Basic information

2013/0106(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
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 **Subject** 3.20.15.06 Maritime or inland transport agreements and cooperation 7.10.04 External borders crossing and controls, visas 7.10.06 Asylum, refugees, displaced persons; Asylum, Migration and Integration Fund (AMIF) 8.40.08 Agencies and bodies of the EU	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	COELHO Carlos (PPE)	29/05/2013
	Shadow rapporteur WEIDENHOLZER Josef (S&D) WIKSTRÖM Cecilia (ALDE) KELLER Ska (Verts/ALE) KIRKHOPE Timothy (ECR) ERNST Cornelia (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	NICOLAI Norica (ALDE)	30/05/2013
DEVE Development	The committee decided not to give an opinion.	
TRAN Transport and Tourism	GRIESBECK Nathalie (ALDE)	03/06/2013

Council of the European Union

Council configuration	Meetings	Date
General Affairs	3313	2014-05-13

	Justice and Home Affairs (JHA)	3298	2014-03-03

European Commission	Commission DG	Commissioner
	Migration and Home Affairs	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
12/04/2013	Legislative proposal published	COM(2013)0197	Summary
18/04/2013	Committee referral announced in Parliament, 1st reading		
09/12/2013	Vote in committee, 1st reading		
08/01/2014	Committee report tabled for plenary, 1st reading	A7-0461/2013	Summary
15/04/2014	Debate in Parliament		
16/04/2014	Decision by Parliament, 1st reading	T7-0418/2014	Summary
16/04/2014	Results of vote in Parliament		
13/05/2014	Act adopted by Council after Parliament's 1st reading		
15/05/2014	Final act signed		
15/05/2014	End of procedure in Parliament		
27/06/2014	Final act published in Official Journal		

Technical information

Procedure reference	2013/0106(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the European Union TFEU 077-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/12489

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	TRAN	PE513.286	18/09/2013	
Committee draft report		PE516.895	04/10/2013	

Committee opinion	AFET	PE516.826	11/10/2013	
Amendments tabled in committee		PE522.849	31/10/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0461/2013	08/01/2014	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0418/2014	16/04/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00035/2014/LEX	15/05/2014	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2013)0197	12/04/2013	Summary
Commission response to text adopted in plenary	SP(2014)471	09/07/2014	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2013)0197	05/06/2013	
Contribution	ES_PARLIAMENT	COM(2013)0197	06/06/2013	
Contribution	IT_SENATE	COM(2013)0197	04/07/2013	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2014/0656
OJ L 189 27.06.2014, p. 0093 Summary

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) - 12/04/2013 - Legislative proposal

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

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: following the call by the European Council of October 2009, the Council adopted Decision 2010/252/EU to strengthen border surveillance operations coordinated by the FRONTEX agency and to establish clear rules of engagement for joint patrolling and the disembarkation of intercepted or rescued persons.

In the context of this proposal, the Commission had chosen to present its proposal under the comitology procedure based on Article 12(5) of the Schengen Border Code4 considering the decision as being an additional measure governing border surveillance.

Problem of legal interpretation: the Decision incorporated, within a single legal instrument, existing provisions of EU and international law. The aim was to overcome the different interpretations of international maritime law adopted by Member States and their diverging practices to ensure the efficiency of sea operations coordinated by the Agency. There was a risk that, in a sea operation, **different rules, sometimes even conflicting ones, would apply to the same situation**.

Amidst this legal uncertainty, Member States' participation in sea operations coordinated by the Agency was low in terms of contributing craft, vessels and human resources. This, in turn, hindered the effectiveness of the operations and undermined efforts of EU solidarity.

Some Member States, Members of the European Parliament, human rights organisations and academics had questioned whether **fundamental rights and the rights of refugees were being respected** during sea operations coordinated by the Agency, particularly on the high seas. The decision aimed to address these concerns by establishing a number of guarantees to ensure the respect of these rights.

Besides these various problems of legal interpretation, the European Parliament considered that the decision should have been adopted in accordance with the ordinary legislative procedure and not the comitology procedure. Therefore, it brought an action before the Court of Justice of the European Union against the Council (mainly because it considered that the decision exceeded the implementing powers conferred under Article 12(5) of the Schengen Borders Code) requesting the annulment of the decision.

At the end of the day, the Court annulled the Decision but decided to maintain its effects until it is replaced by new rules within a reasonable time.

This is the purpose of this proposal.

IMPACT ASSESSMENT: in view of the considerable preparatory work undertaken prior to the adoption of Council Decision 2010/252/EU, the Commission considered that this proposal need not be accompanied by an impact assessment.

LEGAL BASIS: Article 77(2)(d) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal seeks to establish rules for the surveillance of the external sea borders of the Union in the context of operational cooperation coordinated by the FRONTEX agency and to replace Decision 2010/252/EU for the above-mentioned reasons.

The text of the initial decision mainly sought to adopt additional common rules for the surveillance of sea borders by border guards and for the coordination of the operations of the FRONTEX agency.

The main provisions were included in an annex setting out:

- rules for sea border operations coordinated by the Agency, in particular in cases of the interception of persons at sea (including on the high seas;
- non-binding guidelines for search and rescue situations and for disembarkation in the context of sea operations coordinated by the Agency.

The main changes to the initial text may be summarised as follows:

Scope: the scope of application of this proposal is the same as that of the decision, namely border surveillance operations at sea carried out by Member States under the coordination of the Agency. Although in the decision, the concept of 'border surveillance' was understood as including interception measures and arrangements for rescue arising during border surveillance operations, there was still doubt as to whether these measures did in fact fall under the concept of border surveillance as defined in the Schengen Borders Code. This proposal explicitly covers this broader concept of border surveillance by indicating that border surveillance is not limited to the detection of attempts at irregular border crossing but **also extends to steps such as interception measures, and 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.

Case of search and rescue: given that FRONTEX is now also entrusted with assisting Member States in circumstances requiring increased technical assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea for example rendering assistance to persons in distress, this proposal sets out rules on how to deal with these situations in a sea operation coordinated by the Agency.

Operational plan: provisions are envisaged to ensure that this proposal is in line with the amendments made to Regulation (EC) No 2007/2004 establishing FRONTEX. The operational plan has now become a legally binding instrument with regard to all operations coordinated by the Agency and not only as regards rapid interventions, i.e. including sea operations. The rules laid down in this proposal are intended to form part of the operational plan drawn up in accordance with Regulation (EC) No 2007/2004.

Fundamental rights: the legal and judicial developments concerning the protection of fundamental rights are also taken into account in this proposal in particular in regard to the principle of ***non-refoulement*** in sea operations. In this way, in the case of disembarkation in a third country, the persons intercepted or rescued must be identified and their **personal circumstances must be assessed** to the extent possible before disembarkation. They must also be informed of the place of disembarkation in an appropriate way and they must be given an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of *non-refoulement*. This would guarantee that the migrants are informed about their situation and the proposed place of disembarkation thereby allowing them to express any objections.

Detection, interception and rescue: the proposal clearly distinguishes between detection, interception and rescue.

- as regards **interception**, this proposal while retaining the same set of measures as in the Decision, distinguishes between the measures that may be taken in **the territorial sea, on the high seas and in the contiguous zone**, thus clarifying the conditions under which these measures may be taken and the jurisdictional basis on which action may be taken particularly as regards stateless ships. Based on the Protocol against the Smuggling of Migrants by Land, Sea and Air, **interception of ships on the high seas is now clearly linked to the requirement of having a reasonable suspicion that the ship is engaged in the smuggling of migrants**. As in the Decision, the exercise of jurisdiction on the high seas must always be based on the authorisation of the flag State.
- as regards **search and rescue situations,** the text in this proposal remains similar to the Decision. The wording is aligned to that used in the 1979 International Convention on Maritime Search and Rescue and the International Aeronautical and Maritime Search and Rescue Manual (IAMSAR). Also, on the basis of these international instruments, the proposal includes criteria as to when a ship is considered to be in a situation of uncertainty, alert and distress, as well as a definition of a rescue coordination centre.

Disembarkation: this proposal, unlike the Decision, **addresses the issue of disembarkation in terms of interception and rescue**. As regards interception in the territorial sea or in the contiguous zone, **disembarkation takes place in the coastal Member State**. As regards interception on the high seas, subject to guaranteeing the protection of fundamental rights and the principle of *non-refoulement*, **disembarkation may take place in the third country from which the ship departed**. If this is not possible, then **disembarkation takes place in the host Member State**.

As regards **disembarkation following a rescue operation**, this proposal refers to the concept of **'place of safety'** as defined in the Guidelines on the Treatment of Persons Rescued at Sea issued by the International Maritime Organisation, taking into account aspects of fundamental rights, and requires Member States to cooperate with the responsible rescue coordination centre to provide a suitable port or place of safety and to ensure rapid and effective disembarkation.

This proposal takes into account the fact that, at this stage, the maritime and aerial units would be acting under the coordination of the rescue coordination centre, which determines the appropriate port or place of disembarkation.

However, it also recognises the possibility for the maritime units to disembark in the host Member State if they are not released of their obligation to render assistance to persons in distress as soon as reasonably practicable, taking into account the safety of the rescued persons and that of the maritime unit itself.

Territorial provisions: lastly, the proposal includes a series of classical provisions in regard to the participation (or otherwise) of Denmark, Ireland and the United Kingdom in the current text, in accordance with the relevant provisions of the Treaties and protocols and on the association of third countries in its enforcement.

BUDGETARY IMPLICATION: the proposal has no implications for the EU's budget.

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) - 08/01/2014 - Committee report tabled for plenary, 1st reading/single reading

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.

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.

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.