

European Border Surveillance System (Eurosir)

2011/0427(COD) - 10/10/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 479 votes to 101, by 20 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council Establishing the European Border Surveillance System (EUROSUR).

Parliament adopted its position at first reading, following the ordinary legislative procedure. The amendments adopted in plenary were the result of a compromise reached between the European Parliament and the Council. They amend the Commission proposal as follows:

Subject-matter: EUROSUR should establish 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**.

The practice of travelling in small and unseaworthy vessels has dramatically increased the number of migrants drowning at the southern maritime external borders. It is necessary to improve the detection of these small vessels and improve the reaction capability of the Member States thereby contributing to reduce the loss of lives of migrants.

It is also recognised in this Regulation that migratory routes are also taken by persons in need of international protection.

Scope: in addition to the surveillance of land and sea external borders of the Member States, this Regulation should 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**. It should not apply to any **legal or administrative measures taken once the responsible authorities of a Member State have intercepted cross-border criminal activities or unauthorised crossings by persons of the external borders**.

EUROSUR framework: several provisions have been added to strengthen the exchange of information and cooperation in the field of border surveillance and, taking into account **existing** information exchange and cooperation mechanisms in order to optimise the use of the Union budget and to avoid duplication.

Other measures are laid down to strengthen: (i) the national coordination centre and give it new tasks; (ii) **Frontex, so that the Agency can establish and maintain the EUROSUR communication network** and its workings; (iii) the communication network so that Agency may exchange, process and store non-classified sensitive and classified information.

Situational awareness: this term has been revised to cover 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 **prevent the loss of migrants' lives at, along or in the proximity of the external borders**.

Situational picture: measures are provided to enhance the **situation pictures whether they be national, European or common**. To recall, a situational picture shall mean a graphical interface to present near real-time data and information received from different authorities, sensors, platforms and other sources.

- **the National Situational Pictures** should include information collected from third country authorities and should consist of the following layers:

- **an events layer** should consist of 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;
- **an operational layer** should consist of a sub-layer on **own assets**, including military assets assisting a law enforcement mission, and operational areas. 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. The information on own assets in the operational layer shall be classified as RESTREINT UE /EU RESTRICTED;
- **an analysis layer** should consist of an intelligence sub-layer, which contains analysed information and in particular, for the attribution of the impact levels to the external border sections.

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**.

- **European Situational Picture** should be established and maintained by Frontex in order to provide the national coordination centres with effective, accurate and timely information and analysis. It should be composed of information collected from the European Commission, European Union delegations and offices as well as other relevant Union bodies, offices and agencies and international organisations. Information should include the joint operations, pilot projects and rapid interventions coordinated by Frontex. Again, the information on own assets in the operational layer of the European situational picture shall be classified as EU RESTRICTED.

- **the Common Pre-Frontier Intelligence Picture** should comprise the same type of measures as the previous ones. The analysis layer of the European situational picture shall be structured in the same manner as in the national situational picture.

Processing of personal data: it is provided that where the national situational picture is used for the processing of personal data, that data shall be processed in accordance with Directive 95/46/EC, Council Framework Decision 2008/977/JHA and the relevant national provisions on data protection.

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 data should only be processed for the purposes of detection, identification and tracking of vessels. 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.

Reaction corresponding to impact levels: the Member States should ensure that the surveillance activities carried out at the external border sections correspond to the attributed impact levels in the following manner: where a **low impact level** is attributed to an external border section, the national authorities with a responsibility for external border surveillance should 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.

Where a **medium impact level** is attributed to an external border section, the national authorities with a responsibility for external border surveillance should, in addition to the abovementioned measures taken, ensure that appropriate surveillance measures are being taken at this border section.

Where a **high impact level**, the Member State concerned should 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**.

Implementation: the Frontex Agency and the Member States, when implementing the future 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.

Cooperation with Ireland and the United Kingdom: provisions are laid down to improve cooperation with Ireland and the United Kingdom which may assist in better achieving the objectives of EUROSUR. 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.

Cooperation of the Agency with third parties: the Agency should cooperate in particular with the following Union bodies, offices and agencies, and international organisations: European Police Office (Europol); the European Commission, the European External Action Service and Union bodies, offices and agencies including the European Asylum Support Office; etc. The exchange of information and cooperation shall take place on the basis of bilateral or multilateral agreements and should be done 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**.

Before any agreement is concluded, the Member States concerned shall notify the agreement to the Commission. 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.

Exchange of data: it is clearly specified that any exchange of personal data with third countries in the framework of EUROSUR should be strictly limited to what is absolutely necessary for the purposes of this Regulation. 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.

Any exchange of information 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.

Frontex Agency: 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. The Agency may cooperate with the Maritime Analysis and Operations Centre - Narcotics (MAOC-N) and the Mediterranean area anti-drug enforcement coordination centre (CeCLAD-M) in order to exchange information on cross-border crime.

Amendments have been made to the Frontex Regulation to take account of the amendments provided in the Eurosur Regulation.

Evaluation: 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.

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.

Entry into force and applicability: the Regulation should apply from 2 December 2013. Bulgaria, Estonia, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovenia, Slovakia and Finland should each establish a national coordination centre from this date and the remaining Member States from 1 December 2014.

N.B. In an attached statement from the European Parliament, it is stressed 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.