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from:	General Secretariat
to:	Permanent Representatives Committee / Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing the European Border Surveillance System (EUROSUR) – Outcome of the European Parliament's first reading (Strasbourg, 7 to 10 October 2013)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Jan MULDER (ALDE, NL) presented one compromise amendment (amendment 1) to the proposal for a Regulation, on behalf of the Committee on Civil Liberties, Justice and Home affairs. This amendment had been agreed during the informal contacts referred to above. Three additional amendments were tabled for the plenary by political groups: amendment 2 by the Greens/EFA and amendments 3 and 4 by the EFD.

II. VOTE

When it voted on 10 October 2013, the plenary adopted the compromise amendment (amendment 1). No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto¹.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

European Border Surveillance System (EUROSUR) ***I

European Parliament legislative resolution of 10 October 2013 on the proposal for a regulation of the European Parliament and of the Council Establishing the European Border Surveillance System (EUROSUR) (COM(2011)0873 – C7-0506/2011 – 2011/0427(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0873),
 - having regard to Article 294(2) and Article 77(2)(d) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0506/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the undertaking given by the Council representative by letter of 14 June 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Budgets (A7-0232/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Approves its statement annexed to this resolution;
 3. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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Position of the European Parliament adopted at first reading on 10 October 2013 with a view to the adoption of Regulation (EU) No .../2013 of the European Parliament and of the Council establishing the European Border Surveillance System (EUROSUR)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure¹,

¹ Position of the European Parliament of 10 October 2013.

Whereas:

- (1) The establishment of a European Border Surveillance System ('EUROSUR') is necessary in order to strengthen the exchange of information and the 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 ('the Agency'). EUROSUR will *provide* those 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 Union ("external borders") 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.*
- (2) *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 the Member States to detect such small vessels and to improve the reaction capability of the Member States, thereby contributing to reducing the loss of lives of migrants.*
- (3) *It is recognised in this Regulation that migratory routes are also taken by persons in need of international protection.*

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

- (4) Member States should establish national coordination centres ■ to improve the exchange of information and the cooperation *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.
- (5) This Regulation should not hinder Member States from making their national coordination centres also responsible for coordinating the exchange of information and for cooperation with regard to the surveillance of air borders and for checks at border crossing points.
- (6) *The Agency should improve the exchange of information and the cooperation with other Union bodies, offices and agencies, such as the European Maritime Safety Agency and the European Union Satellite Centre, in order to make best use of information, capabilities and systems which are already available at European level, such as the European Earth monitoring programme.*

- (7) 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 will also contribute to the development of the Common Information Sharing Environment (CISE) for the surveillance of the maritime domain of the Union providing a wider framework for maritime situational awareness through information exchange amongst public authorities across sectors in the Union.
- (8) *In order to ensure that the information contained in EUROSUR is as complete and updated as possible, in particular with regard to the situation in third countries, the Agency should cooperate with the European External Action Service. For those purposes, Union delegations and offices should provide all information which may be relevant for EUROSUR.*

- (9) ***The Agency should provide the necessary assistance for the development and operation of EUROSUR and, as appropriate, for the development of CISE, including the interoperability of systems, in particular by establishing, maintaining and coordinating the EUROSUR framework.***
- (10) ***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.***

- (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, *in particular* respect for human dignity, *the right to life, the* prohibition of torture and 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 of access to documents, the right to asylum and to protection against 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 those rights and principles.
- (12) *In accordance with Regulation (EC) No 2007/2004, the Fundamental Rights Officer and the Consultative Forum established by that Regulation 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.*

- (13) Any exchange of personal data *in the European situational picture and the common pre-frontier intelligence picture should constitute an exception. It* should be conducted on the basis of existing national and Union law and should respect their specific data protection requirements. Directive 95/46/EC of the European Parliament and of the Council¹, Regulation (EC) No 45/2001 of the European Parliament and of the Council² and **█** Council Framework Decision 2008/977/JHA³ are applicable in cases in which more specific instruments, such as Regulation (EC) No 2007/2004, do not provide a full data protection regime.

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

³ Council Framework Decision 2008/977/JHA *of* 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

- (14) 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 *and*, at a second stage, to the remaining Member States ■ .

- (15) *This Regulation includes provisions on cooperation with neighbouring third countries, because well-structured and permanent exchange of information and cooperation with those countries, in particular in the Mediterranean region, are key factors for achieving the objectives of EUROSUR. It is essential that any exchange of information and any cooperation between Member States and neighbouring third countries be carried out in full compliance with fundamental rights and in particular with the principle of non-refoulement.*
- (16) *This Regulation includes provisions on the possibility of close cooperation with Ireland and the United Kingdom which may assist in better achieving the objectives of EUROSUR.*
- (17) *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.*

- (18) *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.*
- (19) 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 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.
- (20) 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/EC¹; *the* United Kingdom is therefore not taking part in *its* adoption ■ and is not bound by it or subject to *its* application ■ .

¹ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (OJ L 131, 1.6.2000, p. 43).

- (21) 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/EC¹; Ireland is therefore not taking part in *its* adoption ■ and is not bound by it or subject to *its* application ■ .
- (22) 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 *latters'* association ■ with the implementation, application and development of the Schengen acquis² *which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC*³. *Norway should establish a national coordination centre in accordance with this Regulation as from 2 December 2013.*

¹ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

² OJ L 176, 10.7.1999, p. 36.

³ *Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application 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 development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).*

- (23) 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 *association* with the implementation, application and development of the Schengen acquis¹ *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*².
- (24) 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 acquis³ *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*⁴.

¹ OJ L 53, 27.2.2008, p. 52.

² *Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, 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 acquis (OJ L 53, 27.2.2008, p. 1).*

³ OJ L 160, 18.6.2011, p. 21.

⁴ *Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).*

- (25) *The implementation* of this Regulation does not *affect* the division of competence between the Union and the Member States *or 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 Organized 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.
- (26) *The implementation* of this Regulation does not affect *Regulation (EC) No 562/2006 of the European Parliament and of the Council*¹ *or* the rules for the surveillance of sea external borders in the context of operational cooperation coordinated by the Agency █ .
- (27) Since the *objective of this Regulation, namely to establish* EUROSUR, cannot be sufficiently achieved by Member States alone but can rather, by virtue of its scale and effect, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. 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 *that* objective,

¹ *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) (OJ L 105, 13.4.2006, p. 1).*

HAVE ADOPTED THIS REGULATION:

TITLE I
GENERAL PROVISIONS

Article 1
Subject matter

This Regulation establishes a common framework for the exchange of information and for the cooperation between Member States and the Agency in order to improve situational awareness and ***to increase*** reaction capability at the external borders of the Member States ■ of the Union (*"external borders"*) ***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 ("EUROSUR")***.

Article 2

Scope

1. This Regulation shall apply to the surveillance of external land and sea borders, including **■** the 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.*

2. *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.*

3. This Regulation shall not apply to *any legal or administrative measure taken once the responsible authorities of a Member State have intercepted cross-border criminal activities or unauthorised crossings by persons of the external borders.*
4. Member States and the Agency shall comply with fundamental rights, in particular *the principles of non-refoulement and respect for human dignity and* data protection requirements, when applying this Regulation. They shall give priority to the special needs of children, *unaccompanied minors*, victims of human 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 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 (EC) No 2007/2004;***
- (b) '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;***
- (c) '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***, including the means and timelines to react adequately **█** ;

- (d) '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 and the pre-frontier area;
- (e) 'cross-border crime' means any serious crime *with a cross-border dimension* committed at, *along or in the proximity of*, the external borders ;
- (f) 'external border section' means the whole or a part of the external land or sea border of a Member State, as defined by national law or as determined by the national coordination centre or any other responsible national authority;

- (g) 'pre-frontier area' means the geographical area beyond the external *borders*;
- (h) '*crisis situation*' means any natural or man-made disaster, accident, humanitarian or political crisis or any other serious situation occurring at, along or in the proximity of, the external borders, which may have a significant impact on the control of the external borders;
- (i) '*incident*' means a situation relating to illegal immigration, cross-border crime or a risk to the lives of migrants at, along or in the proximity of, the external borders.

TITLE II
FRAMEWORK

CHAPTER I
Components

Article 4
EUROSUR framework

1. For the exchange of information and for the 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) a communication network;
- (d) a European situational picture;
- (e) a common pre-frontier intelligence picture;
- (f) a 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 among, all authorities with a responsibility for external border surveillance at national level, as well as with the other national coordination centres and the Agency. Each Member State shall notify the establishment of its national coordination centre to the Commission, which shall forthwith inform the other Member States and the Agency thereof.

2. Without prejudice to Article *17 and within the framework of EUROSUR*, the national coordination centre shall be the single point of contact for the exchange of information and for the cooperation with other national coordination centres and with the Agency ■ .
3. The national coordination centre shall:
 - (a) ensure the timely exchange of information and timely cooperation between all national authorities with a responsibility for external border surveillance ■ , as well as with other national coordination centres and the Agency;
 - (b) *ensure the timely exchange of information with search and rescue, law enforcement, asylum and immigration authorities at national level;*

- (c) contribute to an effective and efficient management of resources and personnel;
- (d) establish and maintain the national situational picture in accordance with Article 9;
- (e) support the planning and implementation of national border surveillance activities;
- (f) **coordinate** the national border surveillance system, in accordance with national law;
- (g) **contribute to** regularly **measuring** the effects of national border surveillance activities **for the purposes of this Regulation**;
- (h) 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 communication and analytical tools and allow for the ■ exchange of non-classified sensitive and classified information *in a secure manner and* in near-real-time with, and among, the national coordination centres. The network shall be operational twenty four hours a day and seven days a week and shall 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, stored, transmitted and processed 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.*

4. *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 those set out in the Rules of Procedure of the Commission¹.
5. 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.

¹ OJ L 308, 8.12.2000, p. 26.

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 for *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) the 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 **■**;
- (h) *authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks as referred to in Article 20;*

■

- (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 to the 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', *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 the position, **█** status and type of own assets ***and on*** the authorities involved. ***With regard to military assets assisting a law enforcement mission, the national coordination centre may decide, at the request of the national authority responsible for such assets, to restrict access to such information on a need-to-know basis;***

█
 - (b) 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.

6. *The information on own assets in the operational layer shall be classified as **RESTREINT UE/EU RESTRICTED**.*
7. 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 which are relevant for the *purposes of this Regulation*;
 - (b) an analytical sub-layer, which *includes* analytical reports, risk rating trends, regional monitors and briefing notes which are relevant for the *purposes of this Regulation*;
 - (c) an intelligence *sub-layer, which contains analysed information which is 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.

8. 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;
■
 - (b) tactical risk analysis reports as contained in the analysis layer.
10. *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;
 - (c) *the Commission, providing strategic information on border control, including shortcomings in the carrying-out of external border control;*

(d) *Union delegations and offices;*

(e) other relevant *Union bodies, offices and agencies* and international organisations *as referred to in Article 18;*

(f) other sources.

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

(a) incidents ■ and other events 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.

6. *The information on own assets in the operational layer of the European situational picture shall be classified as **RESTREINT UE/EU RESTRICTED**.*

7. The analysis layer of the European situational picture shall *be structured in the same manner as that of the national situational picture set out in Article 9(7).*

I

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;*

■
 - (b) *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 18*;
- (e) *authorities of* third countries, *on the basis of bilateral or multilateral agreements and regional networks as referred to in Article 20, 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 those of the European situational picture set out in Article 10*.
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 of 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, at **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 being embarkation or transit points for vessels **or other craft** used for **illegal immigration or** cross-border crime;

- (b) tracking of vessels *or other craft* over high seas which are suspected of, or have 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* being used for, or suspected of being 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 being 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 **■** vehicle, **vessel or other craft**.

4. The Agency may refuse a request from a national coordination centre for technical, **financial or operational reasons. The Agency shall notify the national coordination centre in due time of 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 13

Processing of personal data

1. *Where the national situational picture is used for the processing of personal data, those data shall be processed in accordance with Directive 95/46/EC, 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 be used only for the processing of personal data concerning ship identification numbers.*

Those data shall be processed in accordance with Article 11ca of Regulation (EC) No 2007/2004. They shall be processed only for the purposes of detecting, identifying and tracking vessels, as well as for the purposes referred to in Article 11c(3) of that Regulation. They shall automatically be deleted within seven days of receipt by the Agency or, where additional time is needed in order to track a vessel, within two months of receipt by the Agency.

CHAPTER III

Reaction capability

Article 14

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, and shall notify them **to the Agency**.*

Article 15

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 the following impact levels to each of the external land and sea border sections of Member States or change such levels:
 - (a) low impact level where the incidents related to *illegal immigration or* cross-border crime occurring at the relevant border section have an insignificant impact on border security;
 - (b) medium impact level where the incidents related to *illegal immigration or* cross-border crime occurring at the relevant border section have a moderate impact on border security;
 - (c) high impact level where the incidents related to *illegal immigration or* cross-border crime occurring at the relevant border section 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 16

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 the measures taken under point (a), ensure that appropriate surveillance measures are being taken at that border section. When such surveillance measures are taken, the national coordination centre shall be notified accordingly. The national coordination centre shall coordinate any support given in accordance with Article 5(3);*
- (c) where a high impact level is attributed to an external border section, the *Member State concerned shall, in addition to the measures taken under point (b), ensure, through the national coordination centre, that the national authorities operating at that border section are given the necessary support and that reinforced surveillance measures are taken. That Member State may request support from the Agency 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 of 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 **of a country with which agreements or regional networks, as referred to in Articles 19 and 20, 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 in accordance with point (c) of paragraph 1, the Agency, **when responding to that request**, may support that **Member State** in particular by:

- (a) giving priority treatment to 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, *together with the Member State concerned*, evaluate the attribution of impact levels and the corresponding measures taken at national and Union level in its risk analysis reports.

TITLE III
SPECIFIC AND FINAL PROVISIONS

Article 17

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

1. Member States may charge regional, local, functional or other *authorities* which are in a position to take operational decisions, with ensuring situational awareness and reaction capability in their respective areas of competence, including the tasks and competences referred to in points (c), (e) and (f) of Article 5(3) **■** .
2. The decision of Member States to allocate tasks in accordance with 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 such authority regularly informs its own national coordination centre of *such* communication and information exchange.

Article 18

Cooperation of the Agency with third parties

1. The Agency shall make use of existing information, capabilities and systems available in other *Union institutions, bodies, offices and* agencies, and *international organisations*, within their respective legal frameworks.

2. In accordance with paragraph 1, the Agency shall cooperate in particular with the following *Union institutions, 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 European Union Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency when providing the common application of surveillance tools;
 - (c) the 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 that is 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.

3. ***In accordance with paragraph 1, the Agency may cooperate with the Maritime Analysis and Operations Centre - Narcotics (MAOC-N) and the Centre de Coordination pour la lutte antidrogue en Méditerranée (CeCLAD-M) in order to exchange information on cross-border crime to be included in the European situational picture.***
4. Information between the Agency and the ***Union bodies, offices and agencies, and international organisations***, referred to in ***paragraphs 2 and 3***, 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.

5. The cooperation between the Agency and the *Union bodies, offices and agencies, and international organisations*, referred to in *paragraphs 2 and 3*, shall be regulated as part of working arrangements in accordance with Regulation (EC) No 2007/2004 and the respective legal basis of *the Union body, office or agency, or international organisation, concerned*. As regards the handling of classified information, those arrangements shall provide that the *Union body, office or agency* or *international organisation* concerned comply with security rules and standards equivalent to those applied by the Agency.

6. *The Union bodies, offices and agencies, and international organisations*, referred to in *paragraphs 2 and 3, 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 19

Cooperation with Ireland and the United Kingdom

- 1. For the purposes of this Regulation, the exchange of information and the cooperation with Ireland and the United Kingdom may take place on the basis of bilateral or multilateral agreements between Ireland or the United Kingdom respectively and one or several neighbouring Member States or through regional networks based on those agreements. The national coordination centres of the Member States shall be the contact points for the exchange of information with the corresponding authorities 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 the corresponding authority of Ireland or 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 referred to in Article 9(9).*

3. *Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 1 shall not be shared with Ireland or the United Kingdom without the prior approval of the Agency or of that Member State. The Member States and the Agency shall be bound by the refusal to share that information with Ireland or the United Kingdom.*
4. *Onward transmission or other communication of information exchanged under this Article to third countries or to third parties shall be prohibited.*
5. *The agreements referred to in paragraph 1 shall include provisions on the financial costs arising from the participation of Ireland and the United Kingdom in the implementation of those agreements.*

Article 20

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. Such exchange of information and such 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 points for the exchange of information with neighbouring third countries.***

2. ***Before any agreement referred to in paragraph 1 is concluded, the Member States concerned shall notify the agreement to the Commission, which shall verify that its provisions which are relevant for EUROSUR comply with this Regulation. Once the agreement is concluded, the Member State concerned shall notify it to the Commission which shall inform the European Parliament, the Council and the Agency thereof.***

3. *The agreements referred to in paragraph 1 shall comply 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.*
4. *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/EC, Framework Decision 2008/977/JHA and the relevant national provisions on data protection.*
5. Any exchange of information under paragraph 1, 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.

6. Any exchange of information under paragraph 1 ■ shall comply with the conditions of the bilateral and multilateral agreements concluded with neighbouring third countries.
7. ***Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 1 shall not be shared with a third country under that agreement without the prior approval of the Agency or of that Member State. The Member States and the Agency shall be bound by the refusal to share that information with the third country concerned.***

8. ***Onward transmission or other communication of information exchanged under this Article to other third countries or to third parties shall be prohibited.***
9. Any exchange of information with third countries ***acquired via*** the common application of surveillance tools shall be subject to the laws and rules governing those tools as well as to the relevant provisions of Directive 95/46/EC, Regulation (EC) No 45/2001 ***and Framework Decision 2008/977/JHA.***

Article 21

Handbook

1. The 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 ('Handbook'). The Handbook shall provide technical and operational guidelines, recommendations and best practices, ***including on cooperation with third countries.*** The Commission shall adopt the Handbook in the form of a recommendation.

2. ***The Commission may decide, after consultation with Member States and the Agency, to classify parts of the Handbook as RESTREINT UE/EU RESTRICTED in compliance with the rules laid down in the Rules of Procedure of the Commission.***

Article 22

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 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 by 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 by 1 *December* 2016 and every four years thereafter. That evaluation shall include an *assessment* of *the* results achieved against the objectives set **■** , 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. It shall also include *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 23

Amendments to Regulation (EC) No 2007/2004

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

(1) in Article 2(1), point (i) is replaced by the following:

"(i) provide the necessary assistance for 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, in particular by establishing, maintaining and coordinating the EUROSUR framework in accordance with Regulation (EU) No .../2013 of the European Parliament and of the Council^{†}.*

** Regulation (EU) No .../2013 of the European Parliament and of the Council of ... establishing the European Border Surveillance System (EUROSUR) (OJ L ...).^{††};*

[†] OJ: Please insert the number of this Regulation.

^{††} OJ: Please insert the number, date and OJ reference of this Regulation.

(2) *the following Article is inserted:*

"Article 11ca

Processing of personal data in the framework of EUROSUR

The Agency may process personal data as set out in Article 13(2) of Regulation (EU) No .../2013⁺, which shall be applied in accordance with the measures referred to in Article 11a of this Regulation. In particular, the processing of such data shall respect the principles of necessity and proportionality and the onward transmission or other communication of such personal data processed by the Agency to third countries shall be prohibited."

⁺ ***OJ: Please insert the number of this Regulation.***

Article 24

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. Bulgaria, Estonia, Greece, Spain, France, **Croatia**, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovenia, Slovakia and Finland shall establish a national coordination centre in accordance with Article 5 as from **2 December 2013**.

The remaining Member States shall establish a national coordination centre in accordance with Article 5 as 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,

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 for 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 consistent management and of using existing structures: the Agency shall ensure consistency between the different components of the EUROSUR framework, including by 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 general budget of the Union and to avoid duplication***. In this context, EUROSUR shall be established in full compatibility with CISE, thereby contributing to and benefitting from a coordinated and cost-efficient approach to 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. The national coordination centres shall ensure the availability, confidentiality and integrity of the information to be exchanged at national, European *and international* level. The Agency shall ensure 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.

Statement by the European Parliament

The European Parliament stresses that the EU institutions should endeavour to use appropriate and neutral terminology in legislative texts when addressing the issue of third-country nationals whose presence on the territory of the Member States has not been authorised by the Member States' authorities or is no longer authorised. In such cases, EU institutions should avoid using the word "illegal" when it is possible to find alternative wording, and in all cases, when referring to persons, "irregular migrants" should be used.
