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

2013/0106(COD) - 16/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 528 votes to 46 with 88 abstentions, a legislative resolution 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.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary were the result of a compromise between Parliament and Council. They amended the proposal as follows:

Safety at sea: it was specified that measures taken for the purpose of a sea operation should be conducted in a way that, in all instances, **ensured the safety of the persons intercepted or rescued, the safety of the participating units or that of third parties**. It was also recalled that the objective of Union policy in the field of the Union external borders was to ensure the efficient monitoring of the crossing of external borders including through border surveillance, while **contributing to ensuring the protection and saving of lives**. A recital stated that the shipmaster and crew should not face criminal penalties for the sole reason of having rescued persons in distress at sea and brought them to a place of safety.

Principle of non-refoulement: the Regulation should be applied in full compliance with the principle of non-refoulement as defined in the Charter and as interpreted by the case-law of the Court and of the European Court of Human Rights. In accordance with that principle, no person should be **disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a country where, inter alia, there is a serious risk that he or she would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment**, 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 an expulsion, removal or extradition to another country in contravention of the principle of non-refoulement.

Take into account the general situation in the third countries where persons intercepted would be disembarked: when considering the possibility of disembarkation in a third country, in the context of planning a sea operation, the host Member State, in coordination with participating Member States and FRONTEX, should take into account the **general situation** in that third country. Intercepted persons should not be disembarked, forced to enter, conducted to or otherwise handed over to the authorities of a third country which might be dangerous for that person.

The host Member State’s assessment of the general situation in a third country should be based on information derived from a broad range of sources, and it may take into account the existence of agreements and projects on migration and asylum carried out in accordance with Union law.

Other principles should be respected in cases of interception of persons at sea:

- **information for persons intercepted**: during a sea operation, before the intercepted persons were disembarked in a third country, the participating units should use all means to inform the intercepted or rescued persons of their destination give them an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of non-refoulement;
- **trained personnel**: further details should be provided for in the operational plan including the availability of shore-based medical staff, interpreters, legal advisers and other relevant experts. Each participating unit should include at least one person with basic first aid training;
- needs of vulnerable people: throughout a sea operation, the participating units should address the special needs of children, including unaccompanied minors, victims of trafficking in human beings, persons in need of urgent medical assistance, disabled persons etc;
- **data protection**: the exchange with third countries of personal data regarding intercepted or rescued persons obtained during a sea operation should be prohibited where there is a serious risk of contravention of the principle of non-refoulement;
- **human dignity**: participating units should, in the performance of their duties, fully respect human dignity.

FRONTEX's operational plan: pursuant to Regulation (EC) No 2007/2004, border surveillance operations coordinated by the Agency are conducted in accordance with an operational plan. The latter should include specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation, pilot project or rapid intervention takes place, including references to Union and international law regarding interception, rescue at sea and disembarkation. The operational plan should be established in accordance with the provisions governing interception, rescue at sea and disembarkation in the context of border surveillance operations at sea coordinated by the Agency.

It should include procedures ensuring 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.

Special rules: a series of new provisions were inserted into the text, regarding:

- **detection**: participating units should collect and immediately report information about that vessel to the International Coordination Centre, including, where possible, information about the situation of persons on board, in particular whether there is an imminent risk to their lives or whether there are persons in urgent need of medical assistance;
- **interception in the territorial sea**: in the territorial sea of the host Member State or a neighbouring participating Member State, that State should authorise the participating units to take certain measures where there were **reasonable grounds to suspect that a vessel may be carrying persons intending to circumvent checks at border crossing points** or is engaged in the smuggling of migrants by sea. If evidence confirming that suspicion were found, that State may authorise the participating units to (a) seize the vessel and apprehending persons on board; (b) order the vessel to alter its course outside of the territorial sea or the contiguous zone; (c) conduct the vessel or persons on boar to the coastal Member State.
- **interception on the high seas**: if evidence confirming suspicion were found in these cases, the participating units may : (i) seize the vessel and apprehend persons on board; (ii) warn and order the vessel not to enter the territorial sea or the contiguous zone, and, where necessary, request the vessel to alter its course; (iii) conduct the vessel or persons on board to a third country; (iv) conduct the vessel or persons on board to the host Member State or to a neighbouring participating Member State.
- interception in the contiguous zone: in the contiguous zone of the host Member State or of a neighbouring participating Member State, the measures regarding interception of ships would apply so long as they were proportionate. Any authorisation may only be given for measures that were

necessary to prevent the infringement of relevant laws and regulations within that Member State's territory or territorial sea;

- **search and rescue situations**: Member States should observe their obligation to render assistance to any vessel or person in distress at sea and, during a sea operation, their participating units must comply with that obligation, in accordance with international law and respect for fundamental rights. They should do so **regardless of the nationality or status of such a person** or the circumstances in which that person was found;
- **disembarkation**: in the case of search and rescue situations, the host Member State and the participating Member States shall cooperate to identify a place of safety and, when the responsible Rescue Coordination Centre designates such a **place of safety**, they should ensure that disembarkation of the rescued persons is carried out rapidly and effectively.

Solidarity mechanisms: recalling the fact that the policies of the Union in border management, asylum and immigration and their implementation should be governed by the principle of solidarity and fair sharing of responsibility between the Member States, the text promoted burden-sharing including through the transfer, on a voluntary basis, of beneficiaries of international protection.

A 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 to provide rapid operational assistance to that 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 to address urgent and specific needs.

A Member State subject to strong migratory pressure which placed urgent demands on its reception facilities and asylum systems should be able to request:

- the European Asylum Support Office for the deployment of an asylum support team to provide expertise, in relation to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases;
- emergency assistance to address urgent and specific needs.

Report: lastly, FRONTEX should submit an annual report on the practical application of the Regulation. The report should include a description of the procedures put in place by FRONTEX to apply this Regulation during sea operations and detailed information on compliance with fundamental rights and the impact on those rights, and any incidents which may have taken place.