

ROMANIA
MINISTRY OF INTERNAL AFFAIRS
GENERAL INSPECTORATE OF ROMANIAN
BORDER POLICE

Bucharest,
19th of November 2020
No *Lf639*



To:

Mr. Fabrice Leggeri, Frontex Executive Director

Dear Mr. Leggeri,

Regarding your letter no ORD/FDU/MIMI/9743/2020 of 09 November 2020, I wish to thank you for your appreciations regarding the participation of the Romanian Border Police personnel and technical assets deployed within the Joint Operations (JO) and Rapid Intervention Operations (RBI), hosted by Greece, at the maritime borders.

Thus, as regards your requests, they were analyzed at the level of our institution and for this purpose we provide you with the corresponding details.

As it is known, Romania, through the Romanian Border Police, is an active member of Frontex Agency, implementing the provisions of the **Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (UE) no 1052/2013 and (EU) 2016/1624 and of the Regulation (EU) 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**, both of them being supporting documents that are governing the execution of specific activities at institutional level, both during the internal missions and in case of external missions in which our maritime assets take part together with the related crews, according to the commitments undertaken.

Based on the Regulation abovementioned, the Member States facing an excessive migratory pressure or envisaging the evolution of this phenomenon as a result of the specific risk analysis may request the support of the European Border and Coast Guard Agency – Frontex to initiate joint operations/rapid interventions, in order to provide technical and operational support at the EU external border. Also, along with the launching of such missions, the Regulation requires the elaboration of an operational plan establishing the organizational and procedural aspects, and its provisions are legally binding for all the concerned parties.

Following the MS participation in joint maritime operations, according to the *Regulation (EU) 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*, the actions defining the concept of the surveillance at sea, respectively the detection and interception of vessels attempting to enter illegally the EU are regulated therein. The way in which these actions are carried out is presented in accordance with the measures that can be undertaken in case of detecting reasonable indicators and, as regards the interception situation, the application of corresponding measures is developed according to the status of the vessel, as provided for by the *Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against transnational organized crime, and depending on the maritime zones established by the United Nations Convention on the Law of the Sea*.

Considering the cases of the migration phenomenon at sea registered in the joint operations, which are limited to groups of persons embarked on inflatable boats, without legal status, it is important to highlight the incidental legal measures regarding stateless vessels on which there are well-founded suspicions that they are transporting persons who intend to circumvent the checks in the border crossing points or are involved in the smuggling of migrants by sea.

Thus, pursuant to the *Regulation (EU) no 656/2014*, as a result of the surveillance missions conducted by the participating units, the Member State hosting the joint operation may authorize in their territorial sea or in the open sea, directly or with the assistance of the Member State to which the participating unit belongs, the following measures:

- *requesting information and documentation on ownership, registration and elements related to the voyage of the vessel, and on the identity, nationality and other relevant data on persons on board, including whether there are persons in urgent need of medical assistance, and making persons on board aware that they may not be authorized to cross the border;*

- *stopping, boarding and searching the vessel, its cargo and persons on board, and questioning persons on board and informing them that persons directing the vessel may face penalties for facilitating the voyage,*

as well as if evidences confirming that suspicion are found:

- *seizing the vessel and apprehending persons on board,*
- *ordering the vessel to change its course outside of or towards a destination other than the territorial sea or the contiguous zone, including escorting the vessel or steaming nearby until it is confirmed that the vessel is keeping to that given course,*
- *conducting the vessel or persons on board to the coastal Member State in accordance with the operational plan.*

All measures undertaken must be proportionate and not to exceed what is necessary to achieve the objectives, the international coordination center of the Member State hosting the joint operation being responsible for transmitting the appropriate instructions to the participating units, as appropriate.

At the level of our institution, the provisions of the *Charter of Fundamental Rights of the European Union*, of the *Universal Declaration of Human Rights*, adopted on 10 December 1948, by Resolution 217 A in the third session of the United Nations General Assembly and implicitly the provisions of national legislation in accordance with the aforementioned international normative acts are applied and observed.

In 2020, Romania, at the request of the Agency, through the Romanian Border Police, deployed two vessels within the Joint Operation Poseidon 2020 in order to support Greece in its actions to counteract the threats at the EU external maritime border, such as illegal migration, cross-border crime and especially the smuggling of migrants or trafficking of human beings.

Each and every time, the actions of Romanian Border Police vessels are being carried out in accordance with the provisions of the above-mentioned regulations, being developed in accordance with the measures authorized by the relevant national authorities of the hosting MS, through the International Coordination Center (ICC) of the Joint Operation, in this case "Poseidon 2020", which is established in Piraeus / Athens. Here, meetings are held on a daily basis in order to analyze the ongoing activities, the operational, socio-political or other aspects which may have an impact on the entire joint operation in question.

Within these missions, the Romanian Border Police vessels comply with the European and international legislation relevant to the maritime field, acting in accordance with the developed procedural framework, represented by the Operational Plan and its supporting documents, prepared by the Frontex Agency, in collaboration with the hosting MS and participating Member States in order to carry out the respective Joint Operation.

According to the *Operational Plan*, representatives of the border authorities of the Hellenic Republic are permanently on board of the naval mobility assets belonging to the participating Member States and their role is to ensure the flow of information from the participating MS vessel, in this context the Romanian Border Police vessel, to the Local Coordination Center and to the International Coordination Center (ICC), respectively to inform the Romanian Border Police vessel about the measures which has been authorized to carry out by the responsible Greek authorities.

In both reported cases, on 08.06.2020 and 15.08.2020, the Romanian Border Police vessels were carrying out surveillance missions of the external maritime border of the European Union in order to detect boats carrying persons and circumventing or intending to circumvent the checks in the border crossing points or suspected of being involved in smuggling of migrants at sea, respectively cross-border crime.

On 08.06.2020, within the surveillance mission carried out by the Romanian border guards, a craft heading towards the Greek territorial waters was detected with the support of the technical equipment on board, in the Turkish territorial waters and appropriate actions were taken in order to identify the respective water craft.

The observed data regarding the water craft and the persons on board were transmitted to the International Coordination Center through the Hellenic Coast Guard officer who was present on board the Romanian Border Police vessel.

Having reasonable indicators that the detected water craft was suspected of transporting persons intending to circumvent the checks in the border crossings points

and allegedly was involved in the smuggling of migrants by sea, while waiting authorized measures to be disposed by the International Coordination Center, according to the applicable regulations in force, Romanian Border Police vessel carried out permanent monitoring activities of the respective water craft, according to the provisions of Article 5 and Article 6 of Regulation (EU) no 656/2014, mentioned above.

The International Coordination Center informed the Romanian Border Police vessel that it had ordered measures authorized to be carried out by a Hellenic Coast Guard vessel, which was due to arrive on site.

As a consequence, after the arrival of the vessel belonging to the Hellenic authorities in the vicinity of the water craft, the Hellenic International Coordination Center requested the Romanian Border Police vessel to continue its patrol mission in another operational area and the Hellenic authorities to take over the situation concerning the respective water craft.

The same situation was registered on the 15th of August 2020, when similarly, the International Coordination Center ordered the continuation of the mission by the Romanian Border Police vessel in an adjacent area, as the identification of the detected naval target was to be performed by a rapid intervention vessel belonging to the Hellenic border authority, and if needed, the Romanian vessel would have been requested to intervene to provide support to the vessels of the Hellenic border authorities. We find useful to mention that the crew of our vessel permanently monitored the water craft with the support of the systems on board and left the area only after the Hellenic vessel arrived in the vicinity of the water craft with migrants and took over the case in order to solve it.

Regarding the question on the use of AIS equipment which the vessels of the Romanian Border Police are also equipped with (according to the provisions of Chapter 5 - safety of navigation in the *SOLAS Convention - 1974 on the protection of human life at sea*), we would like to mention that being Governmental vessels, their equipment can be set so that it operates in a **visible mode**, in which situation the position and movement parameters of the vessel are available on all international civilian web platforms for monitoring the maritime traffic and, respectively, in an **invisible mode**, meaning that the access to the position and movement parameters of the vessel is allowed only to accredited users.

We mention that according to the above mentioned Convention, Governmental vessels are exempted from the use of AIS equipment, meaning that during the specific mission, at the request of the border authority of the Hellenic Republic, through the liaison officer on board, the AIS device was set to invisible mode, thus preventing the detection of own vessels by unauthorized persons.

As regards the alleged "push back" actions, we specify that Romanian Border Police disapproves this type of actions and did not perform or observe such kind of actions to be carried out by any other asset involved in the joint operations coordinated by Frontex.

At the same time, we strongly reject the allegations that the Romanian Border Police vessels, through dangerous maneuvers, endangered persons on board the water crafts involved in the illegal crossing of the EU external maritime border, as there is no evidence regarding these accusations.

We would like to specify that while the Romanian Border Police vessels were performing their specific missions, there were no situations in which:

- the persons on board the water crafts involved in illegal crossing of the EU external maritime border be in any imminent danger at sea,
 - water crafts involved in illegal crossing of the EU external maritime border be unable to any maneuver ,
 - be persons in water requesting aid,
- or other elements or situations leading, according to the international law, to immediate rescue of the persons on board the water craft.

Last but not least, we would like to underline that the assessment of the Romanian border guards on board of our vessel was correct in accordance with the legal provisions indicated through this letter, an action confirmed also by the fact that in none of the reported cases was necessary to carry out such interventions, neither by the vessels of the Greek authorities, nor by the NATO vessel (under German flag) which was also in the concerned patrol area.

In the context of future operations organized under the aegis of the Agency in which our country will participate, we consider useful to increase the role and the involvement of the Frontex personnel responsible for human rights monitoring during the missions carried out at the external borders of EU.

Also, we would like to express our support for the identification of the necessary tools facilitating the profiling of migrants in order to obtain the information needed to identify the persons who really need assistance apart from those who want to enter the EU area for other purposes.

At the same time, we support the approaches to clarify / update the European legislation in the field of operations at sea, by identifying solutions in the normative acts mentioned in this letter, so that in the future to avoid any particular interpretations at the level of the Member States.

In conclusion, bearing in mind all of the above mentioned, we appreciate that the missions of the Romanian Border Police vessels, both within the joint operations coordinated by Frontex and those carried out at national level, fully observe and respect the international and national legislation applicable to the field in question, meaning that we consider as unfounded the statements made against our own personnel involved in the joint operation carried out under Frontex aegis in the area of competence of the Hellenic Republic.

With highest consideration,

Liviu BUTE

Police principal quaestor

(A) General Inspector of the Romanian Border Police

Member of Frontex Management Board

