating units shall inform the International Coordination Centre of the presence of any persons within the meaning of Article 4(1), and the International Coordination Centre shall convey that information</p> | <p><i>Proposal of the technical meeting to accept the Council.</i></p> |

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| <p>to the competent national authorities. On the basis of that information, the operational plan should determine which follow-up measures may be taken.</p> | <p>competent national authorities. On the basis of that information, the operational plan <i>shall</i> determine which follow-up measures may be taken.</p> | <p>to the competent national authorities <i>of the country where disembarkation takes place.</i> [...] The operational plan <i>shall contain the contact details of those competent national authorities, which shall take appropriate follow-up measures.</i></p> | |
| | <p>AM 51</p> | | |
| | <p>Article 10a</p> | | |
| | <p>1. Each Member State requires the master of a ship flying its flag to proceed with all possible speed to the rescue of persons in distress at sea and to render all possible assistance to them regardless of their nationality or state or of the circumstances in which these persons are found, provided that he can do so without serious danger to the ship, the crew or the passengers. Members States will not take any measures, including criminal procedures and sanctions, against ship masters who have rescued persons in distress and brought them to a harbour on their territory.</p> | | <p>PRES draft compromise:</p> <ul style="list-style-type: none"> - 1st sentence is in Council text for Recital 7 - 2nd sentence is in PRES draft compromise for Recital 7 (AM 13) |

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| | 2. The Agency's Fundamental Rights Strategy and the activities of the Fundamental Rights Officer and the Consultative Forum, as provided for in Article 26a of Regulation 2007/2004, shall apply to sea operations as governed by this Regulation. | | <u>PRES</u> suggests not to accept EP text – covered by the Frontex Regulation. |
| | | Article 10a Amendments to Regulation (EC) No 2007/2004 | |
| | | Regulation (EC) No 2007/2004 is hereby amended as follows: | |
| | | (1) in Articles 3a(1) and 8e(1), at the end of point (j) respectively, the following phrase is added: "in that regard the operational plan shall be established in accordance with the provisions of the Regulation (EU) No .../2014 of the European Parliament and of the Council of ... establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union (OJ L ...)"; | Proposal of the technical meeting to accept the Council. |

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| | AM 52 | | |
| | Article 10b Specialised branches | | |
| | <i>Pursuant to Article 16 of Regulation (EU) No 2004/2007, the Agency shall evaluate the need to set up specialised branches, for all aspects relating to the surveillance of maritime borders, as operational offices in areas subject to significant migration flows, including irregular migration and in particular in the Mediterranean, to improve coordination between Member States and ensure solidarity and responsibility-sharing between them, thereby strengthening the operational capacity of the Agency.</i> | | <u>PRES</u> suggests not to accept EP text – covered by the Frontex Regulation. |
| | AM 53 | | |
| | Article 10c Solidarity mechanisms | | |
| | <i>1. A Member State faced with a situation of urgent and exceptional pressure at its external border shall be able to request:</i> | | PRES invites delegations to further consider Article 10c (1) and (2). |
| | <i>– the deployment of European Border Guard Teams in accordance with Article 8a of Regulation (EC) No 2007/2004 to provide rapid operational assistance to the Member State;</i> | | |

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| | <p>– <i>the Agency for technical and operational assistance in accordance with Article 8 of Regulation (EC) No 2007/2004 in order to obtain assistance on matters of coordination between Members States and/or the deployment of experts to support the competent national authorities;</i></p> | | |
| | <p>– <i>emergency assistance under Article 14 of Regulation XXXX [ISF borders] to address urgent and specific needs in the event of an emergency situation.</i></p> | | |
| | <p>2. A Member State subject to strong migratory pressure which places urgent demands on its reception facilities and asylum systems shall be able to request:</p> | | |
| | <p>– <i>the European Asylum Support Office for the deployment of an asylum support team in accordance with Article 13 of Regulation (EU) No 439/2010 of the European Parliament and of the Council to provide expertise, in particular in relation to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases;</i></p> | | |

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| | <i>– emergency assistance under Article 22 of Regulation XXX (Asylum and Migration Fund) to address urgent and specific needs in the event of an emergency situation;</i> | | |
| | <i>– the Commission to check the willingness of the Member States to accommodate asylum seekers.</i> | | <u>PRES</u> suggests not to accept EP text. |
| | <i>3. With a view to the proper implementation of this Article, the Commission shall continuously monitor the facilities used for the reception of asylum seekers in the Member States and, in the cases described in this article, once it has verified how many places are actually available in such facilities, shall propose a fair redistribution of asylum seekers between Member States, in accordance with Article 80 of the TFEU.</i> | | <u>PRES</u> suggests not to accept EP text. |
| | <i>AM 54</i> | | |
| | <i>Article 10d Report</i> | | |
| | <i>1. The Agency shall submit a report to the European Parliament, the Council and the Commission on the implementation of this Regulation by ...^{30*} and every two years thereafter.</i> | | <u>PRES</u> invites to consider further this amendment. |

³⁰ *OJ: please insert date: two years after entry into force of this Regulation.*

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| | <p><i>2. The report shall include a description of the procedures put in place by the Agency to implement this Regulation during sea operations and an assessment of the practical application of this Regulation, including any incidents which may have taken place. It shall provide detailed information on compliance with fundamental rights, and on the impact on those rights, and shall contain an overview of any reasons expressed by intercepted persons, under Article 4(3), and of measures taken subsequently.</i></p> | | |
| CHAPTER IV FINAL PROVISIONS | | CHAPTER IV FINAL PROVISIONS | |
| | | <i>Article 10b</i> <i>Effects of Decision 2010/252/EU</i> | |
| | | <i>Decision 2010/252/EU shall cease to produce effects from the date of entry into force of this Regulation.</i> | <u>PRES</u> suggests to keep the Council text. |

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| <i>Article 11</i> Entry into force | | <i>Article 11</i> Entry into force | |
| This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties. | | This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties. | |
| Done at Brussels, <i>For the European Parliament</i> <i>The President</i> | | Done at Brussels, <i>For the European Parliament</i> The President | |