



**Frontex' Annual Report on the implementation on the
EU Regulation 656/2014 of the European Parliament
and of the Council of 15 May 2014 establishing rules for
the surveillance of the external sea borders**

2015



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INTRODUCTION

The EU Regulation No 656/2014 of the European Parliament and of the Council of 15 May 2014 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 (hereinafter “Regulation”) came into force on 17 July 2014.

The present report on the practical application of the Regulation was drafted pursuant to Article 13 thereof and is aimed to be submitted to the to the European Parliament, the Council and the Commission.

The report refers to all those joint operations (JO) launched in 2015 that included surveillance of the EU external sea borders, It reflects the operational calendar of activities foreseen in Programme of Work 2015 with implementation periods of respective Joint Operation as specified in Chapter 2.

The report comprises three parts.

The first, describing the provisions introduced to the governing procedural documents related to the Joint Operations, the Operational Plans.

The second part, a description of the procedures set forth by Frontex to implement the Regulation during sea operations and information on its application, including detailed information on compliance with Fundamental Rights, and any incidents which may have taken place.

In this second part, the report analyses the implementation of the Regulation by joint operation starting by the issue of disembarkation in third countries, followed by the by the procedures put in place to address the special needs of certain categories of persons and of persons in need of international protection and assesses the communication and cooperation channels.

The third part contains the assessment of the implementation of the Regulation during 2015 and evaluates the need for further develop the measures adopted so far.

The report also contains in a final chapter observations from the Frontex Fundamental Rights Officer (FRO). In these observations, the FRO reflects on the positive measures taken by the Agency as well as the remaining challenges related to the application of Regulation 656/2014, in particular with regards to the safeguards enshrined in Articles 4 and 10.

1. Provisions introduced to the Operational Plans (OPLANs)

The following Joint Operations launched by Frontex in 2015 included the surveillance at the external sea borders:

- EPN Triton 2015
- EPN Poseidon Sea 2015

- EPN Indalo 2015
- EPN Hera 2015

The Operational Plans of the aforementioned Joint Operations comprised specific provisions in line with the EU Regulation No 656/2014.

The provisions were introduced to the Chapter on the Rules of Engagement and to the Mission Report of the Technical Equipment (for Host and contributing MS Vessels). They were the following:

1. An assessment of the general situation in a Third Country (TC) if disembarkation in a TC was foreseen in the OPLAN - Article 4(2); This was envisaged in cases of:
 - a) disembarkation upon interception in high seas
 - b) disembarkation upon Search and Rescue (SAR)
2. A reference to the existing shore-based medical staff, interpreters and other relevant experts of the host and participating Member States to support the assessment of the personal circumstances of rescued and intercepted persons (if disembarkation in a Third Country is foreseen) - Article 4(3)
3. Contact details of the national authorities responsible for providing follow-up measures upon disembarkation of persons in need of international protection and other persons in a particularly vulnerable situation - children, victims of trafficking in human beings, persons in need of urgent medical assistance, disabled persons, elderly people, pregnant women, single parents with minor children, persons with mental disorders and persons who could have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. - Article 10(2) together with Article 4 (1) and (4).
4. Procedures to collect information to be used in the present report. A special template for reporting on disembarkation in Third Countries was applied and was made available to the deployed assets.
5. Instructions on the part of MRCC regarding assistance in SAR situations.
6. Definition of the modalities for the disembarkation of the persons intercepted or rescued in a sea operation, adapted to the circumstances of the operation and in accordance with the table below

Place of interception/rescue	Place of Disembarkation
Interception in the Territorial Sea	Coastal Member State, that is: Host Member State
Interception on the Contiguous Zone	Coastal Member State, either: <ul style="list-style-type: none"> - Host Member State, - Neighbouring participating Member State that allowed the conduction of the vessel/persons to its territory in accordance with Article 6(2)(c) - Neighbouring non-participating Member State that allowed the conduction of the vessel/persons to its territory in accordance with Article 8(2) together with 6(4) and 6(2)(c)
Interception on the High Seas	1 st - Third Country from which the <i>vessel is assumed to have</i> departed 2 nd - Host Member State Coastal Member State, either:

	<ul style="list-style-type: none"> - Host Member State, - Neighbouring participating Member State that allowed the conduction of the vessel/persons to its territory in accordance with Article 6(2)(c) - Neighbouring non-participating Member State that allowed the conduction of the vessel/persons to its territory in accordance with Article 8(2) together with 6(4) and 6(2)(c)
Search and Rescue	<p>1st - <i>place of safety identified in cooperation</i> between the host Member State and the participating Member States and <i>the responsible Rescue Coordination Centre</i></p> <p>2nd - <i>Host Member State</i></p>

7. Competences/tasks of the ICC

For each sea operation, a coordination structure was established within the host Member State, composed of officers from the host Member State, guest officers and representative of the Agency, including the Coordinating Officer of the Agency. This coordination structure, called International Coordination Centre (ICC), was used as a channel for communication between the officers involved in the sea operation and the authorities concerned.

The ICC leads and coordinates the implementation of the operational activity as described in the Operational Plan.

2. Information on the application of the Regulation in each Joint Operation

2.1. EPN Triton 2015

2.1.1. Period of implementation and operational areas

In accordance with the provision of the Operational Plan, the joint activities started on 01 February 2015 (00:00h LT) and ended on 31 January 2016 (24:00h LT).

The operational area was divided in six different areas: M1 - established south of Sicily Island including the Pelagic Islands; M2 - established south of the island of Malta; M3 - established east of Sicily; M4 - established south of Sardinia; L1 - established east of Puglia; and L2 - established east of Calabria.

The operational area M4 remained on standby and would have only be activated if the area was targeted with qualified migratory incidents and after an assessment by Frontex and the Host MS. The operational area L1 started on standby and was activated from the 1st of May 2015 due to the fact that it started to be targeted with migratory incidents.

2.1.2. Disembarkation in Third Countries

All migrants intercepted or rescued were disembarked in Italy. Disembarkation in third countries was not foreseen in the operational plan. As a result, no such action was carried out during the implementation period of JO EPN Triton 2015.

To meet the requirements of the Regulation, the special template for the reports of disembarkation in Third Countries was made available to the deployed assets, but was never used as no disembarkations in third countries occurred.

The operational area of JO EPN Triton 2015 included the SAR regions of Italy and Malta. Nevertheless, the MRCC Rome received vast majority of SAR requests from boats in distress in Libyan SAR. Communication between the MRCC Rome and Libyan SAR authorities was always established. In view of limited response rate, in most cases SAR was managed by MRCC Rome. All the migrants rescued in the Libyan SAR Area were disembarked in Italy.

2.1.3. Procedures regarding training and the identification of persons in particular situations

The training in first aid is included in the basic training of the law enforcement authorities involved in the operation. Therefore, the crew members of the of Frontex co-financed maritime assets participating in the operation *underwent basic first aid training ensured by the national authority*. Moreover, some of the participating surface assets, with adequate size and operational capacity (Offshore Patrol Vessels), embarked particularly for this activity special teams for SAR and first aid support comprising medic, first aid and SAR experts, boarding team and divers. Upon interception or rescue, the participating maritime assets informed immediately the ICC/IMRCC of the presence of any vulnerable persons on board.

Upon disembarkation, prior to any other action, local authorities rendered the basic human needs of the apprehended and rescued persons such as food, shelter and medical assistance. In this initial procedure, it was involved Red Cross, Save the Children, UNHCR, as well as members of the local Immigration Offices with the support of interpreters and other responsible bodies ensuring screening and personal assessment of the persons apprehended or rescued at the designated points of disembarkation in Italy.

The deployed Guest Officers (GOs) supported Italian authorities upon disembarkation, paying special attention to possible victims of trafficking of human beings. Any person expressing, in any way, a fear of suffering serious harm if (s)he is returned to his/her country of origin or former habitual residence, asking or claiming for asylum or any other form of international protection, was referred by the GOs to the Italian Team Leader with whom they worked.

The Italian Team Leader was responsible to hand over those persons referred by the GOs to the competent Italian authority - local Prefectures (via local Immigration Offices) and Department for Civil Freedom and Immigration for an examination of their status.

2.1.4. Communication and cooperation channels

National Coordination Centre (NCC), International Coordination Centre (ICC) and Italian Maritime Rescue Coordination Centre (MRCC) were in permanent contact with each other. The NCC as the direct partner of Frontex assured the strategic and overall implementation of the JO and was responsible to define the port of disembarkation of the migrants intercepted or rescued. The ICC, which was hosting also the deployment of Frontex Operational Coordinator, was responsible for

the daily operational implementation of the JO and the reporting system. The MRCC, in its capacity of SAR authority in Italy, coordinated all search and rescued incidents.

2.2. EPN Poseidon Sea 2015

2.2.1. Period of implementation and operational areas

In accordance to the Operational Plan, the joint activities started on 1 February 2015 (00:00 local time). The JO EPN Poseidon Sea 2015 was suspended by the launched Poseidon Rapid Intervention on 27 December 2015 (24:00 local time). Due to the fact that Poseidon Rapid Intervention was carried out predominantly in 2016, its implementation will be outlined in the next edition of the Report for 2016.

The operational activities under JO EPN Poseidon Sea 2015 were carried out in two operational areas (J and K). The operational area J covered the border along Turkey from Alexandroupolis in the North to Kastellorizo in the South. The operational area K covered the border area from Corfu in North to Karpathos at the South, approximately 20 nautical miles (NM) zone from the coast.

Two Maritime Vigilance Areas - North and South - were established in the Aegean Sea. Furthermore, in order to monitor secondary migration flow, Reporting points within operational Area K were established at the ports of Igoumenitsa, Patras, Korinthos and Kerkyra.

2.2.2. Disembarkation in Third Countries

The technical assets deployed within the operation were authorized by Greece to disembark in its territory the persons intercepted and apprehended in Greek territorial sea as well as in the operational area beyond its territorial sea. Although foreseen, disembarkation in third countries was not carried out during the implementation period of JO EPN Poseidon Sea 2015.

2.2.3. Assessment of the general situation in Turkey

The Hellenic Authorities conducted an assessment of the general situation in a third country (Turkey) which was made available to Frontex. Based on the information collected by the Host MS and the General Assessment of the Host MS, Greece, the participating Member States and Frontex agreed that apprehended persons could be conducted to or be handed over to the Turkish Authorities, and that apprehended and rescued persons could be disembarked in Turkey.

2.2.4. Procedures regarding training and the identification of persons in particular situations

The training in first aid is included in the basic training of the law enforcement agencies involved in the operation. Moreover, some of the participating surface assets, with adequate size and operational capacity (Offshore Patrol Vessels), embarked particularly for this activity special teams for SAR and first aid support comprising medic, first aid and SAR experts, boarding team and divers. The Frontex co-financed participating assets were properly equipped for assisting maritime SAR missions. The crew members used of these equipment on several occasions, whenever the situation required.

The participating units were instructed to use all means to identify the intercepted or rescued persons, assess their personal circumstances, inform them of their destination in a way that those persons understand or may reasonably be presumed to understand and give them an opportunity

to express any reasons for believing that disembarkation, forcing to enter, conducting or otherwise handing over to the third country authorities to the proposed place would be in violation of the principle of *non refoulement*.

Each participating unit appointed an Officer responsible for collecting all information mentioned above and forward it to ICC. For these purposes, Greece ensured the availability of shore-based medical staff, interpreters, legal advisers and other relevant experts that shall provide support for the screening and personal assessment of the persons apprehended or rescued.

Once disembarked, the migrants were met on shore at the Greek Sea ports by mixed teams of Red Cross, Doctors of the World and other non-governmental organizations personnel. The responsible officers of Hellenic Coast Guard or Hellenic Police were ensuring the examination of the status of persons in need of international protection and addressing the special needs of persons in a particularly vulnerable situation (e.g. children victims of trafficking in human beings, persons in need of urgent medical assistance, disabled persons, elderly people, pregnant women, single parents with minor children, persons with mental disorders and persons who could have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence).

2.2.5. Communication and cooperation channels

The NCC housed in ICC facilitated the communication flow between those two entities. JRCC and ICC were in permanent contact with each other. In case of SAR responsible Hellenic JRCC conventionally took over the coordination and in case of needs cooperated with MRCC Ankara (Turkey) and MRCC Rome (Italy).

2.3. EPN Indalo 2015

2.3.1. Period of implementation and operational areas

The Joint Operation was executed between 1 June and 31 October 2015.

The following five operational areas were defined, covering different southern coastal areas of Spain: Algeciras-Cadiz, Malaga, Motril-Granada, Almeria and Cartagena-Murcia.

2.3.2. Disembarkation in Third Countries

Although foreseen in the Operational Plan as a mere possibility, disembarkation in third countries was not carried out during the implementation period of JO EPN Indalo 2015.

2.3.3. Assessment of the general situation in Morocco and Algeria

The assessment of the situation in Morocco and Algeria was conducted by Spanish authorities and made available to Frontex on 12 May 2015. Based on the information collected by the Host MS and the General Assessment of the Host MS, Spain, the participating Member States that apprehended persons could be conducted to or be handed over to the Moroccan and Algerian Authorities, and that apprehended and rescued persons could be disembarked in Morocco and Algeria, which, nevertheless, did not happen.

2.3.4. Procedures regarding training and the identification of persons in particular situations

The training in first aid is included in the basic training of the law enforcement agencies and navies involved in the operation. Moreover, some of the participating surface assets, with adequate size and operational capacity (Offshore Patrol Vessels), embarked particularly for this activity special teams for SAR and first aid support comprising medic, first aid and SAR experts, boarding team and divers. The Frontex co-financed participating assets were properly equipped for maritime SAR missions. The crew members made use of these equipment on several occasions, whenever the situation required.

The participating units were instructed to use all means to identify the intercepted or rescued persons, assess their personal circumstances, inform them of their destination in a way that those persons understand or may reasonably be presumed to understand and give them an opportunity to express any reasons for believing that disembarkation, forcing to enter, conducting or otherwise handing over to the third country authorities to the proposed place would be in violation of the principle of *non refoulement*.

Each participating unit appointed an Officer responsible for collecting all information mentioned above and forward it to ICC. For these purposes, Greece ensured the availability of shore-based medical staff, interpreters, legal advisers and other relevant experts that shall provide support for the screening and personal assessment of the persons apprehended or rescued.

Once disembarked, the migrants were met on shore in the Spanish ports by mixed teams of Red Cross and different other non-governmental organizations personnel as well as members of the National Police and other responsible bodies ensuring the examination of the status of person in need of international protection and addressing the special needs of children victims of trafficking in human beings, persons in need of urgent medical assistance, disabled persons, elderly people, pregnant women, single parents with minor children, persons with mental disorders and persons who could have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence and other persons in a particularly vulnerable situation.

2.3.5. Communication and cooperation channels

The fact that NCC hosted the ICC facilitated the communication flow between those two entities. RCC and ICC were in permanent contact with each other and with SASEMAR (Maritime Safety and Rescue Society- responsible for SAR operations in Spain). The later, in its capacity of SAR authority in Spain, coordinated these type of activities in close cooperation with Moroccan and Algerian MRCCs. SASEMAR's cooperation with the Moroccan MRCC was particularly enhanced in the strait of Gibraltar where, due to the specificity of the area, both authorities have jurisdiction in the area (part of it also included in the operational area of JO EPN Indalo 2015).

2.4. EPN Hera 2015

2.4.1. Period of implementation and operational areas

The JO started on 3 August 2015 (12.00 LT) and ended on 3 November 2015 (12.00 LT).

The operational area "P" was divided into two zones:

- Operational Area P-1 "Canary": Land area of the Canary Islands
- Operational Area P-2 "Senegal": Territorial waters and exclusive economic zone (EEZ) of Senegal, as well as its air space. The EEZ does not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2.4.2. Disembarkation in Third Countries

The general assessment regarding Senegal was made, however after it was decided that disembarkation in third countries would not be foreseen in the operational plan. As a result, no such action was carried out during the implementation period of JO.

2.4.3. Assessment of the general situation in Morocco and Senegal

The assessment of the situation in Morocco and Senegal was conducted by the Spanish authorities and made available to Frontex on 30 April 2015, prior to launching the operation. It was made with a view of anticipating potential disembarkation of persons in those countries. The assessment was confirmed by exchange of letters between Frontex and the Spanish authorities on 15 and 23 July.

2.4.4. Procedures regarding training and the identification of persons in particular situations

The training in first aid is included in the basic training of the law enforcement agencies and navies involved in the operation.

During the implementation of the operation no migrant boat was intercepted at sea in the operational area. People rescued at sea outside of the operational area by the Spanish and Moroccan assets in their respective search and rescue region, were treated in respect with the SAR and SOLAS conventions as well as IAMSAR manuals.

2.4.5. Communication and cooperation channels

The fact that the NCC housed the ICC facilitated the communication flow between those two entities.

During the JO EPN Hera 2015, there was no occurrence of participating MS units to be placed at the disposal of any Rescue Coordination Centre except between 6 and 24 September for the search of a missing aircraft. No participating unit had the opportunity to inform the International Coordination Centre of the presence of any persons within the meaning of Article 4 (international protection), therefore the ICC did not transmit any information to the competent national authorities of the country where disembarkation should have taken place.

3. Main conclusions and assessment

During the second year of the implementation of the Regulation Frontex' assessment is the following:

Although Frontex has always monitored the protection and promotion of fundamental rights in the joint operations it coordinates, the host Member States were also informing, in advance, their partners responsible for providing support for persons with special needs. Frontex could, thus, better monitor the correct implementation of the Operational Plan in this regard;

The Regulation contributed the clarification to the roles of the National Officer and of the International Coordination Centre and of the communications flows in both interception and

search and rescue cases. The Regulation also allowed for an enhanced cooperation between ICC and national MRCCs;

Faced with the difficulty of dealing with mixed flows and the need to ensure both the respect of the principle of non-refoulement, *inter alia*, and the implementation of EU border management policy, in particular the need to prevent irregular migration and to fight cross-border crime by means of border control, host Member States assumed the responsibility for disembarkation of all persons apprehended and/or rescued in their territory and even beyond their territory as it was decided by Italy.

When disembarkation in third countries were envisaged (in case of JO EPN Poseidon 2015, JO EPN Indalo 2015), Frontex required the host Member State for the “general assessment” of the concerned third country. In this particular aspect, although legal obligations were fully met, Frontex considers that there is room for improvement of the assessments delivered and is ready to support the Member States to develop them;

A tailored briefing for all participants in JO’s has been arranged and included *inter alia* the information and video tutorials as regards main principles of fundamental rights, mechanism of search and rescue activities, as well as role of national authorities to which Frontex experts have to refer in case of persons in need of international protection.

Through the assessment of the implementation of the Regulation in the coming years Frontex will continue to perform its legal tasks of drafting the operational plan and monitor its correct implementation ensuring that the objectives pursued will continue to be attained.

4. Observations of the Fundamental Rights Officer (FRO)

FRO welcomes the inclusion in Operational Plans of an assessment of the general situation in Third Countries (TC) when considering the possibility of disembarkation upon (i) interception in high seas and (ii) Search and Rescue.

However, references to situations of “force to enter, conduct to or hand over” to the authorities of a TC as per Article 4 Regulation 656/2014 should also be spread throughout Operational Plans and not limited to situations of disembarkation, as the same safeguards are applicable in all aforementioned cases.

Disembarkation in TCs was only foreseen in the Operational Plans of EPN Poseidon Sea 2015 and EPN Indalo 2015. Although foreseen in the Operational Plans, disembarkation in TCs was not carried out during the implementation period in any of the JOs to the knowledge of the FRO.

Frontex received two TC general assessments: (i) on the general situation in Turkey carried out by the Greek authorities and (ii) on the general situation in Morocco and Algeria carried out by the Spanish authorities. While welcoming the inclusion of the TC general assessment, FRO is concerned about the content and methodology of the TC general assessments, which in FRO’s view should still be improved to enable Frontex to really assess the situation regarding respect for fundamental rights and risk of *refoulement* in those TCs as mandated by Regulation 656/2014. In FRO’s view, TC general assessments should have a clearer methodology and its content should be enhanced in order to meet the requirements enshrined in Article 4 Regulation 656/2014.

FRO has already suggested a list of a broad range of sources that could be used in the TC general assessments drafted by Member States in coordination with Frontex and stands ready for further cooperation in this field.

4.1. Personal assessment

FRO welcomes the inclusion in Operational Plans of a reference to the obligation of persons participating in operations coordinated by Frontex to use all means to (i) identify the intercepted or rescued persons, (ii) assess their protection needs, (iii) inform them of their destination as well as (iv) 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.

FRO also welcomes the inclusion of references to existing shore-based medical staff, interpreters, and other relevant experts to support the assessment of the personal circumstances of the rescued and intercepted persons.

However, FRO regrets that the concrete means to identify the person and the referral mechanisms used by persons participating in operations coordinated by Frontex to fulfil the abovementioned obligations are not included either in the Frontex Evaluation Reports (FER) or in the Frontex' Annual Report on the implementation of the Regulation 656/2014. Therefore, it remains unclear (i) to what extent Frontex Guest Officers (GOs) and Seconded Guest Officers (SGOs) are de facto able to support national officers in the use of "all means" to perform the identification and personal assessment; (ii) whether these means are sufficient or (iii) there is a need to provide further guidance on how best to perform these tasks, especially when assessing protection needs.

4.2. Procedures regarding the identification of persons in need of international protection and in a particularly vulnerable situation

Operational Plans clearly indicate the obligation of Frontex GOs and SGOs to refer persons in need of protection or in a vulnerable situation to the national officers with whom they work. These national officers are then in charge of handing the persons in need over to the competent authorities. Thus, communication lines seem to be clear in Operational Plans.

Acknowledging that the implementation of the follow up measures is carried out primarily by national authorities, FRO welcomes the inclusion in Operational Plans of clear references to the specific competent authorities in charge of ensuring protection of persons in need of international protection as well as persons in particularly vulnerable situations. However, whereas Operational Plans contain clear references to the competent authorities in case of persons in need of international protection, FRO observes the lack of specific references in some Operational Plans to national mechanisms for the prevention and identification of victims of trafficking in human beings or child protection authorities, especially for unaccompanied minors. In addition, basic contact details of relevant national authorities are not included in any Operational Plan. FRO deems important to include these details either directly or through a reference to the relevant Annex where this information should be made available to ensure clarity on the procedures national officers need to follow after referral by Frontex GOs or SGOs.

FRO welcomes the inclusion in Operational Plan EPN Indalo 2015 of a clear reference to the key role of border guards in ensuring access to international protection procedures by using referral

mechanisms as well as to the obligation to pro-actively provide information to migrants and refugees. This is in line with the obligations deriving from Articles 6 and 8 Asylum Procedures Directive and the recommendations of the FRO.

4.3. Reported incidents

During the reporting period and within the framework of Frontex sea operations, three (3) incidents related to alleged breaches of the prohibition of collective expulsion as per Article 19 EU Charter of Fundamental Rights were brought to the attention of the FRO. The three incidents occurred in the framework of EPN Poseidon Sea 2015.

FRO was appointed as a coordinator in one out of the three incidents and followed up the case with Frontex relevant units and national authorities.

4.4. Frontex Operational Briefings and training activities

Operational Briefings include a presentation on fundamental rights where references to Regulation 656/2014 is made as well as to referral mechanisms. In addition, operational briefings are often supported by the International Organization for Migration, UNHCR, the Red Cross and the European Asylum Support Office (EASO). FRO welcomes this cooperation and encourages its expansion to other border operations.

In order to enable border guards to undergo the personal assessment and ensure referral to the competent authorities of persons in need of international protection, Frontex, in cooperation with EASO started to develop an “Access to procedures” tool in 2015. This tool contains behavioural technics as well as indicators for border guards to identify persons and ensure their access to international protection procedures. In addition, it also provides guidance on follow-up assistance/referral as well as procedural guarantees that need to be observed, such as the provision of information on the possibility to apply for international protection, when and how to do it. The pro-active dissemination of the tool in all operations coordinated by Frontex is expected during 2016.