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Committee on Transport and Tourism

2013/0106(COD)

18.9.2013

OPINION

of the Committee on Transport and Tourism

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union
(COM(2013)0197 – C7-0098/2013 – 2013/0106(COD))

Rapporteur: Nathalie Griesbeck

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SHORT JUSTIFICATION

1. Introduction

Following an action brought by the European Parliament, the Court of Justice, in its judgment of 5 September 2012, annulled Council Decision 2010/252/EU supplementing the Schengen Borders Code as regards the surveillance of the external borders. Parliament had considered that the decision exceeded the implementing powers conferred under Article 12(5) of the code as it altered or added essential elements to such powers.

The scope and content of this proposal are similar to those of the aforementioned annulled decision. The proposal also reflects amendments made to Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the European Union, as well as developments in the law relating to fundamental rights.

The proposal is underpinned by numerous legal instruments including the UN Convention on the Law of the Sea, the International Convention on Maritime Search and Rescue, the International Convention for the Safety of Life at Sea and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, known as the Palermo Convention.

2. The ‘transport’ dimension of the proposal

The proposal broadens the concept of border surveillance to make it possible to intercept vessels if there are grounds to suspect they are carrying persons intending to circumvent checks at border crossing points or are engaged in smuggling migrants by sea. Its scope also encompasses search and rescue activities at sea.

3. Rapporteur’s comments

The rapporteur welcomes the proposal for a regulation establishing rules for the surveillance of the external sea borders, which broadens the concept of monitoring to include search and rescue operations, as the two are clearly linked.

She believes, however, that, with regard to the interception of seagoing vessels, safeguard clauses along similar lines to those set out in Annex III of the Palermo Convention should be inserted to address issues such as the safety and treatment of passengers and the safety of the ship and any cargo it may be carrying.

The rapporteur takes the view that the legal training of border guards should be supplemented by a practical component on helping people in distress, particularly the provision of humanitarian assistance and emergency medical care.

With a view to providing an urgent response to humanitarian needs, vessels used in joint border surveillance operations should have standardised medical and humanitarian kits, and if possible medical personnel, on board.

Given the dangers inherent in transfers between vessels during rescue operations, the rapporteur calls on the Commission to consider providing funding from the Horizon 2020 Framework Programme for Research and Innovation for research projects that aim to make such operations safer, particularly in rough sea conditions, or to improve the equipment of ships engaged in surveillance missions.

The rapporteur stresses the high cost of maritime surveillance, and therefore calls for increased cooperation and more effective exchanges of information between maritime surveillance agencies, as the Commission has itself advocated in its integrated maritime policy. It is for this reason that the rapporteur would like to see the rapid implementation of the Common Information Sharing Environment (CISE) for the surveillance of the EU maritime domain, taking due account of the findings of the Marsuno and BlueMassMed pilot projects. She calls for the Agency's role in this area to be defined in the Regulation as a complement to the provisions laid down in the proposal for a regulation of the European Parliament and of the Council establishing the European border surveillance system (Eurosur).

She is also fully aware that the obligation for all ships to render assistance to any person in danger at sea sometimes runs counter to the provisions of Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. Private vessels may, albeit on rare occasions, be deterred from saving people in distress out of fear of prosecution for having rescued migrants. The rapporteur therefore calls on the Commission to review Directive 2002/90/EC to take account of such sea-rescue situations.

Lastly, the rapporteur welcomes the initiative¹ of March 2012 by the European Ombudsman, P. Nikiforos Diamandouros, to open an investigation into the European Borders Agency's compliance with its obligations in terms of fundamental rights.

AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) During search and rescue operations, vessels should carry at least minimum

¹ Own-initiative enquiry OI/5/2012/BEH-MHZ.

safety equipment and should ensure that the staff on board have received training so as to guarantee the safety of both the persons intercepted and the staff, in accordance with Directive 2012/35/EU on the minimum level of training of seafarers in safety rules and standards for passenger ships (Annex I, chapter V, regulation V/2 paragraph 6).

Justification

An emergency plan should be drawn up, clearly stipulating the division of responsibilities among the staff.

Amendment 2

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) During a border surveillance operation at sea, a situation may occur where it will be necessary to render assistance to persons found in distress. In accordance with international law, every State must require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers, to render assistance to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress. Such assistance *should* be provided regardless of the nationality or status of the persons to be assisted or of the circumstances in which they are found.

Amendment

(7) When conducting a border surveillance operation at sea, a situation may occur where it will be necessary to render assistance to persons found in distress. In accordance with international law, every State must require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers, to render assistance to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress. Such assistance *must* be provided regardless of the nationality or status of the persons to be assisted or of the circumstances in which they are found.

Amendment 3

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) That obligation ***should*** be carried out by Member States in accordance with the applicable provisions of international instruments governing search and rescue situations and in accordance with the requirements concerning the protection of fundamental rights. This Regulation ***should*** not affect the responsibilities of search and rescue authorities, including for ensuring that coordination and cooperation is carried out in such a way that the persons rescued can be delivered to a port or a place of safety.

Amendment

(8) That obligation ***must*** be carried out by Member States in accordance with the applicable provisions of international instruments governing search and rescue situations and in accordance with the requirements concerning the protection of fundamental rights. This Regulation ***does*** not affect the responsibilities of search and rescue authorities, including for ensuring that coordination and cooperation is carried out in such a way that the persons rescued can be delivered to a port or a place of safety.

Amendment 4

**Proposal for a regulation
Recital 8 a (new)**

Text proposed by the Commission

Amendment

(8a) In interception operations at sea where the priority is to protect or provide assistance to the persons on board, due attention should also be paid to protecting the vessel and any cargo it may hold, in accordance with the UN Protocol against the Smuggling of Migrants. When ships are searched, due attention should be paid to the conservation of the marine environment, provided that environmental considerations do not pose a danger to persons on board.

Amendment 5

**Proposal for a regulation
Recital 10 a (new)**

Text proposed by the Commission

Amendment

(10a) In its Communication on the Integrated Maritime Policy for the

European Union, the Commission undertook to ‘take steps towards a more interoperable surveillance system to bring together existing monitoring and tracking systems used for maritime safety and security, protection of the marine environment, fisheries control, control of external borders and other law enforcement activities’. Surveillance authorities must therefore carry out their operations in a more efficient and cost-effective manner. In this context, with a view to facilitating surveillance and rescue operations at sea, the Agency should help pave the way for the Common Information Sharing Environment (CISE) for the surveillance of the EU maritime domain. As soon as the CISE becomes operational, the Agency should be given responsibility for managing the access rights of the participating units.

Amendment 6

Proposal for a regulation Article 3

Text proposed by the Commission

Measures taken for the purpose of a sea operation shall ***be conducted in a way that does not put at risk*** the safety of the persons intercepted or rescued and the safety of the participating units.

Amendment

Measures taken for the purpose of a sea operation shall ***be in full compliance with the EU legislation applying to the equipment, as well as to the training of staff, on board a vessel, in order to ensure*** the safety of the persons intercepted or rescued and the safety of the participating units.

Amendment 7

Proposal for a regulation Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Vessels used for border surveillance by the participating units should have standardised medical and humanitarian kits – containing a sufficient amount of water, food and blankets – to provide an urgent response in emergency situations, taking account of the fact that many intercepted ships will be neither seaworthy nor flagged. The presence of medical personnel in border surveillance units should be encouraged.

Amendment 8

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. No person shall be disembarked in, or otherwise handed over to the authorities of a country where there is a serious risk that such person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment or from which there is a serious risk of expulsion, removal or extradition to another country in contravention of the principle of non-refoulement.

(Does not affect English version.)

*Justification
(Does not affect English version.)*

Amendment 9

Proposal for a regulation Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. Before deciding on disembarkation in a

2. Before deciding on disembarkation in a

third country, the participating units shall take into account the general situation in that third country and intercepted or rescued persons shall not be disembarked in that third country when the host Member State or the participating Member States are aware or ought to be aware that this third country is engaged in practices as described in paragraph 1.

third country, the participating units shall take into account the general situation in that third country and ***the possible existence of bilateral agreements on migration between that country and one or more Member States, in accordance with international law.*** After this analysis, intercepted or rescued persons shall not be disembarked in that third country when the host Member State or the participating Member States are aware or ought to be aware that this third country is engaged in practices as described in paragraph 1.

Justification

In line with existing international law, it is important to introduce this parameter in order to give substance to the bilateral agreements and thus further strengthen the position of third countries.

Amendment 10

Proposal for a regulation Article 4 – paragraph 5

Text proposed by the Commission

5. Border guards participating in a sea operation shall be trained with regard to relevant provisions of fundamental rights, refugee law and the international legal regime of search and rescue.

Amendment

5. Border guards participating in a sea operation shall be trained with regard to relevant provisions of fundamental rights, refugee law and the international legal regime of search and rescue, ***and provided with specialised practical training in on-the-spot assistance to people in distress, particularly the provision of humanitarian assistance and emergency medical care.***

Justification

States which separate their coastguard and border guard services generally do not train their border guards to provide humanitarian assistance and emergency medical care. In dealing with humanitarian crises, it is important to ensure that humanitarian aid and medical care are provided as soon as possible, even before the arrival of rescue teams.

Amendment 11

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

1. Upon detection, the participating units shall approach a ship suspected of crossing or intending to cross the border in an irregular manner to observe its identity and nationality and, pending further measures, it shall be surveyed at a prudent distance. The participating units shall communicate information about the ship immediately to the International Coordination Centre.

Amendment

1. Upon detection, the participating units shall approach a ship suspected of crossing or intending to cross the border in an irregular manner to observe its identity and nationality and, pending further measures, it shall be surveyed at a prudent distance **taking all due precautions**. The participating units shall communicate information about the ship immediately to the International Coordination Centre.

Justification

Those taking part in maritime detection operations must not be put at risk. Prevailing and forecast sea and weather conditions must be among the factors taken into account.

Amendment 12

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

2. Where the ship is about to enter or it has entered the territorial sea or the contiguous zone of a Member State that is not participating in the sea operation, the participating units shall communicate information about the ship to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State concerned.

Amendment

2. Where the ship is about to enter or it has entered the territorial sea or, **where formally proclaimed**, the contiguous zone of a Member State that is not participating in the sea operation, the participating units shall communicate information about the ship to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State concerned.

Justification

Under Article 33 of the United Nations Convention on the Law of the Sea, it is necessary for a contiguous zone to be formally proclaimed, thereby entitling the coastal state to monitor vessels in transit with a view to preventing or punishing infringements of its customs, fiscal,

immigration or sanitary laws and regulations.

Amendment 13

Proposal for a regulation

Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Agency shall help pave the way for the Common Information Sharing Environment (CISE) for the surveillance of the EU maritime domain and shall ensure its interoperability. As soon as the CISE becomes operational, the Agency shall be given responsibility for managing the access rights of the participating units, with a view to facilitating surveillance and rescue operations at sea and to ensuring the confidentiality and security of the data exchanged.

Justification

As part of its integrated maritime policy, the Commission published in 2010 a communication on a Draft Roadmap towards establishing the Common Information Sharing Environment for the surveillance of the EU maritime domain (COM(2010)584), which stressed the added value of an integrated approach to maritime surveillance. Ensuring the exchange and interoperability of data would be greatly advantageous in terms of both efficiency and cost-effectiveness.

Amendment 14

Proposal for a regulation

Article 7 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) requesting information and documentation on ownership, registration **and** elements relating to the voyage, and on the identity, nationality and other relevant data on persons on board;

(a) requesting information and documentation on ownership, registration, **provenance, point of departure and other** elements relating to the voyage, and on the identity, nationality and other relevant data on persons on board;

Justification

Comprehensive and more detailed checks to identify the principal illegal migration routes used by traffickers.

Amendment 15

Proposal for a regulation

Article 7 – paragraph 1 – point e

Text proposed by the Commission

(e) ordering the ship to modify its course outside of or towards a destination other than the territorial sea or the contiguous zone, including escorting the vessel or steaming nearby until the ship is heading on such course;

Amendment

(e) ordering the ship to modify its course outside of or towards a destination other than the territorial sea or, ***where formally proclaimed***, the contiguous zone, including escorting the vessel or steaming nearby until the ship is heading on such course;

Justification

Under Article 33 of the United Nations Convention on the Law of the Sea, it is necessary for a contiguous zone to be formally proclaimed, thereby entitling the coastal State to monitor vessels in transit with a view to preventing or punishing infringements of its customs, fiscal, immigration or sanitary laws and regulations.

Amendment 16

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

1. In the zone contiguous to the territorial sea of a Member State, which is a host Member State or a participating Member State, the measures laid down in Article 6(1) shall be taken in accordance with Article 6(2).

Amendment

1. In the ***formally proclaimed*** zone contiguous to the territorial sea of a Member State, which is a host Member State or a participating Member State, the measures laid down in Article 6(1) shall be taken in accordance with Article 6(2).

Justification

Under Article 33 of the United Nations Convention on the Law of the Sea, it is necessary for a contiguous zone to be formally proclaimed, thereby entitling the coastal State to monitor

vessels in transit with a view to preventing or punishing infringements of its customs, fiscal, immigration or sanitary laws and regulations.

Amendment 17

Proposal for a regulation

Article 9 – paragraph 10 a (new)

Text proposed by the Commission

Amendment

10a. Vessels used for border surveillance by the participating units should have standardised medical and humanitarian kits – containing a sufficient amount of water, food and blankets – to provide an urgent response in emergency situations. The presence of medical personnel in border surveillance units should be encouraged.

Justification

Vessels used for external border surveillance are, to a greater or lesser degree, under-equipped with emergency kit and supplies for providing urgent medical and humanitarian assistance, a situation chiefly attributable to the differences in rules and standards from Member State to Member State.

Amendment 18

Proposal for a regulation

Article 9 – paragraph 11 a (new)

Text proposed by the Commission

Amendment

11a. The provisions of this Article shall apply exclusively during the course of operations coordinated by the Agency and shall be without prejudice to Member States' responsibilities under the International Convention on Maritime Search and Rescue.

Justification

Maritime search and rescue rules are not an EU competence, so it should be noted that Article 9 provides rules for the specific context of sea border surveillance operations

coordinated by the Agency, due to their particular characteristics.

Amendment 19

Proposal for a regulation

Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Protection clauses

1. When the participating units take any measure pursuant to Articles 6, 7, 8 and 10, they must:

(a) ensure the safety and humane treatment of those on board, in accordance with the Charter of Fundamental Rights of the European Union;

(b) take due account of the need not to endanger the security of the vessel or any cargo it may have;

(c) ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to Articles 6, 7, 8 and 10 prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

Justification

In its proposal, the Commission refers to the Protocol against the Smuggling of Migrants, supplementing the United Nations Convention against Transnational Organised Crime. The Commission fails, however, to include the provisions on protection clauses. It would seem wise to include in the regulation the provisions on the protection of the vessel and on the safety and humane treatment of those on board.

Amendment 20

Proposal for a regulation

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Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Reporting

The Commission shall monitor and review the application of this Regulation and submit an overall progress report to the European Parliament and the Council, for the first time by 31 December 2016 and again after two years, on the effectiveness of the measures adopted to prevent unauthorised cross-border movements and combat cross-border crime.

The report shall cover at least the following:

– procedures followed for exchanges of information and cooperation in practice between the Member States and the European border surveillance system (Eurosur);

– compliance by the Member States and the Agency with their obligations under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organised Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention relating to the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other relevant international instruments;

– measures to be taken in future to improve maritime safety and enhance

external border security.

PROCEDURE

Title	Surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union
References	COM(2013)0197 – C7-0098/2013 – 2013/0106(COD)
Committee responsible Date announced in plenary	
Opinion by Date announced in plenary	TRAN 18.4.2013
Rapporteur Date appointed	Nathalie Griesbeck 3.6.2013
Discussed in committee	9.7.2013
Date adopted	17.9.2013
Result of final vote	+: 39 -: 4 0: 0
Members present for the final vote	Magdi Cristiano Allam, Erik Bánki, Izaskun Bilbao Barandica, Philip Bradbourn, Antonio Cancian, Michael Cramer, Joseph Cuschieri, Philippe De Backer, Luis de Grandes Pascual, Christine De Veyrac, Saïd El Khadraoui, Ismail Ertug, Carlo Fidanza, Knut Fleckenstein, Jacqueline Foster, Franco Frigo, Mathieu Grosch, Jim Higgins, Juozas Imbrasas, Dieter-Lebrecht Koch, Werner Kuhn, Jörg Leichtfried, Bogusław Liberadzki, Eva Lichtenberger, Marian-Jean Marinescu, Hubert Pirker, Dominique Riquet, Petri Sarvamaa, David-Maria Sassoli, Vilja Savisaar-Toomast, Olga Sehnalová, Brian Simpson, Keith Taylor, Giommara Uggias, Patricia van der Kammen, Dominique Vlasto, Artur Zasada, Roberts Zile
Substitute(s) present for the final vote	Spyros Danellis, Eider Gardiazábal Rubial, Nathalie Griesbeck, Bogdan Kazimierz Marcinkiewicz, Geoffrey Van Orden