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) - 15/05/2014 - Final act

PURPOSE: to establish the rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by FRONTEX.

LEGISLATIVE ACT: Regulation (EU) N° 656/2014 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.

CONTENT: the Regulation applies to **border surveillance operations** carried out by Member States with respect to their external sea borders in the context of operational cooperation coordinated by FRONTEX.

Safety at sea: the Regulation recalls that the objective of Union policy in the field of the Union external borders is to ensure the efficient monitoring of the crossing of these borders including through border surveillance, **while contributing to ensuring the protection and saving of lives**. This policy extends to steps such as intercepting vessels suspected of trying to gain entry to the Union without submitting to border checks, as well as arrangements on search and rescue.

Principle of non-refoulement: the Regulation should be applied in full compliance with the principle of non-refoulement meaning that 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.

Safety at sea: as a general principle, measures taken for the purpose of a sea operation shall be conducted in a way that, in all instances, ensures the **safety of the persons** intercepted or rescued, the safety of the participating units or that of third parties.

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 assessment of the general situation in a third country shall be based on information derived from a broad range of sources, which may include other Member States, Union bodies, offices and agencies, and relevant international organisations.

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.

Special rules: the Regulation sets out a framework for sea operations including:

- **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;

Any measure shall be proportionate and shall not exceed what is necessary to achieve the objectives of the Regulation.

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. The Regulation contains a series of provisions regarding rescue at sea with the support of the **Rescue Coordination Centre**. The latter will also assist with persons or vessels missing at sea.

Rescue operations will particularly take place if there are doubts as to the seaworthiness of the vessel and the likelihood that the vessel will reach its final destination, or if units detect the presence of persons on board in urgent need of medical assistance, or pregnant women or children.

Disembarkation: the operational plan will contain a series of measures regarding the disembarkation of intercepted persons, particularly 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.

The modalities for disembarkation shall not have the effect of imposing obligations on Member States not participating in the sea operation.

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 Regulation promotes **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 within FRONTEX 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 assistance from the European Asylum Support Office and emergency assistance.

FRONTEX operational plan: by virtue of Regulation (EC) n° 2007/2004 establishing FRONTEX, 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 of this Regulation governing:

- interception,

- €€€€€€€ rescue at sea, and

- €€€€€€€ disembarkation in the context of border surveillance operations at sea coordinated by the Agency.

Lastly, the plan should include procedures ensuring that persons with international protection needs, unaccompanied minors and other vulnerable persons are identified and provided with appropriate assistance.

Report: FRONTEX shall submit an annual report to the European Parliament, the Council and the Commission on the practical application of the Regulation, including a description of the procedures put in place by the Agency regarding sea operations and detailed information on compliance with fundamental rights and the impact on those rights, and any incidents which may have taken place.

ENTRY INTO FORCE: 17.07.2014. From that date, Decision 2010/252/EU will cease to have effect.