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*Committee on Foreign Affairs*

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**2013/0106(COD)**

19.9.2013

## **AMENDMENTS 12 - 42**

**Draft opinion**

**Norica Nicolai**

(PE516.826v01-00)

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

Proposal for a regulation

(COM(2013)0197 – C7-0098/2013 – 2013/0106(COD))

AM\_Com\_LegOpinion

**Amendment 12**

**Judith Sargentini**

on behalf of the Verts/ALE Group

**Proposal for a regulation**

**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1 a) Reminds that the Treaty of Lisbon does not foresee a role for the Common Security and Defence Policy (CSDP) regarding the monitoring of the crossing of external borders including through border surveillance; underlines that the legal basis of CSDP in Article 43 of TEU must be respected in the context of this regulation.***

Or. en

**Amendment 13**

**Ioan Mircea Pașcu**

**Proposal for a regulation**

**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1 a) Particular attention should be given to sea areas which constitute natural maritime borders of the EU but, because of their geographic location, pose specific security challenges and require, therefore, strategically comprehensive measures. This is the case of the Black Sea maritime region, where not only criminal activities such as illegal crossing and smuggling but also the proximity of frozen conflict areas can raise serious security concerns.***

Or. en

**Amendment 14**  
**Norica Nicolai**

**Proposal for a regulation**  
**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1 a) Particular attention should be given to sea areas which constitute natural maritime borders of the EU but, because of their geographic location, pose specific security challenges and require, therefore, strategically comprehensive measures. This is particularly the case of the Black Sea and Baltic Sea maritime regions, where not only criminal activities such as illegal crossing and smuggling but also movements of non-allied fleets and the proximity of frozen conflict areas can raise serious security concerns.***

Or. en

**Amendment 15**  
**Judith Sargentini**  
on behalf of the Verts/ALE Group

**Proposal for a regulation**  
**Recital 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***(1 b) Deplores the fact that the rules of the regulation only apply to specific operations under the coordination of the Agency and to not all civilian, military and commercial vessels flying the flag of a Member State.***

Or. en

**Amendment 16**  
**Judith Sargentini**

on behalf of the Verts/ALE Group

**Proposal for a regulation**

**Recital 1 c (new)**

*Text proposed by the Commission*

*Amendment*

*(1 c) Deplores the many lives lost in the Mediterranean Sea; recalls the tragic incident which took place in May 2011 in the Mediterranean Sea which has cost the lives of 63 Libyan refugees on a small boat; also recalls that, according to the Council of Europe report by Tineke Strik dated 29 March 2012, NATO warships and a NATO helicopter have been in contact with the refugees but did refuse to rescue and bring these refugees to a safe place; calls on the EU Member States and the relevant EU CSDP institutions to make sure that such inaction is ruled out in the future and that EU civil, military or commercial vessels including the Agency make sure that a warm handover of people in danger takes place.*

Or. en

**Amendment 17**

**Judith Sargentini**

on behalf of the Verts/ALE Group

**Proposal for a regulation**

**Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*(2 a) Notes, although not legally binding, the need to ensure that personnel deployed to EU naval CSDP operations respect the rules of the regulations especially with regard to search and rescue.*

Or. en

**Amendment 18**  
**Judith Sargentini**  
on behalf of the Verts/ALE Group

**Proposal for a regulation**  
**Recital 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***(2 b) Expects the EU naval and maritime training missions and operations in the field of CSDP and in the context of financial instruments for external assistance to incorporate and promote rules and principles of the regulation.***

Or. en

**Amendment 19**  
**Judith Sargentini**  
on behalf of the Verts/ALE Group

**Proposal for a regulation**  
**Recital 2 c (new)**

*Text proposed by the Commission*

*Amendment*

***(2 c) With regard to Member States in which the coastguard function is implemented by the military it is important to ensure that the rules and principles of this regulation are applied.***

Or. en

**Amendment 20**  
**Krzysztof Lisek**

**Proposal for a regulation**  
**Recital 9**

*Text proposed by the Commission*

(9) Pursuant to Regulation (EC) No 2007/2004, border surveillance operations coordinated by the Agency are conducted in accordance with an operational plan. Accordingly, as regards sea operations, the operational plan should include specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation or pilot project takes place, including references to international and Union law, regarding interception, rescue at sea and disembarkation. ***In turn***, this Regulation governs the issues of interception, rescue at sea and disembarkation in the context of sea border surveillance operations coordinated by the Agency.

*Amendment*

(9) Pursuant to Regulation (EC) No 2007/2004, border surveillance operations coordinated by the Agency are conducted in accordance with an operational plan. Accordingly, as regards sea operations, the operational plan should include specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation or pilot project takes place, including references to international and Union law, regarding interception, rescue at sea and disembarkation. This Regulation governs the issues of interception, rescue at sea and disembarkation in the context of sea border surveillance operations coordinated by the Agency.

Or. en

**Amendment 21**  
**Sabine Lössing**

**Proposal for a regulation**  
**Recital 11**

*Text proposed by the Commission*

(11) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, notably the right to life, human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, *non-refoulement*, non-discrimination, the right to an effective remedy, the right to asylum and the rights of the child.

*Amendment*

(11) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, notably the right to life, human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, *non-refoulement*, non-discrimination, the right to an effective remedy ***and protection of personal data***, the right to asylum and the rights of the child.

Or. en

**Amendment 22**  
**Norica Nicolai**

**Proposal for a regulation**  
**Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

***(18 a) As regards those countries which are candidates to the Schengen Area, namely Bulgaria, Cyprus and Romania and which are either members and cooperating with the Agency, or have already implemented all standards for inclusion in the Area programs and actions, provisions should be made for their inevitable joining of the Schengen zone to the Agency planning and budgeting, taking into account the high level of standards for implementing the acquis and their bordering maritime areas of particular problematic nature for the security of the European Union.***

Or. en

**Amendment 23**  
**Sabine Lösing**

**Proposal for a regulation**  
**Article 2 – point 11**

*Text proposed by the Commission*

*Amendment*

11. ‘place of safety’ means a location where rescue operations are considered to terminate and where the survivors' safety of life including as regards the protection of their fundamental rights is ***not threatened***, where their basic human needs can be met and from which transportation arrangements can be made for the survivors' next destination or final destination;

11. ‘place of safety’ means a location where rescue operations are considered to terminate and where the survivors' safety of life including as regards the protection of their fundamental ***and human*** rights is ***ensured***, where their basic human needs can be met and from which transportation arrangements can be made for the survivors' next destination or final destination;



**Amendment 24**  
**Judith Sargentini**  
on behalf of the Verts/ALE Group

**Proposal for a regulation**  
**Article 2 – point 11**

*Text proposed by the Commission*

11. ‘place of safety’ means a location where rescue operations are considered to terminate and where the survivors' safety of life ***including as regards*** the protection of their ***fundamental*** rights ***is*** not threatened, where their basic human needs can be met and from which transportation arrangements can be made for the ***survivors'*** next destination or final destination;

*Amendment*

11. Place of safety means a location where rescue operations are considered to terminate and where the survivors' safety of life ***as well as*** the protection of their ***human*** rights ***are*** not threatened, where their basic human needs can be met and from which transportation arrangements can be made for the ***survivor's*** next destination or final destination, ***in respect of the principle of non-refoulement***;

**Amendment 25**  
**Judith Sargentini**  
on behalf of the Verts/ALE Group

**Proposal for a regulation**  
**Article 4 – paragraph 1**

*Text proposed by the Commission*

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*.

*Amendment*

1. No person shall be disembarked in, ***conducted towards*** or otherwise handed over to the authorities of a ***third*** country where there is a serious risk that such person would be subjected to the death penalty, ***to other serious dangers for their life and limb***, to 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*.

Or. en

**Amendment 26**  
**Marietta Giannakou**

**Proposal for a regulation**  
**Article 4 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

2. Before deciding on disembarkation in a third country, the ***host member state*** 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.

Or. en

**Amendment 27**  
**Judith Sargentini**  
on behalf of the Verts/ALE Group

**Proposal for a regulation**  
**Article 4 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

2. Before deciding on disembarkation in, ***or conducting towards*** 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 ***or conducted to*** 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. *Member States are responsible for providing the participating units with relevant information. For this purpose, they may use the information prepared by the European Asylum Support Office, the Agency's Risk Analysis Unit, the United Nations High Commissioner for Refugees and by other international or non-governmental organisations.*

Or. en

**Amendment 28**  
**Jean-Pierre Audy**

**Proposal for a regulation**  
**Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. Persons intercepted or rescued who are not in need of international protection, according to the participating units, or who do not claim such protection may be returned to their country of origin or to any other country in which they are normally resident or of which they are nationals.*

Or. fr

**Amendment 29**  
**Marietta Giannakou**

**Proposal for a regulation**  
**Article 4 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. In case of disembarkation in a third country, the participating units shall identify the intercepted or rescued persons and assess their personal circumstances *to*

3. In case of disembarkation in a third country, the participating units shall identify the intercepted or rescued persons and assess their personal circumstances.

***the extent possible before disembarkation.***  
They shall inform the intercepted or rescued persons of the place of disembarkation in an appropriate way and they shall give them an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of *non-refoulement*.

They shall inform the intercepted or rescued persons of the place of disembarkation in an appropriate way and they shall give them an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of *non-refoulement*.

Or. en

**Amendment 30**  
**Judith Sargentini**  
on behalf of the Verts/ALE Group

**Proposal for a regulation**  
**Article 4 – paragraph 3**

*Text proposed by the Commission*

3. ***In case of*** disembarkation in a third country, the participating units shall identify the intercepted or rescued persons and assess their personal circumstances ***to the extent possible before disembarkation.*** They shall inform the intercepted or rescued persons of the place of disembarkation ***in an appropriate way and they shall give them an opportunity*** to express ***any reasons for believing that*** disembarkation in ***the proposed*** place would be in violation of the principle of *non-refoulement*.

*Amendment*

3. ***Before deciding on*** disembarkation in, ***or conducting towards*** a third country, the participating units shall identify the intercepted or rescued persons and assess their ***individual*** personal circumstances ***including their medical conditions and other circumstances that might make these persons vulnerable.*** They shall inform the intercepted or rescued persons ***in a language or in the languages these persons understand, inter alia via access to the EASO interpreters' helpline,*** of the place of disembarkation ***or return, give them the right to contact a lawyer and inform them of their right*** to express ***protest against the intended measure. If an intercepted or rescued person expresses protest against the intended*** disembarkation in, ***or conduction towards a third country, the person shall be brought to a place on the territory of a Member State where he or she can make use of legal remedies, or, if the person expresses reasons for believing that the intended measure*** would be in violation of

the principle of *non-refoulement*, the person shall be given access to an asylum procedure on the territory of a Member State in accordance with Article 6 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

Or. en

#### **Amendment 31**

**Judith Sargentini**

on behalf of the Verts/ALE Group

#### **Proposal for a regulation**

##### **Article 4 – paragraph 4**

*Text proposed by the Commission*

4. The participating units shall **address** the special needs of children, victims of trafficking, persons in need of urgent medical assistance, persons in need of international protection and other persons in a particularly vulnerable situation **throughout the sea operation**.

*Amendment*

4. **In all decisions and measures throughout the sea operation**, the participating units shall **ensure that** the special needs of children, victims of trafficking, persons in need of urgent medical assistance, persons in need of international protection and other persons in a particularly vulnerable situation **are sufficiently met. For this purpose, participating units shall be able to draw on medical doctors, interpreters, and other relevant experts**.

Or. en

#### **Amendment 32**

**Jean-Pierre Audy**

#### **Proposal for a regulation**

##### **Article 6 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. In the territorial sea of the host Member

*Amendment*

1. In the territorial sea of the host Member

State or a participating Member State, the participating units shall take one or more of the following measures when there are reasonable grounds to suspect that a ship is carrying persons intending to circumvent checks at border crossing points or is engaged in the smuggling of migrants by sea:

State or a participating Member State, the participating units shall take one or more of the following measures when there are reasonable grounds to suspect that a ship is carrying persons intending to circumvent checks at border crossing points or is engaged in the ***illegal*** smuggling of migrants by sea:

Or. fr

**Amendment 33**  
**Marietta Giannakou**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. In the territorial sea of the host Member State ***or a participating Member State***, the participating units shall take one or more of the following measures when there are reasonable grounds to suspect that a ship is carrying persons intending to circumvent checks at border crossing points or is engaged in the smuggling of migrants by sea:

*Amendment*

1. In the territorial sea of the host Member State, the participating units shall take one or more of the following measures when there are reasonable grounds to suspect that a ship is carrying persons intending to circumvent checks at border crossing points or is engaged in the smuggling of migrants by sea:

Or. en

**Amendment 34**  
**Jean-Pierre Audy**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point d**

*Text proposed by the Commission*

d) seizing the ship and apprehending ***persons on board***;

*Amendment*

d) seizing the ship and apprehending ***its crew***;

Or. fr

**Amendment 35**  
**Marietta Giannakou**

**Proposal for a regulation**  
**Article 6 – paragraph 2**

*Text proposed by the Commission*

2. The host Member State *or the participating Member State* on whose territorial sea the interception takes place shall authorise the measures referred to in paragraph 1 and it shall instruct the participating unit appropriately through the International Coordination Centre. The participating unit shall inform the host Member State, through the International Coordination Centre, whenever the master of the ship requests that a diplomatic agent or a consular officer of the flag State be notified.

*Amendment*

2. The host Member State on whose territorial sea the interception takes place shall authorise the measures referred to in paragraph 1 and it shall instruct the participating unit appropriately through the International Coordination Centre. The participating unit shall inform the host Member State, through the International Coordination Centre, whenever the master of the ship requests that a diplomatic agent or a consular officer of the flag State be notified.

Or. en

**Amendment 36**  
**Marietta Giannakou**

**Proposal for a regulation**  
**Article 6 – paragraph 3**

*Text proposed by the Commission*

3. Where there are reasonable grounds to suspect that a ship without nationality or one that may be assimilated to a ship without nationality is carrying persons intending to circumvent the checks at border crossing points or is engaged in the smuggling of migrants by sea, the host Member State *or the participating Member State* in whose territorial sea the stateless ship is intercepted shall authorise and instruct the participating unit to stop it and to take any of the measures laid down

*Amendment*

3. Where there are reasonable grounds to suspect that a ship without nationality or one that may be assimilated to a ship without nationality is carrying persons intending to circumvent the checks at border crossing points or is engaged in the smuggling of migrants by sea, the host Member State in whose territorial sea the stateless ship is intercepted shall authorise and instruct the participating unit to stop it and to take any of the measures laid down in paragraph 1.

in paragraph 1.

Or. en

**Amendment 37**  
**Jean-Pierre Audy**

**Proposal for a regulation**  
**Article 7 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. On the high seas, the participating units shall take one or more of the following measures when there are reasonable grounds to suspect that a ship is engaged in the smuggling of migrants by sea subject to the ***authorisation of the flag State in accordance with*** the Protocol against the Smuggling of Migrants:

*Amendment*

1. On the high seas, the participating units shall take one or more of the following measures, ***including in respect of the flag State***, when there are reasonable grounds to suspect that a ship is engaged in the ***illegal*** smuggling of migrants by sea subject to the ***application of*** the Protocol against the Smuggling of Migrants:

Or. fr

**Amendment 38**  
**Ioan Mircea Pașcu**

**Proposal for a regulation**  
**Article 7 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. On the high seas, the participating units shall take one or more of the following measures when there are reasonable grounds to suspect that a ship is engaged in the smuggling of migrants by sea subject to the authorisation of the flag State in accordance with the Protocol against the Smuggling of Migrants:

*Amendment*

1. On the high seas, the participating units ***and, as required, representatives of the Consultative Forum***, shall take one or more of the following measures when there are reasonable grounds to suspect that a ship is engaged in the smuggling of migrants by sea subject to the authorisation of the flag State in accordance with the Protocol against the Smuggling of Migrants:

Or. en



**Amendment 39**  
**Sabine Lösing**

**Proposal for a regulation**  
**Article 7 – paragraph 4**

*Text proposed by the Commission*

4. Where, though flying a foreign flag or refusing to show its flag, there are reasonable grounds to suspect that the ship is, in reality, of the same nationality as a participating unit, that participating unit shall verify the ship's right to fly its flag. To this end, it may approach the suspected ship. If suspicion remains after the documents have been checked, it shall proceed to a further examination on board the ship, which must be carried out with all possible consideration. The participating Member State of which the ship is allegedly flying the flag shall be contacted through the appropriate channels.

*Amendment*

4. Where, though flying a foreign flag or refusing to show its flag, there are reasonable grounds to suspect that the ship is, in reality, of the same nationality as a participating unit, that participating unit shall verify the ship's right to fly its flag. To this end, it may approach the suspected ship. If suspicion remains after the documents have been checked, it shall proceed to a further examination on board the ship, which must be carried out ***in a way that is proportionate to the goal pursued and*** with all possible consideration. The participating Member State of which the ship is allegedly flying the flag shall be contacted through the appropriate channels.

Or. en

**Amendment 40**  
**Jean-Pierre Audy**

**Proposal for a regulation**  
**Article 7 – paragraph 8**

*Text proposed by the Commission*

8. Where there are reasonable grounds to suspect that a ship without nationality or one that may be assimilated to a ship without nationality is engaged in the smuggling of migrants by sea, the participating unit may board and stop the ship with a view to verifying its statelessness. If suspicions prove to be

*Amendment*

8. Where there are reasonable grounds to suspect that a ship without nationality or one that may be assimilated to a ship without nationality is engaged in the ***illegal*** smuggling of migrants by sea, the participating unit may board and stop the ship with a view to verifying its statelessness. If suspicions prove to be

founded further appropriate measures as laid down in paragraph 1 may be taken in accordance with national law and international law.

founded further appropriate measures as laid down in paragraph 1 may be taken in accordance with national law and international law.

Or. fr

**Amendment 41**  
**Jean-Pierre Audy**

**Proposal for a regulation**  
**Article 7 – paragraph 11**

*Text proposed by the Commission*

11. Where the grounds for suspecting that a ship is engaged in the smuggling of migrants on the high seas prove to be unfounded or the participating unit does not have jurisdiction to act, but there remains a reasonable suspicion that the ship is carrying persons intending to reach the border of a Member State and to circumvent checks at border crossing points, that ship shall continue to be monitored. The International Coordination Centre shall communicate information about the ship to the National Coordination Centre of the Member States towards which it is directed.

*Amendment*

11. Where the grounds for suspecting that a ship is engaged in the **illegal** smuggling of migrants on the high seas prove to be unfounded or the participating unit does not have jurisdiction to act, but there remains a reasonable suspicion that the ship is carrying persons intending to reach the border of a Member State and to circumvent checks at border crossing points, that ship shall continue to be monitored. The International Coordination Centre shall communicate information about the ship to the National Coordination Centre of the Member States towards which it is directed.

Or. fr

**Amendment 42**  
**Ioan Mircea Pașcu**

**Proposal for a regulation**  
**Article 9 – paragraph 7**

*Text proposed by the Commission*

7. Participating units shall promptly communicate their assessment of the situation to the responsible Rescue

*Amendment*

7. Participating units shall promptly communicate their assessment of the situation to the responsible Rescue

Coordination Centre. While awaiting instructions from the Rescue Coordination Centre, participating units shall take all the appropriate measures to ensure the safety of the persons concerned.

Coordination Centre. While awaiting instructions from the Rescue Coordination Centre, participating units shall take all the appropriate measures to ensure the safety *and respect of human rights* of the persons concerned.

Or. en