

Non paper
for the preparation of an implementing act on EUROSUR situational pictures
in accordance with Article 25 of the EBCG 2.0 Regulation.

1) Purpose

The new European Border and Coast Guard Regulation ('EBCG 2.0'), which will enter into force this autumn, encompasses and repeals the current Regulation (EU) No 1052/2013 establishing the European Border Surveillance System (EUROSUR). While EUROSUR continues to function as an integrated framework for the exchange of information and for operational cooperation within the European Border and Coast Guard, its scope has been extended from the surveillance of external land and sea borders to border checks at authorised border crossing points and to the surveillance of external air borders.¹

According to Article 25(4) of the EBCG 2.0 compromise text, *'the details of the information layers of the situational pictures² and the rules for the establishment of specific situational pictures shall be laid down in an **implementing act** adopted by the Commission'* following the Committee procedure.

The purpose of this note is to provide the first elements to support the discussion in the EBCG expert group on this implementing act with a view to preparing the work of the EBCG Committee on this specific aspect.

2) What is the objective of the implementing act?

The 2018 evaluation of EUROSUR³ has identified the need to

1. better define the roles and responsibilities of the various actors so as to improve information exchange and build trust among the stakeholders and
2. clarify more in detail the reporting of events and the delivery of information services in EUROSUR, in particular in defining which are the responsible entities as well as who has the ownership of information and what is the time period to report incidents.

The evaluation indicated that, while it is crucial to provide strict technical requirements, for instance on the structure of the situational pictures, these requirements, if not regularly updated, can become an obstacle for fast and efficient information exchange and thereby hinder further improvements.

The implementing act on EUROSUR should therefore define the technical requirements and procedures, which could be amended if operational needs evolve, without amending the European Border and Coast Regulation itself. This guarantees the necessary operational flexibility while keeping the necessary binding character of the Regulation.

¹ However, by way of derogation, Member States may continue to report on a voluntary basis on border checks and air border surveillance up to two years after the entry into force of this Regulation – see Article 120(3) of the EBCG 2.0 compromise text, document 8354/19 FRONT 140 of 9 April 2019.

² National situational pictures, the European situational picture and the specific situational pictures.

³ Chapters 4.1.3 and 4.1.4 of the Report from the European Commission to the European Parliament and to the Council on the evaluation of the European Border Surveillance System (EUROSUR), COM (2018) 632 final.

3) What should the implementing act consist of?

According to Article 25(4) of the EBCG 2.0 compromise text, the implementing act shall lay down “*the details of the information layers of the situational pictures and the rules for the establishment of specific situational pictures*”⁴, based on the three layers of information (event, operational and analysis) already existing in EUROSUR.

Furthermore, “*the implementing act shall specify*

- *the type of information to be provided,*
- *the entities responsible for collecting, processing, archiving and transmitting specific information,*
- *the maximum delays for reporting,*
- *the data security and data protection rules and related quality control mechanisms.”*

4) When should the implementing act be adopted?

The Regulation does not set a fixed date for the adoption of the implementing act. It clarifies that the corresponding articles of the current EUROSUR Regulation⁵ shall continue to apply pending the entry into force of the implementing act.⁶

However, an early adoption of the implementing act will give clarity to the Member States and to the EBCG Agency and facilitate the transition period. This is why Commission proposes to start preparing this implementing act before the entry into force of the EBCG 2.0 Regulation.

5) Further new elements to be considered

- **Emphasis on the data:** The definition of “situational picture” has evolved towards a more “data centric” approach of the reporting in EUROSUR: In the EBCG 2.0 Regulation, the situational picture is no longer a “*shared graphical interface*” but “*an aggregation of geo-referenced near-real-time data and information transmitted across secured communication and information channels*”.⁷ The graphical interface will now be chosen by the users depending on the operational situation and the level of the command and control structure (strategic, operational or tactical level).
- **Unauthorised secondary movements:** The scope of EUROSUR is being extended not only to border checks and air border surveillance, but also to reporting of events related to unauthorised secondary movements, as this will contribute to the EBCG Agency monitoring of migratory flows

⁴ Article 25(4) of the compromise text.

⁵ Regulation (EU) No 1052/2013

⁶ Article 119(1) of the compromise text

⁷ ‘Situational picture’ means ~~a graphical interface to present~~ an aggregation of geo-referenced near-real-time data and information received from different authorities, sensors, platforms and other sources, which is ~~shared~~ transmitted across secured communication and information channels and can be processed and selectively displayed and shared with other relevant authorities in order to achieve situational awareness and support the reaction capability at, along or in proximity of the external borders and the pre-frontier area;

towards and within the Union for the purpose of risk analysis and situational awareness. When available, information on unauthorised secondary movements shall be reported in the situational picture for the purpose of understanding trends, volumes and routes. The ECBG Agency shall provide this information in the European Situational Picture and provide monitoring trends, volume and routes of migratory flows towards and within the Union as part of EUROSUR Fusion Services. The implementing act referred to in Article 25 of the compromise text will further define the type of reporting to best meet this objective.

- **Air border surveillance** Following discussions in the EUROSUR expert group, the new Regulation provides for a definition of Air Border Surveillance⁸(ABS) which will be reported in the situational pictures on a systematic basis⁹. The Agency shall establish a dedicated EUROSUR Fusion Service. Member States will also have the possibility to divide their external borders in air border sections in addition to land and sea border sections and notify it to the Agency¹⁰.
- **Pre-frontier area:** While the definition of the national situational picture has not changed in the EBCG 2.0 Regulation, the European Situational Picture encompasses now not only the Schengen area, but also the pre-frontier area (common pre-frontier intelligence picture in the current EUROSUR Regulation).
- **Specific situational pictures:** The EBCG 2.0 Regulation defines a third category of situational pictures, the specific situational pictures to support specific operational activities at the external borders or to share information with third parties the international organisations, Union institutions, bodies, offices and agencies or third countries. The specific situational pictures shall be composed of a sub-set of information of the national and European situational pictures.¹¹ The implementing act shall further define what, when and how specific situational pictures shall be established. The details of each situational picture shared with third countries third parties will be annexed to the bi- and multilateral agreements, operational plans or working arrangements.
- **Four impact levels for incident reporting:** The principle of incident reporting has been kept as in the current EUROSUR Regulation. However, a fourth impact level has been added (low, medium, high and in addition now very high). The implementing act shall further specify these aspects of incident reporting in line with the Common Integrated Risk Analysis Model (CIRAM).
- **Changes in border sections:** The definition of the border sections in EUROSUR is also evolving in line with the wider scope of EUROSUR. Member States now have the possibility to designate specific air border sections in line with the new definition of air border surveillance. A new impact level, the critical impact level, is created. It corresponds to a temporary situation where the whole Schengen area is put at risk.

⁸ Air Border Surveillance is the surveillance of any flight of a manned or unmanned aircraft and its passengers and/or cargo to or from the territories of the Member States, which is not an internal flight as defined in point 3 of Article 2 of Regulation (EU) 2016/399;

⁹ See transition period of two years for Member States reporting

¹⁰ Article 31 of the compromise text

¹¹ Article 28 of the compromise text.

- **Monitoring the quality of service (QoS):** As proposed in the evaluation of EUROSUR, the Regulation sets up a capacity for the Agency to “*constantly and continuously monitor the quality of the service offered by the communication network and the quality of the data shared in the EUROSUR situational picture*”. A dedicated EUROSUR Fusion Service will report it to all NCCs and relevant users.
- **Processing of personal data:** The processing of personal data in EUROSUR has also evolved. Ship and now aircraft identification numbers remain the only personal data that can be accessed in the European situational and specific situational pictures and via the EUROSUR Fusion Services. However, the Regulation acknowledges that the processing of information in EUROSUR may exceptionally require the processing of personal data other than ship and aircraft identification numbers. Any processing of such personal data in the framework of EUROSUR shall be strictly limited to what is necessary for the purposes of EUROSUR.

The Regulation also acknowledges that Member States can process personal data in accordance with Regulation (EU) 2016/679 and, where applicable, Directive 2016/680 the latter corresponding to the processing of personal data for law enforcement. As provided for in the above-mentioned Regulations, each Member State shall designate and notify to the Commission the authority, which is to be considered as controller with the central responsibility for the processing of personal data, by that Member State.

- **A more secure network:** Finally, the possibility is now offered to exchange information up to confidential EU on the Communication Network, which becomes “multipurpose” while in the current EUROSUR Regulation it is limited to the only EUROSUR Framework.
- **EUROSUR Handbook:** In the new Regulation, the EUROSUR Handbook is kept and will have to be updated to take into account the above changes once the new implementing act will have entered into force. The current EUROSUR Handbook¹², which has established a set of best practices within the EUROSUR communities, can also inspire the drafting of the new implementing act.

6) Proposed way forward

The meeting of 5 July 2019 will give the opportunity to collect the preliminary views of the Member States on the future implementing act.

After that meeting, the Commission will identify specific topics for further discussions in follow up meetings of the EBCG2.0 expert group.

Based on these discussions, the Commission will present a first consolidated draft of the implementing act for a formal vote in the EBCG Committee, which will be established in the meantime.

In all stages of the preparatory process, the Commission will involve the EBCG Agency for its technical and operational expertise.

¹² C (2015) 9206 final.