Basic information

2011/0427(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
European Border Surveillance System (Eurosur) Repealed by 2018/0330A(COD) Repealed by 2018/0330B(COD) **Subject** 7.10.04 External borders crossing and controls, visas	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	MULDER Jan (ALDE)	09/02/2012
	Shadow rapporteur SCURRIA Marco (PPE) ENCIU Ioan (S&D) KELLER Ska (Verts/ALE) MCINTYRE Anthea (ECR) ERNST Cornelia (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	The committee decided not to give an opinion.	
DEVE Development	The committee decided not to give an opinion.	
BUDG Budgets	RIQUET Dominique (PPE)	15/02/2012

Council of the European Union

Council configuration	Meetings	Date
General Affairs	3268	2013-10-22

European Commission

Commission DG	Commissioner

Migration and Home Affairs	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
12/12/2011	Legislative proposal published	COM(2011)0873	Summary
02/02/2012	Committee referral announced in Parliament, 1st reading		
19/06/2013	Vote in committee, 1st reading		
24/06/2013	Committee report tabled for plenary, 1st reading	A7-0232/2013	Summary
09/10/2013	Debate in Parliament		
10/10/2013	Decision by Parliament, 1st reading	T7-0416/2013	Summary
10/10/2013	Results of vote in Parliament		
22/10/2013	Act adopted by Council after Parliament's 1st reading		
22/10/2013	Final act signed		
22/10/2013	End of procedure in Parliament		
06/11/2013	Final act published in Official Journal		

Technical information

Procedure reference	2011/0427(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealed by 2018/0330A(COD) Repealed by 2018/0330B(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 077-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/08227

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE491.337	03/07/2012	
Committee opinion	BUDG	PE494.698	23/10/2012	
Amendments tabled in committee		PE496.412	19/06/2013	
Committee report tabled for plenary, 1st reading/single				

reading		A7-0232/2013	24/06/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0416/2013	10/10/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00056/2013/LEX	23/10/2013	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0873	12/12/2011	Summary
Document attached to the procedure	SEC(2011)1536	12/12/2011	
Document attached to the procedure	SEC(2011)1537	12/12/2011	
Document attached to the procedure	SEC(2011)1538	12/12/2011	
Commission response to text adopted in plenary	SP(2013)872	27/11/2013	
For information	C(2015)9206	15/12/2015	
Follow-up document	COM(2018)0632	12/09/2018	Summary
Follow-up document	SWD(2018)0410	12/09/2018	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	IT_SENATE	COM(2011)0873	09/03/2012	
Contribution	PT_PARLIAMENT	COM(2011)0873	15/03/2012	
Contribution	IT_CHAMBER	COM(2011)0873	06/06/2012	
Contribution	FR_SENATE	COM(2018)0632	05/11/2018	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Regulation 2013/1052
OJ L 295 06.11.2013, p. 0011 Summary

European Border Surveillance System (Eurosur)

2011/0427(COD) - 12/09/2018 - Follow-up document

The Commission staff working document concerns the evaluation of the Regulation (EU) No 1052/2013 of the European Parliament and of the Council establishing the European Border Surveillance System (EUROSUR).

As a reminder, the EUROSUR Regulation requires the Commission to produce a report on the overall evaluation of EUROSUR by 1 December 2016 and every four years thereafter. This evaluation should examine the results achieved against the objectives set and include an assessment of the continuing validity of the underlying rationale, the application of the EUROSUR Regulation in the Member States and by the European Border and Coast Guard Agency (FRONTEX) now referred to as the Agency, and compliance with and impact on fundamental rights.

However, following the adoption of the European Agenda on Migration and of the European Border and Coast Guard Regulation, the Commission **postponed the evaluation** of EUROSUR in order to take into account the changes that they induced on the implementation of EUROSUR and on its evaluation.

Methodology: this evaluation assesses the performance of the EUROSUR Regulation, i.e. whether it has achieved its objectives, whether it is efficient, coherent, and relevant and has an added value at the EU level.

- ***Relevance***: a majority of Member States and the Agency consider that EUROSUR is relevant to prevent illegal immigration and fight cross border crime. Many examples were reported of cases where the information exchanged with the Agency and between Member States in the context of EUROSUR allowed stopping smuggling of drugs, weapons, cigarettes and other illicit goods and also of human beings and to apprehend smugglers which were then brought to court. Since the adoption of the EUROSUR Regulation, the major evolution having a strong impact on the border surveillance and management policy area was the migrant-crisis, in particular the use of the Western Balkan Route in 2015 and 2016, and the increase of the terrorist threat with a number of attacks in Europe. These both reinforce the need to have a stronger and wider border management framework for cooperation between the Member States and the Agency.
- ***Effectiveness***: overall EUROSUR has positively contributed to information exchange and interagency cooperation.
- ***Coherence***: the adoption of the European Border and Coast Guard (ECBG) regulation sets a new ground for information exchange and cooperation both because of the further definition of the EU Integrated Border Management (IBM) and because of the new mandate given to the Agency. The ECBG Regulation describes new roles for the Agency which benefit or impact EUROSUR.
- ***Efficiency***: a majority of Member State and Agency experts estimate that the administrative burden generated by EUROSUR is marginal. The evaluation concluded that assessing the cost of implementation of EUROSUR has proven difficult. The funding sources used for the implementation of the actions foreseen in the EUROSUR Regulation come from different strands, i.e. Member States' national budgets, the EBCG Agency's budget and several EU funding instruments. The majority of the Member States' experts and the Agency considers that the **benefits of EUROSUR overweighed its costs.**

Implementation: overall, the implementation of the Regulation by the Agency has been achieved. However, the Commission considered that some aspects can be improved, most of which are related to the network availability and its accreditation, data quality and the lack of information available.

Improving EUROSUR: the evaluation has identified a few areas where technical amendments in the EUROSUR regulation could improve the functioning of EUROSUR while preserving the mechanism set by the Regulation which proved very successful. These areas include, *inter alia*:

- redefining situational pictures;
- better definition of EUROSUR data policies;
- increased information security;
- improving reaction capabilities;
- enlarging the scope of EUROSUR in order to address additional aspects of border management (systematic inclusion of border crossing points and air border surveillance, reporting on secondary movements);
- developing new EUROSUR Fusion Services and cooperation with third parties;
- ensuring coherence with the European Border and Coast Guard Regulation;
- reinforcing the competences of the National Coordination Centres (NCC);
- reinforcing the competence of the Agency to cover a wider and more coherent spectrum of border management related activities in support of Member States.

European Border Surveillance System (Eurosur)

2011/0427(COD) - 12/09/2018 - Follow-up document

The Commission presented a report on the evaluation of the European border surveillance system (EUROSUR) established by Regulation (EU) No 1052/2013.

EUROSUR provides a common framework for the exchange of information and for the cooperation between Member States' border surveillance authorities and the European Border and Coast Guard Agency (Frontex). The EUROSUR framework has been operational since 2 December 2013. Its aim is to detect, prevent and combat illegal immigration and cross-border crime, thereby contributing to the protection of migrants' lives and saving their lives. It also aims to strengthen the capacity to react at the external borders of the Member States.

In order to take into account the full implementation of the Regulation on the European Border and Coast Guard adopted on 14 September 2016 and its impact on EUROSUR, the EUROSUR evaluation, initially scheduled for December 2016, has been postponed to September 2018.

State of play of implementation: the report notes that, in general, the implementation of the EUROSUR framework, which includes both a governance framework and an information exchange system, has been carried out in accordance with the provisions of the Regulation.

All Member States have set up their national coordination centres as a focal point for border surveillance at national level, usually operating on 24/7 basis as well as a national situational picture of their border situation, sharing border incidents and analytical reports. They also informed the Commission of their cooperation with neighbouring third countries.

The Agency currently provides thirteen EUROSUR fusion services. These services provide high value-added information services to all national coordination centres via the EUROSUR communication network and directly to joint operations coordinated by the Agency.

Findings of the evaluation: the main conclusions of the report are as follows:

- EUROSUR is **relevant** to prevent illegal immigration and combat cross-border crime. In several cases, the information exchanged via EUROSUR with the Agency and between Member States prevented cases of smuggling of drugs, weapons, cigarettes and other illicit goods as well as of human beings and led to apprehending the smugglers who were then brought to court. EUROSUR has directly contributed to saving the lives of hundreds of migrants by first detecting them at sea and triggering search and rescue mechanisms;
- the EUROSUR framework is **effective** in promoting information exchange and cooperation. The creation of national coordination centres has brought added value by improving the interagency cooperation and information exchange at national and regional level, with neighbouring Member States and with the Agency;
- the costs of implementing EUROSUR, which are borne by national budgets, EU funding instruments and the Agency, are estimated at around **EUR 130 million** and are well below the EUR 208 million estimated in the impact assessment accompanying the 2011 legislative proposal on EUROSUR. EUROSUR has contributed to enforcing synergies at the European level, thus limiting costs at the national level;
- EUROSUR fosters synergies and therefore **coherence** with other policies: it promotes operational cooperation with other actors in areas such as maritime affairs, security and customs control, fisheries control and civil/military cooperation;
- the **European added value** of EUROSUR is fully recognised by the EU community in the field of border management. Removing the EUROSUR framework is not conceivable since most Member States now depend on it for border surveillance.

Possible improvements: although the EUROSUR framework has made progress in achieving its objectives, its functioning could be improved. The Commission shall accompany its report with a proposal to amend the EUROSUR Regulation and to include EUROSUR in the proposal amending the European Border and Coast Guard Regulation.

The proposed amendment of the EUROSUR Regulation may lead to the following improvements.

(1) As regards its functioning, from a system, EUROSUR should evolve into a governance framework encouraging information exchange and cooperation at national, regional and European level, as well as with third parties. This implies:

- reinforcing and clarifying the role and competencies of national coordination centres;
- improving EUROSUR's **governance** by better defining the roles and responsibilities of the various actors in order to improve information exchange and build trust among stakeholders;
- the reduction of technical requirements through innovative and more efficient implementation of information exchange solutions;
- the use of EUROSUR's fusion services: EUROSUR should allow the rapid deployment of new services (such as multi-purpose aerial surveillance) while ensuring compliance with fundamental rights and data protection requirements.

(2) The scope of the Regulation may be gradually extended to cover several aspects of border management:

- the systematic inclusion of border checks at border crossing points;
- air border surveillance to the extent that new criminal activities are based on the use of small aircraft, including remotely piloted aircraft systems for the smuggling of drugs and cigarettes;
- improving the coherence of the framework for information exchange and cooperation with third countries;
- the definition of a common framework for integrated border management, including the monitoring of secondary movements.

It should be noted that the **Fundamental Rights Agency** has suggested several possible developments of EUROSUR such as the inclusion of specific clauses according to which the agreement must be applied in accordance with fundamental rights, in full respect of the principle of non-refoulement and reflecting the core data protection safeguards in future agreements with third countries.

European Border Surveillance System (Eurosur)

2011/0427(COD) - 24/06/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Jan MULDER (ADLE, NL) on the proposal for a regulation of the European Parliament and of the Council Establishing the European Border Surveillance System (EUROSUR).

The committee recommends that the European Parliament's position adopted at first reading, following the ordinary legislative procedure, should amend the Commission proposal as follows:

Subject-matter: it is stipulated the aim of "EUROSUR" should be to increase the 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.**

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.

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, which contains information on position, status and type of own assets and on the authorities involved (the information on own assets in the operational layer shall be classified as EU RESTRICTED);
  - **an analysis layer** should consist of an intelligence sub-layer, which contains analysed informationand 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. It should only be available for a limited period of time before it is deleted.

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**.

Exchange of data: it is specified that 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. Onward transmission or other communication of information exchanged under this Article to other third countries or third parties shall be prohibited.

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 to be included in the European situational picture.

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.

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

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.

European Border Surveillance System (Eurosur)

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.

European Border Surveillance System (Eurosur)

2011/0427(COD) - 22/10/2013 - Final act

PURPOSE: to establish an European Border Surveillance System (EUROSUR).

LEGISLATIVE ACT: Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (EUROSUR).

CONTEXT: the regulation establishes the necessary legal framework to respond to the European Council demand of 23 and 24 June 2011 to continue as a priority the development of the European Border Surveillance System (EUROSUR).

EUROSUR is necessary in order to strengthen the exchange of information and the operational cooperation between national authorities of Member States and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ("the FRONTEX Agency").

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 FRONTEX 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.

CONTENT: this Regulation establishes a common framework for the exchange of information and for the cooperation between Member States and FRONTEX in order to improve situational awareness and to increase reaction capability at the external borders of the Member States of the 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**.

Scope: in addition to the surveillance of external land and sea borders of Member States, including the monitoring, detection and prevention of unauthorised border crossings and the location, the identification and interception of the persons concerned the regulation should also **apply to the surveillance of air borders** as well as to checks at **border crossing points** if Member States **voluntaril**y provide such information to EUROSUR.

This Regulation shall not however 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**.

EUROSUR framework: some provisions have been made for the exchange of information and for the cooperation in the field of border surveillance between Member States, and taking into account **existing** information exchange and cooperation mechanisms, in order to optimise the use of the general budget of the Union and to avoid duplication.

The EUROSUR framework shall consist of the following components:

- national coordination centres;
- national situational pictures;
- a communication network;
- a European situational picture;
- a common pre-frontier intelligence picture;
- a common application of surveillance tools.

Each of these structures is described in the regulations as well as their respective tasks as well as the tasks of FRONTEX which would ensure the implementation of the necessary communications network for the establishment and operation of EUROSUR.

Major lines of action of EUROSUR:

1) Situational awareness: thanks to EUROSUR, it is possible 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;

To this end **pictures of national, European and common situations** should be put in place in the form of a graphical interface to present near-real-time data and information received from different authorities, sensors, platforms and other sources in order to achieve situational awareness and support the reaction capability along the external borders and the pre-frontier area;

These various pictures are described precisely in the regulation.

It should be noted that the **common pictures** would be drawn up by FRONTEX and would aim to propose an intelligence framework if situated **in the pre-frontier area**. These pictures would provide national coordination centres a precise idea of the information and the relevant analyses and would allow them to provide a better surveillance of the external borders.

2) Common application of surveillance tools: on the basis of information received, EUROSUR would via FRONTEX apply selective monitoring of designated third-country ports and coasts which have been identified as being embarkation or transit points for vessels or other craft used for illegal immigration or cross-border crime or for tracking of vessels over high seas.

Processing of personal data: some provisions foresee that data shall be processed strictly in accordance with the applicable European legislation (Directive 95/46/EC, Framework Decision 2008/977/JHA and the relevant national provisions on data protection). The data collected for the purpose of borders surveillance would be regularly erased at the end of their use under the monitoring framework in place.

3) Reaction capability: for the purposes of this regulation, each Member State shall divide its external land and sea borders into border sections. In this context, it is expected that Member States ensure that monitoring actions along these sections correspond **to certain levels of impact**. In general,

- 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;

- if an impact level is considered **average**, when such surveillance measures are taken, the national coordination centre shall be notified accordingly. This last shall coordinate any support given;

- if the level of impact turns out to be high, the national authorities should strengthen surveillance measures with the support of FRONTEX, to initiate joint operations or **rapid response**.

The Agency shall, together with the Member State concerned, evaluate the attribution of impact levels and the corresponding measures in its risk analysis reports.

Cooperations: provisions have been made to establish a framework of cooperation with:

- **Ireland and the United Kingdom**: these provisions have been made to improve cooperation with Ireland and the United Kingdom, which could contribute to a better achievement of the objectives of EUROSUR. This cooperation 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 ;
- **neighbouring or other third countries**: several types of cooperation could be provided, such as cooperation with the Commission, the European External Action Service and Union bodies, offices and agencies including the European Asylum Support Office, … The specific agreements with third countries shall comply with bilateral or multilateral agreements concluded or to conclude in line with 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**.

Exchange of data with third countries: any exchange of personal data with third countries would be exceptional and only within the framework of European law on data protection. In any case, any exchange of personal data between Member States or with third countries **must remain an exception** and respect the data protection law.

Furthermore Member States must not use EUROSUR to send information to third countries that could be used to identify a person whose request for access to international protection is under examination or whose life or physical integrity could be threatened.

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 as EUROSUR. When implementing this Regulation, **the Agency and the Member States, 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. It may also 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.

It should be noted that changes have been made to the regulation establishing FRONTEX to take account of the changes provided for in the EUROSUR regulation.

Practical guide: it is foreseen that in close cooperation with the Member States, the Agency and any other relevant Union body, office or agency, the Commission shall, make available a practical handbook for the implementation and management of EUROSUR. 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.

Monitoring and evaluation: the Commission should regularly evaluate the results of the implementation of the regulation in order to determine to what extent the EUROSUR objectives have been met. Implementation reports should be submitted to the European Parliament every two years and include the question of whether the principle of non-refoulement has been respected. Reports are thus planned in 2015 on the functioning of EUROSUR and in 2016 an evaluation of the effectiveness of the whole system, accompanied, where necessary, by proposals to amend this regulation.

ENTRY INTO FORCE AND APPLICABILITY: the regulation shall apply from 02.12.2013.

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 as from this date.

The remaining Member States shall establish a national coordination centre as from 01.12.2014.

European Border Surveillance System (Eurosur)

2011/0427(COD) - 12/12/2011 - Legislative proposal

PURPOSE: to establish a European Border Surveillance System (EUROSUR) with the aim of increasing coordination within and between Member States to prevent and tackle serious crime.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: this proposal shall provide for the necessary legal framework to respond to the request of the European Council of 23-24 June 2011 to further develop the European Border Surveillance System (EUROSUR) as a matter of priority in order to become operational by 2013, allowing Member States' authorities carrying out border surveillance activities and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), to share operational information and improve cooperation.

The aim of EUROSUR is to reinforce the control of the Schengen external borders. EUROSUR will establish a mechanism for Member States' authorities carrying out border surveillance activities to share operational information and to cooperate with each other and with the Agency in order to reduce the loss of lives at sea and the number of irregular immigrants entering the EU undetected, and to increase internal security by preventing cross-border crimes, such as trafficking in human beings and the smuggling of drugs.

The works currently carried out for the testing and the gradual establishment of EUROSUR are based on a roadmap presented in a Commission Communication in 2008.

IMPACT ASSESSMENT: the Commission has identified four policy options comprising of sub-options:

- ***Option 1***: fully decentralised - with the support of the National Coordination Centres (NCC) ;
- ***Option 2***: partly centralised – for the EUROSUR network ;
- ***Option 3***: fully centralised approach and including a sub-option ‘Cooperation with third countries”;
- ***Option 4***: common applications of surveillance tools at EU level.

In line with the impact assessment, the following options would be the preferred ones:

- with regard to the establishment of NCCs, Option 1.1 is the preferred option, because it does not require Member States to restructure their national administrations and thus could be easily implemented;
- following the decentralised approach for setting up EUROSUR, the preferred policy option for the EUROSUR network is Option 2.2;
- taking into account the urgent need for enhancing border control in the Mediterranean region, Option 3.2 provides the best answer on how to promote the cooperation with neighbouring third countries. However, the willingness of northern African countries to cooperate is a precondition for the implementation of Option 3.2.
- for the common application of surveillance tools, Option 4.2 is the option providing most added value.

LEGAL BASIS: Article 77(2)(d) of the Treaty on the Functioning of the European Union (TFEU) according to which the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning any measure necessary for the gradual establishment of an integrated management system for external borders.

CONTENT: this proposal 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 reaction capability at the external borders of the Member States and of the European Union, the European Border Surveillance System (EUROSUR).

The purpose of the legislative proposal is to improve the situational awareness and reaction capability of Member States and the Agency when preventing **irregular migration and cross-border crime at the external land and maritime borders**.

Common framework: a common framework shall be established with clear responsibilities and competencies for the national coordination centres (NCC) for border surveillance in the Member States and the Agency, which form the backbone of EUROSUR. These centres, which shall ensure an effective and efficient management of resources and personnel at national level, and the Agency shall communicate with each other via the communication network, which would allow to exchange both non-classified sensitive as well as classified information.

For the exchange of information and cooperation in the field of border surveillance, Member States and the Agency shall use the framework of EUROSUR, consisting of the following components: (i) national coordination centres for border surveillance; (ii) national situational pictures; (iii) communication network; (iv) European situational picture; (v) common pre-frontier intelligence picture; (vi) common application of surveillance tools.

The proposal also outlines the objectives of:

Situational pictures: the cooperation and information exchange between the national coordination centres and the Agency is done via 'situational pictures', which shall be established at national and European level as well as for the pre-frontier area. These three pictures, of which the two latter shall be managed by the Agency, are structured in a similar way to facilitate the flow of information among them.

The situational pictures will as a general rule not involve personal data but rather the exchange of information on incidents and depersonalised objects, such as the detection and tracking of vessels. In exceptional cases personal data may form part of the data shared by Member States with the Agency provided that the conditions of Frontex Regulation are met. To the extent personal data forms part of the national situational picture of neighbouring external border sections, it may be exchanged between neighbouring Member States only, under the conditions set by the horizontal EU legal framework on data protection;

Surveillance tools: the Agency shall provide a service for the common application of surveillance tools, taking into account that such a service can be provided more cost-efficiently at European level. Such a service could be implemented with the support of relevant European space programmes, including the operational Global Monitoring for Environment and Security (GMES). The approach chosen in EUROSUR is to make best use of existing information, capabilities and systems available in other EU agencies to the extent possible. For this reason, the Agency would closely cooperate with the **EU Satellite Centre**, the European Fisheries Control Agency and the European Maritime Safety Agency in providing the service for the common application of surveillance tools as well as with EUROPOL in order to exchange information on cross-border crime. With regard to maritime traffic data to be provided by the **SafeSeaNet** system under Directive 2002/59/EC, the Commission intends to make an appropriate proposal modifying the Directive in 2013. It is envisaged that the relevant information in SafeSeaNet will also be made available for purposes other than those related to maritime safety, maritime security and marine environment protection and thereby be part of the surveillance tools used in the EUROSUR framework.

Reaction capacity: better awareness of what is going on at the external borders is only of limited value if it is not complemented by an improved capability of EU Member States to react to challenges faced at their external borders. For this reason, Member States shall divide their external borders into borders sections, to which – based on risk analysis and the number of incidents occuring – impact levels shall be attributed. Depending on which impact levels have been attributed, the national coordination centres and the Agency shall take counter-measures in order to lower the impact on the border section in question.

Cooperation with third countries: exisiting and planned regional networks set up between Member States and neighbouring third countries shall be linked to EUROSUR via the national coordination centres.

Implementation: taking into account that Member States and the Agency are already in the process of setting up the different components of EUROSUR at national and European level, EUROSUR should become operational in the **second half of 2013**. The Joint Research Centre of the European Commission should provide the Agency with technical support on the further technical development of EUROSUR.

Monitoring and evaluation: the Agency shall submit a report on the functioning of EUROSUR on 1 October 2015 and every two years thereafter. The Commission shall provide an overall evaluation of EUROSUR to the European Parliament and the Council on 1 October 2016 and every four years thereafter.

Fundamental rights and data protection requirements: this proposal was subjected to scrutiny to ensure that its provisions are fully compatible with fundamental rights and notably human dignity, prohibition of torture and inhuman or degrading treatment or punishment, right to liberty and security, right to the protection of personal data, non-refoulement, non-discrimination and rights of the child. Particular attention was paid to Articles 4 and 19(2) of the EU Charter of Fundamental Rights, which **prohibit removal of persons to a State where there is a serious risk of death penalty, torture or other inhuman or degrading treatment or punishment**.

The draft Regulation explicitly prohibits any exchange of information with a third country that could use this information to identify persons or groups of persons who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of fundamental rights. It explicitly provides that Member States and the Agency shall give priority to the special needs of children, victims of trafficking, persons in need of urgent medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation. The protection of personal data is also of particular importance as data sharing may include personal data, in which situation the data protection rules apply and must be fully respected.

Territorial provisions: this Regulation constitutes a development of provisions of the Schengen *acquis*, in which the United Kingdom and Ireland are not participating but which applies to 4 associated countries (Norway, Iceland, Switzerland and Liechtenstein).

BUDGETARY IMPLICATION: the different components of EUROSUR will be mainly implemented by the Agency and by Member States (shared management) on the basis of the 2008 EUROSUR roadmap:

- with regard to setting up the national coordination centres, Member States will be supported by the External Borders Fund in 2012-2013 and the instrument for financial support for external borders and visa as part of the planned Internal Security Fund in 2014-2020;
- the Agency will use its own budget to set up the communication network and other horizontal components of EUROSUR, such as the European situational picture and the common pre-frontier intelligence picture, and when necessary this is completed by support under the Internal Security Fund (direct or indirect centralised financial management);
- funding provided under the 7th Framework Programme for Research and Development will support the setting up of the envisaged service for the common application of surveillance tools in 2012-2013;
- measures in neighbouring third countries will be supported in 2012-2013 by the Thematic Programme for Asylum and Migration, as part of the Development Cooperation Instrument.

The impact assessment provides a financial envelope of **EUR 338.7 million** from 2011 to 2020.