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Executive Summary of the Impact Assessment

Accompanying the document

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

establishing the European Border Surveillance System (EUROSUR)

{ COM(2011) 873 final }
{ SEC(2011) 1536 final }
{ SEC(2011) 1538 final }

1. INTRODUCTION

This impact assessment report has been prepared by DG HOME to accompany the legislative proposal on the establishment of a European Border Surveillance System (EUROSUR).

EUROSUR can be described as a set of measures enhancing the cooperation and information exchange of border control authorities at national and European level as well as when cooperating with neighbouring third countries, with the result that the situational awareness and reaction capability of these authorities would be considerably increased when combating irregular migration and cross-border crime. Hence EUROSUR should be seen in the context of the progressive establishment of a European model of integrated border management.

The works carried out between 2008 and 2011 for the development, testing and gradual establishment of EUROSUR are based on a roadmap presented in a Commission Communication in 2008.¹ In its conclusions of June 2011 the European Council stated that EUROSUR "will be further developed as a matter of priority in order to become operational by 2013 and allow Member States' authorities carrying out border surveillance activities to share operational information and improve cooperation."

2. PROBLEM DEFINITION

2.1. General problems faced in border surveillance

Irregular migration

The EU faces considerable pressure from irregular migration at its external borders. During the first six months of 2011, 74 300 unauthorised border crossings were detected, of which over 96 % took place at the external borders of Spain, Malta, Italy and Greece. Despite the coordination efforts of Frontex Member States' border control authorities often face difficulties to agree on a common approach and usually need considerable time to find an appropriate operational response.

Loss of life of migrants at sea

The use of small unseaworthy boats has increased dramatically the number of migrants and refugees drowning in the Atlantic Ocean between Africa and the Canary Islands and in the Mediterranean Sea. This tragic death toll must be significantly reduced.

Cross-border crime

Criminal networks involved in the smuggling of migrants are often using the same routes and methods for cross-border crime activities, such as trafficking in human beings and drugs. An improved interagency cooperation between border control and police authorities should contribute significantly to fighting such serious crimes at the external borders.

2.2. Specific problems faced in border surveillance

There are a number of reasons why criminal networks are often faster and more flexible in changing their routes and methods for irregular migration and cross-border crime than Member States' authorities in reacting to changed situations.

¹ COM(2008) 68 final of 13.2.2008 ('EUROSUR roadmap').

Insufficient interagency cooperation at national level

In some Member States, up to six different authorities are directly involved in the surveillance of maritime borders. While some Member States have established a single national surveillance system, in other Member States different authorities have set up parallel systems, without clear rules and workflows for cooperation and information exchange among them.

Insufficient information exchange between Member States

In the field of border surveillance there is not only a lack of coordination inside some Member States, but also in between Member States, due to the absence of proper procedures, networks or communication channels to exchange information.

Insufficient cooperation with neighbouring third countries

The migration pressure presents considerable challenges also for the third countries located on the southern shores of the Mediterranean Sea. It is therefore necessary to cooperate more closely with the countries of origin and the countries of embarkation of irregular migrants.

Insufficient situational awareness in the maritime domain

The fact that traffickers are currently using small wooden and glass-fibre boats for smuggling irregular migrants and illicit drugs poses a major challenge to law enforcement authorities because it is extremely difficult to detect, identify and track such small boats on the high seas.

2.3 Baseline for the EUROSUR legislative proposal

The EUROSUR project has been on-going since 2008. Significant progress has already been made and this development is expected to continue.

3. ANALYSIS OF SUBSIDIARITY

3.1. The EU's right to act

The EUROSUR legislative proposal would be based on Article 77 (2) (d) of the Treaty on the Functioning of the European Union, constituting a development of provisions of the Schengen *acquis*.

3.5. Subsidiarity

In line with the *principle of subsidiarity*, EUROSUR follows a decentralised approach, with the national coordination centres forming the backbone of the EUROSUR cooperation. The intention is to make best use of existing systems as well as recent technological developments.

4. OBJECTIVES

4.1. General objectives

By establishing an information exchange and cooperation mechanism, EUROSUR shall

- 1) Contribute to the management of migration flows by reducing the number of irregular migrants entering the Schengen area undetected;

- 2) Protect and save lives at the external borders by diminishing considerably the unacceptable death toll of migrants at sea;
- 3) Increase the internal security of the European Union by preventing serious crime at the external borders of the Schengen area;

4.2. Specific and operational objectives

In order to achieve the general objectives, EUROSUR shall increase the *situational awareness* and *reaction capability* of the Member States' border control authorities and Frontex.

1) *Situational awareness*:

- a. Improved interagency cooperation by streamlining structures and interlinking systems in the law enforcement domain;
- b. The use of data fusion combined with modern technological capabilities for detecting and tracking in particular small vessels;
- c. Cross-sectoral information exchange with other actors in the maritime domain, such as transport, customs, fisheries control and defence;
- d. Improved information exchange with neighbouring third countries.

2) *Reaction capability*:

- a. Exchange of data, information and intelligence, thereby moving to a more intelligence driven approach based on risk analysis;
- b. Effective management of personnel and resources;
- c. Effect measurement, evaluating the effect of border surveillance activities.

5. POLICY OPTIONS

The question to be answered in this impact assessment is *how* the different components of EUROSUR should be implemented. To this end, three policy options have been identified, following a

- fully **decentralised** (policy option 1),
- partly **centralised** (policy option 2) and
- fully **centralised** (policy option 3) **approach**.
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In particular it should be assessed which responsibilities could be given to the *national coordination centres* (NCCs), such as:

- *Coordination* of the surveillance of land and maritime borders (**Policy Option 1.1**);
- *Command & control* competencies for the surveillance of land and maritime borders (**Policy Option 1.2**);
- *Command & control* competencies for border control² (**Policy Option 1.3**).
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The different policy options for setting up the **EUROSUR network** take into account whether the NCCs and Frontex use it for:

- *Decentralised* and *unclassified* information exchange (**Policy Option 2.1**);
- *Decentralised* and *classified* information exchange (**Policy Option 2.2**);
- *Centralised* and *classified* information exchange (**Policy Option 2.3**).
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² Surveillance of land, maritime and air borders and border checks at border crossing points.

Policy Option 2.2 assesses also the impact of costs for including the information exchange on cross-border crime and of providing the Common Pre-frontier Intelligence Picture (CPIP).

Furthermore, it is assessed whether information between the **EUROSUR network and neighbouring third countries** could be exchanged via

- *National coordination centres*, serving as a 'hub' for *regional networks* and *bilateral information exchange* with neighbouring third countries (**Policy Option 3.1**);
- *National coordination centres*, serving as a 'hub' for *regional networks* with neighbouring third countries, with a new regional network to be set up in the Mediterranean region (**Policy Option 3.2**);
- *Frontex* only (**Policy Option 3.3**).
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Finally it is scrutinized whether the service for the **common applications of surveillance tools at EU level** should be provided by

- External service providers to each concerned NCC directly (**Policy Option 4.1**);
- Frontex together with EUSC,³ EMSA⁴ and GMES⁵ (**Policy Option 4.2**);
- Frontex alone (**Policy Option 4.3**).

6. ASSESSMENT OF IMPACTS

Each sub-option in the policy options is screened according to the following criteria:

- 1. Effectiveness:** The extent to which the proposal can be expected to achieve the general, specific and operational objectives.
- 2. Consistency:** The extent to which options are consistent with the overall EUROSUR approach, other EU policies and activities, including their acceptance by Member States.
- 3. Costs:** The extent to which the general policy objectives can be achieved for a given level of resources/at the least cost (cost-effectiveness).
- 4. Impact on fundamental rights**, in particular on the protection of personal data.

6.1. Sub-options 1.1 to 1.3 for national coordination centres

6.1.1. Effectiveness

Taking into account the multitude of national authorities involved in maritime border surveillance, limiting the role of the NCC to *coordination* functions - as envisaged in Option 1.1 - would be more easily accepted by competing authorities. Giving all NCCs *command & control* functions – as foreseen under Option 1.2 - would allow for a more rapid response to an identified threat. Including *air border surveillance* and *border checks* as proposed in Option 1.3 would have the advantage of giving the NCC a better *situational awareness* for all aspects of border control.

³ EU Satellite Centre.

⁴ European Maritime Safety Agency.

⁵ EU programme for Global Monitoring for Environment and Security.

6.1.2. Consistency

Option 1.1 is fully consistent with the overall EUROSUR approach, which aims at establishing a cooperation mechanism for all authorities involved in border surveillance. Giving the NCCs command & control functions as envisaged in Options 1.2 and 1.3 could undermine this aim.

6.1.3. Costs

The *financial costs* needed in 2011-2020 for setting up, upgrading and maintaining the NCCs and the Frontex Situation Centre are estimated to amount to M€ 195,2 for option 1.1, M€401,4 for option 1.2 and M€747,3 for option 1.3.

6.1.4. Fundamental rights

The information exchange and cooperation mechanism as envisaged under EUROSUR does not involve the *handling of personal data*. Since it might be difficult to guarantee that the any handling of personal data is fully excluded, it has to ensure that the processing of personal data is adequate, relevant and not excessive in relation to purposes for which they are collected and processed.

6.2. Sub-options 2.1 to 2.3 for the EUROSUR network

6.2.1. Effectiveness

The limitation to unclassified information exchange in Option 2.1 would exclude the information exchange on cross-border crime, which is usually regarded as sensitive information. The encryption of the data flow under Option 2.2 would allow the Member States to share such sensitive information, which is also a pre-condition for exchanging intelligence in the Common Pre-Frontier Intelligence Picture (CPIP). A centralised system - as envisaged under Option 2.3 – would allow a better control of the data flow.

6.2.2. Consistency

The disadvantage of Option 2.3 is the lack of consistency: EUROSUR follows a decentralised *federation of systems* approach. Furthermore, several Member States have difficulties to accept to store their information centrally on a system that they do not manage.

6.2.3. Costs

The *financial costs* in 2011-2020 for the EUROSUR network in line with Option 2.1 are estimated to amount to M€42, increasing to M€46 for Option 2.2 and to M€49 for Option 2.3. The costs of the analytical layer of the CPIP, as included under Options 2.2 and 2.3, amount to M€29.

6.2.4. Fundamental rights

The handling of personal data under Option 2.1 is excluded, because the network is unclassified. The accreditation process of a protected network as envisaged under Options 2.2 and 2.3 ensures that procedures would be in place not only for the handling of security sensitive data, but sensitive data in general, such as the handling of personal data.

6.3. Sub-options 3.1 to 3.3 for cooperation with third countries

6.3.1. Effectiveness

Option 3.1 would lead to an improvement of the situational awareness in the Baltic Sea, the Black Sea and in the Atlantic Ocean around the Canary Islands, because the three existing

regional networks SEAHORSE, CoastNet and BSCF would be interlinked with the EUROSUR network, with the NCCs serving as a 'hub' for the information exchange.

Option 3.2 is the preferred option, because it delivers the capability required for EUROSUR to cooperate with third countries in the Mediterranean region.

Under Option 3.3 Frontex would have to re-negotiate all the agreements already concluded between Member States and third countries under the above mentioned regional networks.

6.3.2. Consistency

Options 3.1 and 3.2 build largely on existing capabilities, allowing Member States and third countries to take into account regional priorities and specificities. Option 3.3 is not in line with the EUROSUR approach of making best use of existing infrastructures and systems.

6.3.3. Costs

There is no cost related to Option 3.1, because a connection from all three regional networks to their respective NCCs was established before the end of 2011. Concerning Option 3.2, the costs for establishing and maintaining the SEAHORSE Mediterraneo in 2011-2020 are estimated at M€5,37. With regard to Option 3.3, the costs for replacing the three regional networks by the EUROSUR network are around M€25,29.

6.3.4. Fundamental rights

Cooperating with third countries in order to prevent irregular migration could have a significant negative impact on fundamental rights in case the third country authorities use such information to identify persons or groups of persons which are likely to be subject to torture, inhuman and degrading treatment. The legislative proposal on EUROSUR must therefore provide the appropriate safeguards in order to prevent such a situation.

6.4. Sub-options 4.1 to 4.3 for the common application of surveillance tools

6.4.1. Effectiveness

Option 4.1 would envisage that Member States use individually existing capabilities established by the EU Satellite Centre (EUSC) and the European Maritime Safety Agency (EMSA). Option 4.2 would be more efficient than Option 4.1, because Frontex would coordinate the requests coming from the national coordination centres. In Option 4.3 Frontex would establish such a service on its own, which would be difficult to achieve in the mid-term.

6.4.2. Consistency

Option 4.2 would be more consistent with the objective of promoting interagency cooperation than Options 4.1 and 4.3. Due to its multi-purpose and cross-sectoral approach, EU funding provided by the GMES programme for such a service can be justified.

6.4.3. Costs

The total costs in 2012-2020 for Option 4.1 are estimated at M€ 80, with almost similar amounts for Option 4.2 (M€62,1) and Option 4.3 (M€62,3).

6.4.4. Fundamental rights

Option 4.1 would have the disadvantage that legal frameworks may not be established to enable commercial operators to monitor activities in third countries and store information in line with data protection laws.

7. COMPARISON OF OPTIONS AND IDENTIFICATION OF PREFERRED POLICY OPTION

In line with the assessment in section 6, 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 pre-condition for the implementation of Option 3.2.

For the common application of surveillance tools, Option 4.2 is the option providing most added value.

Costs, responsibility and source of funding for the preferred option

Step	Component	PO x.1	PO x.2	PO x.3	Preferred option	
		Decentralised approach	Partly centralised approach	Centralised approach	To be set up by	Funding via
1	NCCs	M€99,6	M€271,6	M€610	Member States	EBF
1	FSC	M€95,6	M€129,8	M€137	Frontex	Frontex
2, 7	Network	M€42,4	M€46,7	M€49,3	Frontex	Frontex
6	CPIP (RAU)	€0,0	M€29,3	M€29,2	Frontex	Frontex
3	3 rd countries	€0,0	M€5,4	M€25,3	Member States	DCI, EBF
5	Common application of surveillance tools	M€80,5	M€62,1	M€62,3	Frontex EUSC EMSA	Frontex and FP7/ GMES
Total		M€318,1	M€544,9	M€913		
Preferred Option		M€338,7				

Combining the preferred options, the costs of EUROSUR would amount to M€338,7.

8. MONITORING AND EVALUATION

Frontex shall ensure that methods are in place to monitor the functioning of EUROSUR against the main policy objectives. Two years after EUROSUR is fully operational and every year thereafter, Frontex shall submit to the European Parliament, the Council and the Commission a report on the functioning of EUROSUR.

Moreover three years after the EUROSUR system would have started all its operations and every four years thereafter, the Commission shall produce an overall evaluation of EUROSUR, accompanied, where necessary, by appropriate proposals to amend the Regulation establishing EUROSUR.