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Committee on Foreign Affairs

2013/0106(COD)

11.10.2013

OPINION

of the Committee on Foreign Affairs

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: Norica Nicolai

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SHORT JUSTIFICATION

The Subcommittee for Security and Defence considers that the proposed Regulation needs only certain improvements, meant to underline those specific areas in the work of the Agency that concern security challenges or that can indirectly be related to the dynamics of EU relations with third countries. Intra-EU communication is promoted, notably to the EEAS, on security-related information which may be obtained by the Agency. The fact that sensitive maritime areas where conflict and security challenges are an issue are also highlighted as this can be a leading source of problems for the surveillance of external sea borders. The opinion also wants to promote the rights and protection accorded to nationals of third countries who may find themselves in distress during the Agency's operations, and ensure a level of protection for those EU nationals who have responsibility to assist. Finally, the fact that an enlargement of the Schengen Area is envisaged, it is put forward that this should also be part of this Regulation, in order to avoid future blockages.

AMENDMENTS

The Committee on Foreign Affairs 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 1 a (new)

Text proposed by the Commission

Amendment

(1a) 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 and Baltic Sea maritime regions, where not only criminal activities such as illegal crossing and smuggling but also the proximity of frozen conflict areas can raise serious security concerns.

Amendment 2

Proposal for a regulation Recital 1 b (new)

Text proposed by the Commission

Amendment

(1 b) This regulation is without prejudice to the obligations under international law of all civilian, military and commercial vessels flying the flag of a Member State to protect people in distress at sea.

Amendment 3

Proposal for a regulation Recital 2

Text proposed by the Commission

Amendment

(2) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ('the Agency') established by Council Regulation (EC) No 2007/2004 of 26 October 2004 is responsible for the coordination of operational cooperation between Member States in the field of management of the external borders, including as regards border surveillance. The Agency is also responsible to assist Member States in circumstances requiring increased technical assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea. Specific rules with regard to border surveillance activities carried out by maritime and aerial units of one Member State at the sea border of other Member States or on the high seas in the context of operational cooperation coordinated by the Agency are necessary to further strengthen such cooperation.

(2) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ('the Agency') established by Council Regulation (EC) No 2007/2004 of 26 October 2004 is responsible for the coordination of operational cooperation between Member States in the field of management of the external borders, including as regards border surveillance. The Agency is also responsible to assist Member States in circumstances requiring increased technical assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea. Specific rules with regard to border surveillance activities carried out by maritime and aerial units of one Member State at the sea border of other Member States or on the high seas in the context of operational cooperation coordinated by the Agency are necessary to further strengthen such cooperation. ***To this end, the Agency shall endeavour to use innovative applications of existing technologies in order to improve and simplify information***

gathering as well as information sharing especially for those maritime areas facing the greatest pressure of unauthorised crossings and having the greater difficulty, because of geographical and climatic reasons, to adequately monitor such traffic.

Amendment 4

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

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Amendment 5

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

Amendment

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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.

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, ***including rules and procedures which ensure that persons with international protection needs including potential victims of trafficking, unaccompanied minors and other vulnerable persons are identified during the operation, and that they are provided with the adequate assistance.*** 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 6

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

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Amendment 7

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.

Amendment 8

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 9

Proposal for a regulation

Article 2 – paragraph 12 a (new)

Text proposed by the Commission

Amendment

(12a) ‘operational plan’ has the meaning provided for by articles 3a and 8e of Regulation (EC) 2007/2004.

Amendment 10

Proposal for a regulation

Article 4 - paragraph 2

Text proposed by the Commission

Amendment

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.

2. Before deciding on disembarkation in a third country, ***the Agency, the host and other participating Member States*** 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 ***they are aware*** that this third country is engaged in practices as described in paragraph 1. ***In this regard, a list of third countries shall be adopted in accordance with the examination procedure referred to in Article 5 of Regulation 182/2011.***

Amendment 11

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.

Amendment 12

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. In case of disembarkation in a third country, the participating units shall identify the intercepted or rescued persons and assess their personal circumstances. 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 13

Proposal for a regulation Article 5 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This information shall also be conveyed to the INTCEN of the EU External Action Service which shall act as central information point between the Member States, the European Council and the relevant services, according to each specific need for information exchange.

Amendment 14

Proposal for a regulation

Article 5 - paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall endeavour to increase cooperation with the EU Agency using also FRONTEX assets mainly in highly strategic maritime areas facing both increased criminal trafficking and security and defence challenges.

Amendment 15

Proposal for a regulation

Article 6 – paragraph 1 – introductory part

Text proposed by the Commission

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:

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 **illegal** smuggling of migrants by sea:

Amendment 16

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

Amendment

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

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

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.

Coordination Centre, whenever the master of the ship requests that a diplomatic agent or a consular officer of the flag State be notified.

Amendment 17

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 in paragraph 1.

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.

Amendment 18

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:

Amendment 19

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 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.

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 ***and respect of human rights*** of the persons concerned.

Amendment 20

Proposal for a regulation Article 10 a (new)

Text proposed by the Commission

Amendment

1. Each Member State requires the master of a ship flying its flag to proceed with all possible speed to the rescue of persons in distress at sea and to render all possible assistance to them regardless of their nationality or state or of the circumstances in which these persons are found, provided that he can do so without serious danger to the ship, the crew or the passengers. Members States will not take any measures, including criminal procedures and sanctions, against ship masters who have rescued persons in distress and brought them to a harbour on their territory.

2. The Agency's Fundamental Rights Strategy and the activities of the Fundamental Rights Officer and the Consultative Forum, as provided for in Article 26a of Regulation 2007/2004, shall apply to sea operations as governed by this Regulation.

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
References	COM(2013)0197 – C7-0098/2013 – 2013/0106(COD)
Committee responsible Date announced in plenary	LIBE 18.4.2013
Opinion by Date announced in plenary	AFET 18.4.2013
Rapporteur Date appointed	Norica Nicolai 30.5.2013
Discussed in committee	18.9.2013
Date adopted	10.10.2013
Result of final vote	+: 34 –: 8 0: 5
Members present for the final vote	Bastiaan Belder, Elmar Brok, Jerzy Buzek, Tarja Cronberg, Arnaud Danjean, Mark Demesmaeker, Marietta Giannakou, Ana Gomes, Andrzej Grzyb, Richard Howitt, Liisa Jaakonsaari, Jelko Kacin, Tunne Kelam, Nicole Kiil-Nielsen, Maria Eleni Koppa, Andrey Kovatchev, Eduard Kukan, Vytautas Landsbergis, Krzysztof Lisek, Sabine Lösing, Marusya Lyubcheva, Willy Meyer, Francisco José Millán Mon, Annemie Neyts-Uyttebroeck, Alojz Peterle, Tonino Picula, Mirosław Piotrowski, Bernd Posselt, Hans-Gert Pötering, Cristian Dan Preda, Tokia Saïfi, György Schöpflin, Werner Schulz, Sophocles Sophocleous, Laurence J.A.J. Stassen, Davor Ivo Stier, Nikola Vuljanić, Sir Graham Watson, Karim Zérìbi
Substitute(s) present for the final vote	Charalampos Angourakis, Andrew Duff, Hélène Flautre, Dominique Vlasto, Paweł Zalewski
Substitute(s) under Rule 187(2) present for the final vote	Vojtěch Mynář, Andreas Pitsillides, Vilja Savisaar-Toomast