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 Members States

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Carlos COELHO (EPP, PT) on the proposal for a regulation of the European Parliament and of the Council 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 European Union.

The committee recommended that Parliament's position in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Protection of fundamental rights and the principle of non-refoulement: Members stressed that in line with the future Regulation no person shall be disembarked in, conducted towards, otherwise handed over to the authorities of, or forced to enter, a country where **there is a serious risk that such person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment** or any serious violations of their human rights, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of expulsion, removal or extradition to another country **in contravention of the principle of non-refoulement**.

Intercepted or rescued persons should not be disembarked in, conducted towards, otherwise handed over to the authorities of, or forced to enter, a third country when the host Member State, the participating Member States or the Agency are aware or ought to be aware that this third country is engaged in inhumane practices. Those Member States should provide that information to the participating units. For that purpose, they should use information from a range of sources, including in particular other Member States, the EEAS, the European Asylum Support Office, Frontex, the United Nations High Commissioner for Refugees, etc.

Members recalled that the future Regulation should be applied in full compliance with the principle of non-refoulement, according to which no one may be **expelled, removed or extradited to, or forced to enter, a country** where there is a **real risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment**. The possible existence of an arrangement between a Member State and a third country cannot absolve Member States from their international obligations under international and Union law under the principle of non-refoulement.

Protection of fundamental rights: Members also called for the participating units to treat all persons on board in a humane way. All border guards and other personnel of the Member States shall receive, prior to their participation in a sea operation, training in relevant Union and international law, including fundamental rights, children's rights and **access to international protection** and guidelines for the purpose of identifying persons seeking protection and redirecting them towards the appropriate facilities.

Protection of persons intercepted in case of disembarkation in a third country: if disembarkation is considered, the participating units should identify the intercepted or rescued persons and assess their personal circumstances, including their medical conditions and other circumstances that might make them vulnerable or subject to international protection needs, before a decision is made.

If there are grounds to believe that disembarkation of persons intercepted or rescued at sea in the proposed place would be in **violation of the principle of non-refoulement**, the participating units should not share personal information regarding the persons with the authorities of the country of origin or with the authorities of other third countries.

Moreover, the decision on the place of disembarkation **after a search and rescue situation** should be made also taking into account the principle of non-refoulement.

Solidarity mechanism: Members stressed that solidarity between Member States should be strengthened. It is for this reason that Member State faced with a situation of urgent and exceptional pressure at its external border should be able to request:

- the deployment of European Border Guard Teams in accordance with Frontex to provide rapid operational assistance to the Member State;
- the Agency for technical and operational assistance in order to obtain assistance on matters of coordination between Members States and/or the deployment of experts to support the competent national authorities;
- emergency assistance under ISF borders to address urgent and specific needs in the event of an emergency situation.

Other measures are also envisaged, such as: (i) the possibility of involving the European Asylum Support Office as necessary; (ii) using the future "Asylum and migration" Funds to meet specific needs in a emergency; (iii) the Commission to check the willingness of the Member States to accommodate asylum seekers.

In this context, the Commission should continuously monitor the facilities used for the reception of asylum seekers in the Member States and, in the cases described in this article, once it has verified how many places are actually available in such facilities, should **propose a fair redistribution of asylum seekers between Member States**, in accordance with Article 80 of the TFEU.

Mobilisation of EUROSUR: when coordinating border surveillance operations, the Agency should provide Member States with information and analysis concerning these operations. Member States and the Agency should introduce in EUROSUR all relevant information collected during these operations.

Respect of European asylum measures: Member States and the Agency are bound by the provisions of the asylum acquis, and in particular of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection with regard to applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of Member States.

Smuggling of migrants: Members strengthened the provisions as regards actions to be taken in case of **suspicions that a ship is engaged in the smuggling of migrants by sea** prove to be founded. Measures taken should be subject to the authorisation of the flag State in accordance with the Protocol against the Smuggling of Migrants. The participating unit may seize the ship and apprehending persons on board. The measures may only be taken if the participating unit has ascertained that the ship is not forced to enter a third country in violation of their human rights.

Assistance to victims: when there are reasonable grounds to suspect that a ship is engaged in trafficking of human beings and illegal immigration, assistance shall be given to victims.

Search and rescue situations: provisions have been included to enhance the framework action as regards sea operations:

- **before a sea operation**, Member States should ensure that their participating units will comply with the obligation to **render assistance to any ship or person in distress at sea**, in accordance with applicable provisions of international Conventions governing search and rescue and fundamental rights. They should do so regardless of the nationality or status of such a person or the circumstances in which that person is found;
- **before disembarkation**, the persons intercepted or rescued in the sea operation shall receive clear information, in a language which they understand or may reasonably be presumed to understand, on where disembarkation will take place. Particular attention shall be given to **unaccompanied minors**.

Emergency situation: each Member State requires the master of a ship flying its flag to proceed with all **possible speed to the rescue of persons in distress at sea** and to render all possible assistance to them regardless of their nationality or state or of the circumstances in which these persons are found, provided that he can do so without serious danger to the ship, the crew or the passengers. Members States should not take any measures, including criminal procedures and sanctions, **against ship masters** who have rescued persons in distress and brought them to a harbour on their territory.

Coastal states: under the United Nations Convention on the Law of the Sea, it is necessary for a contiguous zone to be formally proclaimed, thereby entitling the coastal State to monitor vessels in transit with a view to preventing or punishing infringements of its customs, fiscal, immigration or sanitary laws and regulations.

Mediterranean Office: Members stressed the need to set up specialised branches, for all aspects relating to the surveillance of maritime borders, as operational offices in areas subject to significant migration flows, including irregular migration and in particular in the Mediterranean, to improve coordination between Member States and ensure solidarity and responsibility-sharing between them, thereby strengthening the operational capacity of the Agency.

Report: lastly, Members called on Frontex to submit a report to the European Parliament, the Council and the Commission on the implementation of this Regulation every two years. The report should include a description of the procedures put in place by the Agency to implement this Regulation during sea operations and an assessment of the practical application of this

Regulation, including any incidents which may have taken place. It shall provide detailed information on compliance with fundamental rights of intercepted persons.