

**Annual report on the implementation of
Regulation (EU) 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 Frontex**

2017

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List of abbreviations

EASO - European Asylum Support Office,
EUROSUR - European Border Surveillance system
FRA - Fundamental Rights Agency
FRO - Fundamental Rights Officer
Frontex - European Border and Coast Guard Agency
FSC - Frontex Situation Centre
ICC - International Coordination Centre
IOM - International Organization for Migration
JO - Joint Operation
MAS - Multipurpose Aerial Surveillance
MRCC - Maritime Rescue and Coordination Centre
MS - Member States
NATO - North Atlantic Treaty Organization
NCC - National Coordination Centre
SASEMAR - Maritime Safety and Rescue Society
SIR - Reported Serious Incidents
UNHCR - UN Refugee Agency

Introduction

The EU Regulation 656/2014 of the European Parliament and of the Council of 15 May 2014 establishes rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex (hereinafter “Regulation”) came into force on 17 July 2014.

This Regulation has been fully integrated in the Operational Plans of the joint maritime operations as it is referred to in the European Border and Coast Guard Regulation¹.

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 European Parliament, the Council and the Commission.

The report refers to all those joint operations launched in 2017 that included surveillance of the EU external sea borders. It reflects the operational calendar of activities foreseen in the Programme of Work 2017 of the European Border and Coast Guard Agency (Frontex) with implementation periods of the respective joint operations as specified in Chapter 2.

The report comprises four parts.

- The first part describes the provisions introduced to the Operational Plans.
- The second part defines the procedures set for Frontex to implement the Regulation during the joint maritime operations and information on its application, including detailed information on compliance with Fundamental Rights. In this part, the report analyses the implementation of the Regulation in the joint operations starting with the issue of disembarkation in Third Countries, followed 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 the assessment of the communication and cooperation channels. The second part further contains a brief information on other maritime activities taking place in the vicinity of the operational areas of the joint operations Poseidon and Triton.
- The third part contains the general assessment made by Frontex of the implementation of the Regulation during the joint operations in 2017 and outlines operational consequences or strategic questions to the EU institutions arising from a four year experience since the entry into force of the Regulation.
- The fourth part presents the independent observations of Frontex’s Fundamental Rights Officer.

1. Provisions introduced to the Operational Plans

The following joint operations coordinated by Frontex in 2017 included the surveillance activity at the external sea borders:

- Triton 2017
- Poseidon 2017
- Indalo 2017
- Hera 2017

Specific provisions, in line with the Regulation, are incorporated in the Operational Plans of those joint operations, in particular the respective Annex 6 (Description of the Tasks and Specific Instructions to the Members of the European Border and Coast Guard Teams (Rules Of Engagement) and the Technical

¹ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.09.2016, p. 1).

Equipment Mission Reports, applicable to both, host and participating Members States² vessels deployed by Frontex.

The provisions introduced in the Operational Plans, where applicable, included:

- The need for an assessment of the general situation in a Third Country whenever the disembarkation in this Third Country was foreseen in the Operational Plan³; this was envisaged in cases of:
 - disembarkation upon interception on the high seas
 - disembarkation upon Search and Rescue
- A reference to the existing shore-based medical staff, interpreters and other relevant experts of the host and participating Members States to support the assessment of the personal circumstances of rescued and intercepted persons (if disembarkation in a Third Country would be foreseen) - Article 4(3) of the Regulation.
- 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, such as children, in particular unaccompanied minors, 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) of the Regulation.
- A special template for reporting on disembarkation in Third Countries to be made available to the deployed assets.
- Definition of the modalities for the disembarkation of persons intercepted or rescued within Frontex coordinated maritime operations, adapted to the circumstances of each respective JO and in accordance with the provisions of Article 10 of the Regulation.

1.1 Competences/tasks of the International Coordination Centres

Within each joint operation, an operational coordination structure is established in the respective host Members States, composed of the officers from the host Members States, National Officials representing assets deployed by participating Members States and Frontex Operational Coordinator under the control of Frontex Coordinating Officer. This coordination structure, called International Coordination Centre, leads and coordinates the implementation of the operational activity as described in the Operational Plan and acts as a channel for communication between the officers involved in joint operations and the national authorities concerned.

Frontex coordinated joint operations are set up with the main aim for border control purposes. Frontex-deployed assets operate under the command of the International Coordination Centre. However, when contacted by the respective Maritime Rescue Coordination Centre, or when a search and rescue case is being declared, it is the Maritime Rescue Coordination Centre that takes command for search and rescue situations. It is worth mentioning that support to search and rescue is provided also beyond the operational areas of Frontex. In this regard, in 2017, Frontex deployed assets were involved directly in rescuing approximately 28 883 persons in the frame of Frontex coordinated joint operations.

Following the “Operational and technical support to search and rescue” as part of the European Integrated Border Management, providing such assistance is also a part of Frontex’s mandate. This is also

² For the purposes of the present document, the term “Member State” includes also the States participating in the relevant development of the Schengen acquis in the meaning of the Treaty on the Functioning of the European Union and its Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union, that is, Norway, Iceland, Liechtenstein, and Switzerland.

³ Article 4(2) of the Regulation provides: “When considering the possibility of disembarkation in third country, in the context of planning a sea operation, the host Member State, in coordination with participating Member States and the Agency, shall take into account the general situation in that third country.”

in line with international law, which obliges all captains of vessels to provide assistance to any persons found in distress at sea.

It has to be noted that Frontex support to Members States does not cease after the migrants are being disembarked at the host Members States. Frontex is present at the respective stages of processing of migrants, thus contributing to internal security of the EU. In this context Frontex deploys screening, debriefing, fingerprinting and advanced level document experts. In line with its mandate, Frontex also processes personal data collected during interviews of migrants and shares those personal data with Europol and national law enforcement authorities for the purposes of criminal investigations and prevention of terrorism.

2. Application of the Regulation in the Joint Maritime Operations

2.1. Joint Operation Triton 2017

2.1.1. Period of implementation and operational areas

In accordance with the Operational Plan, joint operation Triton 2017 started on 1 February 2017⁴ and ended on 31 January 2018. The operational area was established in the south of Italy (Puglia and Calabria) including Sicily, Sardinia, the Pelagic Islands, as well as an area south of the island of Malta.

Lampedusa, Pozzalo, Taranto, Trapani and Messina (since the end of August 2017) were the locations nominated as hotspots in Italy.

2.1.2. Assessment of the general situation in Third Countries

Due to the fact that the possibility of disembarkation of the rescued or intercepted migrants in a Third Country was not considered in the joint operation Triton, no assessment of the general situation in Third Countries was made by Italy.

2.1.3. Disembarkation in Third Countries

Upon the decision of Italy, with Frontex Agreement, it was stated in the Operational Plan that coordination and cooperation would be ensured, with all the relevant search and rescue authorities, in order that all persons rescued by the units participating in the Joint Operation would be disembarked in a place of safety in Italy, within the operational area. At the same time it was decided that no rescued person by a participating maritime asset, independently of the area where the rescue would take place, could be handed over to Third Country authorities or disembarked in the territory of that Third Country.

In case of a search and rescue incident in the territorial waters and contiguous zone of Malta or in cases when the safeguard of the lives of people in distress required so, disembarkation to in Malta could be envisaged.

All migrants intercepted or rescued by Frontex assets were disembarked in Italy.

2.1.4. Procedures related to training and the identification of persons in particular situations

Training in first aid is included in the basic training of the national law enforcement authorities and navies involved in the operation. The crew members of the Frontex co-financed maritime assets participating in the operation underwent basic first aid training ensured by the national authority. Some of the participating surface assets, with adequate size and operational capacity (Offshore Patrol Vessels), embarked particularly for this activity special teams for search and rescue and first aid support comprising medical, first aid and search and rescue experts, boarding teams and divers. Upon interception or rescue, the participating maritime assets informed immediately the International Coordination Centre, respectively the Italian Maritime Rescue Coordination Centre of the presence of any vulnerable persons on board.

⁴ Period between 1 January 2017 and 31 January 2017 was addressed in Frontex's Annual Report 2016 on the implementation on the EU Regulation 656/2014 published on 18 July 2017.

Once disembarked, the migrants were met ashore in the Italian ports by Host Members States officers with the support of the experts deployed by other Members States as well as respective international and non-governmental organizations 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.

2.1.5. Communication and cooperation channels

The National Coordination Centre, the International Coordination Centre and the Italian Maritime Rescue Coordination Centre were in permanent contact with each other. The National Coordination Centre assured the strategic and overall implementation of the joint operation and was responsible to define the ports of disembarkation of the migrants intercepted or rescued. The International Coordination Centre was responsible for the daily operational implementation of the joint operation. The Maritime Rescue Coordination Centre, in its capacity as search and rescue authority in Italy, coordinated all search and rescue incidents.

2.1.6. Other maritime activities in vicinity of the joint operation Triton area

EUNAVFOR MED Operation Sophia vessels and aircrafts operated close to the Libyan territorial waters, rendering assistance in search and rescue activities coordinated by the Italian Maritime Rescue Coordination Centre, when requested. The cooperation between the joint operation Triton and EUNAVFOR Med was based on Standard Operating Procedures.

In accordance with the Standard Operating Procedures, the exchange of operational Liaison Officers between EUNAVFOR MED and the joint operation Triton contributed to an enhanced level of operational cooperation and information exchange between the two actors. Gaining advantage of the presence of an EU Common Security and Defence Policy military operation in the area, proper coordination was considered mandatory to ensure the security of the assets deployed under the joint operation Triton and EUNAVFOR MED.

In addition, several vessels of Non-governmental organizations operated off the coast of Libya, rendering assistance to the migrants' boats departing from Libya. In order to better structure their interventions and relations with Governmental authorities, a Code of Conduct for Non-governmental organizations was introduced by the Italian authorities as from July 2017.

The majority of rescues were made by the EUNAVFOR MED and Non-governmental organizations' assets⁵, as they were the closest to the search and rescue incidents occurring from the Libyan coast. Frontex's co-financed assets were deployed proactively at the southern boundary of the Maltese Search and Rescue Region, to be then engaged for search and rescue by the competent Maritime Rescue Coordination Centre, if needed.

2.2. Joint Operation Poseidon 2017

2.2.1. Period of implementation and operational areas

The joint operation Poseidon 2017, in accordance with the Operational Plan, started on 1 February 2017⁶ and ended on 31 January 2018.

The operational activities were carried out at the external sea border of Greece at the Eastern Aegean and Eastern Ionian Seas; additionally two maritime vigilance areas - North and South - were established

⁵ The Regulation does not apply to the assets of EUNAVFOR Med nor to Non-governmental organizations.

⁶ Period from 1 January 2017 to 31 January 2017 was addressed in Frontex's Annual Report 2016 on the implementation on the EU Regulation 656/2014 published on 18 July 2017.

in the Aegean Sea. Furthermore, in order to monitor secondary migration flows, Reporting points were established at the ports of Igoumenitsa, Patras, Korinthos and Kerkyra.

Five islands, namely Lesbos, Chios, Samos, Kos and Leros were nominated as hotspots in Greece.

2.2.2. Assessment of the general situation in Turkey

The assessment of the general situation in Turkey was conducted by the Hellenic authorities and made available to Frontex on 17 January 2017. Based on the general assessment, the host, the participating Members States and Frontex agreed that the intercepted or rescued persons could be disembarked in Turkey, conducted to or otherwise handed over to Turkish authorities provided that such decision, taken upon personal assessment, does not constitute an infringement to the fundamental rights of the person nor a breach of the principle of non-refoulement.

2.2.3. Disembarkation in Third Countries

The assets deployed within the operation were authorized, by Hellenic authorities, to disembark in Greek territory the persons intercepted or rescued in Greek territorial sea as well as in all operational area, even beyond its territorial sea. Although the possibility of disembarkations in a Third Country has been considered, in practice such disembarkations did not take place during the joint operation Poseidon. This was due to the fact that there were no migrants intercepted or rescued by Frontex assets within Turkish waters in the Aegean Sea. In case of Ionian Sea, all rescued migrants were also transferred to the nearest place of safety in Greece.

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

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

The participating units were instructed to use appropriate 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*.

Once disembarked, the migrants were met ashore at the Greek Sea ports by the Host Member State officers with support of respective international and non-governmental organizations. The responsible officers of the 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 International Coordination Centre in Piraeus facilitated the communication flow between different entities. The Hellenic Joint Rescue Coordination Centre and the International Coordination Centre were in permanent contact with each other. In case of search and rescue, the Joint Rescue Coordination Centre took over the coordination and, in case of need, cooperated with Maritime Rescue Coordination Centre in Ankara (Turkey) and Maritime Rescue Coordination Centre in Rome (Italy).

2.2.6. Other maritime activities in the vicinity of the joint operation Poseidon area

The Standing NATO Maritime Group 2 was operating within the North Atlantic Treaty Organization (NATO) Aegean Activity, deploying maritime assets⁷ in the area. The activities of the Standing NATO Maritime Group 2 were carried out at the territorial waters of both Greece and Turkey, as well as on the high seas (international waters), being focused on the reconnaissance, monitoring of illegal crossings by various vessel, boats etc., contributing actively to the border surveillance.

The cooperation between Allied Maritime Command (MARCOM) and Frontex was based on specific Standard Operating Procedures, ensuring the real-time sharing of the operational information. In order to achieve it, Frontex had an operational Liaison Officer deployed on board of the Standing NATO Maritime Group 2 Flag Ship. The mutual cooperation between NATO and Frontex, brought added value as regards the early detection of the migrant boats illegally crossing the maritime border.

There were also few boats⁸ of Non-governmental organizations operating mainly in the Northern area of Aegean, thus being a part of the Greek Search and Rescue Region, and rendering the assistance in search and rescue under the coordination of the Hellenic Joint Rescue Coordination Centre.

2.3. Joint Operation Indalo 2017

2.3.1. Period of implementation and operational areas

In accordance to the provision of Operational Plan, the joint operation Indalo 2017 started on 3 May 2017 and ended on 31 January 2018.

Initially the operational area covered the following southern coastal areas of Spain: Algeciras, Malaga, Motril-Granada, Almeria and Cartagena-Murcia; as from 21 September 2017 the operational area also included the Spanish territorial and international waters off the province of Cadiz.

2.3.2. Assessment of the general situation in Third Countries

Due to the fact that the possibility of disembarkation of the rescued or intercepted migrants in a Third Country was not considered in the joint operation Indalo, no assessment of the general situation in Third Countries was made by Spain.

2.3.3. Disembarkation in Third Countries

In agreement between Frontex and Spain, it was stated in the Operational Plan that all persons rescued by the units participating in the Joint Operation would be disembarked in a place of safety in Spain, within the operational area. No disembarkation could take place in the territory of a Third Country.

All migrants intercepted or rescued by Frontex assets were in fact disembarked in Spain.

2.3.4. Procedures related to training and identification of persons in particular situations

Training in first aid is included in the basic training of the national law enforcement authorities and navies involved in the operation. Some of the participating surface assets, with adequate size and operational capacity (Offshore Patrol Vessels), embarked particularly for this activity special teams for search and rescue and first aid support comprising medical, first aid and search and rescue experts, boarding teams and divers. The Frontex co-financed participating assets were properly equipped for maritime search and rescue missions. The crew members made use of this equipment, whenever the situation required.

Once disembarked, the migrants were met ashore in the Spanish ports by Host Member State officers with the support of the experts deployed by other Member States as well as respective international and non-governmental organizations 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

⁷ The Regulation does not apply to NATO Aegean Activity (SNMG2) assets.

⁸ *Ibid.* the Regulation does not apply to Non-governmental organizations' assets.

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 the National Coordination Centre hosted the International Coordination Centre in Madrid facilitated the communication flow between those two entities.

They were in permanent contact with each other and with the Maritime Safety and Rescue Society (SASEMAR) responsible for search and rescue operations in Spain. The latter, in its capacity as search and rescue authority in Spain, coordinated this type of activities in close cooperation with Moroccan and Algerian Maritime Rescue Coordination Centres. SASEMAR's cooperation with the Moroccan Maritime Rescue Coordination Centre was particularly enhanced in the Strait of Gibraltar due to the specificity of the area.

2.4. Joint Operation Hera 2017

2.4.1. Period of implementation and operational areas

The joint operation started on 1 August 2017 and ended on 31 October 2017.

The operational area "P" was divided into two zones: land area of the Canary Islands and territorial waters and Exclusive Economic Zone of Senegal, as well as its air space.

2.4.2. Disembarkation in Third Countries

Although foreseen in the Operational Plan, disembarkation in Third Countries was not carried out during the implementation period of the joint operation Hera 2017. During the implementation of joint operation, no migrant boats were intercepted at sea in the operational area.

2.4.3. Assessment of the general situation in Senegal

The assessment of the situation in Senegal was conducted by Spanish authorities and made available to Frontex on 21 April 2017 and after a specific request made by Frontex to review it according to the requirements of the Regulation, updated on 18 July 2017.

Based on the general assessment, the host, the participating Member States and Frontex agreed that Senegal, the only Third Country to which rescued or intercepted persons may be conducted to or to whose authorities they may be handed over or in which territory they may be disembarked, is not engaged in practices such as infringements to the fundamental rights of the persons nor breaches of the principle of non-refoulement.

For the future, in accordance with Article 54 (4) of European Border and Coast Guard Regulation, a status agreement shall be concluded by the EU with the Third Country concerned in order to enhance the concept of the joint operation Hera.

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

Training in first aid is included in the basic training of the national law enforcement authorities and navies involved in joint operation. Some of the participating surface assets embarked particularly for this activity special teams for search and rescue and first aid support comprising medical, first aid and search and rescue experts, boarding teams and divers. The Frontex co-financed participating assets were properly equipped for maritime search and rescue missions.

Once disembarked, the migrants were met ashore in the Spanish ports by the Host Member State officers with support of international and non-governmental organizations 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.

2.4.5. Communication and cooperation channels

The fact that the National Coordination Centre hosted the International Coordination Centre in Madrid facilitated the communication flow between those two entities.

The Local Coordination Centre in Las Palmas, which is settled within the structure of the Regional Coordination Centre in Gran Canaria, was, on a daily basis, collecting all information received by the assets deployed on the spot as well as information regarding the incidents occurred. All this information was constantly transferred to the International Coordination Centre. The presence of Liaison Officers from Morocco, Mauritania and Senegal in the LCC provided further valuable information.

3. Main conclusions

3.1. Frontex and the Host Member States of its maritime joint operations fully complied with the purposes of Fundamental Rights enshrined in the Regulation

It can be concluded that Frontex has always monitored the protection of and ensured full compliance with fundamental rights in the joint operation it coordinates. According to the Operational Plan, the respective authorities of the host Member State involved in the joint operations, communicated in advance with other entities responsible for providing support for vulnerable persons with special needs.

The provision of the Regulation contributed to the clarification of the communications flows in both interception and search and rescue cases and facilitated the enhanced cooperation between the respective International Coordination Centres and national Maritime Rescue Coordination Centres.

Faced with the difficulty of dealing with mixed flows and the need to ensure both the respect of the principle of *non-refoulement*, and the implementation of European integrated border management, in particular the need to prevent illegal immigration and to fight cross-border crime by means of border control, the host Member States assumed the responsibility for disembarkation in their territories of all persons apprehended and/or rescued.

With the involvement of other actors⁹ in the vicinity of the operational areas of the joint operations Poseidon and Triton, in particular the NATO Aegean Activity, EUNAVFOR Med and respective Non-governmental organizations, the capacities for border surveillance and search and rescue have increased in the areas in focus. As an outcome, the Italian Maritime Rescue Coordination Centre has been engaging primarily the assets of EUNAVFOR Med and respective Non-governmental organizations operating close to Libyan coast when search and rescue cases have been declared. In case of the NATO Aegean activity, the assets contributed to early detections of the migrant boats illegally crossing the maritime border thus facilitating Greek and Turkish authorities in border surveillance and search and rescue operations.

When disembarkation in Third Countries was envisaged (in case of joint operations Poseidon 2017 and Hera 2017), Frontex required the host Member States to provide a “general assessment” of the concerned Third Countries. Although considering this possibility, the disembarkations in the Third Countries did not take place in the above indicated joint operations.

In regard the quality of the general assessments of the Third Countries, Frontex considers that a broader range of sources, which may include other Member States, respective EU entities and international organisations could be used as well as the existence of agreements and projects on migration and asylum carried out in accordance with Union law and through Union funds could be taken into account.

⁹ The Regulation does not apply to those actors.

Tailored briefings for all participants of the joint operations have been arranged by Frontex 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.

Specific operational briefings delivered to the crew members of deployed maritime and aerial assets were recognised as a valuable tool to increase the awareness of participants about the implementation of border control activities and the follow-up measures upon disembarkation of persons.

With the same goal, search and rescue workshops were organised in the frame of the joint operations Poseidon and Triton with participation of the Member States assets. These workshops also served to test the communication structures and cooperation between them, as well as between the International Coordination Centres and Maritime Rescue Coordination Centres.

3.2. Can the Regulation serve a sound management of the maritime EU external borders by Frontex in the long run?

As demonstrated by this report, the Member States hosting Frontex maritime joint operations in 2017 were rather reluctant to envisage disembarkations in neighbouring Third Countries or, when they theoretically did so, they never actually instructed the vessels deployed under Frontex joint operations to disembark rescued irregular migrants in the closest place of safety in a neighbouring Third Country. It seems even that the difference between the concept of interception case and the concept of search and rescue case got lost in the daily routine of competent national authorities of the Member States hosting Frontex maritime joint operations. At this point it is difficult to conclude whether this development over the last years is due to the complexity of the Regulation or whether the Regulation indirectly deterred operational authorities from considering disembarkations in third countries as viable options.

In summer 2017 Italy questioned this point and requested Frontex to explore how the Operational Plan of Triton could be improved to mitigate the fact that all disembarkations were automatically and systematically taking place in the Host Member State. The Operational Plan of Themis 2018 was a partial response to that question. However while this report on the Regulation was being drafted, the European Council adopted on 28 June 2018 following conclusion:

“In order to definitively break the business model of the smugglers, thus preventing tragic loss of life, it is necessary to eliminate the incentive to embark on perilous journeys. This requires a new approach based on shared or complementary actions among the Member States to the disembarkation of those who are saved in Search and Rescue operations. In that context, the European Council calls on the Council and the Commission to swiftly explore the concept of regional disembarkation platforms, in close cooperation with relevant third countries as well as UNHCR and IOM. Such platforms should operate distinguishing individual situations, in full respect of international law and without creating a pull factor”.

Against that new background and based on its operational experience since the entry into force of the Regulation four years ago, Frontex invites the EU institutions and in particular the EU legislator to explore a revision of the Regulation taking into account following facts:

- The current Regulation somehow discriminates Frontex joint operations while national authorities acting alone are not bound by the Regulation. Thus they can in a less complex way proceed with disembarkations in Third countries provided that there is no breach of the principle of non refoulement.
- Other actors listed in this report such as EU military operations, NATO or Non-governmental organisations or private rescuers as well as other EU agencies such as European Maritime Safety Agency and the European Fisheries Control Agency are not bound by the Regulation, just complying with the international rule of the place of safety. In that context it is difficult to understand why the joint operations of the European Border and Coast Guard Agency (Frontex) should be subject to a different legal obligation making it less attractive and more cumbersome

for maritime EU Member States. It is even less understandable in view of the development of EU Coast Guard functions that Frontex, the European Maritime Safety Agency and the European Fisheries Agencies have jointly undertaken in line with their respective revised mandates that entered into force in October 2016.

Against the new background created by the conclusions of the European Council adopted on 28 June 2018, and in parallel to possible amendments of the Regulation to be decided by the EU legislator, Frontex is ready to explore with the respective Host Member States of Themis, Poseidon, Indalo and Hera how Operational Plans could better provide for disembarkations options in relevant Third Countries. In some cases Frontex joint operations could also better serve the cooperation between the EU Host Member State of an operation and relevant Third countries. As an example Joint Operation Hera would be significantly enhanced if Frontex deployed assets could operate in the territorial waters of Senegal on the basis of a Status Agreement concluded in line with Article 54 (4) of the European Border and Coast Guard Regulation.

The assumption paving the way to the Regulation adopted in 2014 was that Frontex only deploys maritime surface assets under joint operations hosted by an EU Member State. However in the context of European Border Surveillance system (EUROSUR) and due to the development of own aerial surveillance capacities by Frontex, new operational situations will arise and require political guidance. In the context of the Multipurpose Aerial Surveillance (MAS) developed by Frontex in 2017, many sightings saved lives and triggered Search and Rescue actions that would have otherwise not taken place because no coastal State had spotted the case.

For the time being, Frontex Situation Centre shares the information collected by MAS in real time with the neighbouring EU Member States. In particular there is no direct operational transmission from Frontex Situation Centre to Libyan Coast Guard forces. Given the fact that the Commission allocated 46 million euro for the creation of a Maritime Rescue Coordination Centre in Tripoli, that Italy was designated by the Commission as project leader while Frontex supports Italy with technical expertise in this project, Frontex seeks political guidance from the EU institutions: which EU institutional mechanism or political decision making process will one day notify Frontex that it is allowed to share sightings with the Maritime Rescue Coordination Centre of Tripoli for the purpose of Search and Rescue? This question is even more relevant and urgent since the International Maritime Organisation recognised the existence of a Search and Rescue Region declared by Libya. Shall SAR Convention 1979 be applied here and Libyan MRCC/JRCC informed accordingly?

A possible revision of the Regulation or the ongoing revision of the EUROSUR Regulation should certainly address under which circumstances and conditions Frontex is explicitly entitled to share maritime sightings with neighbouring Third Countries for the purpose of Search and Rescue or other purposes pertaining to law enforcement at sea.

4. Observations of the Frontex Fundamental Rights Officer

4.1 Concerns in the preparation and implementation of sea surveillance operations

The commitments to fulfil obligations related to the guarantee of protection of fundamental rights and the principle of non-refoulement as set by the Regulation 656/2014 were expressed in general terms in all relevant operational plans concerned, i.e. Joint Operation (JO) Triton 2017, JO Indalo 2017, JO Poseidon 2017 and JO Hera 2017. As matters of concern, the FRO has repeatedly drawn attention within the Agency to the following issues related to the preparation and the implementation of the aforementioned operations:

- Need to enhance the quality and comprehensiveness of the assessment as well as an update of the **general situation in a third country**;

- Lack of clarity and/or absence of clear methods for the **assessment of personal circumstances** of intercepted or rescued person to be disembarked, forced to enter, conducted or handed over to the authorities of a third country;
- Insufficient information/clarity in relation to referral procedures regarding **identification of persons with international protection needs** and in a particularly vulnerable situation.

4.1.1 Assessment of the general situation in a third country

The FRO welcomes the inclusion of the assessments of the general situation in third countries in operational plans when considering the possibility of disembarkation upon interception (i) in high seas and (ii) Search and Rescue Regions. In 2017, the assessments were carried out for Turkey by Hellenic authorities and for Morocco, Algeria and Senegal by Spanish authorities.

While welcoming the inclusion of the third countries general assessments, the FRO, as repeatedly indicated in earlier reports, is concerned about their extent, content and methodology. In general, the assessments for the aforementioned third countries tend to merely enumerate a list of political and legal instruments and do not offer any conclusive assessment, analysis or reference, on whether the practices on the third country could contravene fundamental human rights and the principle of non-refoulement as enshrined by Article 4 of the Regulation 656/2014. Secondly, the assessments do not incorporate findings on international and domestic human rights, neither protection and asylum mechanisms nor other UN relevant monitoring mechanisms that report about implementation of obligations deriving from the international conventions in the analysed third countries. Thirdly, the FRO further indicated that these assessments lack references to a **“broad range of sources”** as mandated in Article 4.2 paragraph 2 of the Regulation 656/2014 such as the reports and information provided by relevant international organisations or other EU bodies with specific mandate on fundamental rights and/or asylum. In sum, these assessments seem not to meet the basic requirements established in Regulation 656/2014 to justify that any disembarkation will not amount to potential violation of fundamental rights, and in particular the principle of non-refoulement.

Taking into consideration the aforementioned concerns, the FRO recommends to the Agency to request from the host MS the expansion of some of these assessments, as well as the incorporation in operational plans of the procedures aiming to **“update [the assessment] as necessary”** as per Article 4.2 of the Regulation 656/2014. As proposed by the FRO, the sources provided should be broad and diverse as well as updated to reflect accurately the possible dynamics of the situation in the relevant third countries. The FRO stands ready for further cooperation in this field to render the exercise meaningful for the prevention of violations of the principle of non-refoulement.

4.1.2 Assessment of personal circumstances

The FRO welcomes the inclusion in all operational plans of a reference to the obligation of participating units in operations coordinate by Frontex to use all means to (i) identify the intercepted or rescued persons, (ii) assess their personal circumstances, (iii) inform them of their destination as well as (iv) give them an opportunity to express any reason for believing that disembarkation in the proposed place would be in violation of the principle of non-refoulement.

The FRO also welcomes the inclusion of a provision in the operational plans establishing that each participating unit shall appoint an Officer responsible for the final decision on the personal assessment and for the collection of all information, excluding the personal data, which shall be regularly forwarded to International Coordination Center of the given joint operation (ICC) and to Frontex.

As foreseen in Article 5 of the Regulation 656/2014, there is a provision requesting from the host Member States and relevant third countries to ensure the availability of shore-based medical staff, interpreters, legal advisors and other relevant experts to support personal assessment of the persons intercepted or rescued at the designated point of disembarkation. The consideration of disembarkation as a place of safety is also fully included in the operational plans. Disembarkation in third countries was not foreseen during the implementation of JO Triton 2017 (Italy) neither of JO Indalo 2017 (Spain), while it was foreseen in JO Poseidon 2017 (Greece) and in JO Hera 2017 (Senegal, Spain). As reported by the Agency, disembarkation in third countries was not carried out during the implementation of all the aforementioned

operational plans. However, and in order to comply with Article 4.1 of the Regulation 656/2014, the prohibition contained in the operational plans should extend not only to disembarkation but also to “force to enter, conduct to or otherwise hand over”.

4.1.3 Procedures regarding identification of persons with international protection needs and in a particularly vulnerable situation

The FRO welcomes the inclusion in all operational plans of a provision according to which the participating units shall, when there is a vessel in uncertainty, alert or distress, take into account and transmit all relevant information and observations to the responsible Maritime Rescue Coordination Centre (MRCC), including information on persons on board in urgent need of medical assistance, pregnant women, children, etc. The operational plans also foresee follow-up measures related to provision of basic human needs, and special measures applicable to persons in need of international protection and other vulnerable persons. The FRO welcomes that the operational plans, as part of follow-up measures, clearly state who the persons in vulnerable situation might be, besides those in need of international protection, such as children, unaccompanied minors, victims of trafficking in human being, persons with serious illness, disabled people, elderly people, pregnant women, single parents with children, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

In order to fulfil the obligation foreseen in Article 16 (3.1) of the Regulation 2016/1624, a **questionnaire to request information about the referral mechanism** was sent to host Member States in December 2016. Neither Italy in JO Triton 2017, nor Greece in JO Poseidon 2017 provided answers to the Questionnaire prior to the commencement of the respective operations in 2017. On a positive note, this has been done for the upcoming cycle of operations in 2018 by Greece, whose answers also covered the newly added part related to the national procedures on stateless persons. The FRO also welcomes the fact that the host Member State Spain within JO Hera 2017 replied extensively to the questionnaire in the item 3) by covering aspects related to internal and external oversight mechanisms for alleged violations of fundamental rights. Regarding the inclusion of the Questionnaire in the operational plans, JO Indalo was the only one that included it as an Annex.

Finally, the FRO regrets that the proposal to include a specific fundamental rights-related operational objective, and activities as well as indicators was only taken into consideration within the JO Indalo 2017 and JO Hera 2017 operation plans. Its omission in the remaining operational plans results in a lack of collection of sex and age disaggregated data as a basis for the identification of children and gender-specific needs¹⁰, required to tailor the Agency’s operational response with child protection expertise, or gender considerations in the deployment. This inclusion is a basic prerequisite that would allow a proper impact assessment and evaluation of the operational activities on fundamental rights and the principle of non refoulement within a more solid framework. Further development on how this systematic data collection on fundamental rights relevant matters, in order to evaluate its impact, needs to be considered by the Agency in the upcoming cycle of operations.

4.2 Reported Serious Incidents (SIR) and Complaints

During the reporting period and within the framework of Frontex operations, a total of nine (9) Serious Incident Reports (SIR) were submitted to Frontex, from which three (3) took place in Frontex sea operations. The FRO was appointed as a SIR coordinator for all reported incidents and followed up the cases with Frontex relevant units and national authorities. Among the three incidents reported, one occurred in JO Triton 2017 and two in JO Poseidon 2017. The alleged violated rights in these SIRs were the following: the right to life (Article 2 of the Charter of fundamental rights of the European Union), right to asylum (Article 18), the rights of the child (Article 24) and Human dignity together with the right to the integrity of the person (Article 1 and 3). One of the three cases is still open and under follow up

¹⁰ Communication from the Commission to the European Parliament and the Council - The Protection of children in migration, COM(2017) 211 final, 12 April 2017 [URL: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/whatwe-do/policies/european-agendamigration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf] and Letters to Frontex Executive Director sent on 11 May 2017 and 20 December 2017 regarding “a child protection strategy for Frontex” and “gender mainstreaming in Frontex activities”.

procedures, and pending final reporting on findings and conclusions by the respective authorities at the time of reporting.

No complaints were received concerning sea surveillance operations. However FRO notes that the Agency had not developed awareness material on the complaints mechanism for distribution to operational areas in 2017. The situation is expected to be remedied in 2018.

4.3 Awareness and capacity building activities

The FRO welcomes that all the operational plans embedded a fundamental rights chapter where references to the Regulation 656/2014 are made as well as to the referral mechanisms in all operational briefings/debriefings to all participants if the joint operations, and also the obligation to train participants on fundamental rights and access to international protection in sea surveillance operations. In addition, operational briefings were often supported by the European Asylum Support Office (EASO), the International Organization for Migration (IOM), the UN Refugee Agency (UNHCR), Save the Children and the Red Cross. The FRO welcomes this cooperation and encourages its expansion to other border operations with the support of the Frontex Consultative Forum on fundamental rights. Furthermore, the FRO deems important to hold specific working sessions in operational areas on trafficking in human beings -which was initiated in 2018- and on the prevention of violation of the principle of non-refoulement to all participants in Frontex activities, especially in hotspots, for which the Fundamental Rights Agency (FRA) could also be a very adequate and useful partner to provide assistance.

In order to enable first entry officials to proactively engage in the personal assessment of intercepted and rescued persons, as well as to ensure referral to the competent authorities of persons in need of international protection, Frontex, in cooperation with EASO developed an “**Access to procedures**” tool in 2015. This tool contains information, behavioural technics and indicators for border guards to identify persons in need of international protection and ensure their access to international protection procedures, as well as guidance on referral and procedural guarantees that need to be observed in this process (such as the provision of information on the possibility to apply for international protection, when and how to do it). The FRO welcomes that, following her advice, the tool was proactively disseminated in 2017 in the sea operations coordinated by Frontex and that it was assessed as useful and relevant to their tasks by members of the teams deployed.

Following the delivery in 2016, the FRO continued delivering regularly in 2017 the fundamental rights related session on the specialised training for “Maritime Border Surveillance Officers” for those potential participants to be deployed in the Agency’s sea surveillance operations.