

Commission Staff Working Paper. Impact assessment accompanying the Proposal for a regulation of the European Parliament and of the Council establishing the European Border Surveillance System (EUROSUR) (Brussels, 12 December 2011)

**Caption:** This document, dated 12 December 2011, explains the situations and reasons backing the Commission's legislative proposal establishing EUROSUR. This document also presents the general and specific and operational objectives of the proposed surveillance mechanism.

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**COMMISSION STAFF WORKING PAPER**

**Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council establishing the European Border Surveillance System (EUROSUR)**

{COM(2011) 873 final}  
{SEC(2011) 1537 final}  
{SEC(2011) 1538 final}

*Accompanying document to the*  
**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL ON**

**Establishing the European Border Surveillance System (EUROSUR)**

**IMPACT ASSESSMENT**

This report commits only the Commission's services involved in its preparation and does not  
prejudge the final form of any decision to be taken by the Commission.

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**Lead DG:** Home Affairs  
**Associated DG:** Maritime Affairs

## 1. INTRODUCTION

This impact assessment report is prepared by DG HOME to accompany the legislative proposal on the establishment of a European Border Surveillance System (EUROSUR). EUROSUR can be described as a set of measures enhancing the cooperation and information exchange of border control authorities at national and European level as well as when cooperating with neighbouring third countries, with the result that the situational awareness and reaction capability of these authorities would be considerably increased when combating irregular migration and cross-border crime. Hence EUROSUR should be seen in the context of the progressive establishment of a European model of integrated border management.

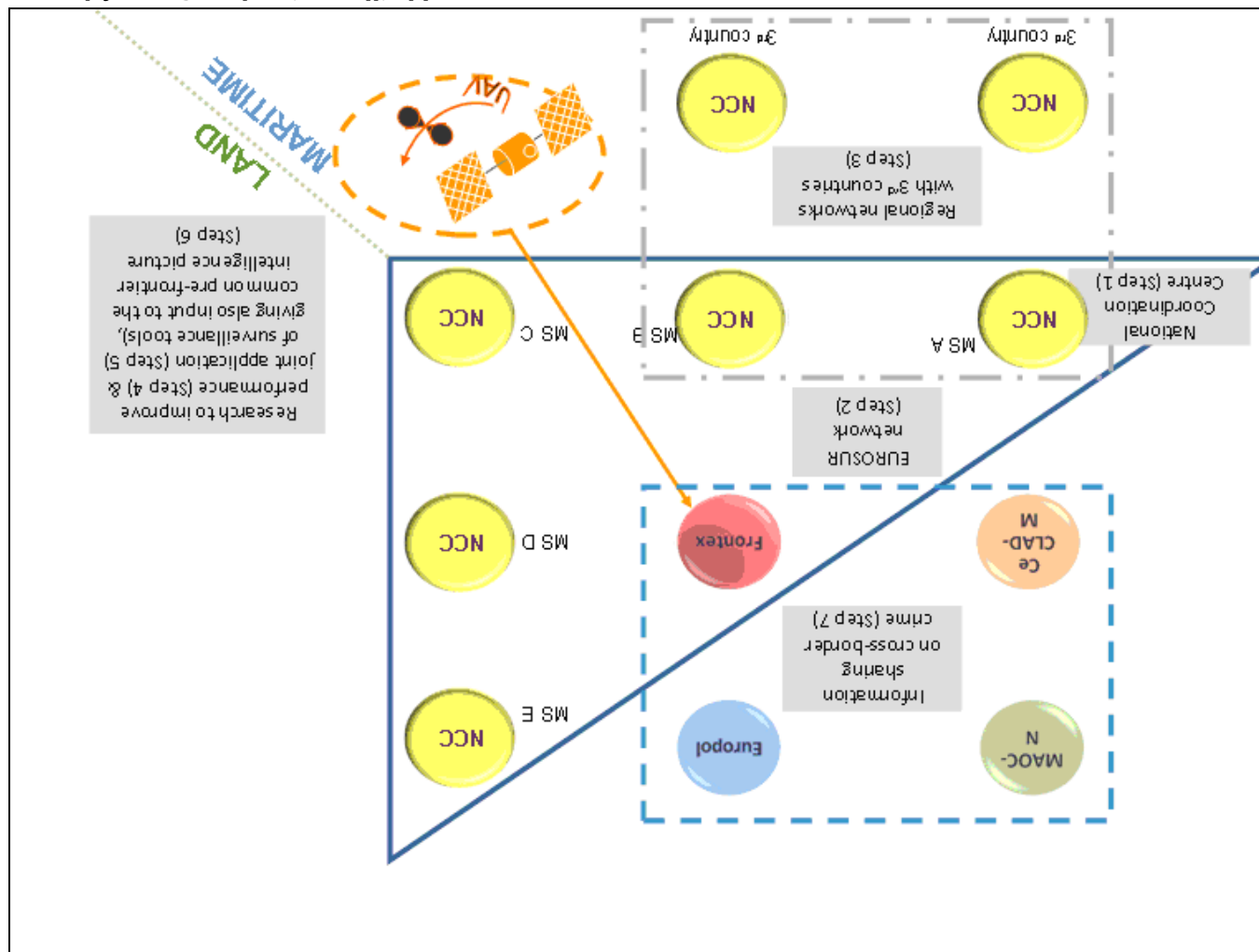
The works carried out between 2008 and 2011 for the development, testing and gradual establishment of EUROSUR are based on a roadmap presented in a Commission Communication in 2008.<sup>1</sup> This roadmap has been endorsed by the Justice and Home Affairs Council in its conclusions of June 2008 and February 2010 and by the Stockholm Programme and the Action Plan implementing the Stockholm Programme. In its conclusions of June 2011 the European Council stated that EUROSUR "will be further developed as a matter of priority in order to become operational by 2013 and allow Member States' authorities carrying out border surveillance activities to share operational information and improve cooperation."

In its 2008 EUROSUR roadmap the Commission proposed to establish EUROSUR in three phases, consisting of eight steps:

| Phases                                                                                              | Steps                                                                                                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Phase I</b><br>Interlinking and streamlining existing surveillance systems at national level     | <b>Step 1:</b> Setting up of <i>national coordination centres (NCCs)</i> for border surveillance in the Member States located at the eastern and southern Schengen external borders.                                                                 |
|                                                                                                     | <b>Step 2:</b> Setting up of the <i>EUROSUR network</i> .                                                                                                                                                                                            |
|                                                                                                     | <b>Step 3:</b> Cooperation with <i>neighbouring third countries</i> to enhance their capacity to manage their own borders, fight cross-border crime and fulfil their search and rescue responsibilities.                                             |
| <b>Phase II</b><br>Development of common tools for border surveillance at EU level                  | <b>Step 4:</b> Exploitation of <i>R&amp;D (FP7)</i> to improve and test the performance of surveillance tools, e.g. to detect small boats.                                                                                                           |
|                                                                                                     | <b>Step 5:</b> Setting up of a service for the <i>common application of surveillance tools</i> (satellites, ship reporting systems, etc.).                                                                                                           |
|                                                                                                     | <b>Step 6:</b> Setting up of the <i>Common Pre-frontier Intelligence Picture</i>                                                                                                                                                                     |
| <b>Phase III</b><br>Creation of a common information sharing environment for the EU maritime domain | <b>Step 7:</b> Creation of a <i>common information sharing environment</i> for internal security purposes covering the southern maritime borders.                                                                                                    |
|                                                                                                     | <b>Step 8:</b> Creation of a <i>common information sharing environment</i> for the EU maritime domain, covering all maritime activities (border control, law enforcement, customs, maritime safety, marine environment, fisheries control, defence). |

*Steps and phases identified in the 2008 EUROSUR roadmap*

<sup>1</sup> COM(2008) 68 final of 13.2.2008 ('EUROSUR roadmap'). This Communication was elaborated on the basis of the MEDSEA and BORTEC studies carried out by Frontex. For further details see Annex 1.1.

Table illustrating the 7 Steps of the *EUROSUR* roadmap

The eight separate, but interlinked steps are being developed and implemented in parallel, thereby reducing the risk in case one step is delayed or even fails. The development of EUROSUR also takes into account that Member States are responsible for their national security and for controlling their external borders. Therefore the aim is not to set up a centralised border surveillance system at EU level which would replace national systems, but to make best use of existing structures and modern technology.

The 2008 roadmap was accompanied by an impact assessment<sup>2</sup> identifying several shortcomings<sup>3</sup> and three objectives<sup>4</sup>, which remain valid for the current impact assessment, and presenting four *policy options*:

|                        |                                               |
|------------------------|-----------------------------------------------|
| <b>Policy Option 1</b> | No changes are made to the current situation. |
| <b>Policy Option 2</b> | Phase 1 (Steps 1 to 3)                        |
| <b>Policy Option 3</b> | Phases 1 and 2 (Steps 1 to 6)                 |
| <b>Policy Option 4</b> | Phases 1, 2 and 3 (Steps 1 to 7)              |

*Policy options of the 2008 EUROSUR impact assessment*

Under the 2008 impact assessment, the preferred policy actions were Steps 1 to 7 as proposed under policy option 4. In its conclusions of June 2008 and February 2010 the Justice and Home Affairs Council gave a clear political mandate to develop and implement Steps 1 to 7, while Step 8 is being developed in the framework of the EU Integrated Maritime Policy. Under the leadership of the Commission the relevant concepts for Steps 1 to 7 have been defined between 2008 and 2011, thereby determining the technical and operational framework of EUROSUR.<sup>5</sup> In parallel, Frontex launched pilot projects to test and validate selected EUROSUR components. Furthermore, several Member States have established their national coordination centres with EU funding received under the External Borders Fund.

While the impact assessment presented in 2008 assessed the different components proposed in Steps 1 to 7 of the EUROSUR roadmap, thereby identifying '*what*' should be done, the current impact assessment assesses '*how*' these components should be implemented until 2013 on the basis of the works carried out between 2008 and 2011.

## 2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

The Commission has taken into account the opinions and concerns of the stakeholders – the border control authorities of Member States. In the two progress reports on EUROSUR published by the Commission the public has been informed on the development of EUROSUR. In 2008-2011, DG Home Affairs and Frontex gave several presentations on the EUROSUR development to the Council,<sup>6</sup> the European Parliament<sup>7</sup> and EU agencies.<sup>8</sup>

<sup>2</sup> SEC(2008) 151.

<sup>3</sup> The following shortcomings had been listed: lack of interagency cooperation and of exchange of relevant information, in particular when it comes to maritime border surveillance; current technical limitations in detecting and tracking small vessels; lack of preparedness to quickly respond to changing routes and methods used for irregular migration and cross-border crime etc.

<sup>4</sup> 1) Reduce number of irregular migrants entering the Schengen area undetected; 2) Reduce loss of lives of migrants at sea; 3) Increase the internal security of the EU by combating cross-border crime.

<sup>5</sup> See also Commission Staff Working Paper determining the technical and operational framework of EUROSUR and actions to be taken for its establishment, SEC(2011) 145 final of 28.1.2011.

<sup>6</sup> E.g. Council Working Group on Frontiers, Standing Committee on Operational Cooperation on Internal Security (COSI), EU Military Staff etc.

During this time EUROSUR has also been presented and discussed during conferences and meetings with other stakeholders, such as non-governmental organisations and academia, the research community<sup>9</sup> and the private sector organisations.<sup>10</sup> As a result, hundreds of people with personal and professional interest in border surveillance have been informed in detail about the EUROSUR initiative and their input and expertise have been taken into account. Since 2008 the Commission and Frontex have set up technical expert groups, carried out technical studies and initiated pilot projects to develop, test and validate the different components of EUROSUR.<sup>11</sup> The active participation of Member States in these actions clearly demonstrates their full support and dedication to EUROSUR both at political and operational level.

### 1) Technical expert groups

Since 2008, six different technical expert groups have been established in order to develop the technical and operational framework of EUROSUR,<sup>12</sup> with the *EUROSUR Member States' expert group* being the most important one. Having met 13 times since June 2008, this group is chaired by DG Home Affairs of the European Commission and consists of border surveillance experts from the Member States, Frontex and the Commission.

### 2) Technical studies

Between January 2009 and January 2010, the *EUROSUR technical study* was carried out by an external contractor in order to develop the key concepts of EUROSUR.<sup>13</sup> These included technical and management concepts for national border surveillance systems and national coordination centres, the system architecture for the EUROSUR communication network as well as the system architecture for the Common Pre-frontier Intelligence Picture. Furthermore, between June and September 2011, the *technical study assessing the financial impact of establishing EUROSUR* was carried out, which provided detailed cost estimates for the policy options identified in this impact assessment.<sup>14</sup>

### 3) Testing and validation

Thirdly, the different technical components of EUROSUR need to be tested and validated among Member States and Frontex before making them operational. For example, the EUROSUR network is currently being tested on a pilot basis between Frontex and selected Member States.<sup>15</sup> Furthermore the 7<sup>th</sup> EU Framework Programme for research and

<sup>7</sup> E.g. European Parliament Seminar on Collaboration in Space for International Global Maritime Situational Awareness (C-SIGMA), Brussels, 16.11.2010.

<sup>8</sup> European Maritime Safety Agency (EMSA), EU Satellite Centre (EUSC), European Defence Agency (EDA), European Space Agency (ESA).

<sup>9</sup> E.g. 2008 and 2010 EU Security Research Conferences.

<sup>10</sup> E.g. in the context of the European Security Research and Innovation Forum (ESRIF) and the European Organisation for Security (EOS).

<sup>11</sup> Summaries of the most relevant documents can be found in Annex 1.

<sup>12</sup> An overview these groups can be found in Annex 2.

<sup>13</sup> Technical study on developing concepts for border surveillance infrastructure, a secure communication network and a pre-frontier intelligence picture within the framework of a EUROSUR (EUROSUR technical study). Main contractor: ESG. Subcontractors: EADS, SELEX, Thales. Consultants: SECUNET, University of the German Army. Budget: M€ 1, 8, funded under External Borders Fund.

<sup>14</sup> Technical study assessing the financial impact of establishing EUROSUR. Main contractor: GHK. Subcontractors: UNISYS and Euroconsult. Budget: € 144 150, funded by DG Home Affairs.

<sup>15</sup> For this purpose, Frontex uses an external contractor (GMV; budget: M€ 1,5) and is supported by the Member States' expert group on the EUROSUR pilot project as a platform for technical discussions. In 2011, Finland, France, Italy, Poland, Slovakia and Spain will be connected to the EUROSUR network.



development (FP7) is being used since 2008 to improve the performance and test the combination of surveillance tools in close cooperation with the private sector.<sup>16</sup>

#### 4) Links to other EU policies

EUROSUR will enhance interagency cooperation between national law enforcement authorities (border guards, police, customs, etc.). It is therefore intrinsically linked to the Internal Security Strategy of the EU. By improving the cross-sectoral information exchange between different authorities with interests in the EU maritime domain, it also supports and forms part of the Integrated Maritime Policy of the EU, which is coordinated by DG Maritime Affairs (MARE).

Since 2008 DG HOME has worked closely with DG Enterprise and Industry (ENTR), DG Maritime Affairs (MARE), DG Mobility and Transport (MOVE), DG Justice (JUST), DG External Relations (RELEX) and the Joint Research Centre (JRC) in developing EUROSUR. This cooperation was formalised in an inter-service steering group with these General-Directorates on 14 September 2011, involving also the Legal Service (SJ), the Secretariat-General (SG) and DG Taxation and Customs Union (TAXUD). This interservice group, to which the European External Action Service (EEAS) has also been invited, met again on 20 September 2011 and 6 October 2011, discussing legal and technical issues linked to the establishment of EUROSUR, such as the protection of personal data and the access to ship reporting systems.

The *Impact Assessment Board* (IAB) reviewed the draft impact assessment and delivered its opinion on 21 October 2011. The recommendations for improvement were accommodated in the final version of this document. In particular, the following changes were made:

Firstly, in Chapters 3.2 and 3.3 the problem drivers have been more fully described to clarify how a lack of rules hinders cooperation and how irregular migration and cross-border crime could evolve in future. In Chapter 6, when assessing the different options a closer link to the baseline scenario has been established. Secondly, in Chapter 6.5 a deeper analysis of the impacts of third country cooperation options to underpin the choice of the option in this regard. Thirdly, monitoring indicators have been included in Chapter 8. Fourthly, the scoring of the options in Chapter 6 has been revised, systematically taking the baseline scenario as a reference.

Finally, it was clarified that the selected options were also the ones supported by a majority of Member States during the process of developing the different components of EUROSUR in the relevant technical expert groups in 2008-2011.

### 3. PROBLEM DEFINITION

As explained further below, the absence of a common regulatory basis for Member States to exchange information and cooperate in the area of border surveillance, especially at the external maritime borders of the EU, means that unauthorised border crossings and cross-border crime may go undetected. Moreover the already unacceptable death toll of migrants drowning when trying to reach EU shores might even further increase.

#### 3.1. Border surveillance

The EU has some 7 400 km of external land borders and 57 800 km of external maritime borders and coastlines. According to EU law, border control consists of border checks and

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<sup>16</sup> See Annex 1.5.

border surveillance. Border surveillance covers the control of land and maritime borders between the border crossing points where border checks are carried out. Whereas border checks are specifically regulated in the *Schengen Border Code*, the code and accompanying guidance contains only general provisions for border surveillance.<sup>17</sup> According to Article 12(1) of the Schengen Borders Code, the main purpose of border surveillance is to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally.<sup>18</sup>

### 3.2. General problems faced in border surveillance<sup>19</sup>

#### 3.2.1. Irregular migration

The EU faces pressure from irregular migration at its external borders. Over 100 000 unauthorised border crossings were detected at the land and maritime external borders of the EU in 2009 and in 2010. During the first six months of 2011, 74 300 unauthorised border crossings were detected, of which over 96 % took place at the external borders of Spain, Greece, Italy and Malta. There is currently no estimate of the annual flow of irregular migrants managing to cross the external borders undetected. However, certain indicators may provide guidance. In 2009, the number of illegally staying third country nationals apprehended inside the Member States was about 570 000 and Member States returned about 250 000 persons.<sup>20</sup> Furthermore, it is assumed that the majority of migrants illegally present in the EU Member States, which are estimated to vary between three to six million, are overstaying after having entered legally.

No matter whether migrants cross the external borders of the Member States legally or irregularly, the reasons for leaving one's country of origin are often similar, ranging from war and persecution to natural disasters, famine, pollution and poor living conditions. In addition, there are a number of corresponding pull-factors, which make Member States attractive for these migrants, such as better job opportunities and living conditions, political and religious freedom, superior education and medical care, security and also family links. For these reasons irregular migration cannot be regarded as an isolated problem, but must be embedded into a comprehensive European migration policy, as pursued for instance by the Union under the 'Global approach to migration'.

Taking into account differences in political stability, living conditions and demographic developments in the EU compared to several other regions in the world, it is likely that the numbers of persons seeking international protection or simply a better life will rise in the future. A better capability to manage migration flows and prevent unauthorised border crossings could also raise the willingness of EU citizens to accept increased numbers of legal migrants, taking also into account that many EU Member States are facing shrinking and ageing populations.

On the basis of EU and national legislation, border guard, police and other law enforcement authorities are taking measures against irregular migration both at the external borders as well as inside the territories of Member States. Irregular migration is largely facilitated by criminal networks, which are highly innovative and flexible in finding new methods and quick in redirecting migration routes. As a result, during the last years relatively short stretches of the

<sup>17</sup> References to and excerpts of these legal acts can be found in Annex 1.1.

<sup>18</sup> For further details see Annex 1.1.

<sup>19</sup> For further details see the impact assessment accompanying the EUROSUR roadmap, SEC(2008) 151 final of 13.2.2008, 6-16.

<sup>20</sup> Commission Communication on Migration, COM(2011) 248final of 4.5.2011, 8-9.

external borders, such as the Straits of Gibraltar, the Canary Islands, Lampedusa, Malta and the Greek land border with Turkey have received thousands of irregular migrants within a few weeks or months. Despite the coordination efforts of Frontex Member States' border control authorities often face difficulties to agree on a common approach and usually need considerable time to find an appropriate operational response.

### 3.2.2. *Loss of life at sea*

Many irregular migrants and persons in need of international protection are travelling in conditions of extreme hardship and are taking great personal risks in their attempts to cross the Schengen external borders clandestinely. In particular the practice of using small unseaworthy boats, which are overcrowded and without any safety equipment or illumination, has increased dramatically the number of migrants and refugees drowning in the Atlantic Ocean between Africa and the Canary Islands and in the Mediterranean Sea. It is impossible to determine the total number of migrants having lost their lives when trying to reach the shores of the EU Member States. However, it can be assumed that over the years their numbers has grown into the thousands.<sup>21</sup>

### 3.2.3. *Cross-border crime*

Criminal networks involved in the smuggling of migrants are often using the same routes and methods for cross-border crime activities, such as trafficking in human beings, illicit drug trafficking, illicit arms trafficking, trafficking in radioactive and nuclear substances, and terrorism. An effective border surveillance system both at national and European level as well as an improved interagency cooperation between border control and police authorities should contribute significantly to fighting such serious crimes at the external borders.

## 3.3. **Specific problems faced in border surveillance**

There are a number of reasons why criminal networks are often faster and more flexible in changing their routes and methods for irregular migration and cross-border crime than Member States' authorities in becoming aware of and reacting to these changed situations.

### 3.3.1. *Insufficient interagency cooperation and information sharing at national level*

Member States' authorities involved in border surveillance have set up different organisational structures at land and maritime borders. Whereas at the external land borders professional border guards, occasionally closely cooperating with police and customs, are responsible for border surveillance, different solutions have been found in each of the Member States for the question of who is responsible for the surveillance of maritime borders.<sup>22</sup>

In some Member States, up to six different authorities are directly involved in the surveillance of maritime borders, including various police forces, coast guards, customs, navies and air forces. In addition, other national agencies such as fisheries control and maritime authorities have strong interests in maritime surveillance. Consequently, structures and systems used for maritime surveillance are different in every Member State. While some Member States have established a single national maritime surveillance system serving all involved national

<sup>21</sup> A list of press reports can be found on [http://fortresseurope.blogspot.com/2006/02/immigrants-dead-at-frontiers-of-europe\\_16.html](http://fortresseurope.blogspot.com/2006/02/immigrants-dead-at-frontiers-of-europe_16.html), estimating that around 12 943 migrants died in the Mediterranean Sea and around the Canary Islands between 1988 and the end of July 2011, with 1931 alone in 2011.

<sup>22</sup> An overview can be found in Annex 4.2.

authorities, in other Member States different authorities such as border guards, maritime authorities and navies have established parallel systems and control centres. As a result of the EUROSUR development, many Member States are in the process of establishing a joint coordination centre for maritime surveillance, from which the different national authorities coordinate their activities. However, in several Member States, national authorities still operate two or more surveillance systems and corresponding control centres in parallel, without clearly determined rules and workflows for cooperation and information exchange among them. Due to the absence of binding rules at EU level, the pressure to streamline and interlink such historically grown administrative structures could be too low for leading to the necessary adaptations.

### *3.3.2. Insufficient information exchange between Member States, leading to a reduced reaction capability*

In the field of border surveillance there is not only a lack of coordination inside some Member States, but also in between Member States, due to the absence of proper procedures, networks or communication channels to exchange information. For example, in several Member States national authorities do not automatically share the location of their patrols with each other, in particular when it comes to maritime surveillance operations. The same applies to patrols of different Member States operating in neighbouring border sections or maritime areas, so that it can happen that in case of an incident no proper coordination of the patrols nearby takes place. Appropriate communication channels, workflows and operating procedures should therefore be established to enhance the cooperation between Member States.

### *3.3.3. Insufficient cooperation with neighbouring third countries*

The migration pressure presents considerable challenges not only for the Member States on the northern, but also for the third countries located on the southern shores of the Mediterranean Sea in terms of detection, apprehension, reception and further processing and readmission of migrants. It is therefore necessary to include these areas into surveillance activities and to support and to cooperate more closely with the countries of origin and the countries of embarkation of irregular migrants.

### *3.3.4. Insufficient situational awareness in the maritime domain, and in particular to detect and track small boats used for irregular migration and illicit drug smuggling*

From a technical point of view, maritime border surveillance is more demanding than land border surveillance. The maritime borders are a vast space, which is filled with a huge number of legitimate activities such as fishing, commercial shipping and pleasure boating. The fact that traffickers are currently using small wooden and glass-fibre boats for smuggling irregular migrants and illicit drugs poses a major challenge to law enforcement authorities because it is extremely difficult to detect, identify and track such small, non-metallic boats on the high seas. Technical solutions have to be found to improve the situational awareness in the maritime domain and detect these small boats, such as the use of earth observation satellites and unmanned aerial vehicles in combination with ship reporting systems. Taking into account that the practice of using small, unseaworthy boats is the main reason for the huge loss of lives of migrants at sea, such a capability would also contribute to considerably reducing the loss of lives at the external borders.

### 3.4. Does the EU have the right to act?

The EUROSUR legislative proposal would be based on Article 77 of the Treaty on the Functioning of the European Union (TFEU). According to Article 77(1)(b) and (c) TFEU the EU shall develop a policy with a view to efficient monitoring of the crossing of external borders and the gradual introduction of an *integrated management system for external borders*.<sup>23</sup> According to Article 77(2)(d) TFEU the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning any measure necessary for the gradual establishment of an *integrated management system for external borders*.<sup>24</sup> Article 12 of the Schengen Borders Code deals in general terms with border surveillance and delegates implementing powers to the Commission. The mandate of Frontex covers border management in general and therefore provides that Frontex can take measures related to operational coordination, exchange of information, risk analysis as well as research and development for border surveillance.

The establishment of EUROSUR will not result in the development of a new area of EU policy but it forms part of a policy aimed at reinforcing the management of the external borders of the Member States. Hence EUROSUR will constitute a new policy instrument which will streamline cooperation and enable systematic information exchange between Member States on border surveillance, something which currently does not exist at EU level. Once adopted, the legislative act on EUROSUR would constitute a development of provisions of the Schengen *acquis*, in which the United Kingdom and Ireland are not participating, but which is applicable to four associated countries (Norway, Iceland, Switzerland and Liechtenstein<sup>25</sup>). Schengen states are committed to maintaining common standards for external border controls.

### 3.5. Subsidiarity

In line with the *principle of subsidiarity*, EUROSUR follows a decentralised approach, with the national coordination centres for border surveillance forming the backbone of the EUROSUR cooperation. This means that in quantitative terms most information would be managed in the national coordination centres, without Frontex being able to see this information. Only selected information of strategic relevance would be shared with and analysed by Frontex. Hence EUROSUR does not affect the division of competences between the EU and its Member States. The intention is to make best use of existing national border control infrastructures in combination with operational international and European systems (e.g. AIS, SafeSeaNet) as well as recent technological developments (e.g. use of satellites).

By interlinking existing national and European systems and developing new capabilities, EUROSUR enables Member States' border control authorities and Frontex to communicate and exchange information in order to have better situational awareness at the external borders, thus bringing true added value to border surveillance. Better information sharing will help to identify targets such as boats used for irregular migration and cross-border crime more accurately and therefore allow a more targeted timely and cost-efficient use of available equipment for interception. This is an objective which cannot be sufficiently achieved by the Member States alone and which can be better achieved at Union level.

<sup>23</sup> Compare also Article 3 of the Treaty on European Union (TEU) and Article 67 TFEU.

<sup>24</sup> Compare also Article 79 TFEU on developing a common immigration policy aimed at ensuring the efficient management of migration flows and the prevention of illegal immigration and trafficking in human beings and Article 87 TFEU on police cooperation.

<sup>25</sup> Liechtenstein is expected to join the Schengen area until the end of 2011.

### 3.6. What is the baseline situation for implementing EUROSUR?

The EUROSUR project has been on-going since 2008, based on its roadmap agreed by the Council and taken forward at technical level in relation to each step of that roadmap. Significant progress has already been made and this development is expected to continue. Against this background the baseline scenario described below takes into account the progress already made in developing EUROSUR so far in general as well as the current state-of-play in relation to each of the specific problems identified. The baseline scenario with regard to the specific problems identified in sections 3.3.1 to 3.3.3 is described in sections 3.6.3 to 3.6.6.

#### 3.6.1. Technical and operational framework of EUROSUR

The 'technical and operational framework of EUROSUR' presented by the Commission in January 2011<sup>26</sup> interlinks the different steps identified in the 2008 EUROSUR roadmap in a coherent manner and identifies the short-term and long-term actions which still need to be taken for establishing EUROSUR. Therefore this framework represents the baseline for implementing EUROSUR.

The key components of the EUROSUR *technical framework* are the following:

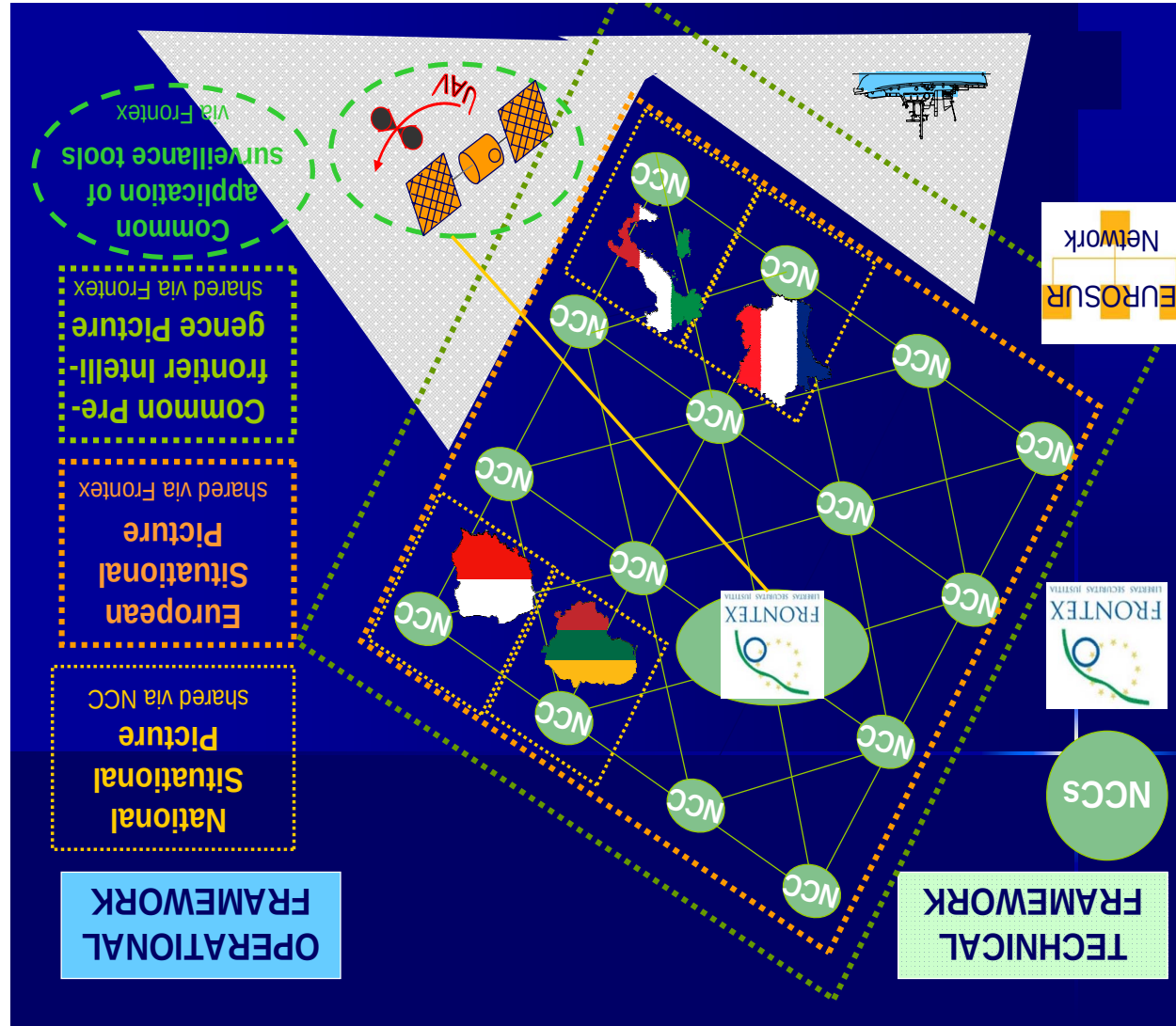
- A *national coordination centre (NCC)*, to be set up and properly managed by each Member State participating in EUROSUR, shall coordinate 24/7 the activities of all national authorities carrying out external border surveillance tasks and exchange information with the national coordination centres in other Member States, as well as with Frontex. Similar centres should also be set up in neighbouring third countries, communicating with Member States via regional networks.
- The *Frontex Situation Centre (FSC)* shall provide the national coordination centres with pre-defined services such as the common application of surveillance tools.
- The *EUROSUR network* shall provide communication tools and enable secure exchange of security sensitive data and information between the national coordination centres and Frontex, which should technically administer the network.

The EUROSUR *operational framework* should consist of rules for collecting and sharing information via the following common '*situational pictures*' and services:

- Each national coordination centre shall manage a *National Situational Picture (NSP)*, which consists of information collected from local situational pictures and from different national authorities, as well as intelligence gathered, for example, from the Common Pre-Frontier Intelligence Picture and the cooperation with third countries.
- Frontex shall manage the *European Situational Picture (ESP)*, which shall consist of aggregated information from e.g. open-source intelligence, the National Situational Pictures, the Common Pre-Frontier Intelligence Picture and the service for the common application of surveillance tools.
- Frontex shall also manage the *Common Pre-Frontier Intelligence Picture (CPIP)*, which should include information and intelligence on the pre-frontier area which is of relevance for the prevention of irregular migration and cross-border crime.

<sup>26</sup> Compare SEC(2011) 145 final of 28.1.2011.





- Via the service for the *common application of surveillance tools* (e.g. satellites, ship reporting systems), Frontex shall provide national coordination centres with surveillance information on their borders and on the pre-frontier area on a frequent, reliable and cost-efficient basis.

This common technical and operational framework shall considerably improve the *situational awareness* and the *reaction capability* of national authorities surveying the Schengen external borders.

By merging the different components into one common framework, it shall lead over time to a unified approach of actors at tactical, operational and strategic levels, allowing for informed and timely decision making and coherent execution based on the seamless and efficient sharing and exploitation of information by properly tailored processes and networks.

### 3.6.2. Scope of EUROSUR<sup>27</sup>

The EUROSUR framework should allow to focus on the relevant needs of border control authorities and on the information to be exchanged between them. This ensures that the measures adopted for the establishment of EUROSUR do not go beyond what is necessary in order to achieve the objectives identified in the next section.

Initially EUROSUR should be limited to the 18 Member States and associated countries located at the eastern and southern Schengen external borders,<sup>28</sup> because problems with irregular migration and cross-border crime mainly occur at these borders. Once EUROSUR has been established in 2013, it should be quickly extended to all 24 Schengen countries with land and maritime external borders,<sup>29</sup> taking into account that routes might shift as a result of improved surveillance at the southern and eastern borders. Air border surveillance and border checks shall be out of scope of EUROSUR for the time being.<sup>30</sup>

When carrying out border surveillance activities at the external borders, Member States' authorities have to fulfil their obligations which arise from international instruments,<sup>31</sup> including the prohibition on sending a person back to a country where he or she risks being exposed to torture or to inhuman or degrading treatment or punishment (principle of non-refoulement).<sup>32</sup> Therefore EUROSUR aims in particular at improving the detection, identification and tracking of small boats, thereby supporting search and rescue missions without prejudice to the functions and tasks of the responsible Rescue Coordination Centres.<sup>33</sup>

<sup>27</sup> An overview table on the scope of EUROSUR can be found in Annex 3.

<sup>28</sup> Norway, Finland, Estonia, Latvia, Lithuania, Poland, Slovakia, Hungary, Romania, Bulgaria, Cyprus, Greece, Slovenia, Malta, Italy, France, Spain and Portugal.

<sup>29</sup> Thus also including Sweden, Germany, Denmark, Netherlands and Belgium.

<sup>30</sup> Thus Austria, Czech Republic, Liechtenstein, Luxembourg and Switzerland would not actively take part in EUROSUR.

<sup>31</sup> United Nations Convention on the Law of the Sea (UNCLOS), 1982; Convention for the Safety of Life at Sea (SOLAS), 1974; International Convention on Maritime Research and Rescue (SAR), 1979.

<sup>32</sup> Articles 4 and 19(2) of the Charter of Fundamental Rights of the EU; Article 3 of the European Convention on Human Rights, Article 3 of the UN Convention against Torture; Article 33 of the UN Convention Relating to the Status of Refugees and the 1967 Protocol thereto.

<sup>33</sup> Compare also Council Decision 2010/252/EU of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by Frontex, OJ L 111 of 4 May 2010, 20. See Annex 1.1.



### 3.6.3. Baseline scenario for national coordination centres and the Frontex situation centre

Since 2008, Member States have been using the External Borders Fund (EBF) for setting up their national coordination centres (NCCs). In order to "support the development and implementation of the national components of EUROSUR", the EBF foresees up to 75% EU funding for "investments in establishing or upgrading a single national coordination centre, which coordinates 24/7 the activities of all national authorities carrying out external border control tasks (detection, identification, and intervention) and which is able to exchange information with the national coordination centers in other Member States".<sup>34</sup> It is up to each Member State to determine the authority responsible for the NCC, which sometimes requires intensive negotiations between different national authorities and ministries.

Table: Overview of current and planned responsibilities of NCCs<sup>35</sup>

| Responsibilities of NCCs of 24 Member States located at land and maritime external borders with regard to |                                     | Responsible | Planned | Not responsible | No reply | Not applicable |
|-----------------------------------------------------------------------------------------------------------|-------------------------------------|-------------|---------|-----------------|----------|----------------|
| Maritime border surveillance                                                                              |                                     | 13          | 5       | -               | 4        | 2              |
| Air border surveillance                                                                                   |                                     | 6           | 6       | 8               | 4        | -              |
| Land border surveillance                                                                                  |                                     | 7           | 3       | 1               | 1        | 12             |
| Border checks                                                                                             |                                     | 12          | 2       | 6               | 4        | -              |
| Coordination                                                                                              | Other national authorities          | 17          | 3       | -               | 4        | -              |
|                                                                                                           | Third countries                     | 12          | 4       | 4               | 4        | -              |
|                                                                                                           | Local/regional centres              | 14          | 2       | 4               | 4        | -              |
|                                                                                                           | Other national coordination centres | 12          | 6       | 2               | 4        | -              |
|                                                                                                           | Frontex                             | 12          | 5       | 3               | 4        | -              |
| Command and control                                                                                       |                                     | 12          | 3       | 5               | 4        | -              |
| Information exchange                                                                                      | Up to the level of EU Top Secret    | 2           | 1       | -               | 4        | -              |
|                                                                                                           | EU Secret                           | 3           | -       | -               | 4        | -              |
|                                                                                                           | EU Confidential                     | 1           | 5       | -               | 4        | -              |
|                                                                                                           | EU Restricted                       | 5           | 5       | -               | 4        | -              |
|                                                                                                           | Unclassified, but protected         | 6           | -       | -               | 4        | -              |
|                                                                                                           | Unclassified                        | 3           | -       | -               | 4        | -              |
|                                                                                                           | Handling personal data              | 9           | -       | 6               | 9        | -              |

Following a detailed questionnaire sent by the Commission in 2008, Member States and Frontex elaborated a first description of the tasks of NCCs in 2009. In parallel, Frontex carried out an assessment determining those parts of the external borders that should be covered by a stationary border surveillance system.<sup>36</sup> On the basis of these works, a *technical study* was carried out by an external contractor in 2009-2010 in order to develop the key concepts of EUROSUR, such as technical and management concepts for NCCs and national border surveillance systems, leading to a revised version of the description of the tasks of NCCs in 2010.

<sup>34</sup> Commission Decision 2007/599/EC of 27 August 2007 (EBF strategic guidelines, priority 2).

<sup>35</sup> A more detailed overview can be found in Annexes 4.1 to 4.5.

<sup>36</sup> This assessment also included a comparison with the plans presented by the Member States in the context of the External Borders Fund, showing that they generally match with the assessment.

These 'EUROSUR guidelines' are currently being used by Member States and Frontex on a voluntary basis for setting up the relevant components of EUROSUR. Using the financial support given under the External Borders Fund, between 2008 and 2010 13 out of the 18 Member States located at the southern and eastern Schengen external borders have established their NCCs, with the majority of them becoming operational in 2011. This number will increase to 16 by the end of 2011.<sup>37</sup>

The table above shows that the basic responsibilities of NCCs differ widely between Member States which is a considerable obstacle in the daily cooperation and information exchange. With regard to the 18 Member States located at the southern and eastern external borders, the table above can be summarised as follows:

As far as the responsibilities and competencies of the 18 NCCs located at the southern and eastern Schengen external borders are concerned,<sup>38</sup> 10 NCCs are already responsible and 5 NCCs are planned to become responsible for *maritime border surveillance*.<sup>39</sup> 7 of these 18 NCCs are by now responsible and 3 NCCs are intended to become responsible for *land border surveillance*.<sup>40</sup> 5 NCCs out of the 18 NCCs are responsible for *air border surveillance* and another 6 NCCs planned to become responsible for air border surveillance. However, in 6<sup>41</sup> out of the remaining 7 Member States this is not envisaged. Furthermore, out of the 18 NCCs 10 are responsible and another 2 are planned to become responsible for *border checks*, while for 5 NCCs nothing is planned in this regard.<sup>42</sup> Finally, 11 out of these 18 NCCs have already *command and control* functions, and 3 are planning to get them, while 3 Member States<sup>43</sup> exclude this possibility.

M€ 40 have been spent between 2007 and 2010 in setting up and upgrading the 13 NCCs established until the end of 2010, using national funding, but also funding from the External Borders Fund and the Schengen Facilities.<sup>44</sup>

The counterpart for the NCCs in Frontex is the *Frontex Situation Centre* (FSC) which has been set up in 2008. In the context of EUROSUR, the FSC shall serve as the single point of contact in Frontex for the information exchange and cooperation with the NCCs. The total cost of establishing the FSC amounted to M€ 2.2 between 2008 and 2010.

#### 3.6.4. Baseline scenario for the EUROSUR network and the situational pictures

The goal is to set up a secured communication network which will provide communication tools and enable electronic data exchange in order to send, receive and process information 24/7 close-to-real time between the national coordination centres as well as with Frontex. In 2009-2010 the system architecture of the EUROSUR network as well as the content of the National and European Situational Pictures and the Common Pre-Frontier Intelligence Picture have been defined in the EUROSUR technical study and in the EUROSUR guidelines.

<sup>37</sup> Greece plans to make its NCC operational in 2013. Norway could not provide a reply at this stage.

<sup>38</sup> See overview in Annex 4.1.

<sup>39</sup> Of the 4 remaining Member States, 2 (Hungary and Slovakia) do not have any maritime borders. One country (Norway) could not provide a reply at this stage.

<sup>40</sup> Of the remaining 8 Member States, 6 do not have any land border, while one (Romania) replied that its NCC is not planned to become responsible for land border surveillance and another country (Norway) could not provide a reply at this stage.

<sup>41</sup> Cyprus, France, Malta, Romania, Slovenia and Slovakia. Norway could not provide a reply at this stage.

<sup>42</sup> Norway could not provide a reply at this stage.

<sup>43</sup> France, Italy and Poland. Norway could not provide a reply at this stage.

<sup>44</sup> The costs ranged from € 22 514 in Romania to M€ 18,8 in Slovakia. An overview of the 2007-2010 NCC costs can be found in Annex 4.4.

Between November 2010 and May 2012, based on a Memorandum of Understanding Frontex carries out a pilot project in order to test the network and the information exchange via situational pictures with initially six Member States<sup>45</sup> in daily practice. This pilot project is being funded by Frontex with M€ 1,5, using an external contractor.

### 3.6.5. *Baseline scenario for the cooperation with third countries*

A well-structured and permanent cooperation and information exchange with neighbouring third countries, in particular in the Mediterranean region, is a key factor for the success of EUROSUR, but also a goal which will be achieved neither quickly nor easily.

In 2011 the EU has made EUROSUR a targeted initiative in the Thematic Programme for Migration and Asylum,<sup>46</sup> reserving considerable funding for 2011-2013 for the third countries situated along the southern and south-eastern maritime borders of the EU which accept to cooperate in the framework of EUROSUR.

A concrete example how such support could lead to an enduring and steady cooperation and information exchange between Member States and neighbouring third countries are the following three existing regional networks:<sup>47</sup>

- o *SEAHORSE* is a network between border control authorities in Spain, Portugal, Mauretania, Morocco, Senegal, Gambia, Guinea Bissau and Cap Verde for exchanging information on irregular migration and criminal activities at the Western and North-Western African coasts (Canary Islands).
- o The *Baltic Sea Region Border Control Cooperation* (BSRBCC) is a regional tool for daily inter-agency (police, customs, coast guards and border guards) interaction in the Baltic Sea to combat cross-border crime. In the BSRBCC Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Norway, Poland, Russia and Sweden are exchanging relevant information via a dedicated network called COASTNET.
- o Within the framework of the *Black Sea Littoral States Border/Coast Guard Cooperation Forum* (BSCF), border and coast guards from Bulgaria, Romania, Ukraine, Russia, Georgia and Turkey are exchanging information with regard to illegal activities via the *Black Sea Border Coordination and Information Center* (BBCIC) at Bourgas/Bulgaria.

The BSRBCC/COASTNET and BSCF/BBCIC have been gradually established since 2005 and SEAHORSE since 2006. The overall costs for setting up, upgrading and maintaining the technical infrastructure of these regional cooperation centres is M€77 in 2007-2010.

### 3.6.6. *Baseline scenario for the common application of surveillance tools at EU level*

In 2008-2009, the *GMES*<sup>48</sup> *border surveillance working group* elaborated the *GMES concept in support to EUROSUR*,<sup>49</sup> focusing in particular on the use of satellites and other surveillance tools for the tracking of vessels and the punctual monitoring of neighbouring

<sup>45</sup> Spain, France, Italy, Slovakia, Poland and Finland.

<sup>46</sup> Commission Decision C(2011)2304 of 7.4.2011 adopting the Multiannual Indicative Programme 2011-2013 for the Thematic Programme 'Cooperation with Third Countries in the areas of Migration and Asylum'.

<sup>47</sup> For further details see Annex 6.1.

<sup>48</sup> GMES (Global Monitoring for Environment and Security) is the European Initiative for the establishment of a European capacity for Earth Observation. More information can be found at [http://ec.europa.eu/gmes/index\\_en.htm](http://ec.europa.eu/gmes/index_en.htm) and <http://www.gmes.info>.

<sup>49</sup> See Annex 1.6.

third country ports and coasts, which are known as departure points for irregular migration and narcotics trafficking.

Due to the high costs and the lack of ready-made solutions only a few Member States<sup>50</sup> currently use satellites, unmanned aerial vehicles and aerostats on an occasional, usually test basis for border surveillance purposes. Since uncertainty as to the performance and operational reliability of such technologies is high, a number of FP7 funded research projects are currently going on in order to improve and verify the technological capabilities for using such surveillance tools for border security purposes.<sup>51</sup>

## 4. OBJECTIVES

### 4.1. General objectives

By establishing an information exchange and cooperation mechanism, which allows national authorities carrying out border surveillance activities and Frontex to exchange information and to cooperate at tactical, operational and strategic level, EUROSUR shall

- 1) Contribute to the management of migration flows by reducing the number of irregular migrants entering the Schengen area undetected;
- 2) Protect and save lives at the external borders by diminishing considerably the unacceptable death toll of migrants at sea;
- 3) Increase the internal security of the European Union and of the people residing in the EU by preventing serious crime at the external borders of the Schengen area;

The general objectives 1 and 3 should be seen as a contribution to providing EU citizens with an *area of freedom, security and justice* without internal frontiers, in which the free movement of persons is ensured in conjunction with measures for external border controls and the prevention and combating of crime.<sup>52</sup>

### 4.2. Specific and operational objectives

In order to achieve the general objectives, EUROSUR has two specific objectives, namely to significantly increase the *situational awareness* and *reaction capability* of the Member States' border control authorities and Frontex, so that in a best case scenario any new route or method for irregular migration and cross-border crime is identified and disrupted shortly after it has been established.

- 1) *Situational awareness* measures how the authorities are capable of detecting cross-border movements and finding reasoned grounds for control measures.<sup>53</sup> This can be accomplished by achieving the following operational objectives at national and European level:
  - a. Improved interagency cooperation by streamlining structures and interlinking systems in the law enforcement domain;

<sup>50</sup> E.g. Spain, Italy, Malta.

<sup>51</sup> See Annex 1.5.

<sup>52</sup> Article 3(2) TEU and Article 67(2) TFEU. Compare also Article 77(1)(b) and (c) and 77(2)(c) TFEU.

<sup>53</sup> Full situational awareness is only needed at tactical and operational level (e.g. in the local and regional coordination centre) in order to take real-time operational decisions. At strategic level (e.g. in the NCC and in Frontex) only a subset of the data is needed to take decisions.

- b. The use of data fusion combined with modern technological capabilities for detecting and tracking cross-border movements, in particular (small) vessels;<sup>54</sup>
  - c. Cross-sectoral information exchange with other actors in the maritime domain, such as transport, customs, fisheries control and defence;
  - d. Improved information exchange with neighbouring third countries.
- 2) The *reaction capability* measures the lapse of time required to reach any cross-border movement to be controlled and also the time and the means to react adequately to unusual circumstances. The following operational objectives should therefore be attained at national and European level:
- a. Exchange of data, information and intelligence in close-to-real time and - whenever needed - in a secure manner, thereby moving from a patrolling driven to a more intelligence driven approach based on risk analysis;
  - b. Effective management of personnel and resources, including sensors and patrols;
  - c. Effect measurement, evaluating the effect of border surveillance activities, thereby providing a new baseline for risk assessment and re-arrangement of priorities.

*Table interlinking problems, objectives and actions*

| Specific problems                                                                          | Specific objectives                                                                                                                                                                                      | Actions envisaged                                                                                                 |
|--------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Insufficient interagency cooperation and information exchange at national level.           | 1a - Streamlining structures and interlinking systems at national level.<br>2a - Effective management of personnel & resources.<br>2c - Effect measurement.                                              | Establishment of a <i>national coordination centre</i> (NCC).                                                     |
| Insufficient information exchange between Member States.                                   | 2a - Exchange of data, information and intelligence in close-to-real time.                                                                                                                               | Setting up of the <i>EUROSUR network</i> , interlinking NCCs and Frontex.                                         |
| Insufficient cooperation with neighbouring third countries.                                | 1d - Improved information exchange with neighbouring third countries.                                                                                                                                    | Interlinking EUROSUR with <i>regional networks</i> set up between Member States and neighbouring third countries. |
| Insufficient situational awareness in the maritime domain (e.g. detection of small boats). | 1b - Use of data fusion combined with technological capabilities for detecting and tracking cross-border movements.<br>1c - Cross-sectoral information exchange with other actors in the maritime domain | Setting up of a service for the <i>common application of surveillance tools</i> at EU level.                      |

## 5. POLICY OPTIONS

### 5.1. Overview of policy options

The first option to be addressed is not to take any further action at EU level. As described in the baseline in section 3.6, not taking any coordinated action at EU level would mean that the different steps identified in the 2008 EUROSUR roadmap will continue to be implemented in a non-coherent manner, resulting in overlaps and reduced efficiency when addressing the problems described in section 3.2. Furthermore, the problems described in sections 3.3 would be insufficiently addressed, because there would no clear rules on the criteria for

<sup>54</sup>

E.g. by combining data and information derived from different civilian and military ship reporting systems, patrol assets, satellites and other surveillance tools.

implementation of the individual steps as well as on the obligations of Member States and Frontex, including on how they should contribute to and benefit from EUROSUR. Hence, this option is being discarded as ineffective for achieving the objectives outlined in section 4.

The question to be answered in this impact assessment is not *which*, but *how* the different components of EUROSUR as identified in Steps 1, 2, 3, 5, 6 and 7 of the EUROSUR roadmap<sup>55</sup> should be implemented. To this end, three policy options have been identified, following a

- fully **decentralised** (policy option 1),
- partly **centralised** (policy option 2) and
- fully **centralised** (policy option 3) **approach**.

In line with Step 1 of the EUROSUR roadmap and the specific problems identified in section 3.3.1, the responsibilities to be given in the EUROSUR legislative proposal to the *national coordination centres* could include:<sup>56</sup>

- *Coordination of the surveillance of land and maritime borders* (**Policy Option 1.1**);
- *Command & control competencies for the surveillance of land and maritime borders* (**Policy Option 1.2**);
- *Command & control competencies for border control*<sup>57</sup> (**Policy Option 1.3**).

With regard to Step 2 of the EUROSUR roadmap and the specific problems identified in section 3.3.1, the different policy options for setting up the **EUROSUR network** are being assessed, taking into account whether the NCCs and Frontex use it for:

- *Decentralised and unclassified information exchange* (**Policy Option 2.1**);
- *Decentralised and classified information exchange* (**Policy Option 2.2**);
- *Centralised and classified information exchange* (**Policy Option 2.3**).

In line with Steps 6 and 7 of the EUROSUR roadmap, Policy Option 2.2 assesses also the impact of costs for including the information exchange on cross-border crime and of providing the Common Pre-frontier Intelligence Picture (CPIP).

In line with Step 3 of the EUROSUR roadmap and the specific problems identified in section 3.3.3, it is assessed whether information between the **EUROSUR network and neighbouring third countries** could be exchanged via

- *National coordination centres, serving as a 'hub' for regional networks and bilateral information exchange with neighbouring third countries* (**Policy Option 3.1**);
- *National coordination centres, serving as a 'hub' for regional networks with neighbouring third countries, with a new regional network to be set up in the Mediterranean region* (**Policy Option 3.2**);
- *Frontex only* (**Policy Option 3.3**).

<sup>55</sup> Step 4 on research for border surveillance is focusing on the development, testing and validation of the other steps before them being implemented. Step 8 is being carried out in the framework of the EU Integrated Maritime Policy and does not form part of this impact assessment.

<sup>56</sup> Policy Options 1.1 and 1.2 shall be understood as minimum requirements.

<sup>57</sup> Surveillance of land, maritime and air borders and border checks at border crossing points.



| 2011 Impact Assessment: HOW? |                                               | 2008 IA: WHAT?                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Step                         | Objective: Setting up of                      | Policy option 1                                                                                                                                                                                                                                                                         | Policy option 2                                                                                                                                                                                                                                                                                                                                 |
| 1                            | National Coordination Centres (NCC)           | 1.1 NCC coordinates the surveillance of land & maritime external borders                                                                                                                                                                                                                | 1.2 NCC has command & control (C2) competencies for the surveillance of land & maritime external borders                                                                                                                                                                                                                                        |
| 2                            | EUROSUR network                               | 2.1 Network is used for decentralised & unclassified information exchange on irregular migration at external borders; Info is shared in decentralised manner, using internet without encryption; Frontex administers the network, Frontex provides services (audio/video conferencing). | 2.2 Network is used for decentralised & classified information exchange (up to EU Restricted) on Irregular migration & serious crime at external borders; Info is shared in decentralised manner, using internet with encryption; Frontex administers the network; Frontex provides in a centralised manner services (CPIP, satellite imagery). |
| 3                            | Cooperation with neighbouring third countries | 3.1 NCCs act as a 'hub' for exchanging information between the EUROSUR network, existing regional networks and the bilateral cooperation of Member States with third countries.                                                                                                         | 3.2 NCCs act as a 'hub' for exchanging info between EUROSUR network and regional networks. An additional network is established in the Mediterranean region, complementing bilateral cooperation.                                                                                                                                               |
| 4                            | Research & development                        | Using FP7 funding, Step 4 is used for developing and testing the technical capabilities envisaged in the other steps.                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                 |
| 5                            | Common application of surveillance tools      | 4.1 This service is provided by external service providers directly to each NCC on basis of bilateral contracts.                                                                                                                                                                        | 4.2 This service is provided by Frontex in cooperation with EMSA and EUSC and funded by GMS.                                                                                                                                                                                                                                                    |
| 6                            | CPIP <sup>58</sup>                            | The impact of the CPIP is assessed under Step 2.                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                 |
| 7                            | CISE <sup>59</sup> for internal security      | The impact of the exchange of information on combating serious crime at the EU external borders between border guards and other law enforcement authorities is assessed under Step 2.                                                                                                   |                                                                                                                                                                                                                                                                                                                                                 |

58

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Common Pre-Frontier Intelligence Picture.  
Common Information Sharing Environment. The CISE for the EU maritime domain (Step 8) is developed in the framework of the EU Integrated Maritime Policy.



With regard to Step 5 of the EUROSUR roadmap and the specific problems identified in section 3.3.2, it is scrutinized whether the service for the **common applications of surveillance tools at EU level** should be provided by

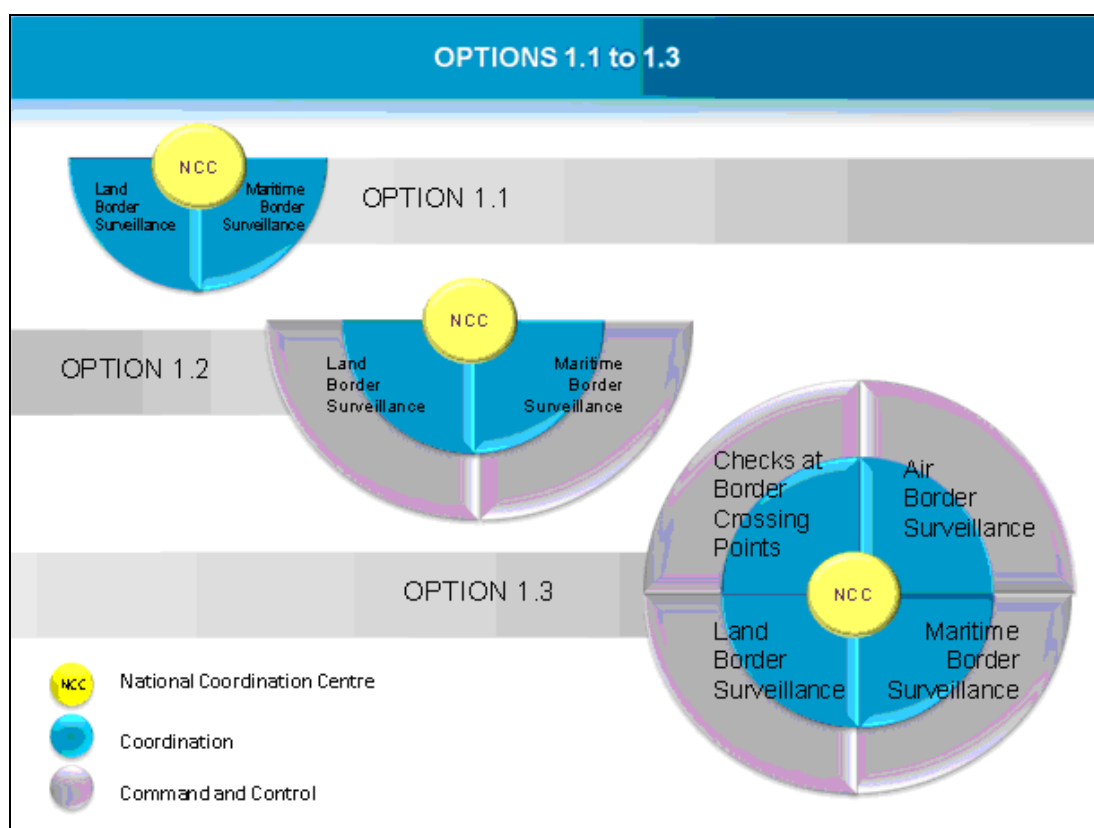
- External service providers to each concerned NCC directly (**Policy Option 4.1**);
- Frontex together with other European agencies and GMES (**Policy Option 4.2**);
- Frontex alone (**Policy Option 4.3**).

The three policy options are examined in the context of each component (national coordination centre, EUROSUR network etc.) and then compared with each other.

## 5.2. Policy options for setting up the national coordination centres

With a view to streamlining the interagency cooperation at national level, the goal is to establish one national coordination centre (NCC) for border surveillance first in each of the 18 Schengen countries located at the eastern and southern external borders of the Schengen area and later on in all 24 Schengen countries with external land and maritime borders.

*Table illustrating Policy Options 1.1 to 1.3*



The existing or planned NCCs could be categorised as follows:<sup>60</sup>

| <b>Policy options applied to 18 NCCs</b>                                                                  |                                                                                                                  |                                                                                       |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| <b>Policy Option 1.1</b><br>NCC coordinates (at least) the surveillance of land and maritime surveillance | <b>Policy Option 1.2</b><br>NCC has command & control competencies for (at least) land and maritime surveillance | <b>Policy Option 1.3</b><br>NCC has command & control competencies for border control |
| Italy, France, Netherlands, Belgium and Poland                                                            | Cyprus, Spain, Hungary, Malta, Romania, Greece, Slovenia and Slovakia                                            | Bulgaria, Estonia, Germany, Latvia, Lithuania, Portugal and Finland                   |

Since responsibilities and competencies of NCCs differ considerably from one Member State to another, there is a need to clarify and harmonise the responsibilities and competencies of NCCs and Frontex, in this manner facilitating and streamlining their daily cooperation.

#### 5.2.1. Policy Option 1.1: NCC coordinates land and maritime border surveillance

Giving the NCC a *coordination* function for all national authorities involved in border surveillance would in particular increase the situational awareness at maritime borders, taking into account that in some Member States up to six different national authorities are involved in maritime border surveillance, sometimes running parallel systems and centres. The question of who should manage the NCC is to be decided by each Member State. This question might be answered more easily in case the NCC has *only* a coordination role.

Making the NCC responsible for *land and maritime border surveillance* would take into account that routes can change quickly between land and maritime borders, as demonstrated at the Greek-Turkish border.

#### 5.2.2. Policy Option 1.2: NCC has command & control competencies for the surveillance of land and maritime borders

Under this policy option, the NCC does not only provide situational awareness of conditions, activities and developments along the external land and maritime borders, but has also *command and control* functions to ensure an immediate reaction. Command and control (C2) is the common term for the effective management of personnel and resources. Command and control functions are performed through an arrangement of personnel, equipment, communications, facilities and procedures employed by a commander in planning, directing, coordinating, and controlling forces and operations in the accomplishment of the mission.

#### 5.2.3. Policy Option 1.3: NCC has command & control competencies for border control<sup>61</sup>

Including *air border surveillance* would also cover the use of small planes for cross-border crime. In particular **Spain** is recently facing a growing number of small low-flying planes coming from Northern Africa, either landing on unmarked airfields or dropping drugs while flying over its territory. There is the risk that this practice could spread also to other Member States.

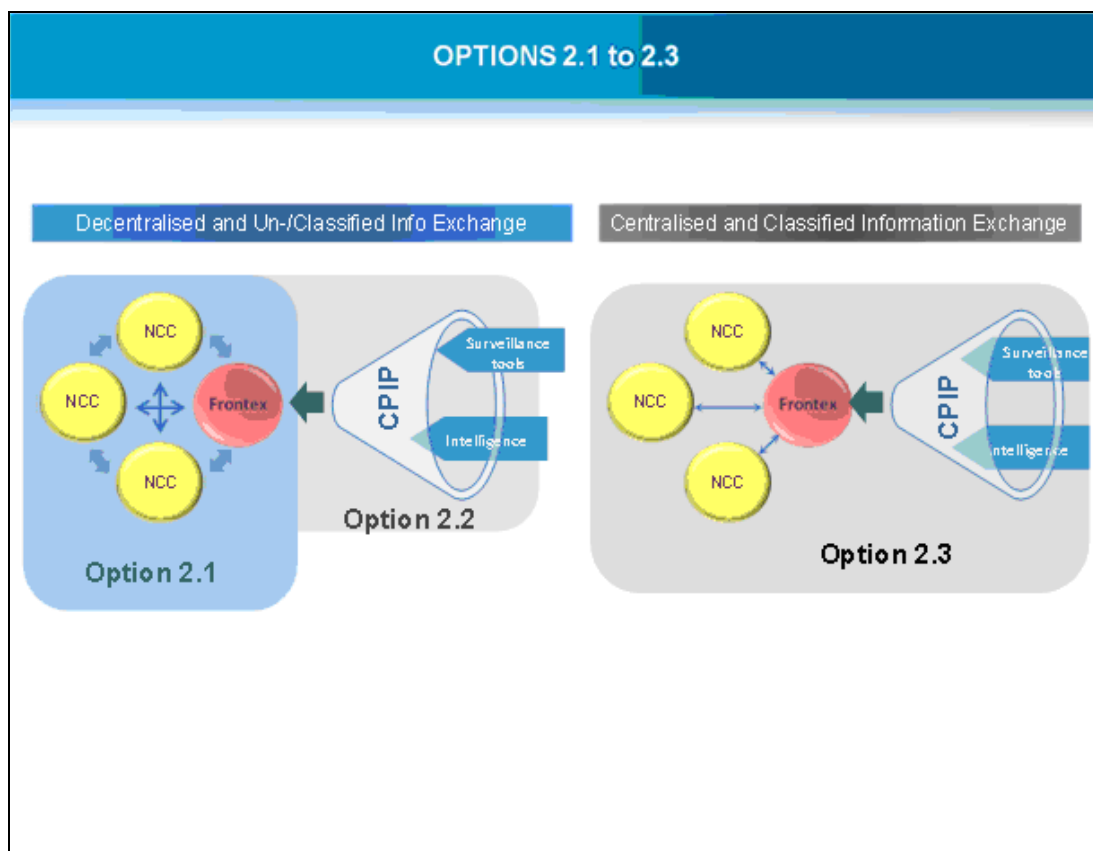
Including *border checks* would have the advantage of giving the NCC full situational awareness and reaction capability for all aspects of border control.

<sup>60</sup> Based on replies received from 20 Member States in August 2011.

<sup>61</sup> Surveillance of land, maritime and air borders and border checks at border crossing points.

### 5.3. Policy options for setting up the EUROSUR network

Table illustrating Policy Options 2.1 to 2.3



#### 5.3.1. Policy Option 2.1: Network used for decentralised & unclassified information exchange

Setting up the EUROSUR network in a decentralised manner would mean that the information would be physically managed by each NCC. From a technical point of view, the parameters of the pilot project mentioned in the baseline scenario would apply to Option 2.1, meaning that the network is

- Technically administrated by Frontex;
- Used for unclassified and decentralised information exchange on irregular migration,
- Using internet without encryption;<sup>62</sup>
- Providing communication services, such as audio/video conferencing.

However, there would be three major differences:

- o The information exchange in the EUROSUR network would be based on *EU legislation*, providing a firm and permanent legal basis instead of the *Memorandum of Understanding* signed between Frontex and the Member States participating in the pilot project.
- o Not only six, but in 2012 the *18 Schengen countries* located at the southern and eastern external borders and in 2014 all *24 Schengen countries* with land and maritime external borders would connect their NCCs to the network to exchange information.

<sup>62</sup> But password protected and using https.

- o Not only Frontex, but another 4 EU agencies<sup>63</sup> would be connected to the network in 2012 and an additional 2 European agencies<sup>64</sup> in 2014.

### 5.3.2. Policy Option 2.2: Network used for decentralised & classified information exchange

Option 2.2 would be an *extended* version of Option 2.1 and therefore using the same technical parameters. In addition, under Option 2.2 the network would be used also for exchange of

- *classified* information via *internet with encryption tools* (up to the level EU Restricted);
- information concerning *cross-border crime*;
- the *Common Pre-Frontier Intelligence Picture (CPIP)*.<sup>65</sup>

Including the possibility of exchanging classified information in a secure manner allows exchanging sensitive information related to cross-border crime and intelligence as envisaged under the CPIP.

### 5.3.3. Policy Option 2.3: Network used for centralised & classified information exchange

While again using similar technical parameters, Option 2.3 would be a *fully centralised* version of Option 2.2 for

- Sharing unclassified and classified information via Frontex (NCC – Frontex – NCC);
- Sharing information up to the level of EU Restricted.

Making Frontex responsible for a centralised information exchange, including the management of hardware and software, would facilitate the daily management and also future technical upgrades of the network.

In addition to the above mentioned sup-options, one could also consider to give the technical administration of the EUROSUR network to the Large Scale IT Agency, which is expected to become operational in autumn 2012 in order to manage the Schengen Information System II, the Visa Information System and EURODAC. Tasking this agency to administrate also the EUROSUR network could, however, considerably slow down the daily operation of EUROSUR, because the situational pictures used for exchanging information in EUROSUR need to be updated permanently and in close to-real-time. This would be the task of Frontex, which might lose precious time and resources in coordinating with the Large Scale IT Agency, also taking into account that in EUROSUR information would be exchanged in a decentralised manner and not be stored centrally. Hence this option has been discarded.

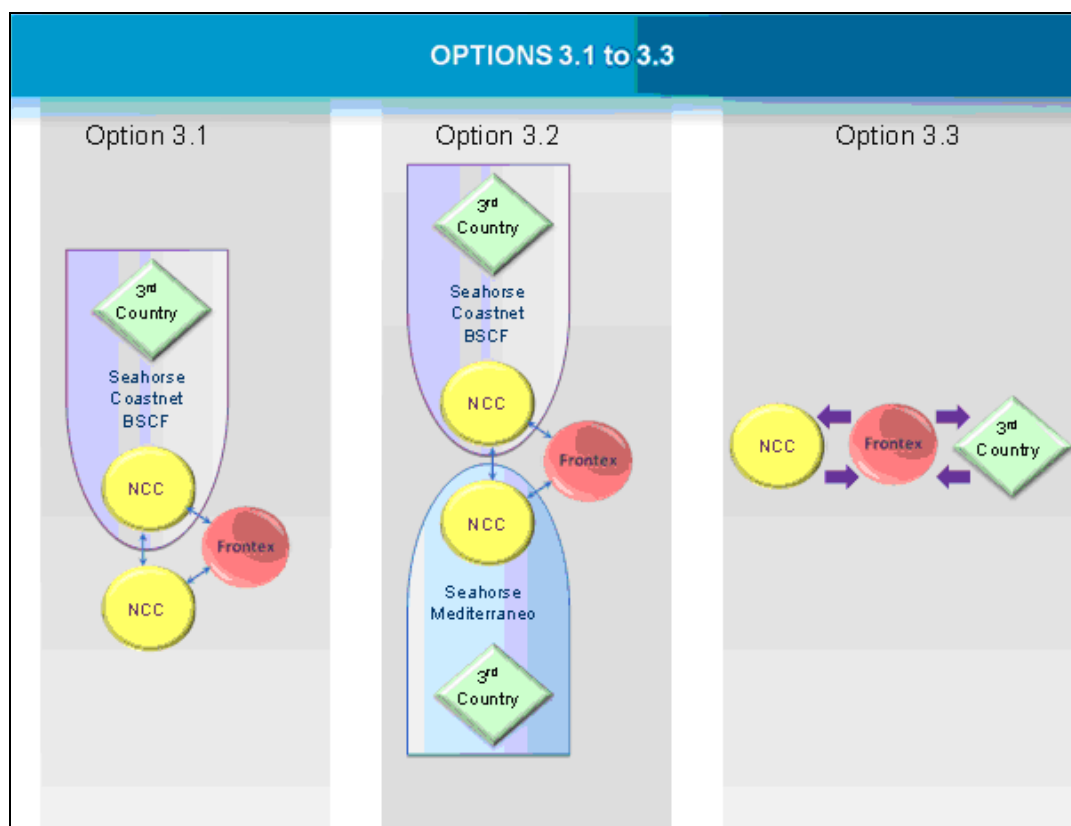
<sup>63</sup> EU Satellite Centre, European Maritime Safety Agency, European Fisheries Control Agency, EUROPOL.

<sup>64</sup> Centre de Coordination pour la lutte antidrogue en Méditerranée (CeCLAD-M) and the Maritime Analysis and Operations Centre – Narcotics (MAOC-N).

<sup>65</sup> The National Situational Pictures are supposed to be managed by the NCCs and the European Situational Picture by the Frontex Situation Centre (FSC). Therefore they are not assessed separately. Their costs have been included in the cost estimates for the NCCs and the FSC.

#### 5.4. Policy options for cooperating with neighbouring third countries

Table illustrating Policy Options 3.1 to 3.3



##### 5.4.1. Policy Option 3.1 (bilateral approach)

Under Option 3.1, the Member States' NCCs would act as a 'hub' for exchanging information between the EUROSUR network on the one hand and the Member States' information exchange with neighbouring third countries on the other hand, carried out on a bilateral basis as well as in the framework of the three regional networks mentioned above.

In comparison to the baseline scenario, Option 3.1 would bring the three existing regional networks (SEAHORSE, CoastNet, BSCF), which have been set up by Member States on their own initiative, into the EU framework, allowing to exchange information between EUROSUR and neighbouring third countries via the national coordination centres.

##### 5.4.2. Policy Option 3.2 (regional approach, including the setting up of a new network)

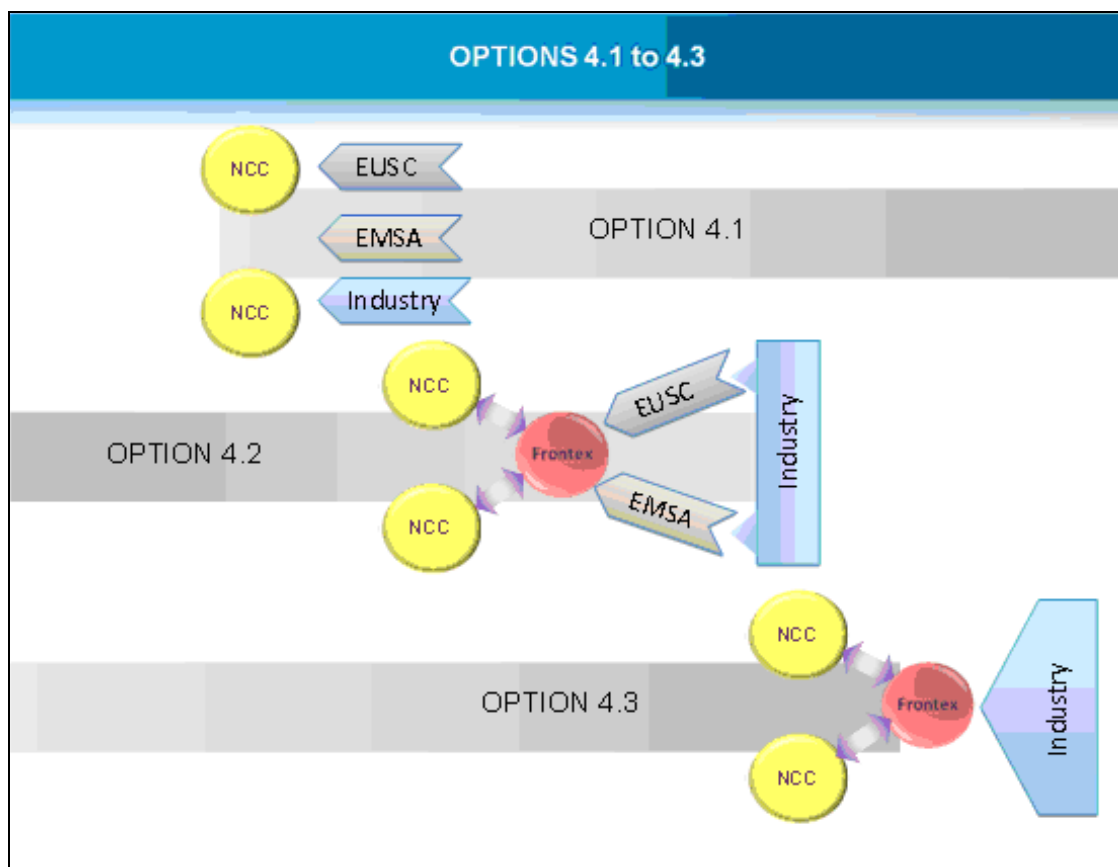
Like under Option 3.1, the national coordination centres would act as a 'hub' for exchanging information between the EUROSUR network and regional networks. In addition, a new regional network called 'SEAHORSE Mediterraneo' would be set up, enabling the Member States in the Mediterranean region, which for the time being exchange information with neighbouring third countries only on a bilateral basis, to intensify the regional cooperation.

##### 5.4.3. Policy Option 3.3 (centralised approach)

Under this option, Frontex would centralise the information exchange with neighbouring third countries by connecting them directly to the EUROSUR network, thereby replacing bilateral cooperation and the above mentioned regional networks.

### 5.5. Policy options for the common application of surveillance tools at EU level

Table illustrating Policy Options 4.1 to 4.3



#### 5.5.1. Policy Option 4.1 (bilateral approach)

Policy Option 4.1 assumes that Member States would 'work in isolation' when using tools such as earth observation satellites for border surveillance. Whereas in the baseline scenario Member States cooperate with private sector providers and national space agencies, under this option they would also take advantage of the capabilities provided by the EU Satellite Centre (EUSC) and the European Maritime Safety Agency (EMSA):

- EMSA provides technical assistance and support on maritime safety, pollution by ships and maritime security. For this purpose, EMSA operates *inter alia* systems on vessel traffic reports (LRIT, SafeSeaNet) and satellite monitoring (CleanSeaNet).
- The EUSC is an Agency of the European External Action Service. The staff of the Centre consists of image analysts, geospatial specialists and supporting personnel from EU Member States.

Under this option each NCC would have to negotiate separately with EMSA and the EUSC, which could be difficult due to the fact that border surveillance is not covered by the mandate of these two agencies. The NCCs would also have to fully cover the costs for using the services, including the setting up of dedicated communication lines. The processing of the information and the updating of the National Situational Picture would be undertaken at national level.

### 5.5.2. Policy Option 4.2 (cooperative approach)

Policy Option 4.2 would envisage that Frontex would provide for a *common application of surveillance tools* (e.g. satellites, unmanned aerial vehicles, aerostats, ship reporting systems etc.) at EU level. This option has been described in detail in the *Concept of operations (CONOPS) for the common application of surveillance tools*, which has been finalised by the GMES border surveillance group in July 2011.<sup>66</sup> The service described in the CONOPS would allow Frontex to provide NCCs via the EUROSUR network with surveillance information on a frequent, reliable and cost-efficient basis. Frontex would closely cooperate with EMSA and the EUSC making best use of already existing operational capacities, thereby avoiding duplication and extra costs. The financial costs for this European service would be covered initially by Frontex and later on by GMES.

### 5.5.3. Policy Option 4.3 (centralised approach)

Under this option, the services described in the CONOPS would be provided only by Frontex. Frontex would contract directly private sector service providers, because it would not be cooperating with the EUSC and EMSA.

## 6. ASSESSMENT OF THE IMPACTS OF POLICY SUB-OPTIONS

### 6.1. Assessment criteria

Each sub-option in the policy options is screened according to the following criteria:

- 1. Effectiveness:** The extent to which the proposal can be expected to achieve the general, specific and operational objectives.
- 2. Consistency:** The extent to which options are consistent with the overall EUROSUR approach, other EU policies and activities, including their acceptance by Member States.
- 3. Costs:** The extent to which the general policy objectives can be achieved for a given level of resources/at the least cost (cost-effectiveness) as well as the extent to which costs could be covered by EU financial programmes and by Member States.
- 4. Impact on fundamental rights,** in particular on the protection of personal data.

Taking into account that the different components of EUROSUR concern mainly interagency cooperation and information, the environmental impact is only marginal. No legal information obligations except the ones mentioned in Chapter 8 are envisaged.

As far as the economic impact is concerned, the decentralised step-by-step approach in EUROSUR could possibly have a favourable impact on small and medium sized enterprises, because the implementation is done largely by the individual Member States and the Frontex, with the result that a multitude of smaller contracts will be concluded in line with the EU public procurement rules. Since this approach has been followed for all suboptions, the economic impact is similar for all of them.

For each of the sub-options described in section 5, the anticipated impact has been assessed against these criteria on a nine-point scale, using the following symbols:

|     |                      |
|-----|----------------------|
| - - | Negative impact/cost |
|-----|----------------------|

<sup>66</sup> See Annex 1.6.



|    |                                    |
|----|------------------------------------|
| -  | Slightly negative impact/cost      |
| 0  | Baseline or equivalent to baseline |
| +  | Slightly positive impact/savings   |
| ++ | Positive impact/savings            |

The cost estimates provided herein have been developed on the basis of data provided by Member States, EU agencies and the private sector and verified by the external contractor for the technical study assessing the financial impact of EUROSUR (GHK). They constitute a best estimate of costs of implementing the policy options under consideration on the basis of their description in the 2008 EUROSUR roadmap and subsequent technical documents. Adjustments to the scope, organisational and governance structures, technical requirements, nature of the provision of services and phasing of implementation of the EUROSUR roadmap would be expected to lead to changes in the costs of providing those services.

## 6.2. Sub-options 1.1 to 1.3 for national coordination centres

### *Comparative assessment of Policy Options 1.1 to 1.3*

| The NCCs and Frontex have the following functions:           | Effectiveness | Consistency | Costs | Fundamental rights |
|--------------------------------------------------------------|---------------|-------------|-------|--------------------|
| Baseline scenario: Different functions in each Member State  | 0             | 0           | 0     | 0                  |
| 1.1. Coordination of land and maritime border surveillance   | +             | ++          | ++    | +                  |
| 1.2. Command & control for land maritime border surveillance | ++            | .-          | -     | +                  |
| 1.3. Command & control for border control <sup>67</sup>      | ++            | .-          | --    | +                  |

#### 6.2.1. Effectiveness

In comparison to the baseline scenario, all three sub-options have a positive impact because they clearly contribute to achieving the general objectives of reducing irregular migration, the loss of migrants at sea and cross-border crime. However, there are differences with regard to improving the *situational awareness* and the *reaction capability*:

Taking into account the multitude of national authorities involved in maritime border surveillance, limiting the role of the NCC to *coordination* functions - as envisaged in Option 1.1 - would be more easily accepted by competing authorities and would improve their willingness to participate in or cooperate with such a centre, in particular when it comes to civil-military cooperation. Therefore Option 1.1 would be the preferred option for promoting interagency cooperation and cross-sectoral information exchange, thereby increasing considerably the overall *situational awareness*.

On the other hand, Option 1.2 would have clear advantages over Option 1.1 when it comes to the *reaction capability*: Giving all NCCs *command & control* functions would allow for a more rapid, efficient and cost-effective response to an identified threat than giving the NCC only a coordination role.

<sup>67</sup> Land, maritime and air border surveillance as well as checks at border crossing points.

For example, putting the NCC on top of a centralized command structure, combined with a decentralized execution, would ensure that all available national personnel and resources would be used in the most efficient manner to react in a crisis situation. Finally, a NCC with such functions would be in a better position for evaluating the effects of the measures taken. However, during the discussions in 2008-2011 several Member States have clearly expressed their concern that in case the NCC would have *command & control* functions, not all authorities in border surveillance (e.g. navies) would agree to cooperate, which the result that the objectives of EUROSUR would be undermined.

Including *air border surveillance* and *border checks* as proposed in Option 1.3 would have in principle the advantage of giving the NCC a better *situational awareness* for all aspects of border control. However, air border surveillance is usually a military competence. Furthermore, a some Member States rejected this option during the discussions in 2008-2011, because in their national administrations the competencies for border surveillance (e.g. navy, coast guard) and border checks (e.g. police) are strictly divided, making it difficult to improve interagency cooperation and cross-sectoral information exchange when the NCC has command & control functions.<sup>68</sup>

#### 6.2.2. Consistency

Option 1.1 is fully consistent with the overall EUROSUR approach, which aims at establishing an information exchange and cooperation mechanism for all authorities involved in border surveillance. Giving the NCCs command & control functions as envisaged in Options 1.2 and 1.3 could not only undermine this aim, but could also be regarded as interfering into the competencies of other policy fields.

This is also one of the main reasons why during the discussions in the EUROSUR Member States' expert group in 2008-2010 several Member States fiercely rejected the option of giving NCCs *command and control* competences.

However, Option 1.1 should be seen as a minimum requirement, which would not prevent Member States from giving their *command and control* competencies as it was already done or is planned in a majority of Member States.

#### 6.2.3. Costs

With regard to the baseline scenario, Member States estimated that the costs for setting up, upgrading and maintaining their NCCs amount to M€ 309 in 2011-2020.<sup>69</sup> However, these figures do not provide a firm basis for proper cost estimates, because Member States have given or are planning to give different responsibilities and competences to their NCCs, which are in different stages of implementation. Taking into account that they have provided complete and well-justified cost estimates, for Option 1.1 the NCCs of France and Belgium, for Option 1.2 the NCCs of Cyprus and Slovakia and for Option 1.3 the NCC of Finland have been selected as a basis for calculating the overall cost estimates. The cost estimates for the Frontex situation centre (FSC) have been provided by Frontex.<sup>70</sup>

<sup>68</sup> A fourth option – giving the NCC a coordination function for border control, including border checks – has not been assessed, because in all Member States border guards/police, which always have a centralised command structure, are responsible for border checks.

<sup>69</sup> For the NCC cost estimates provided by Member States in August 2011 in the framework of the technical study assessing the financial impact of establishing EUROSUR, see Annex 4.6. The 2017-2020 figures have been based upon the 2016 figures as provided by Member States.

<sup>70</sup> For the calculation of the NCC cost estimates see [Annex 4.7](#). For the FSC cost estimates see [Annex 4.8](#).

*Cost comparison between policy options 1.1 to 1.3 (2011-2020)*

|                         | <b>Policy Option 1.1<br/>Decentralised Option</b> | <b>Policy Option 1.2<br/>Partly centralised<br/>option</b> | <b>Policy Option 1.3<br/>Centralised option</b> |
|-------------------------|---------------------------------------------------|------------------------------------------------------------|-------------------------------------------------|
| NCC costs <sup>71</sup> | M€ 99,7                                           | M€ 271,6                                                   | M€ 610,4                                        |
| FSC costs               | M€ 95,5                                           | M€ 129,8                                                   | M€ 136,9                                        |
| <b>Total costs</b>      | <b>M€ 195,2</b>                                   | <b>M€ 401,4</b>                                            | <b>M€ 747,3</b>                                 |

The *financial costs* needed in 2011-2020 for setting up, upgrading and maintaining such centres in the 24 Member States and associated countries located and land and maritime Schengen external borders and for the FSC are estimated to amount to M€ 195,2 for option 1.1, M€ 401,4 for option 1.2 and M€ 747,3 for option 1.3.

#### 6.2.4. Fundamental rights

The information exchange and cooperation mechanism as envisaged under EUROSUR does not involve the *handling of personal data*. However, several NCCs intend to handle personal data, in particular when the NCC is also made responsible for border checks as proposed under Option 1.3. But also NCCs set up in line with Options 1.1 and 1.2 might - in the context of border surveillance - handle personal data at national level, for instance when collecting data on people related to a suspicious vessel being tracked (ownership, operators, passengers, crew, agents, etc.).

However, under all three sub-options it might be difficult to guarantee that the any handling of personal data is fully excluded, in particular when information is being sent from the national to the European level. To ensure that the principles of personal data protection law applicable in the European Union are being observed<sup>72</sup>, safeguards should be introduced to guarantee that personal data is processed fairly and lawfully, collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. It also has to ensure that the processing of personal data is adequate, relevant and not excessive in relation to purposes for which they are collected and processed. For Frontex the given legal limitations apply.<sup>73</sup>

### 6.3. Sub-options 2.1 to 2.3 for the EUROSUR network

*Comparative assessment of Policy Options 2.1 to 2.3*

| The EUROSUR network is being used by the NCCs and the FSC for:  | <b>Effectiveness</b> | <b>Consistency</b> | <b>Costs</b> | <b>Fundamental rights</b> |
|-----------------------------------------------------------------|----------------------|--------------------|--------------|---------------------------|
| Baseline scenario                                               | <b>0</b>             | <b>0</b>           | <b>0</b>     | <b>0</b>                  |
| <b>2.1.</b> Decentralised and unclassified information exchange | +                    | +                  | -            | <b>0</b>                  |
| <b>2.2.</b> Decentralised and classified information exchange   | ++                   | ++                 | --           | +                         |
| <b>2.3.</b> Centralised and classified information exchange     | ++                   | --                 | --           | ++                        |

<sup>71</sup> For all 24 Schengen countries with land and maritime external borders.

<sup>72</sup> Cf. Directive 95/46/EC (OJ L 281, 23.11.1995, p. 31); Regulation (EC) No 45/2001 (OJ L 8, 12.1.2001, p. 1); Council of Europe Convention of 28.1.1981 (ETS 108).

<sup>73</sup> For Frontex the given legal limitations apply. See Articles 11a ff of Regulation (EU) No .../2011 of ... amending Council Regulation No 2007/2004 establishing Frontex, OJ ...

### 6.3.1. Effectiveness

In comparison to the baseline scenario, under which a network is currently being set up on a pilot basis between Frontex and six Member States, all three options would improve the effectiveness of this pilot network by further developing it. When comparing Option 2.1 with Option 2.2, the following can be concluded:

The limitation to unclassified information exchange in Option 2.1 would largely exclude the information exchange on cross-border crime, which is usually regarded as sensitive information. This means that the general objective of *preventing cross-border crime* would not be met under Option 2.1, which can therefore be discarded.

The encryption of the data flow under Option 2.2 would allow the Member States to share more sensitive information including, once the system is accredited, EU Restricted data, thereby improving the *situational awareness* at the external borders. The possibility for a classified information exchange is also a pre-condition for exchanging intelligence on developments and events occurring in the pre-frontier area, as envisaged under the Common Pre-Frontier Intelligence Picture (CPIP). Adding the CPIP services and products enables the sharing of information and intelligence on threats emerging in the pre-frontier area, thereby giving the border control authorities additional time for coordinating necessary counter-measures, which would considerably improve their *reaction capability*.

However, Option 2.2 is more demanding and time consuming to manage than Option 2.1, requiring Frontex to set up and maintain a number of services in close-to-real time. The benefits of Option 2.3 over Option 2.2 are mainly linked to its effectiveness: A centralised system allows a better control of the data flow between Member States. It is also easier to query one centralised database than to broadcast a query to all NCCs, thereby enabling the exchange and fusion of data, information and intelligence in close-to-real time.

### 6.3.2. Consistency

The disadvantages of Option 2.3 in comparison to Option 2.2. are the lack of consistency: The overall system architecture of EUROSUR follows a decentralised *federation of systems* approach. The decentralised approach in Option 2.2 promotes the cooperation between Member States at operational and regional level, while avoiding an information overload in Frontex, thereby possibly slowing down the *reaction capability*. Even with considerably increased human and financial resources, Frontex might not be able to deliver such the centralised network solution envisaged under Option 2.3 (and also under Option 3.3), thereby putting at risk achieving the general objectives. Several Member States have difficulties to accept to store their information centrally on a system that they do not manage.<sup>74</sup>

### 6.3.3. Costs

The *financial costs* in 2011-2020 for setting up and maintaining the EUROSUR network in line with the decentralised Option 2.1 are estimated to amount to M€ 42. These costs would increase to M€ 46 for the partly centralised Option 2.2 and to M€ 49 for the centralised Option 2.3.<sup>75</sup>

#### *Cost comparison between policy options 2.1 to 2.3 (2011-2020)*

| Policy Option 2.1 | Policy Option 2.2 | Policy Option 2.3 |
|-------------------|-------------------|-------------------|
|-------------------|-------------------|-------------------|

<sup>74</sup> Instead of a centralised repository the central part could be limited to a central repository of indexes. Such a system would require a lower volume of data transfer and lower central database capability and it could still be regarded as a decentralised system.

<sup>75</sup> For detailed cost estimates see Annexes 5.1 to 5.3.

|                                               | Decentralised option | Partly centralised option | Centralised option |
|-----------------------------------------------|----------------------|---------------------------|--------------------|
| Network costs                                 | M€ 42,4              | M€ 46,74                  | M€ 49,32           |
| CPIP costs<br>(Frontex<br>RAU <sup>76</sup> ) | €0                   | M€29, 29                  | M€ 29,29           |
| <b>Total costs</b>                            | <b>M€ 42,4</b>       | <b>M€ 76,03</b>           | <b>M€ 78,61</b>    |

These estimates include the costs for setting up, upgrading and maintaining the EUROSUR network and extending it from 6 to 18 NCCs in 2012 and to another 6 NCCs in 2014. Furthermore, the estimate takes also into account the costs for an extension from 1 EU agency (Frontex) to 4 other EU agencies<sup>77</sup> in 2012 and additional 2 European agencies<sup>78</sup> in 2014.

The network cost estimates between the three options differ only slightly, which makes Options 2.2 and 2.3 more interesting, since they provide considerable added value with relatively little additional costs.

The *Common Pre-Frontier Intelligence Picture* (CPIP) will consist of an event, operational and analytical layer managed by Frontex.<sup>79</sup> The costs for the FSC in providing the event and operational layers of the CPIP are already included in the cost estimates for the FSC under Policy Options 1.1 to 1.3. Therefore only the estimated costs of the analytical layer of the CPIP, which will be provided by Risk Analysis Unit (RAU) of Frontex, are shown under Options 2.2 and 2.3, amounting to M€ 29.<sup>80</sup>

#### 6.3.4. Fundamental rights

The handling of personal data under Option 2.1 is excluded, because the network is unclassified. The accreditation process of a protected network as envisaged under Options 2.2 and 2.3 ensures that rules and procedures would be in place not only for the handling of security sensitive data, but sensitive data in general, such as the handling of personal data.

In the context of EUROSUR the focus is on exchanging operational information, whereas the exchange of personal data is not envisaged. In case the EUROSUR network would exceptionally be used for exchanging personal data on the basis of existing legislation, the limitations and safeguards for the handling of personal data mentioned in Section 6.2.4 would fully apply. From a data protection standpoint, centralising the data as envisaged under Option 2.3 has advantages because it means that there is no need to duplicate it on multiple national systems.

#### 6.4. Sub-options 3.1 to 3.3 for cooperation with third countries

##### *Comparative assessment of Policy Options 3.1 to 3.3*

<sup>76</sup> Risk Analysis Unit.

<sup>77</sup> EU Satellite Centre, European Maritime Safety Agency, European Fisheries Control Agency, EUROPOL.

<sup>78</sup> Centre de Coordination pour la lutte antidrogue en Méditerranée (CeCLAD-M) and the Maritime Analysis and Operations Centre – Narcotics (MAOC-N).

<sup>79</sup> For CPIP concepts see Annex 1.7.

<sup>80</sup> For detailed cost estimates on the CPIP see Annex 5.4.

| Information between the EUROSUR network and third countries is exchanged via: | Effectiveness | Consistency | Costs | Fundamental rights |
|-------------------------------------------------------------------------------|---------------|-------------|-------|--------------------|
| Baseline scenario: 3 regional networks outside EU framework                   | 0             | 0           | 0     | 0                  |
|                                                                               | +             | ++          | 0     | 0                  |
| 3.1. NCCs as 'hub' to the regional networks                                   | ++            | ++          | -     | 0                  |
|                                                                               | ++            | --          | --    | 0                  |
| 3.2. Like 3.1, plus a new regional network for the Mediterranean              |               |             |       |                    |
| 3.3. Frontex only, replacing the regional networks                            |               |             |       |                    |

#### 6.4.1. Effectiveness

In comparison to the baseline scenario, Option 3.1 would lead to a considerable improvement of the situational awareness in the Baltic Sea, the Black Sea and in the Atlantic Ocean around the Canary Islands, because the three existing regional networks SEAHORSE, CoastNet and BSCF, which have been established outside the EUROSUR framework, would be interlinked with the EUROSUR network in an indirect manner, with the NCCs serving as a 'hub' for the information exchange.

Option 3.1 is also the easiest one to establish in the short-term, since it builds on these three existing networks and does not reconsider these cooperation mechanisms established by Member States with third countries since 2005-2006. Especially it would also respect the fact that different solutions have been found with regard to the question which centre in these regional networks should be responsible for ensuring the information exchange with one or several third countries: For SEAHORSE and the BSCF, regional coordination centres have been established for this purpose, which would be linked under Option 3.1 to the NCC in which they are located. In the CoastNet network, no such centre exists, but information is being exchanged in a decentralised manner between the NCCs.

However, Option 3.1 would entail a less coherent approach in the cooperation with neighbouring third countries in the Mediterranean region, which would undermine the three general objectives of EUROSUR in this region.

Option 3.2 is the preferred option with regard to effectiveness, because it delivers the capability required for EUROSUR to exchange surveillance information and cooperate with third countries also in the Mediterranean region while being the most cost-efficient. Under the leadership of Spain, Italy, Malta, Portugal and Cyprus are currently preparing a project proposal for a 'SEAHORSE Mediterraneo' network, which would enable the northern African countries and Member States to exchange information on irregular migration and cross-border crime in the Mediterranean region. Option 3.2 is more challenging than Option 3.1, because it requires the agreement of the northern African countries to join the 'SEAHORSE Mediterraneo network'.

Option 3.3 would offer more potential than the other two options in terms of information management, allowing for a centralised and possibly classified information exchange. However, Option 3.3 would be even more difficult to achieve than Option 3.2, because Frontex would have to re-negotiate also all the agreements concluded between Member States



and ten third countries under the networks CoastNet, BSCF and SEAHORSE.<sup>81</sup> Consequently, it would achieve the general objectives of EUROSUR only in the long-term.

#### 6.4.2. Consistency

Options 3.1 and 3.2 build largely on existing capabilities, allowing Member States and third countries to take into account regional priorities and specificities. Option 3.3 is not in line with the EUROSUR approach of making best use of existing infrastructures and systems. Furthermore, making Frontex the 'hub' for the information exchange between Member States and third countries – as envisaged under Option 3.3 - has been rejected by Member States when discussing this issue in the relevant working groups in 2010-2011.

#### 6.4.3. Costs

##### *Cost comparison between policy options 3.1 to 3.3 (2011-2020)*

|                    | <b>Policy Option 3.1<br/>Decentralised option</b> | <b>Policy Option 3.2<br/>Regional option</b> | <b>Policy Option 3.3<br/>Centralised option</b> |
|--------------------|---------------------------------------------------|----------------------------------------------|-------------------------------------------------|
| <b>Total costs</b> | <b>M€ 0,0</b>                                     | <b>M€ 5,37</b>                               | <b>M€ 25,29</b>                                 |

There is no cost related to Option 3.1, because from a financial point of view it does not constitute a change from the baseline, since a connection from all three regional networks with their respective NCCs was established before the end of 2011. Concerning Option 3.2, the costs for establishing and maintaining the SEAHORSE Mediterraneo in 2011-2020 between three third countries and Member States in the region are estimated at M€ 5,37.<sup>82</sup>

With regard to Option 3.3, the costs for replacing the three regional networks by the EUROSUR network are around M€ 25,29, taking into account the cost estimates elaborated for Policy Option 2.2 and assuming that about 15 third countries would be connected directly to the EUROSUR network. The decommissioning costs for the existing networks have been estimated to 10% of the annual average baseline costs of the three networks<sup>83</sup>.

#### 6.4.4. Fundamental rights

Under Option 3.1 Member States' authorities are exchanging in the regional networks SEAHORSE, CoastNet and BSFC operational information, but no personal data with neighbouring third countries.

The same would apply to Options 3.2 and 3.3. Cooperating with third countries in order to prevent irregular migrants from entering the Schengen area undetected could have a significant negative impact on fundamental rights in case the third country authorities use such information to identify persons or groups of persons which are likely to be subject to torture, inhuman and degrading treatment or any other violations of fundamental rights.

The legislative proposal on EUROSUR must therefore provide the appropriate safeguards in order to prevent such a situation.

### 6.5. Sub-options 4.1 to 4.3 for the common application of surveillance tools

#### *Comparative assessment of Policy Options 4.1 to 4.3*

<sup>81</sup> Russia, Ukraine, Georgia, Turkey, Morocco, Mauretania, Senegal, Cape Verde, Gambia and Guinea Bissau. For details see Annex 6.1.

<sup>82</sup> The concerned countries are not named, because negotiations are still going on.

<sup>83</sup> This assumption is in line with the standard assumption for calculation decommissioning costs in the IT industry,



| The service for the common application of surveillance tools at EU level is provided by: | Effectiveness | Consistency | Costs | Fundamental rights |
|------------------------------------------------------------------------------------------|---------------|-------------|-------|--------------------|
| Baseline scenario                                                                        | 0             | 0           | 0     | 0                  |
| 4.1. External service providers to each concerned NCC directly                           | +             | --          | --    | -                  |
| 4.2. Frontex together with EMSA and EUSC                                                 | ++            | ++          | -     | +                  |
| 4.3. Frontex alone                                                                       | ++            | -           | -     | +                  |

#### 6.5.1. Effectiveness

As described in the baseline scenario, due to the high costs and the lack of ready-made solutions only a few Member States currently use satellites for border surveillance purposes, utilizing private sector providers and national space agencies. Due to a diversified approach of Member States the overall coverage and therefore detection and response to relevant threats would be less effective.

Option 4.1 would envisage that Member States use existing capabilities established by the EU Satellite Centre (EUSC) and the European Maritime Safety Agency (EMSA). The benefits of cooperating with the EUSC and EMSA would be as follows: The EUSC could help in particular with regard to the detection and identification of small boats leaving third-country coasts, which requires very high resolution imagery. The availability of such imagery is restricted, because it is often collected for national defence purposes. Therefore it is not always available and if so, under strict license conditions. The added value of EMSA is that it manages ship reporting systems, such as SafeSeaNet, containing AIS data that can be to a large extent commercially purchased, but (unlike in SafeSeaNet) does not have quality control. LRIT data is owned by Flag States (governments) and is not commercially available. This means that the remote maritime traffic picture cannot be composed in a similar way by commercial companies since access to data is limited.

However, under Option 4.1 there would be still a considerable risk of duplication of efforts, both between the two agencies which have developed operational services for the use of satellite imagery as well as between Member States, because they would task EMSA and the EUSC in parallel and without coordination among them.

Option 4.2 would be even more efficient than Option 4.1, because Frontex would coordinate the requests coming from the national coordination centres as well as the services to be provided from the EUSC and EMSA, while combining it with other surveillance activities, such as Frontex joint operations and the use of Frontex owned technical equipment. Such a coordinated approach could in particular improve the capability to detect and track small vessels used for irregular migration and cross-border crime.

Member States have shown a clear preference for Option 4.2, which the result, that a Concept of Operations for the common application of surveillance tools has been elaborated in 2011,<sup>84</sup> which shall be tested between Frontex, EMSA and the EUSC in 2012.

<sup>84</sup> See Annex 1.6.

In Option 4.3 Frontex would not take advantage of existing capabilities set up by the EUSC and EMSA, but establish the service for the common application of surveillance tools on its own. Since it is likely to take considerable time for Frontex to accumulate the same knowledge and expertise as the EUSC and EMSA, it would be difficult to implement Option 4.3 and to achieve full operational effectiveness in the short to mid-term.

#### 6.5.2. Consistency

The biggest advantage of Options 4.1 and 4.2 would be that it takes into account that substantial investments in space infrastructure and know-how already undertaken by GMES/ESA, EMSA and the EUSC. Option 4.2 would be more consistent with the objective of promoting interagency cooperation than Options 4.1 and 4.3, envisaging a European capability for the *common application of surveillance tools* which could not only be used for border surveillance, but also for other purposes, such as law enforcement and defence and thereby representing an important component in establishing the common information sharing environment for the EU maritime domain<sup>85</sup>. Due to its multi-purpose and cross-sectoral approach, EU funding provided by the GMES programme for such a service can be justified.

#### 6.5.3. Costs

| <i>Cost comparison between policy options 4.1 to 4.3 (2011-2020)</i> |                                                   |                                                            |                                                 |
|----------------------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------|-------------------------------------------------|
|                                                                      | <b>Policy Option 4.1<br/>Decentralised option</b> | <b>Policy Option 4.2<br/>Partly centralised<br/>option</b> | <b>Policy Option 4.3<br/>Centralised option</b> |
| <b>Total</b>                                                         | <b>M€ 80,5</b>                                    | <b>M€ 62,1</b>                                             | <b>M€ 62,3</b>                                  |

The total costs in 2012-2020 for Option 4.1 are estimated at M€ 80, with almost similar amounts for Option 4.2 (M€ 62,1) and Option 4.3 (M€ 62,3).<sup>86</sup>

The costs of Option 4.1 are not only higher, but this option is not cost-efficient, since the processing of data would be undertaken at national level, which implies a multiplication of staff, activities and associated fixed costs (i.e. buildings, offices and equipment), with the result that the different NCCs would replicate what could be done better at EU level. Option 4.2 would build not only on the existing experience, know-how and capabilities of EMSA, EUSC and GMES, but existing contracts with service providers and data distributors could be used, involving cost reductions. In the long-term, Option 4.3 provides potential in benefiting from significant economies of scale because of having a single centralised actor (Frontex), which also explains why the cost estimates are almost identical with Option 4.2, which largely builds on existing capabilities.

#### 6.5.4. Fundamental rights

Option 4.1 would also have the disadvantage that legal frameworks may not be established to enable commercial operators to monitor activities in third countries and store information in line with data protection laws.

<sup>85</sup> Step 8 of the 2008 EUROSUR roadmap. Compare Commission Communications COM(2009) 538 final of 15.10.2009 and COM(2010) 584 final of 20.10.2010.

<sup>86</sup> For detailed cost estimates see Annexes 7.1 to 7.3.

## 7. COMPARISON OF OPTIONS AND IDENTIFICATION OF PREFERRED POLICY OPTION

In line with the assessment in section 6, the following options would be the preferred ones:

With regard to the establishment of NCCs, Option 1.1 is the preferred option, because it does not require Member States to restructure their national administrations and thus could be easily implemented. However, Option 1.1, giving the NCCs coordination functions for land and maritime border surveillance, should be regarded only as a minimum requirement, not preventing Member States from giving their NCCs additional competencies as discussed under Options 1.2 and 1.3.

Following the decentralised approach for setting up EUROSUR, the preferred policy option for the EUROSUR network is Option 2.2. Frontex is already setting up the EUROSUR network on a pilot basis with selected Member States, focusing currently on the exchange of unclassified information. The security accreditation for exchanging information at the level of EU Restricted is a long process, which might lead to delays. This choice also takes into account the relatively small difference in network costs and the need for exchanging sensitive information when setting up the Common Pre-Frontier Intelligence Picture.

Taking into account the urgent need for enhancing the situational awareness and reaction capability for border control in the Mediterranean region, Option 3.2 provides the best answer on how to promote the cooperation with neighbouring third countries. However, the willingness of northern African countries to cooperate is a pre-condition for the implementation of Option 3.2.

For the common application of surveillance tools, Option 4.2 is the option providing most added value. The testing and validation of the cooperation between Frontex, EMSA and the EUSC is planned for 2012 as well as foreseen in a number of FP7 projects starting in 2013. It is envisaged for this service to be funded by the GMES programme as of 2014.

The options selected above have also been the ones preferred by Member States when developing the different steps and components of EUROSUR in 2008-2011. Taking into account that EUROSUR is supposed to be set up in a decentralised manner, EU legislation would guarantee that each of the steps and components would be implemented in the same way. Furthermore, it would ensure that the different steps would complement each other in a coherent manner, thereby increasing their overall efficiency.

With regard to Options 1.1 and 2.2, the EU legislation should focus in particular on the tasks and functions of national coordination centres, Frontex and the EUROSUR network as well as on common rules for the exchange of information between the NCCs and Frontex. When being consulted in 2008-2011, Member States clearly expressed the need for EU legislation on EUROSUR, because the *Updated EU Schengen Catalogue on External borders control, Return and readmission* includes only recommendations and best practices on border surveillance, but no binding rules.<sup>87</sup>

With regard to Options 3.2, the legal basis for the establishment of the SEAHORSE Mediterraneo network would be an agreement between the countries. Concerning Option 4.2, Frontex, EMSA and EUSC would regulate the cooperation with regard to the *common application of surveillance tools* in a service-level agreement.

<sup>87</sup> References to and excerpts of these legal acts can be found in Annex 1.1.

*Costs, responsibility and source of funding for the preferred option*

| Step             | Component                                | PO x.1                 | PO x.2                      | PO x.3               | Preferred option        |                          |
|------------------|------------------------------------------|------------------------|-----------------------------|----------------------|-------------------------|--------------------------|
|                  |                                          | Decentralised approach | Partly centralised approach | Centralised approach | To be set up by         | Funding via              |
| 1                | NCCs                                     | M€ 99,6                | M€ 271,6                    | M€ 610               | Member States           | EBF                      |
| 1                | FSC                                      | M€ 95,6                | M€ 129,8                    | M€ 137               | Frontex                 | Frontex                  |
| 2, 7             | Network                                  | M€ 42,4                | M€ 46,7                     | M€ 49,3              | Frontex                 | Frontex                  |
| 6                | CPIP (RAU)                               | € 0,0                  | M€ 29,3                     | M€ 29,2              | Frontex                 | Frontex                  |
| 3                | 3 <sup>rd</sup> countries                | € 0,0                  | M€ 5,4                      | M€ 25,3              | Member States           | DCI, EBF                 |
| 5                | Common application of surveillance tools | M€ 80,5                | M€ 62,1                     | M€ 62,3              | Frontex<br>EUSC<br>EMSA | Frontex and FP7/<br>GMES |
| Total            |                                          | M€ 318,1               | M€ 544,9                    | M€ 913               |                         |                          |
| Preferred Option |                                          | M€ 338,7               |                             |                      |                         |                          |

Combining the preferred options, the costs of EUROSUR would amount to M€ 338,7.

EUROSUR will not require additional EU funding. Member States would continue using the EBF in this regard. Furthermore, considerable FP7 funding is being used for developing and testing selected EUROSUR components.

In line with the principle of subsidiarity, EUROSUR would be a decentralised system, leaving Member States fully in charge of controlling the external borders and cooperating with neighbouring third countries, while selected components, such as the EUROSUR network, would be provided centrally by Frontex, thereby generating added value for all EUROSUR stakeholders.

Most Member States already have the minimum infrastructure in place and therefore it is not envisaged that they would encounter difficulties in upgrading and connecting their national infrastructures. The difficulties which some Member States may meet are more of a organisational than technical nature, e.g. when determining which national authority should be responsible for the national coordination centre.

The role of Frontex in EUROSUR would grow steadily when administering the EUROSUR network as well as providing the common application of surveillance tools. Frontex would fulfil these tasks in line with its mandate as amended in 2011, which allows the Agency to purchase and own its own technical assets, to process under certain conditions personal data obtained during operations and to provide technical assistance to third countries.

## 8. MONITORING AND EVALUATION

Frontex shall ensure that methods are in place to monitor the functioning of EUROSUR against the main policy objectives. Two years after EUROSUR is fully operational and every year thereafter, Frontex shall submit to the Commission a report on the technical and operational functioning of EUROSUR, taking into account the following indicators:

### Impact indicators<sup>88</sup>

1. Reduced number of irregular migrants entering the Schengen undetected;
2. Reduced death toll of migrants at sea;
3. Reduced cross-border crime, in particular of drugs smuggled across the external borders.

### Result and output indicators

1. Increased situational awareness at the external borders and in the pre-frontier area;
2. Improved interagency cooperation at national level;
3. Improved cooperation between Member States as well as with Frontex;
4. Increased cooperation with neighbouring third countries.
5. Increased technical and operational capability to detect and track small boats;
6. Increased exchange of unclassified and classified information in close-to-real time;
7. Increased capability to react to alerts, incidents and other events at the external borders.

Moreover three years after the EUROSUR system would have started all its operations and every four years thereafter, the Commission shall produce an overall evaluation of EUROSUR, including examining results against objectives and assessing the continuing validity of the underlying rationale. The first evaluation is expected to take place in 2016 under the condition of EUROSUR becoming operational as of 2013. The Commission should submit the reports on the evaluation to the European Parliament and the Council, accompanied, where necessary, by appropriate proposals to amend the Regulation establishing EUROSUR.

<sup>88</sup>

These indicators will also depend on factors outside of EUROSUR, such as changes in the political and economic situation in neighbouring third countries.