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MARE MSEG-SURVEILLANCE 6

Subject: Sixth meeting of the Commission's Member State Expert subGroup on the integration of maritime surveillance (MSEsG) of 22.9.2011.

Meeting Report

The sixth meeting of the MSEsG was attended by Member States, by TAG members and Commission services.

Mailing list: After Agenda approval, the Chair reminded of the need to shorten the MSEsG mailing list. Member States were kindly recalled to provide DG Mare with *two* mailing contacts that will be responsible to dispatch information at national level.

Step 1 table: The Commission thanked those Member States that already submitted their input to table 1. As certain Member States (IT, NL) pointed towards the complexity of this exercise, the Commission indicated that Member States may fill this table as they deem appropriate. As required in the Roadmap towards establishing the Common Information Sharing Environment ('CISE') for the surveillance of the EU maritime domain, Table n° 1 establishes the list of the various CISE relevant Member States' authorities while indicating the respective sectoral competences within each Member State. Table n° 1 also establishes which authority has access to which existing CISE relevant information exchange system.

Preliminary TAG conclusions Roadmap Steps 2, 3, 5: The TAG carried out steps 2, 3 and 5 and submitted its preliminary draft conclusions (see Annex 1). The MSEsG congratulated TAG for this work that it qualified as an important and necessary step forward and which provides an overarching picture for further reflexion. The complexity in particular of table n° 2 however requires some further analysis, to explain its content and to clarify the way forward. Indeed, table n° 2 includes about 500 Data sets (horizontal entries) classified in three broad groups: 1.) Maritime Traffic Data, 2.) Maritime Geospatial Data and 3.) Maritime Events Management Data. As regards each of these 500 data sets the TAG identified (as vertical entries) the respective user community(ies) producing or receiving such data at present (supply of data) and identified further cross-sectoral demand for each of those data elements from the various user communities (demand for data). The difference constitutes the prevailing 'gap' of

cross-sectoral data exchange and thus the business case for the CISE. Even though further analysis needs to be carried out in this respect, such gap already appears to be relevant and the TAG proposes to accept all the above mentioned demands for cross-sectoral data exchange.

Table n° 2 further identified about 20 existing networks that are currently not connected with each other. The networks do at present exchange or share only about 50% of these 500 above-mentioned data sets.

Table n° 2 also identified the security level at which TAG proposes to exchange the said 500 data sets by means of CISE. It revealed that most data sets merely require 'unclassified' data protection level. Only few data sets require 'restricted', 'confidential' or 'secret' data protection levels. This should significantly ease the demanded cross-sectoral data exchange.

The Commission concluded by indicating that this table should be considered as work in progress as e.g. data sets may be added or modified any time but that it will also never be fully complete. Nevertheless, as table n° 2 is now already well elaborated it should be stabilised for the time being.

Further particular comments are summarised below:

- Germany, supported by NL reminded that even though there is an impressive number of unsatisfied demand for cross-sectoral and cross-border data exchange, there may be legal barriers to overcome. Further, table n° 2 should now be kept as it is and not be modified too much any further (support by FR).
- Portugal indicated that the table n° 2 matrix should not be cast in stone as CISE user communities need to remain dynamic in the way they handle maritime surveillance.
- The United Kingdom supported by NL, FR reminded the need to further analyse the usefulness of exchanging all the data listed in table n° 2.
- Romania indicated that further to submitting its input to table n° 1, it is carrying out an extra task on its own initiative. Indeed Romania is carrying out a gap analysis at national level that, by its nature, goes in more detail than the TAG's table n° 2 in so far as it carries out a similar gap analysis but focused on cross-sectoral data exchange between national authorities.
- France underlined the necessity to maintain the approach based on 'functional' User Communities to avoid falling back into an approach focusing on Member States.
- Italy pointed towards the need for CISE to allow for the exchange of any type of information, including IT *information service packages* as well as information originating from satellites.

Commission's conclusions: The Commission concluded that Table n° 2 needs to be further analysed in view of better defining the existing gap between demand and supply for cross-sectoral data exchange. Even though table n° 2 may be modified any time, it is nevertheless already well elaborated and should be stabilised for the time being. MS do not need to modify or validate the table at this stage.

Impact assessment (IA): It was reminded that the legislators require the Commission to carry out an IA for any new political initiative. The CISE initiative requires such IA that will have to address fundamental questions to the extent necessary. In this context and in

accordance with the CISE Roadmap, the technical, legal, cost/benefit, social and environmental aspects will have to be analysed.

The following comments were received by MS:

- Portugal indicated that the IA should focus on *net centric scenarios*. Related governance aspects need to be addressed. This in particular in view to ensure the flexibility required for relevant public actors to carry out their tasks in the most effective manner. Portugal further highlighted the complementarity of initiatives such as CISE, the European Marine Observation and Data network (EMODNET) and Maritime Spatial Planning (MSP) while indicating the relevance of creating an integrated maritime situational awareness that will be made possible through cross-sectoral information exchange. CISE will be the instrument to allow for such-cross sectoral information exchange.
- France asked for the IA to focus on options that fall within the CISE scope already agreed upon in the Roadmap and the related Council conclusions.

The Comissioin presented its outline for legal work ahead:

- The Netherlands indicated their agreement towards such legal approach and added the need to combine the ‘top down’ (timely identify overarching legal aspects) with the ‘bottom up’ (identifying each data set for cross-sectoral exchangeability) approach.
- The United Kingdom supported the NL position and asked if the foreseen timeline was at risk. The Commission indicated that even though the IMP Financial regulation, through which related funds should be secured for 2011 to 2013 is still with co-legislators, it is still seeking alternatives to start at least some Impact Assessment related studies before the adoption of the said Regulation.

As regards the principles governing the technical work ahead, Italy, the Netherlands and France reiterated the need for satellite data to be transmitted via CISE. The Commission indicated that CISE should be conceived in a way such as to allow for the transmission of any information including satellite one.

Bluemassmed (BMM) and MARSUNO presented their state of play. MARSUNO will provide its final report in December 2011 and has been elaborating on gaps in cross-sectoral cooperation and related proposals on how to bridge them. BMM has been decentralising its approach to allow for node development at national level. In order to allow for the implementation of such reoriented approach, the BMM Grant agreement was amended and extended by 8 month until August 2012.

IMS coordination: Based on the Council's request, the Commission presented a first draft table listing and summarising all IMS related actions carried out at EU level, including few relevant NATO ones. This draft presented over 60 actions in total. Member States expressed their satisfaction as regards the Commission's swift action and their concern as regards the number of actions carried out in parallel as it becomes difficult to keep the overview. MS further indicated that the number of such parallel actions demonstrates the validity of the Council conclusions of 23 May 2011 on this coordination point. Member States then asked for this table to be further developed in view to reflect upon centers of

gravity between networks and systems. Accordingly, the Commission indicated that it will further investigate the matter.

Presentations: Presentations were held as regards ‘Eurosur’ (border control), PT Marsur/NEC (military), the Maritime Strategy Framework Directive (MSFD) (environment) and the Shared Environmental Information System (SEIS) (environment).

Mediterranean Coastguard Forum 2012 The Commission presented its intention to support the revitalization of this Member State lead initiative and a working document setting the context, with the aim to trigger candidatures for hosting. IT that had initiated and hosted the last meeting explained the objectives and declared its intention to assist countries interested to lead. ES and FR expressed their willingness to host and were urged to find a commonly acceptable solution. Commission and EMSA agreed to give input to the Forum. In the meantime, FR and ES agreed that the former hosts in 2012 and the latter expressed its readiness to do so in 2013.

Conclusions: The Commission took note of the MSEsG’s continued support to the work carried out in particular by TAG and to the work ahead as presented.

The next MSEsG meeting will be held in the first quarter of 2012.

Beate GMINDER

Cc.: Contact list MSEsG

Annex 1: Preliminary TAG conclusions on CISE Roadmap steps 2, 3 & 5

Annex 2: Legal aspects of the establishment of the Common Information Sharing Environment (CISE) for the surveillance of the EU maritime domain

Annex 1

Preliminary TAG conclusions on Steps 1, 2, 3 & 5 of the CISE Roadmap

Preliminary findings

TAG reaffirms the need to enhance data exchange or sharing across sectors and borders throughout Europe. TAG underlines that an important step towards this data sharing is not linked to technical details only but also to a cultural change, procedures, principles and governance. It is for this reason that TAG invites Member States representatives to facilitate as much as possible the creation of a favourable environment to the sharing of relevant information.

Under Step 1 of the Roadmap towards establishing the *Common Information Sharing Environment* (CISE) for the surveillance of the EU maritime domain, Member States and the Commission so far identified over 400 CISE relevant maritime authorities across the EU. Part of these authorities already exchange maritime surveillance relevant data via more than 20 identified existing networks.

Under Step 2 the TAG so far identified over 500 data sets relevant to CISE. A number of these data sets might further decomposed into sub-sets, but not at this stage. The 500 data sets have been organised in three categories:

1. Maritime Traffic Data
2. Maritime Geospatial Data
3. Maritime Events Management Data

For each of these 500 data sets, the TAG verified whether there is any unsatisfied *cross-sectoral* demand from one or more of the 7 CISE user communities. Doing so for the 500 data sets, the TAG identified more than three thousand demands from one or the other User Community not satisfied by supply. This result points towards a substantial 'gap' between current cross-sectoral demand and supply for maritime surveillance related data across the EU and hence towards a '*business case*' justifying the creation of CISE.

Further, combining Steps 1 and 2, it appears that only about 50%, of these 500 above-mentioned data sets, are currently exchanged or shared through one or the other of the existing networks identified above. Data can however not be exchanged between these networks as they are not interoperable today. This finding further points towards the need for CISE to go beyond merely connecting these existing networks, as CISE shall allow satisfying the important remaining demand for cross-sectoral data exchange. For this reason CISE could also connect any relevant upcoming systems or networks with existing ones and should aim at allowing the exchange of the remaining information and data not yet available through existing or future system/networks.

Under Step 3 the TAG verified for each of the 500 data sets at which security level they should be exchanged through CISE and observed that most of these data sets are of unclassified nature. As a result, the TAG recommends that most of the 500 data sets be safely exchanged through CISE at 'unclassified' data protection level. Only few data sets require 'restricted', 'confidential' or 'secret' data protection levels. Proper means to

exchange such information within CISE shall be foreseen. The whole process has to take into account the various conditions of confidentiality where applicable. Of course existing legal restrictions and provisions on data protection that prevent misuse or public disclosure of many data sets need to be strictly respected. (To be further examined under step 6 of the Roadmap)

Under Step 5 the TAG verified for each of the 500 data sets whether the various demands for cross-sectoral and cross-border data exchange or sharing should be satisfied. As a result the TAG *recommends* that appropriate access rights shall be granted as regards all such demands within prescribed restrictions if any. No decision will be taken at present with regards to granting access rights in particular not without involvement of data owners / Member States / relevant authorities.

Under Steps 4 and 6 the TAG is further examining the technical and legal feasibility for cross-sectoral and cross-border data exchange and sharing via CISE as well as its cost and benefits.

Steps forward: The TAG will continue its work to fine tune the 'Information availability matrix' and the related gap analysis, finalise terms of reference and accompany the process for studies (technical, legal, cost benefit, social and environmental) in view to elaborate the functional concept to establish CISE.

Annex 2

Working document for the 6th meeting on the Member States Experts sub-Group on the integration of maritime surveillance – 22 September 2011

Legal aspects of the establishment of the Common Information Sharing Environment (CISE) for the surveillance of the EU maritime domain

1. BACKGROUND AND STATE OF PLAY

1.1. Legal study and current political definitions

The Commission conducted already in 2008 a study¹ on legal restrictions for sharing maritime monitoring and surveillance data. The study concluded that an appropriate legal framework should be put in place addressing on the one hand sharing restrictions embedded in legislation² and on the other incorporating the necessary safeguards with respect to data security and confidentiality, protection of personal data and contractual provisions (intellectual property rights).

The Guiding principles Communication (COM(2009)548 final) reiterated that any mechanism aiming at the cross-border exchange of data should be made subject to a clear legal framework, listing the main associated legal issues and safeguards.

The legal framework should underpin the principle of ‘sharing on a need to know and responsibility to share’ basis, which is the fundament of the CISE introduced in the Roadmap Communication (COM(2010)584 final) and reiterated in the Council conclusions³.

Merely all steps of the Roadmap Communication⁴ are of relevance for the creation of an appropriate legal framework. For example, the identification of the participants to the CISE (Step 1) will reveal the future data providers and recipients, while the exhaustive description of the CISE data types will shed light on the nature of the data involved and the associated elements of legal nature.

Moreover, the definition of *access rights* in accordance with Step 5 by User Communities by 2012, will address the requirement of legal clarity as regards the providers and recipients (the 'who' affair, i.e. who has access to what). However, the

¹http://ec.europa.eu/maritimeaffairs/studies/legal_aspects_maritime_monitoring_en.pdf - final report Oct 2008

² Further suggesting that the legal framework should at least define the nature of data involved, purpose of data exchange and potential data recipients

³ See Council conclusions on integration of maritime surveillance, 23.5.2011, para 2 in http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/122177.pdf

⁴ Welcomed by the Member States by means of the above conclusions. The Council expressly supported the further elaboration of the 6 steps proposed in the roadmap, bearing in mind that some of these steps could be addressed in parallel, as appropriate, to avoid delays

mere existence of an appropriate access right to a specific piece of information is not in itself adequate for the establishment of the CISE; to realize the data exchange a clear legal description of the rights and obligations of the participants⁵ and the adaptation of the sectoral data policies, where required, is also needed.

As its title suggests (“providing a coherent legal framework”), Step 6 consists in giving suitable answers to all the above questions.

1.2. Challenges to be addressed

The legal work in practice consists into turning the data supply and demand matrix elaborated by the Technical Advisory Group into operational provisions, while paying attention not to undermine the legal protection called for by the nature of certain data types. To this purpose, the matrix already includes a column titled “Legal conditions for exchange”, under which the legal restrictions associated with each of the 500+ data types are expected to be identified by the TAG:

Data type x	LEGAL CONDITIONS FOR EXCHANGE			
	EU/ International Legislation for collection and/or exchange	legislation reference / web link	Legal restrictions	
			Personal data protection	Other legal restrictions

In parallel, the two CISE pilot projects will also provide fieldwork insight into the legal problems encountered and the solutions chosen by the partners to overcome them.⁶ Moreover, the study on the supporting technical framework for the CISE will shed light (a) on the network architecture, providing options as regards the management of the decentralized network, and (b) the requirements necessary to make network and systems' interconnection a reality. The results of this work, to be ongoing until at least 2013 will also need to be reflected in the future legislation.

Schematically, the operational part of the CISE from a legal point of view can be presented as follows:



⁵ Including on the appropriate way to establish the 'need to know' (purpose of exchange) and safeguards incumbent upon them

⁶However, the final report of BlueMassMed will, after the prolongation of the project for eight months might not be available before autumn 2012.,.

Need to know is identified as the trigger of the *responsibility to share*, once the access rights are established in accordance with Step 5 of the Roadmap. However, the examination of the existence of an appropriate access right should be preceded by...

...*the establishment of the purpose* of the data sharing request. This is particularly relevant both as the overall rationale of the CISE and in the context of data protection law⁷. It activates the responsibility to share and legitimizes the transmission of personal data (wherever part of the relevant data type).

Adaptation of data policies (eg for maritime traffic data to reach the border or fisheries control communities) is required to lead from access right to responsibility to share. A first identification of the existing provisions relevant to maritime data exchange policies had been done by the 2008 study, but this work will clearly require substantial update in view of future legislative work.

A number of further *obligations* may be incumbent on the recipient following the data exchange, in particular with regard to certain data types (eg not to further disseminate data or to respect a duty of confidentiality).

Apart from the aforementioned, the legal work of the CISE should also adequately address:

- The choice of appropriate legal basis and instruments to accommodate all seven user communities, including the military. Parallel examination of soft and legally binding instruments, including pros and cons of each choice.
- International law: whenever surveillance data are collected and disseminated in accordance with international law (e.g. SOLAS Convention for LRIT), what is the best way to realize the CISE in a way compatible with such overarching legislation?
- Best options to address (a) data and professional confidentiality; Transfer the same duty of confidentiality on the recipient or expanding the circle of lawful recipients? (b) intellectual property rights: how can contractual restrictions on further sharing be overcome?

2. Discussion on way forward

The Roadmap towards establishing the CISE designates the Member States Experts sub-group on the integration of maritime surveillance in coordination with sectoral expert groups as the relevant actor to implement Step 6 “Providing a coherent legal framework”.

Once the Regulation to support the further development of the Integrated Maritime Policy⁸ is adopted by the Council and the European Parliament, the Commission will

⁷ The clear description of nature of data and the statement of the purpose of sharing is a specific requirement of data protection law (*cf* Articles 6 and 7 of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data. This requirement is generally referred to as "purpose limitation". The Annex to the 2010 Roadmap Communication already provides a good overview of the maritime *functions* to be supported through the CISE

⁸ COM(2010)494

have the possibility to commission a study to assist the MSEsG and the sectoral groups in this task.

Member States' representatives are requested to take note on the above and comment as appropriate.