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New rules for the surveillance of the EU external sea borders

The Permanent Representatives Committee (Coreper) approved on 13 February 2014 a compromise reached with the European Parliament on a draft regulation establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the member states of the EU (FRONTEX). Today the European Parliament's Committee on Civil Liberties, Justice and Home Affairs also approved that agreement, which paves the way for the formal adoption of the regulation by the European Parliament and the Council during the Greek Presidency.

The regulation provides member states participating in FRONTEX operations with clearer, updated and binding rules to be applied in the course of these operations. This will result in greater effectiveness and legal certainty in operations at the external sea borders.

This regulation is one of the actions contained in the communication of the Commission on the work of the [Task Force Mediterranean](#) and it will be one of the key tools which the EU has at its disposal to improve the surveillance of the external sea borders and to contribute to preventing, for example, tragedies at sea such as the recent ones in the Southern Mediterranean.

In order to enter into force, the draft regulation still needs to be formally approved by the European Parliament and the Council.

Background

The purpose of border surveillance is to prevent unauthorised border crossings, to counter cross-border crime and to apprehend or take other measures against those persons who have crossed the border in an irregular manner.

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To be effective, the new regulation is not limited to the detection of attempts at irregular border crossing but equally extends to steps such as intercepting ships suspected of trying to gain entry to the Union without submitting to border checks, as well as arrangements intended to address situations such as search and rescue that may arise during a sea operation and arrangements intended to bring such an operation to a successful conclusion.

The provisions of this regulation regarding interception, rescue at sea and disembarkation will be taken into account in the operational plans of the border surveillance operations coordinated by FRONTEX. These plans will include specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation takes place, including references to international and Union law. They will also include procedures to ensure that persons with international protection needs, victims of trafficking in human beings, unaccompanied minors and other vulnerable persons are identified and provided with appropriate assistance, including access to international protection.

Moreover, the regulation will be applied in full compliance with the principle of *non-refoulement* as defined in the Charter of Fundamental Rights of the EU and as interpreted by the case law of the European Court of Justice and of the European Court of Human Rights. According to this principle, no person should be returned to their country of origin or any other country where he or she would be subject to the death penalty or there is a risk of persecution, torture or other serious harm.

This regulation replaces [Council decision 2010/252/EU](#), which was adopted as an implementing measure with a view to supplementing the Schengen Borders Code.

This decision was annulled by the European Court of Justice in its judgment of 5 September 2012 ([Case C-355/10](#)) as it considered that it contained essential elements which went beyond the scope of the implementing measures. The Court stated that only the EU legislator, by means of the ordinary legislative procedure, was entitled to adopt rules of such a nature. The Court maintained the effects of the decision until the entry into force of new rules.