

Courtesy translation

Dear Mr Šefčovič,

The standing committee for Immigration & Asylum / Justice and Home Affairs (JHA) Council of the States General has taken note with interest of the proposal for a Regulation establishing the European Border Surveillance System (EUROSUR).¹ The proposal has been discussed in the meetings of the committee of 21 February and 6 March 2012. In this letter you will find the committee's questions and comments about this proposal.

EUROSUR's tasks and the division of powers between the Member States and the European Union

The proposal is intended to prevent and combat serious crime such as drug trafficking and trafficking in human beings and to reduce the number of deaths among migrants at sea. The establishment of EUROSUR will create a common technical framework intended to strengthen the management of the Schengen external borders. This will be done by streamlining operational information and improving the cooperation among the Member States and between them and Frontex. In this system a major role is assigned to Frontex in particular. Can the European Commission give an exact description of EUROSUR's tasks and their scope, taking into account the tasks of the Member States and Frontex? What is the division of the tasks, powers and responsibilities between these three parties, in particular in the extraterritorial zones? Does EUROSUR's task consist solely of detection and the exchange of information or does it also include advising on how to act in the event of detection of, say, illegal migrants? The committee also wishes to know how the European Commission regards the practicability of the EUROSUR system.

The Dutch government assesses the proposal as largely proportional, but makes exceptions in respect of three parts.² For example, it disagrees with the provision imposing an obligation to supply information to Frontex about the external borders and considers that the Member States should have the freedom to derogate from this on the grounds of technical and financial constraints or other good reasons. The Dutch government is also critical of the provisions making it obligatory for Member States to take measures in response to a risk analysis of the external borders. This is a matter that should be left to the Member States themselves. The Dutch government's third point of criticism concerns the central role given to Frontex in monitoring and evaluating the technical and operational deployment of EUROSUR. In the opinion of the Dutch government, this should at the very least be a shared responsibility of the Member States and Frontex. How does the European Commission view these points in the light of proportionality?

Can the European Commission also indicate how the effectiveness of the measures relating to the impact levels is determined? What are the powers of the Member States in assessing the effectiveness of the measures?³

Parliamentary oversight

As powers have been assigned mainly at the European level, this may have consequences for parliamentary oversight. The committee would be grateful to learn how it is proposed to exercise

¹ COM(2011)873.

² House of Representatives, 2011-2012 volume, 22.112, no. 1331.

³ See Articles 14 and 15 of the Proposal for a Regulation establishing the European Border Surveillance System.

democratic control of EUROSUR, particularly in its relationship with Frontex. What is the role of the European Parliament in this matter? And what role do the national parliaments have?

Fundamental rights

Finally, the committee would like to know how the regulation safeguards fundamental rights, especially the protection of personal data and the principle of non-refoulement. What are the exact consequences of the fact that in its operations EUROSUR is required to observe the Charter of Fundamental Rights, in particular the principle of non-refoulement, the prohibition of torture and the rights of the child?

How can EUROSUR ensure that both the search and rescue obligations of maritime law and the Refugee Convention are observed at sea, even in extraterritorial operations? What are the powers and responsibilities with regard to monitoring observance of these obligations by the Member States?

Costs and benefits

As regards the costs and benefits of the EUROSUR system, the committee would like to have more clarity about the added value of close-to-real time provision of data, partly in relation to the costs of this system. Can the European Commission also shed more light on the cost effectiveness of the possible use of satellite surveillance and other technological solutions?

The committee for Immigration & Asylum / Justice and Home Affairs (JHA) Council looks forward with interest to receiving the European Commission's answers.

Yours sincerely,

P.L. Meurs

Chair of the standing committee for Immigration & Asylum / Justice and Home Affairs (JHA) Council