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NOTE

from: Presidency
to: Coreper/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)

No. prev. doc.: 9175/13 FRONT 42 CODEC 977 COMIX 270

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

Subject: Draft Regulation of the European Parliament and of the Council establishing the European Border Surveillance System (EUROSUR) [First Reading]
- *Approval of the final compromise text with a view to an agreement at first reading*

Introduction

Coreper on 15 May 2013 examined the text in doc. 9175/13 with a view to the trilogue with the EP on the draft Regulation establishing the European Border Surveillance System (EUROSUR) on 29 May 2013.

Following an exchange of views it was concluded that there was broad support for the text of the draft Regulation set out in the Annex to 9175/13, subject to some minor changes, and subject to reservations by some delegations on specific points, with a view to reaching agreement with the European Parliament at a trilogue scheduled for 29 May 2013. The changes which were agreed were that a reference to Croatia would be introduced in Article 21(3), that Article 18(1) would provide for information on concluded agreements to be also given to the Council and Frontex and

that Article 15(1)(b) would be revised to omit the reference to the temporary allocation of additional personnel and resources. The Presidency would also attempt to obtain a softer wording of Article 9(5).

It was also agreed that the Presidency would take into account a suggestion supported by certain delegations to delete the reference to the lives of migrants in Article 3(fb) and Article 9(3)(a) but the Presidency underlined that the European Parliament was likely to strongly resist such a change.

Following Coreper on 15 May 2013, the draft Regulation was discussed in a trilogue with the European Parliament on 29 May 2013. The Presidency reached an agreement on the draft Regulation with the EP representatives, subject to final confirmation on behalf of the Council regarding a number of changes introduced in certain provisions.

The text of the draft Regulation as it stands following the trilogue is set out in the Annex. Changes compared to doc. 9175/13 are underlined.

Below a number of issues of political importance as well as certain issues of a technical nature in relation to that text are highlighted.

Issues of political importance

- * The EP accepted to drop Recital 1b (EP AM 6).
- * The EP confirmed its acceptance of Council text for Article 9(5)(9) and (9a).
- * The EP accepted to omit the reference to the temporary allocation of additional personnel and resources in Article 15 (1) (b).
- * As regards the use of term "illegal immigration" instead of "irregular migration" in accordance with Article 79 TFUE, the EP accepted to use the term of "illegal immigration" as in the Council text, subject to three specific requests for Articles 2 (1) and (2) and 9(3)(a). The EP asked to replace in Article 2 (1) "illegal border crossings" by "unauthorised border crossings" and to delete in Article 2(2) the reference to "...persons illegally/irregularly crossing the external borders" and replace it with "...persons crossing the external borders without authorisation". This wording was accepted by the Presidency, subject to confirmation

by Coreper, having in mind also that Article 12(1) in the SBC contains both terms ("prevent unauthorised border crossings" and "persons who have crossed the border illegally"). The Presidency also, subject to confirmation by Coreper, agreed to change in Art 9(3)(a) – from "A sub-layer on illegal border crossings...." to "A sub-layer on unauthorised border crossings".

- * As regards EP AM 70 regarding Article 10(6) on the analytical layer of the European Situational Picture (ESP), in which the EP made a link to the Schengen evaluation mechanism, EP accepted to move this issue to Article 10(2), which lists the sources of information for establishing the ESP. However, the EP could not agree with the compromise text put forward by the Presidency after Coreper on 15 May 2013. At the last trilogue, the Presidency accepted, subject to confirmation by Coreper, to introduce at the end of the sentence the words "... *including shortcomings in the carrying-out of external border control;*". The text agreed in Article 10(2)(baa) should be seen in the light of the much stronger text proposed by the EP in AM 70 and in Article 14 on impact levels in EP AM 87, which the EP has accepted to drop. The text agreed only refers to a source of information for the purpose of establishing the European Situational Picture and does not make explicit reference to the Schengen Evaluation Mechanism.
- * The Presidency also, subject to approval by Coreper, agreed to an EP suggestion for a slightly different wording for Article 18(1) and (1b) on cooperation with neighbouring third countries. In relation to paragraph 1, the EP insisted that the whole text of the bilateral or multilateral agreements with neighbouring third countries should be sent to the Commission so that the Commission on that basis can determine what it considers to be the relevant parts of the agreement which need to be verified. The last sentence in paragraph 1 takes into account the concern expressed by one delegation at the last discussion in Coreper so as to ensure that Member States and Frontex would be informed about the bilateral or multilateral agreements concluded by other Member States. The EP also asked to be informed by Commission on the agreements concluded.
- * In relation to the definition of "incidents" (Article 3 fb) and the sub-layer on illegal border crossings in the events layer of the National Situational Picture (Article 9(3)(a)), the EP made clear that those provisions were a substantial part of the overall agreement. It was therefore not possible to delete the reference to situations relating to a risk for the lives of migrants in the

definition of "incidents" and to change the wording in Article 9(3)(a).

Issues of a technical nature

* Following a suggestion by the CLS, a new Recital 9aa on cooperation with the UK and IE has been included in the preamble.

* The dates in Article 21(3) and (4) on the implementation of EUROSUR were agreed. The dates referred to in Article 20 and Recital 13 were accordingly changed.

* It was also agreed to include a reference to Croatia in Article 21(3).

The LIBE Committee has planned to vote its report at a extraordinary meeting which will be held on 10 June 2013 in Strasbourg.

The Presidency invites delegations to agree with the compromise text for the purpose of reaching a first reading agreement with the European Parliament.

Conclusion

The Permanent Representatives Committee is invited to:

- *endorse the draft compromise package as set out in the Annex, and*
 - *take note that the Presidency will inform the Chairman of the LIBE Committee of the European Parliament accordingly by a letter*
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Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

Establishing the European Border Surveillance System (EUROSUR)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(d) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The establishment of a European Border Surveillance System (hereinafter referred to as 'EUROSUR') is necessary in order to strengthen the information exchange and operational cooperation between national authorities of Member States as well as with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Council Regulation (EC) No 2007/2004¹, hereinafter referred to as ('the Agency'). EUROSUR *provides* these authorities and the Agency with the infrastructure and tools needed to improve their situational awareness and reaction capability *at the external borders of the Member States of the European Union for the purpose of* detecting, preventing *and combating illegal immigration* and cross-border crime *and contributing to ensuring the protection* and saving *the* lives of migrants.
- (1a) *The practice of travelling in small and unseaworthy vessels has dramatically increased the number of migrants drowning at the southern maritime external borders. EUROSUR should considerably improve the operational and technical ability of the Agency and Member States to detect these small vessels and to improve the reaction capability of the Member States thereby contributing to reduce the loss of lives of migrants.*
- (2) Member States should establish national coordination centres to improve the cooperation and information exchange *for border surveillance* between them and with the Agency. It is essential for the proper functioning of EUROSUR that all national authorities with a responsibility for external border surveillance under national law *cooperate* via national coordination centres.
- (3) This Regulation should not hinder Member States from making their national coordination centres also responsible for coordinating the information exchange and cooperation with regard to the surveillance of air borders and for checks at border crossing points.
- (3a) *This Regulation requires that the Agency improves the cooperation and information exchange with other Union bodies, offices and agencies, such as the European Maritime*

¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

Safety Agency and the EU Satellite Centre, in order to make best use of existing information, capabilities and systems which are already available at European level such as the European Earth Observation Programme.

- (4) This Regulation forms part of the European model of integrated border management of the external borders and of the Internal Security Strategy of the European Union. EUROSUR also contributes to the development of the Common Information Sharing Environment for the surveillance of the EU maritime domain (CISE), providing a wider framework for maritime situational awareness through information exchange amongst public authorities across sectors in the Union.
- (4a) *In order to ensure that the information contained in EUROSUR is as complete and updated as possible, notably as regards the situation in third countries, the Agency should cooperate with the European External Action Service. For those purposes, European Union delegations and offices should provide all information which may be relevant for EUROSUR.*

- (5) *The Agency should provide the necessary assistance to the development and operation of EUROSUR and, as appropriate, to the development of CISE, including interoperability of systems, notably through establishing, maintaining and coordinating the EUROSUR framework.*
- (5a) *The Agency should be provided with the appropriate financial and human resources in order to adequately fulfil the additional tasks assigned to it under this Regulation.*
- (6) This Regulation respects the fundamental rights and observes the principles recognised by *Articles 2 and 6 of the Treaty on European Union and* the Charter of Fundamental Rights of the European Union, notably *the right to life*, human dignity, prohibition of torture and inhuman or degrading treatment or punishment, *prohibition of trafficking in human beings*, *the right to liberty and security*, *right to the protection of personal data*, *right of access to documents*, *right to asylum*, and *protection in cases of removal and expulsion*, non-refoulement, non-discrimination and *the rights of the child*. This Regulation should be applied by Member States *and the Agency* in accordance with these rights and principles.
- (6a) *In accordance with Article 26a(4) of Regulation (EC) No 2007/2004, the Fundamental Rights Officer and the Consultative Forum should have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency within the framework of Eurosur.*
- (6b) *This Regulation recognises that migratory routes are also taken by persons in need of international protection.*
- (7) Any exchange of personal data *in the European situational picture and the common pre-frontier intelligence picture should remain an exception. It* should be conducted on the basis of existing national and Union legal provisions and should respect their specific data protection requirements. The Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹ and █ the Council Framework Decision 2008/977/JHA *of* 27 November 2008 on the protection of personal data processed in the

¹ OJ L 8, 12.1.2001, p. 1.

framework of police and judicial cooperation in criminal matters² are applicable in cases in which more specific instruments, such as Regulation (EC) No 2007/2004, do not provide a full data protection regime.

- (8) Since the *objective of this Regulation, namely the* establishment of EUROSUR cannot be sufficiently achieved by Member States alone and can therefore, by virtue of the scale and impact of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, *as set out in that Article*, this Regulation does not go beyond what is necessary in order to achieve *this objective*.
- (9) In order to implement a gradual geographical roll-out of EUROSUR, the obligation to designate and operate national coordination centres should apply in *two* successive stages, first to the Member States located at the southern [] and [] eastern [] external borders *of the Member States and*, at a second stage to the remaining Member States [].
- (9a) *This Regulation includes provisions on the cooperation with neighbouring third countries, because a well-structured and permanent cooperation and information exchange with these countries, in particular in the Mediterranean region, is a key factor for achieving the objectives of EUROSUR. It is essential that any cooperation and information exchange between Member States and neighbouring third countries be carried out in full compliance with fundamental rights and notably the principle of non-refoulement.*
- (9b) *This Regulation includes provisions on the close cooperation with the United Kingdom and Ireland in order to better achieve the objectives of EUROSUR.*
- (9c) *The Agency and the Member States, when implementing this Regulation, should make the best possible use of existing capabilities in terms of human resources as well as technical equipment, both at Union and national level.*
- (9d) *The Commission should regularly assess the results of the implementation of this Regulation to determine the extent to which the objectives of EUROSUR have been achieved.*

² OJ L 350, 30.12.2008, p. 60.

- (10) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, [] annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is [] not bound by it or subject to *its* application []. Given that this Regulation builds upon the Schengen acquis, [] Denmark shall, in accordance with Article 4 of that Protocol, decide within *a period of* six months after ***the Council has decided on*** this Regulation whether it will implement it in its national law.
- (11) This Regulation constitutes a development of *the* provisions of the Schengen acquis [] in which the United Kingdom ***does not take part***, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis³, *the* United Kingdom is therefore not taking part in *its* adoption [] and is not bound by it or subject to *its* application [].
- (12) This Regulation constitutes a development of *the* provisions of the Schengen acquis [] in which Ireland ***does not take part***, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis⁴, Ireland is therefore not taking part in *its* adoption [] and is not bound by it or subject to *its* application [].
- (13) As regards Iceland and Norway, this Regulation constitutes a development of *the* provisions of the Schengen acquis, ***within the meaning of*** the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the *latter's* association [] with the implementation, application and development of the Schengen acquis⁵ ***which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement. As regards Norway, Article 5(1) should apply as from 2 December 2013.***
- (14) As regards Switzerland, this Regulation constitutes a development of *the* provisions of the Schengen acquis ***within the meaning of*** the Agreement between the European Union, the European Community and the Swiss Confederation ***on*** the Swiss Confederation's

³ OJ L 131, 1.6.2000, p. 43.

⁴ OJ L 64, 7.3.2002, p. 20.

⁵ OJ L 176, 10.7.1999, p. 36.

association with the implementation, application and development of the Schengen acquis⁶ *which fall within the area referred to in point A of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC*⁷.

- (15) As regards Liechtenstein, this Regulation constitutes a development of *the* provisions of the Schengen acquis *within the meaning of* the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis⁸ *which fall within the area referred to in point A of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU*⁹.
- (16) *The implementation* of this Regulation does not *affect* the division of competence between the Union and the Member States *nor the* obligations of Member States under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organised Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention relating to the Status of Refugees, the Convention for the Protection of Human Rights and Fundamental Freedoms and other relevant international instruments.
- (17) *The implementation* of this Regulation does not affect *the Schengen Borders Code nor* the rules for the surveillance of sea external borders in the context of operational cooperation coordinated by the Agency █ .

HAVE ADOPTED THIS REGULATION:

TITLE I
GENERAL PROVISIONS

⁶ OJ L 53, 27.2.2008, p. 52.

⁷ OJ L 53, 27.2.2008, p.1.

⁸ OJ L 160, 18.6.2011, p. 21.

⁹ OJ L 160, 18.6.2011, p. 19.

Article 1

Subject- matter

This Regulation establishes a common framework for the exchange of information and cooperation between Member States and the Agency in order to improve the situational awareness and ***to increase the*** reaction capability at the external borders of the Member States **█** of the European Union, hereinafter referred to as "***EUROSUR***", ***for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.***

Article 2

Scope

1. This Regulation shall apply to the surveillance of land and sea external borders of the Member States, including **█** monitoring, detection, identification, tracking, prevention and interception of ***unauthorised*** border crossings ***for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.***
- 1a. ***This Regulation may also apply to the surveillance of air borders as well as to checks at border crossing points if Member States voluntarily provide such information to EUROSUR.***
2. This Regulation shall not apply to ***any legal or administrative measures taken once the responsible authorities of a Member State have intercepted the movements of cross-border criminal activities or of persons crossing the external borders without authorisation.***
3. Member States and the Agency shall comply with fundamental rights, including ***the principles of non-refoulement and human dignity and*** data protection requirements, when applying this Regulation. They shall give priority to the special needs of children, ***unaccompanied minors***, victims of trafficking, persons in need of urgent medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation.

Article 3
Definitions

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

- (-a) "*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 2007/2004;
- (a) 'situational awareness' means the ability to monitor, detect, identify, track and understand *illegal* cross-border activities in order to find reasoned grounds for *reaction* measures on the basis of combining new information with existing knowledge, *and to be better able to reduce loss of lives of migrants at, along or in the proximity of the external borders*;
- (b) 'reaction capability' means the ability to perform actions aimed at countering illegal cross-border *activities at, along or in the proximity of the external borders of the Member States*, including the means and timelines to react adequately █ ;
- (c) 'situational picture' means a graphical interface to present *near* real-time data *and* information █ received from different authorities, sensors, platforms and other sources, which is shared across communication and information channels with other authorities in order to achieve situational awareness and support the reaction capability along the external borders *of the Member States* and the pre-frontier area;
- (d) 'cross-border crime' means any serious █ crime *with a cross-border dimension* committed at, *along or in the proximity of* the external borders of *the Member States* █ ;
- (e) 'external border section' means the whole or a part of the external land or sea border of a Member State as defined by national legislation or as determined by the national coordination centre or any other responsible national authority;
- (f) 'pre-frontier area' means the geographical area beyond the external *borders* of *the Member States* █ .
- (fa) '*crisis situations*' means any natural or man-made disasters, accidents, humanitarian or political crisis or any other serious situation occurring at, along or in the proximity of the external borders of the Member States, which may have a significant impact on the control of the external borders.

- (fb) '*incident*' means a situation relating to illegal immigration, cross-border crime or a risk for the lives of migrants at, along or in the proximity of the external borders of Member States.

TITLE II
FRAMEWORK

CHAPTER I
Components

Article 4

EUROSUR framework

1. For the exchange of information and cooperation in the field of border surveillance *and, taking into account existing information exchange and cooperation mechanisms*, Member States and the Agency shall use the **EUROSUR** framework █, consisting of the following components:
 - (a) national coordination centres █;
 - (b) national situational pictures;
 - (c) communication network;
 - (d) European situational picture;
 - (e) common pre-frontier intelligence picture;
 - (f) common application of surveillance tools.
2. The national coordination centres shall provide the Agency via the communication network with █ information from their national situational pictures which is required for the establishment and maintenance of the European situational picture and of the common pre-frontier intelligence picture.
3. The Agency shall give the national coordination centres via the communication network unlimited access to the European situational picture and to the common pre-frontier intelligence picture.
4. The components listed in paragraph 1 shall be established and maintained in line with the

principles outlined in the annex.

Article 5

National Coordination Centre

1. Each Member State █ shall designate, operate and maintain a National Coordination Centre █, which shall coordinate and exchange information between all authorities with a responsibility for external border surveillance at national level as well as with the other national coordination centres and the Agency. The Member State shall notify the establishment of the centre to the Commission, which shall forthwith inform the other Member States and the Agency.
2. Without prejudice to Article ***16 and within the framework of EUROSUR***, the national coordination centre shall be the single point of contact for the exchange of information and cooperation with other national coordination centres and with the Agency █.
3. The national coordination centre shall:
 - (a) ensure the timely information exchange and cooperation between all national authorities with a responsibility for external border surveillance █ as well as with other national coordination centres and the Agency;
 - (aa) ***ensure the timely information exchange with search and rescue, law enforcement, asylum and immigration authorities at national level;***
 - (b) contribute to an effective and efficient management of resources and personnel;
 - (c) establish and maintain the national situational picture in accordance with Article 9;
 - (d) support the planning and implementation of █ national border surveillance activities;
 - (e) ***coordinate*** the national border surveillance system, █ in accordance with national law;
 - (f) ***contribute to*** regularly ***measuring*** the effects of national border surveillance activities ***for the purposes of this Regulation;***
 - (g) coordinate operational measures with other Member States, without prejudice to the competences of the Agency ***and of Member States.***

4. The national coordination centre shall operate twenty-four hours a day and seven days a week.

Article 6

The Agency

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

Article 7

Communication network

1. The Agency shall establish and maintain a communication network in order to provide communications and analytical tools and allow for the **█** exchange of non-classified sensitive and classified information ***in a secured manner and*** in near-real time with and between the national coordination centres. The network shall be operational twenty four hours a day and seven days a week and allow for:
 - (a) bilateral and multilateral information exchange in near-real time;
 - (b) audio and video conferencing;
 - (c) secure handling, storing, ***transmission and*** processing of non-classified sensitive information;

- (d) secure handling, storing, transmission and processing of EU classified information up to the level of RESTREINT UE/EU RESTRICTED or equivalent national classification levels, ensuring that classified information is handled in a separate and duly accredited part of the communication network.
2. The Agency shall provide technical support and ensure that the communication network is interoperable with any other **relevant** communication and information system managed by the Agency.
3. The Agency **shall exchange, process and store non-classified sensitive and classified information in the communication network in accordance with Article 11d of Regulation (EC) No 2007/2004.**
- 3a. **The** national coordination centres shall exchange, process and store non-classified sensitive and classified information in the communication network in compliance with rules and standards which [] are equivalent to the Commission Decision 2001/844/EC amending its internal Rules of Procedure [].
4. Member States' authorities, agencies and other bodies using the communication network shall ensure that equivalent security rules and standards as those applied by the Agency are complied with for the handling of classified information.

CHAPTER II

Situational Awareness

Article 8

Situational pictures

1. The national situational pictures, the European situational picture and the common pre-frontier intelligence picture shall be produced through the collection, evaluation, collation, analysis, interpretation, generation, visualisation and dissemination of information.
2. The pictures referred to in paragraph 1 shall consist of the following layers:
- (a) an events layer [] ;
 - (b) an operational layer [] ;
 - (c) an analysis layer [] .

Article 9
National Situational Picture

1. The national coordination centre shall establish and maintain a national situational picture, in order to provide all authorities with responsibilities in ***the control and in particular surveillance of external borders*** at national level with effective, accurate and timely information [].
2. The national situational picture shall be composed of information collected from the following sources:
 - (a) national border surveillance system [] in accordance with national law;
 - (b) stationary and mobile sensors operated by national authorities with a responsibility for external border surveillance;
 - (c) patrols on border surveillance and other monitoring missions;
 - (d) local, regional and other coordination centres;
 - (e) other relevant national authorities and systems, ***including liaison officers, operational centres and contact points***;
 - (f) the Agency;
 - (g) national coordination centres in other Member States [] ;
(ga) authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks as referred to in Article 18;
[]
 - (i) ship reporting systems ***in accordance with their respective legal bases***;
 - (j) other relevant European and international organisations;
 - (k) other sources.

3. The events layer of the national situational picture shall consist of the following sub-layers:
- (a) a sub-layer on *unauthorised border crossings including* information, *available to the national coordination centre*, on incidents *relating to a risk for the of lives of migrants*;
 - (b) a sub-layer on cross-border crime █ ;
 - (c) a sub-layer on crisis situations █ ;
 - (d) a sub-layer on other events, which *contains* information on unidentified and suspect, *vehicles, vessels and other craft* and persons present at, *along or in the proximity of* the external borders of the Member State concerned, as well as any other event which may have a significant impact on the control of the external borders;
4. *The national coordination centre* shall *attribute* a single indicative impact level, ranging from 'low' and 'medium' to 'high' impact *to each incident in the events layer of the national situational picture*. *All incidents* shall be shared with the Agency.
5. The operational layer of the national situational picture shall consist of the following sub-layers:
- (a) a sub-layer on own assets, *including military assets assisting a law enforcement mission, and operational areas, which contains* information on position, █ status and type of own assets █ *and on* the authorities involved █ ;
█
 - (c) a sub-layer on environmental information, which *contains* or *gives* access to information on terrain and weather conditions at the external borders of the Member State concerned.
- 5a. *The information on own assets in the operational layer shall be classified as EU RESTRICTED.*
6. The analysis layer of the national situational picture shall consist of the following sub-layers:
- (a) an information sub-layer, which *contains* key developments and indicators relevant

for the *purposes of this Regulation*;

- (b) an analytical sub-layer, which *includes* analytical reports, risk rating trends, regional monitors and briefing notes relevant for the *purposes of this Regulation*;
- (c) an intelligence *sub-layer*, which *contains analysed information relevant for the purposes of this Regulation and, in particular, for the attribution of the impact levels* █ to the external █ border sections █ ;
- (d) an imagery and geo-data sub-layer, which *includes* reference imagery, background maps, █ validation *of analysed information and* change analysis (earth observation imagery) as well as change detection, geo-referenced data and *external* border permeability maps.

7. The information contained in the analysis layer and on environmental information in the operational layer of the national situational picture may be based on the information provided in the European situational picture and in the common pre-frontier intelligence picture.

█ 9. The national coordination centres of neighbouring Member States shall share with each other directly and in near-real time the situational picture of neighbouring external border sections relating to:

- (a) █ incidents █ and other significant events contained in the events layer;
- █
- (d) tactical risk analysis reports as contained in the analysis layer.

9a. The national coordination centres of neighbouring Member States may share with each other directly and in near real time the situational picture of neighbouring external border sections relating to the positions, status and type of own assets operating in the neighbouring external border sections as contained in the operational layer.

Article 10

European Situational Picture

1. The Agency shall establish and maintain a European situational picture in order to provide the national coordination centres with *effective, accurate and timely* information and

analysis █ .

2. The European Situational Picture shall be composed of information collected from the following sources:

- (a) national situational pictures *to the extent required by this Article* █ ,
- (b) the Agency;
- (ba) *the European Commission, providing strategic information on border control, including shortcomings in the carrying-out of external border control;*
- (bb) *European Union delegations and offices;*
- (c) other relevant *Union bodies, offices and agencies* and international organisations *as referred to in Article 17*;
- (d) other sources.

3. The events layer of the European situational picture shall include information relating to:

- (a) incidents █ contained in the events layer of the national situational picture █ ;
- (b) incidents █ and other events contained in *the* Common Pre-Frontier Intelligence Picture █ ;
- (c) incidents █ in the operational area of a joint operation, *pilot project or rapid intervention* coordinated by the Agency.

4. In the European situational picture the Agency shall *take into account* the impact level that was assigned to a specific incident in the national situational picture by the national coordination centre.

5. The operational layer of the European situational picture shall consist of the following sub-layers:

- (a) a sub-layer on own assets, which *contains* information on the position, time, █ status and type of assets participating in the Agency joint operations, *pilot projects and rapid interventions* or at the disposal of the Agency, and the deployment plan, including the area of operation, patrol schedules and communication codes;

- (b) a sub-layer on operations, which *contains* information on the joint operations, *pilot projects and rapid interventions* coordinated by the Agency, including the mission statement, location, status, duration, information on the Member States and other actors involved, daily and weekly situational reports, statistical data and information packages for the media;
 - (c) a sub-layer on environmental information, which *includes* information on terrain and weather conditions at the external borders of the Member States.
- 5a. *The information on own assets in the operational layer of the European situational picture shall be classified as EU RESTRICTED.*
6. The analysis layer of the European situational picture shall *be structured in the same manner as in the national situational picture.*

Article 11

Common Pre-Frontier Intelligence Picture

- 1. The Agency shall establish and maintain a common pre-frontier intelligence picture in order to provide the national coordination centres with *effective, accurate and timely* information and analysis on the pre-frontier area █ .
- 2. The common pre-frontier intelligence picture shall be composed of information collected from the following sources:
 - (a) national coordination centres, *including information and reports received from Member States' liaison officers via the competent national authorities;*
 - █
 - (ba) *European Union delegations and offices;*
 - (c) the Agency, *including information and reports provided by its liaison officers;*
 - (d) other relevant *Union bodies, offices and agencies* and international organisations *as referred to in Article 17;*
 - (e) *authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks as referred to in Article 18, via the national coordination*

centres;

- (f) other sources.
3. The common pre-frontier intelligence picture may contain information which is relevant for air border surveillance █ and checks at *external* border crossing points.
 4. The events, *operational and analysis layers* of the common pre-frontier intelligence picture shall *be structured in the same manner as in the European situational picture*.
 5. The Agency shall assign a single indicative impact level to each incident in the events layer of the common pre-frontier intelligence picture. The Agency shall inform the national coordination centres on any incident in the pre-frontier area █ .

Article 12

Common application of surveillance tools

1. The Agency shall *coordinate* the common application of surveillance tools █ in order to supply the national coordination centres and itself with surveillance information on the external borders and on the pre-frontier area on a regular, reliable and cost-efficient basis.
2. The Agency *shall* provide a national coordination centre, upon *its* request, with information on the external borders of the requesting Member State and on the pre-frontier area which *may be* derived from:
 - (a) selective monitoring of designated third-country ports and coasts which have been identified through risk analysis and *information* as embarkation or transit points for vessels *and other craft* used for *illegal immigration or* cross-border crime;
 - (b) tracking of a vessel *or other craft* over high seas which is suspected of or has been identified as being used for *illegal immigration or* cross-border crime;
 - (c) monitoring of designated areas in the maritime domain in order to detect, identify and track vessels *and other craft* suspected of or used for *illegal immigration or* cross-border crime;
 - (d) environmental assessment of designated areas in the maritime domain and at the external land border in order to optimise monitoring and patrolling activities;

- (e) selective monitoring of designated pre-frontier areas at the external **borders**, which have been identified through risk analysis and **information** as potential departure or transit areas for **illegal immigration or** cross-border crime.
3. The Agency **shall** provide the information referred to in paragraph 1 by combining and analysing data **which may be** collected from the following systems, sensors and platforms:
- (a) ship reporting systems **in accordance with their respective legal bases**;
 - (b) satellite imagery;
 - (c) sensors mounted on any **█ vehicles, vessels or other craft**.
4. The Agency may refuse a request from a national coordination centre on the basis of technical, **financial or operational reasons**. **The Agency shall notify in due time the national coordination centre with the reasons for such a refusal.**
5. The Agency may use on its own initiative the surveillance tools referred to in paragraph 2 for collecting information which is relevant for the common pre-frontier intelligence picture.

Article 12a
Processing of personal data

1. ***Where the national situational picture is used for the processing of personal data, that data shall be processed in accordance with Directive 95/46/EC¹⁰, Council Framework Decision 2008/977/JHA and the relevant national provisions on data protection.***
2. ***The European situational picture and the common pre-frontier intelligence picture may only be used for the processing of personal data concerning ship identification numbers.***

This personal data shall be processed in accordance with Article 11ca of Regulation (EC) No 2007/2004. This data shall only be processed for the purposes of detection, identification and tracking of vessels as well as for the purposes referred to in Article 11c(3) of Regulation (EC) No 2007/2004. It shall automatically be deleted within seven days or, in case additional time is needed for tracking a vessel, within two months following the receipt of the relevant data by the Agency.

¹⁰ ***OJ L 281, 23.11.1995, p. 31***

CHAPTER III

Reaction Capability

Article 13

Determination of external border sections

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

Article 14

Attribution of impact levels to external border sections

1. Based on the Agency's risk analysis and **in agreement with** the Member **State** concerned, the Agency shall attribute **or change** the following impact levels to each of the external land and sea border sections of Member States:
 - (a) low impact level in case the incidents related to **illegal immigration or** cross-border crime occurring at the border section in question have an insignificant impact on border security;
 - (b) medium impact level in case the incidents related to **illegal immigration or** cross-border crime occurring at the border section in question have a moderate impact on border security;
 - (c) high impact level in case the incidents related to **illegal immigration or** cross-border crime occurring at the border section in question have a significant impact on border security.
2. The national coordination centre shall regularly assess whether there is a need to **change** the impact level of any of the border sections **by taking into account the information contained in the national situational picture**.
3. The Agency shall visualise [] the impact levels attributed to the external borders in the European situational picture.

Article 15

Reaction corresponding to impact levels

1. The Member States shall ensure that the surveillance [] activities carried out at the external

border sections correspond to the attributed impact levels in the following manner:

- (a) where a low impact level is attributed to an external border section, the ***national authorities with a responsibility for external border surveillance shall organise*** regular surveillance on the basis of risk analysis and ensure that sufficient ***personnel and resources*** are being kept in the border area in readiness for tracking, identification and interception;
- (b) where a medium impact level is attributed to an external border section, the ***national authorities with a responsibility for external border surveillance shall, in addition to measures taken under point (a), ensure that appropriate surveillance measures are being taken at this border section. When those measures are taken, the national coordination centre shall be notified accordingly. The national coordination centre shall coordinate any support given at national level;***
- (c) where a high impact level is attributed to an external border section, the ***Member State concerned shall, in addition to measures taken under point (b), ensure, through the national co-ordination centre, that the national authorities operating at this border section are given the necessary support and that reinforced surveillance measures are taken. That Member State may request the Agency for support subject to the conditions for initiating joint operations or rapid interventions as laid down in Regulation (EC) No 2007/2004.***

2. The national coordination centre shall ***regularly*** inform the Agency about the measures taken at national level pursuant to ***point (c)*** of paragraph 1 □ .
3. Where a medium or high impact level is attributed to an external border section which is adjacent to the border section of another Member State or ***a country with which agreements or regional networks, as referred to in Articles 17a and 18, are in place***, the national coordination centre shall ***contact*** the national coordination centre of the neighbouring ***Member State or the competent authority of the neighbouring country and shall endeavour to coordinate the necessary cross-border measures.***
4. Where a ***Member State*** submits a request according to point (c) of paragraph 1, the Agency, ***when responding to that request***, may support that ***Member State*** in particular by:

- (a) giving priority treatment for the common application of surveillance tools;
 - (b) coordinating the deployment of European Border Guard Teams in accordance with Regulation (EC) No 2007/2004;
 - (c) ensuring the deployment of technical equipment at the disposal of the Agency in accordance with Regulation (EC) No 2007/2004;
 - (d) coordinating any additional support offered by *other* Member States.
5. The Agency shall evaluate *together with Member States* the attribution of impact levels and the corresponding measures taken at national and Union level in its risk analysis reports.

TITLE IV
SPECIFIC PROVISIONS

Article 16

Allocation of tasks to other *authorities* in the Member States

- 1. Member States may entrust regional, local, functional or other *authorities*, which are in the position to take operational decisions, with ensuring the situational awareness and reaction capability in the respective area of competence, including the tasks and competences referred to in points (b), (d) and (e) of *paragraph 3 of Article 5*.
- 2. The decision of the Member State referred to in paragraph 1 shall not affect the national coordination centre in its ability to cooperate and exchange information with other national coordination centres and the Agency.
- 3. In pre-defined cases, *as determined at national level*, the national coordination centre may authorise *an authority* referred to in paragraph 1 to communicate and exchange information with the regional *authorities* or the national coordination centre of another Member State or *the competent authorities of a* third country on condition that it regularly informs its own national coordination centre about *such* communication and information exchange.

Article 17
Cooperation of the Agency with third parties

1. The Agency shall make use of existing information, capabilities and systems available in other ***Union bodies, offices and agencies, and international organisations***, within the respective legal frameworks.
2. In accordance with paragraph 1, the Agency shall cooperate in particular with the following ***Union bodies, offices and agencies, and international organisations***:
 - (a) European Police Office (Europol) in order to exchange information on cross-border crime to be included in the European situational picture;
 - (b) the EU Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency when providing the common application of surveillance tools;
 - (c) the European Commission, ***the European External Action Service and Union bodies, offices and agencies including the European Asylum Support Office***, which may provide the Agency with information relevant for maintaining the European situational picture and the common pre-frontier intelligence picture;
 - (d) international organisations which may provide the Agency with information relevant for maintaining the European situational picture and the common pre-frontier intelligence picture.
- 2a. ***In accordance with paragraph 1, the Agency may cooperate with the Maritime Analysis and Operations Centre - Narcotics (MAOC-N) and the Centre de Coordination pour la lutte antidrogué en Méditerranée (CeCLAD-M) in order to exchange information on cross-border crime to be included in the European situational picture.***
3. Information between the Agency and the ***Union bodies, offices and agencies and international organisations*** referred to in ***paragraphs 2 and 2a*** shall be exchanged via the ***communication*** network referred to in Article 7 or other communication networks which fulfil the criteria of availability, confidentiality and integrity.
4. The cooperation between the Agency and the ***Union bodies, offices and agencies and international organisations*** referred to in ***paragraphs 2 and 2a*** shall be regulated in working arrangements in accordance with Regulation (EC) No 2007/2004 and the respective legal basis of ***the Union body, office and agency, or international organisation concerned***. As regards the handling of classified information, these arrangements shall

provide that the ***Union body, office and agency*** and ***international organisation*** concerned comply with equivalent security rules and standards as those applied by the Agency.

5. ***The Union bodies, offices and agencies*** referred to in ***paragraphs 2 and 2a shall*** use information received in the context of EUROSUR ***only*** within the limits of their legal framework and in compliance with fundamental rights, ***including data protection requirements.***

Article 17a

Cooperation with Ireland and the United Kingdom

1. ***For the purposes of this Regulation, the exchange of information and cooperation with Ireland and the United Kingdom may take place on the basis of bilateral or multilateral agreements between Ireland and the United Kingdom and one or several neighbouring Member States or through regional networks based on these agreements. The national coordination centres of the Member States shall be the contact point for the exchange of information with the corresponding authority of Ireland and the United Kingdom within EUROSUR. Once those agreements are concluded, they shall be notified to the Commission.***
2. ***The agreements referred to in paragraph 1 shall be limited to the following exchange of information between the national coordination centre of a Member State and Ireland and the United Kingdom:***
 - (a) ***information contained in the national situational picture of a Member State to the extent transmitted to the Agency for the purposes of the European situational picture and the common pre-frontier intelligence picture,***
 - (b) ***information collected by Ireland and the United Kingdom which is relevant for the purposes of the European situational picture and the common pre-frontier intelligence picture,***
 - (c) ***information as laid down in Article 9(9).***

3. *Prior approval of any other Member State or of the Agency, which provided information in the context of EUROSUR and which is not part of any of the agreements referred to in paragraph 1, shall be required before that information can be shared with Ireland and the United Kingdom under that agreement.*
4. *Onward transmission or other communication of information exchanged under this Article to third countries or other third parties shall be prohibited.*
5. *The agreements referred to in paragraph 1 shall include provisions on financial costs arising from the participation of Ireland and the United Kingdom in the implementation of those agreements.*

Article 18

Cooperation with neighbouring third countries

1. *For the purposes of this Regulation, Member States may exchange information and cooperate with one or several neighbouring third countries. That exchange of information and cooperation shall take place on the basis of bilateral or multilateral agreements or through regional networks established on the basis of those agreements. The national coordination centres of the Member States shall be the contact point for the exchange of information with neighbouring third countries. Before such agreements are concluded, Member States shall notify them to the Commission, which shall verify the compliance of the parts of the agreements relevant for EUROSUR with this Regulation. Once they are concluded, they shall be notified to the Commission which shall inform the European Parliament, the Council and the Agency.*
- 1a. *Those agreements shall be in compliance with the relevant Union and international law on fundamental rights and on international protection, including the Charter of Fundamental Rights of the European Union and the Convention relating to the Status of Refugees, in particular the principle of non-refoulement.*
- 1b. *Any exchange of personal data with third countries in the framework of EUROSUR shall be strictly limited to what is absolutely necessary for the purposes of this Regulation. It shall be carried out in accordance with Directive 95/46/EC¹¹, Council Framework Decision 2008/977/JHA and the relevant national provisions on data*

¹¹ OJ L 281, 23.11.1995, p. 31.

protection.

2. Any exchange of information under paragraph 1 of this Article and under point *(ga) of paragraph 2* of Article 9, which *provides* a third country *with* information *that could be used* to identify persons or groups of persons *whose request for access to international protection is under examination or* who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of fundamental rights, shall be prohibited.
3. Any exchange of information under paragraph 1 of this Article and under point *(■ ga) of paragraph 2* of Article 9 ■ shall be done in compliance with the conditions of the bilateral and multilateral agreements concluded with neighbouring third countries.
4. Prior approval of any other Member State *or of the Agency*, which provided information in the context of EUROSUR and which is not part of any of the agreements referred to in paragraph 1 and of the networks referred to in point *(ga)* of *paragraph 2 of Article 9 ■*, shall be required before that information can be shared with any third country under that agreement or network; *The Member States and the Agency shall be bound by the request not to exchange that information with the third country concerned.*

4b. *Onward transmission or other communication of information exchanged under this Article to other third countries or third parties shall be prohibited.*

5. Any exchange of information with third countries *acquired via* the common application of surveillance tools is subject to the legislation and rules governing those tools and systems as well as to the relevant provisions of Directive 95/46/EC, Regulation (EC) No 45/2001 and Council Framework Decision 2008/977/JHA.

Article 19
Handbook

1. The European Commission shall, in close cooperation with the Member States, the Agency, *and any other relevant Union body, office or agency*, make available a Practical Handbook for the implementation and management of EUROSUR (hereinafter ‘Handbook’), providing technical and operational guidelines, recommendations and best practices *including on cooperation with third countries*. The European Commission shall adopt the Handbook in the form of a recommendation.

2. *The European Commission may decide, after consultation with Member States and the Agency, to classify parts of the Handbook as EU RESTRICTED in compliance with the rules laid down in Commission Decision 2001/844/EC amending its internal Rules of Procedure.*

Article 20

Monitoring and evaluation

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

Article 20a

Amendments to Regulation (EC) No 2007/2004

Regulation No (EC) 2007/2004 is hereby amended as follows:

1. *In Article 2(1), point (i) is replaced by the following:*

"(i) provide the necessary assistance to the development and operation of a European border surveillance system and, as appropriate, to the development of a common

information sharing environment, including interoperability of systems, notably through establishing, maintaining and coordinating the EUROSUR framework in accordance with Regulation XXX of the European Parliament and the Council establishing the European Border Surveillance System (EUROSUR)."

2. *The following new Article 11ca is inserted:*

"Article 11ca

Processing of personal data in the framework of EUROSUR

The Agency may process personal data as set out in Article 12a(2) of Regulation XXX of the European Parliament and the Council establishing the European Border Surveillance System (EUROSUR), which shall be applied in accordance with the measures referred to in Article 11a. In particular, the processing of such data shall respect the principles of necessity and proportionality and onward transmission or other communication of such personal data processed by the Agency to third countries shall be prohibited."

Article 21

Entry into force and applicability

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

4. Article 5(1) shall apply to the remaining Member States █ from 1 ***December*** 2014.

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX

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

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

enable the EUROSUR stakeholders to react to changing situations in a flexible and structured manner.
