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Committee on Civil Liberties, Justice and Home Affairs

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*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union
(COM(2013)0197 – C7-0098/2013 – 2013/0106(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout, e.g. 'ABCD'. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union
(COM(2013)0197 – C7-0098/2013 – 2013/0106(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0197),
 - having regard to Article 294(2) and Article 77(2)(d) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0098/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Transport and Tourism (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Article 80 of the Treaty on the Functioning of the European Union provides that the policies of the Union set out in Chapter 2 on border checks,

asylum and immigration and their implementation are to be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States, and that, whenever necessary, Union acts under that Chapter are to contain appropriate measures to give effect to that principle.

Or. en

Justification

It is important to recall Article 80 of the TFEU and the principle of solidarity between Member States.

Amendment 2

Proposal for a regulation
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Cooperation with neighbouring third countries is crucial to prevent unauthorised border crossings and to counter cross-border criminality. In accordance with Regulation (EC) No 2007/2004, the Agency may cooperate with the competent authorities of third countries, in particular as regards risk analysis and training, and should facilitate operational cooperation between Member States and third countries.

Or. en

Justification

Cooperation of the Member States and the Agency with third countries should be reinforced for a better implementation of this Regulation.

Amendment 3

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) In accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and general principles of Union law, any measure taken in the course of a surveillance operation should be proportionate to the objectives pursued, non-discriminatory and it should fully respect human dignity, fundamental rights **and** the rights of refugees and asylum seekers, **including** the principle of non-refoulement. Member States and the Agency are bound by the provisions of the asylum acquis, and in particular of ***Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*** with regard to applications for ***asylum*** made in the territory, including at the border or in the transit zones of Member States.

Amendment

(5) In accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and general principles of Union law, any measure taken in the course of a surveillance operation should be proportionate to the objectives pursued, non-discriminatory and it should fully respect human dignity, fundamental rights, the rights of refugees and asylum seekers **and** the principle of non-refoulement. Member States and the Agency are bound by the provisions of the asylum acquis, and in particular of ***Directive 2013/32/EU of the European Parliament and of the Council***¹ with regard to applications for ***international protection*** made in the territory, including at the border, ***in the territorial waters*** or in the transit zones of Member States.

¹ ***Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.06.2013, p. 60).***

Or. en

Justification

The principle of non-refoulement doesn't apply only to refugees and asylum seekers and the two issues should be separated. It is necessary also to update the reference to the Procedures Directive, as it was adopted since the Commission made its proposal.

Amendment 4

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) This Regulation should be applied in full compliance with the principle of non-refoulement, according to which no one may be removed, expelled or extradited to a third country where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. The possible existence of an arrangement between a Member State and a third country cannot absolve Member States from their obligations under international and Union law where they are aware or ought to be aware that the third country concerned is engaged in practices in contravention of the principle of non-refoulement.

Or. en

Justification

The principle of non-refoulement should be separated from the issue of "systemic deficiencies" in the asylum procedures and reception conditions (cf Recital 6).

Amendment 5

Proposal for a regulation Recital 6

Text proposed by the Commission

Amendment

(6) The possible existence of an arrangement between a Member State and a third country cannot absolve Member States from *those* obligations whenever

(6) The possible existence of an arrangement between a Member State and a third country cannot absolve Member States from *their* obligations *under*

they are aware or ought to be aware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that third country amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment *or where they are aware or ought to be aware that this third country is engaged in practices in contravention of the principle of non-refoulement.*

international and Union law whenever they are aware or ought to be aware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that third country amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment.

Or. en

Justification

The principle of non-refoulement should be separated from the issue of "systemic deficiencies" in the asylum procedures and reception conditions (cf Recital 5a).

Amendment 6

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) Pursuant to Regulation (EC) No 2007/2004, border surveillance operations coordinated by the Agency are conducted in accordance with an operational plan. Accordingly, as regards sea operations, the operational plan should include specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation or pilot project takes place, including references to international and Union law, regarding interception, rescue at sea *and* disembarkation. In turn, this Regulation governs the issues of interception, rescue at sea and disembarkation in the context of sea border surveillance operations coordinated by the Agency.

Amendment

(9) Pursuant to Regulation (EC) No 2007/2004, border surveillance operations coordinated by the Agency are conducted in accordance with an operational plan. Accordingly, as regards sea operations, the operational plan should include specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation, pilot project *or rapid intervention* takes place, including references to international and Union law, regarding interception, rescue at sea, disembarkation *and rules and procedures which ensure that persons with international protection needs, victims of human trafficking, unaccompanied minors and other vulnerable persons are*

identified during the operation and provided with appropriate assistance, including access to international protection. In turn, this Regulation governs the issues of interception, rescue at sea and disembarkation in the context of sea border surveillance operations coordinated by the Agency.

Or. en

Justification

Those rules should also apply to rapid interventions coordinated by Frontex.

Amendment 7

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, *notably the right to life, human dignity*, prohibition of torture and of inhuman or degrading treatment or punishment, right to liberty and security, non-refoulement, non-discrimination, the right to an effective remedy, *the right to asylum* and the rights of the child.

Amendment

(11) This Regulation respects the fundamental rights and observes the principles recognised by *Articles 2 and 6 of the Treaty on European Union (TEU)* and by the Charter of Fundamental Rights of the European Union, *in particular respect for human dignity, the right to life, the* prohibition of torture and of inhuman or degrading treatment or punishment, *the prohibition of trafficking in human beings, the* right to liberty and security, *the right to the protection of personal data, the right to asylum and to protection against removal and expulsion,* non-refoulement, non-discrimination, the right to an effective remedy and the rights of the child. *This Regulation should be applied by Member States and the Agency in accordance with those rights and principles.*

Or. en

Justification

This Recital should be aligned to the one included in the EUROSUR Regulation.

Amendment 8

Proposal for a regulation

Article 2 – point 4

Text proposed by the Commission

4. ‘participating Member State’ means a Member State which participates in a sea operation by providing ***assets or human resources***, but which is not a host Member State;

Amendment

4. ‘participating Member State’ means a Member State which participates in a sea operation by providing ***technical equipment or border guards and other staff***, but which is not the host Member State;

Or. en

Justification

The vocabulary used should be aligned to that of the Frontex Regulation. It should be ensured that the implementation of the obligations under international refugee and humanitarian law is part of the operational plan.

Amendment 9

Proposal for a regulation

Article 2 – point 7 a (new)

Text proposed by the Commission

Amendment

7a. "operational plan" means the operational plan referred to in Articles 3a or 8e of Regulation (EC) No 2007/2004;

Or. en

Justification

As the term "operational plan" is used in Article 10, it should be made clear what it refers to.

Amendment 10

Proposal for a regulation Article 2 – point 11

Text proposed by the Commission

11. 'place of safety' means a location where rescue operations are considered to terminate and where the survivors' safety of life ***including as regards*** the protection of their fundamental rights ***is*** not threatened, where their basic human needs can be met and from which transportation arrangements can be made for the survivors' next destination or final destination;

Amendment

11. 'place of safety' means a location where rescue operations are considered to terminate and where the survivors' safety of life ***as well as*** the protection of their fundamental rights ***are*** not threatened, where their basic human needs can be met and from which transportation arrangements can be made for the survivors' next destination or final destination, ***in compliance with the principle of non-refoulement***;

Or. en

Justification

A clear definition of 'place of safety' is necessary as this is one of the central issues in search and rescue obligations under international law.

Amendment 11

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

1. No person shall be disembarked in, or otherwise handed over to the authorities of a country where there is a serious risk that such person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment or from which there is a serious risk of expulsion, removal or extradition to another country in contravention of the principle of non-refoulement.

Amendment

1. No person shall be disembarked in, otherwise handed over to the authorities of, ***or forced to enter***, a country where there is a serious risk that such person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment or from which there is a serious risk of expulsion, removal or extradition to another country in contravention of the principle of non-refoulement.

Justification

The principle of non-refoulement does not apply only in case of disembarkation, but also in cases the ship is ordered to modify its course towards a third country.

Amendment 12**Proposal for a regulation
Article 4 – paragraph 2***Text proposed by the Commission*

2. Before ***deciding on disembarkation in a third country, the participating units shall take into account*** the general situation in ***that third country and intercepted*** or rescued persons shall not be disembarked in ***that*** third country when the host Member State or the participating Member States are aware or ought to be aware that this third country is engaged in practices as described in paragraph 1.

Amendment

2. Before ***and while a sea operation is taking place, the host Member State and the participating Member States shall examine*** the general situation in ***the neighbouring third countries. Intercepted*** or rescued persons shall not be disembarked in ***a*** third country when the host Member State or the participating Member States are aware or ought to be aware that this third country is engaged in practices as described in paragraph 1. ***Those Member States shall provide that information to the participating units. For that purpose, they may use the information prepared by the European Asylum Support Office, the Agency and the United Nations High Commissioner for Refugees.***

Or. en

Justification

The obligation to examine the situation in neighbouring third countries should fall on the Member States, and not on the participating units. It should be done during the preparation of the operation, but also, if there are any changes, during the operation itself.

Amendment 13

Proposal for a regulation Article 4 – paragraph 3

Text proposed by the Commission

3. ***In case of*** disembarkation in a third country, the participating units shall identify the intercepted or rescued persons and assess their personal circumstances ***to the extent possible before disembarkation***. They shall inform the intercepted or rescued persons of the place of disembarkation ***in an appropriate way*** and they shall 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.

Amendment

3. ***If*** disembarkation in a third country ***is considered***, the participating units shall identify the intercepted or rescued persons and assess their personal circumstances, ***including their medical conditions and other circumstances that might make them vulnerable, before a decision is made***. They shall inform the intercepted or rescued persons of the place of disembarkation ***in a language which those persons understand or may reasonably be presumed to understand*** and they shall 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.

Or. en

Justification

The identification and assessment of personal circumstances should be done when disembarkation in a third country is considered, not when the decision is already made, allowing for a full respect of the Principle of non-refoulement and to prevent collective expulsions prohibited by article 4 of Protocol No 4 of the European Charter of Human Rights. It should be ensured that the persons who will be disembarked understand what will happen to them.

Amendment 14

Proposal for a regulation Article 4 – paragraph 5

Text proposed by the Commission

5. Border guards participating in a sea operation shall be trained with regard to

Amendment

5. Border guards participating in a sea operation shall be trained with regard to

relevant provisions of fundamental rights, refugee law and the international legal regime of search and rescue.

relevant provisions of fundamental rights, refugee law and the international legal regime of search and rescue. ***Each participating unit shall include at least one person with basic medical training.***

Or. en

Justification

In order to be able to assist rescued or intercepted persons in need of medical assistance, all participating units should include at least one person who can give first medical assistance.

Amendment 15

**Proposal for a regulation
Article 5 – paragraph 3**

Text proposed by the Commission

3. The participating units shall communicate information about any ship suspected of being engaged in illegal activities at sea outside the scope of **a** sea operation to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State or Member States concerned.

Amendment

3. The participating units shall communicate information about any ship suspected of being engaged in illegal activities at sea, ***which are*** outside the scope of ***the*** sea operation, to the International Coordination Centre, which shall convey this information to the National Coordination Centre of the Member State or Member States concerned.

Or. en

Justification

Linguistic clarification.

Amendment 16

**Proposal for a regulation
Article 6 – paragraph 1 – point c**

Text proposed by the Commission

Amendment

(c) making persons on board aware that they may not be authorised to cross the border and that persons directing the *craft* may face penalties for facilitating the voyage;

(c) making persons on board aware that they may not be authorised to cross the border and that persons directing the *ship* may face penalties for facilitating the voyage;

Or. en

Justification

Since 'ship' is defined in Article 2, it should be used throughout the text.

Amendment 17

**Proposal for a regulation
Article 6 – paragraph 1 – point e**

Text proposed by the Commission

Amendment

(e) ordering the ship to modify 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 *the ship* is heading on such course;

(e) ordering the ship to modify its course outside of or towards a destination other than the territorial sea or the contiguous zone, including escorting the *ship* or steaming nearby until *it* is heading on such course;

Or. en

Justification

Since ship is defined in Article 2, it should be used throughout the text.

Amendment 18

**Proposal for a regulation
Article 6 – paragraph 1 – point f**

Text proposed by the Commission

Amendment

(f) conducting the ship or persons on board

(f) conducting the ship or persons on board

to the host Member State or to another Member State participating in the operation, or to the coastal Member State.

to the host Member State or to another Member State participating in the operation, or to the coastal Member State, ***in accordance with the operational plan.***

Or. en

Justification

Operational plans and arrangements devised before the operation takes place are essential to quickly address initial border control or immigration issues to minimize delays that might negatively impact the assisting ship, including temporary provisions for hosting the persons on board while such issues are being resolved.

Amendment 19

Proposal for a regulation Article 6 – paragraph 3

Text proposed by the Commission

3. Where there are reasonable grounds to suspect that ***a ship without nationality or one that may be assimilated to a ship without nationality*** is carrying persons intending to circumvent the checks at border crossing points or is engaged in the smuggling of migrants by sea, the host Member State or the participating Member State in whose territorial sea the stateless ship is intercepted shall authorise and instruct the participating unit to stop it and to take any of the measures laid down in paragraph 1.

Amendment

3. Where there are reasonable grounds to suspect that ***a stateless ship*** is carrying persons intending to circumvent the checks at border crossing points or is engaged in the smuggling of migrants by sea, the host Member State or the participating Member State in whose territorial sea the stateless ship is intercepted shall authorise and instruct the participating unit to stop it and to take any of the measures laid down in paragraph 1.

Or. en

Justification

"Stateless ship" is defined in Article 2, it should be used throughout the text.

Amendment 20

Proposal for a regulation

Article 7 – paragraph 1 – point c

Text proposed by the Commission

(c) making persons on board aware that they are may not be authorised to cross the border and that persons directing the **craft** may face penalties for facilitating the voyage;

Amendment

(c) making persons on board aware that they are may not be authorised to cross the border and that persons directing the **ship** may face penalties for facilitating the voyage;

Or. en

Justification

Since "ship" is defined in Article 2, it should be used throughout the text.

Amendment 21

Proposal for a regulation

Article 7 – paragraph 1 – point e

Text proposed by the Commission

(e) ordering the ship to modify 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 the ship is heading on such course;

Amendment

deleted

Or. en

Justification

The UN Convention on the Law of the Sea provides for the freedom of navigation on the high seas. It is therefore not possible for a participating unit to order the ship to modify its course on the high seas.

Amendment 22

Proposal for a regulation Article 7 – paragraph 4

Text proposed by the Commission

4. Where, though flying a foreign flag or refusing to show its flag, there are reasonable grounds to suspect that the ship is, in reality, of the same nationality as a participating unit, that participating unit shall verify the ship's right to fly its flag. To this end, it may approach the suspected ship. If suspicion remains after the documents have been checked, it shall proceed to a further examination on board the ship, which **must** be carried out with all possible consideration. The participating Member State of which the ship is allegedly flying the flag shall be contacted through the appropriate channels.

Amendment

4. Where, though flying a foreign flag or refusing to show its flag, there are reasonable grounds to suspect that the ship is, in reality, of the same nationality as a participating unit, that participating unit shall verify the ship's right to fly its flag. To this end, it may approach the suspected ship. If suspicion remains after the documents have been checked, it shall proceed to a further examination on board the ship, which **shall** be carried out with all possible consideration. The participating Member State of which the ship is allegedly flying the flag shall be contacted through the appropriate channels.

Or. en

Justification

Linguistic correction.

Amendment 23

Proposal for a regulation Article 7 – paragraph 8

Text proposed by the Commission

8. Where there are reasonable grounds to suspect that ***a ship without nationality or one that may be assimilated to a ship without nationality*** is engaged in the smuggling of migrants by sea, the participating unit may board and ***stop*** the ship with a view to verifying its statelessness. If suspicions prove to be founded further appropriate measures as

Amendment

8. Where there are reasonable grounds to suspect that ***a stateless ship*** is engaged in the smuggling of migrants by sea, the participating unit may board and ***search*** the ship with a view to verifying its statelessness. If suspicions prove to be founded further appropriate measures as laid down in paragraph 1 may be taken in accordance with national law and

laid down in paragraph 1 may be taken in accordance with national law and international law.

international law.

Or. en

Justification

Since "stateless ship" is defined in Article 2, it should be used throughout the text. The wording should be aligned with the Palermo Protocol (Article 8(7)), which provides that the ship may be "boarded and searched".

Amendment 24

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 1

Text proposed by the Commission

In the case of interception in the territorial sea or the contiguous zone as laid down in Article 6(2) or Article 8(1), disembarkation shall take place in the host Member State or in the participating Member State in whose territorial *waters* or contiguous zone the interception takes place.

Amendment

In the case of interception in the territorial sea or the contiguous zone as laid down in Article 6(2) or Article 8(1), disembarkation shall take place in the host Member State or in the participating Member State in whose territorial *sea* or contiguous zone the interception takes place.

Or. en

Justification

The expression "territorial sea" is used throughout the text, and should be used here too.

Amendment 25

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 2

Text proposed by the Commission

In the case of interception in the territorial sea or the contiguous zone as laid down in Article 6(4) or Article 8(2), disembarkation

Amendment

In the case of interception in the territorial sea or the contiguous zone as laid down in Article 6(4) or Article 8(2), disembarkation

shall take place in the Member State in whose territorial *waters* or contiguous zone the interception takes place.

shall take place in the Member State in whose territorial *sea* or contiguous zone the interception takes place.

Or. en

Justification

The expression "territorial sea" is used throughout the text, and should be used here too.

Amendment 26

Proposal for a regulation

Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The persons intercepted or rescued in the sea operation shall receive clear information, in a language which they understand or may reasonably be presumed to understand, on where disembarkation will take place.

Or. en

Justification

All persons who are rescued or intercepted should be informed as to where they will be disembarked, not only those who may be disembarked in a third country (Article 4 paragraph 3), in a language they can understand.

Amendment 27

Proposal for a regulation

Article 10 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

In the case of search and rescue situations as laid down in Article 9, the participating units shall cooperate with the responsible Rescue Coordination Centre to provide a

Subject to the application of Article 4, in the case of search and rescue situations as laid down in Article 9, the participating units shall cooperate with the responsible

suitable port or place of safety for the rescued persons and to ensure their rapid and effective disembarkation.

Rescue Coordination Centre to provide a suitable port or place of safety for the rescued persons and to ensure their rapid and effective disembarkation.

Or. en

Justification

It should be highlighted that the decision on the place of disembarkation after a search and rescue situation should be made also taking into account the principle of non-refoulement.

Amendment 28

**Proposal for a regulation
Article 10 – paragraph 5**

Text proposed by the Commission

5. The participating units shall inform the International Coordination Centre of the presence of any persons within the meaning of **Article 4(1)**, and the International Coordination Centre shall convey that information to the competent national authorities. On the basis of that information, the operational plan **should** determine which follow-up measures may be taken.

Amendment

5. The participating units shall inform the International Coordination Centre of the presence of any persons within the meaning of **Article 4**, and the International Coordination Centre shall convey that information to the competent national authorities. On the basis of that information, the operational plan **shall** determine which follow-up measures may be taken.

Or. en

Justification

The reference should not be only to paragraph 1 of Article 4, but to the whole Article 4, so as to cover as well paragraph 4 (persons requiring special attention).

Amendment 29

**Proposal for a regulation
Article 10 a (new)**

Article 10a

Solidarity mechanisms

1. A Member State faced with a situation of urgent and exceptional pressure at its external border shall be able to request:

– the deployment of European Border Guard Teams in accordance with Article 8a of Regulation (EC) No 2007/2004 to provide rapid operational assistance to the Member State;

– the Agency for technical and operational assistance in accordance with Article 8 of Regulation (EC) No 2007/2004 in order to obtain assistance on matters of coordination between Members States and/or the deployment of experts to support the competent national authorities;

– emergency assistance under Article 14 of Regulation XXXX [ISF borders] to address urgent and specific needs in the event of an emergency situation.

2. A Member State subject to migratory pressure which places urgent demands on its reception facilities and asylum systems shall be able to request:

– the European Asylum Support Office for the deployment of an asylum support team in accordance with Article 13 of Regulation (EU) No 439/2010 of the European Parliament and of the Council¹ to provide expertise, in particular in relation to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases;

– emergency assistance under Article 22 of Regulation XXX ([Asylum and Migration Fund] to address urgent and specific needs in the event of an emergency situation.

¹ *Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ L 132, 29.5.2010, p. 11).*

Or. en

Justification

It is important to recall the solidarity mechanisms already existing and that Member States can activate in case of sudden influx of third country nationals.

Amendment 30

**Proposal for a regulation
Article 10 b (new)**

Text proposed by the Commission

Amendment

Article 10b

Report

1. The Agency shall submit a report to the European Parliament, the Council and the Commission on the implementation of this Regulation by xxx (two years after entry into force) and every two years thereafter.

2. The report shall include a description of the procedures put in place by the Agency to implement this Regulation during sea operations and an assessment of the practical application of this Regulation, including any incidents which may have taken place, and of the compliance with and impact on fundamental rights.

Or. en

Justification

A regular report should be prepared by the Agency on the way the Regulation is applied during the Frontex sea operations.

EXPLANATORY STATEMENT

Background:

During the last decade, the Mediterranean region has been affected by a number of international and regional geopolitical and economic developments, leading to political instability and contributing to increase migration flows and asylum pressure from the Southern shores of the Mediterranean to its Northern shores, notably the Southern EU Member States located at the geographical periphery of the EU, such as Greece, Italy, Spain, Malta and Cyprus.

The southern EU Members States were suddenly confronted with a large number of individuals, coming from the Mediterranean region in an attempt to flee conflict, persecution, or just to improve their economic opportunities, using the maritime route to cross international borders clandestinely. The number of persons crossing Europe's southern sea borders using unseaworthy boats amounted to around 10.000 people in 2010, increased to over 70.000 people in 2011, to drop again to around 20.000 people in 2012, where most of these crossings were organised by smugglers.

Although the phenomenon is not widespread through the EU, it affects the EU as a whole. This situation resulted in prompt calls for more solidarity and sustainable responses from the EU to support those countries most affected by irregular arrivals by sea. Responsibility-sharing and solidarity became indispensable factors to ensure that the fundamental rights of asylum seekers and refugees are fully respected in the EU.

The Commission's proposal seems to be well-balanced and follows the same objective as the annulled Decision, to incorporate within a single legal instrument existing provisions of EU and international law, aiming to overcome the different interpretations of international law adopted by Member States and their diverging practices to ensure the efficiency of sea operations coordinated by Frontex.

But it tries to go further, where the Part II of the annulled Decision - non-binding guidelines for search and rescue situations and for disembarkation of rescued or intercepted persons - will become now a legally binding instrument and directly applicable in the Member States, setting up rules on how to deal with these situations in all sea operations coordinated by Frontex. It tries, in this way, to answer to the critics made against Frontex operations, where some questions were raised regarding search and rescue situations.

Conclusions

Legally Binding Instrument:

The European Court of Justice decision in case C-355/10, among other things, confirmed that the EU is competent to legislate in the field covered by Council Decision 2010/252. It is also clear that the scope of the proposal does not go beyond the current 2010/252 Decision and that the additional binding elements are in line with the European Court of Justice case-law.

Legal and Judicial developments on the protection of fundamental rights:

The proposal takes into account the legal and judicial developments, such as the amendment to Regulation EC No 2007/2004 and the judgment of the European Court of Human Rights in *Hirsi Jamaa and Others v. Italy*, concerning the protection of fundamental rights as well as the principle of non-refoulement in sea operations.

The need to protect our borders and to have an efficient system of border surveillance is not detrimental to the fundamental rights of migrants arriving at European shores. The right to life and respect for the principle of non-refoulement are core fundamental rights and the European Union and its Member States have to ensure their full implementation and respect.

It is essential to provide further legal clarity on the respect for fundamental rights in the context of maritime surveillance and on the disembarkation of persons intercepted or rescued at sea, including the full respect of the principle of non-refoulement. In that sense, several amendments were presented aiming to reinforce the Principle of non-refoulement and the protection of Human Rights and highlighting that all Member States which participate in those operations are bound by the International and EU acquis, including the relevant case-law, regarding their obligations.

Reinforcement of the Principle of Solidarity:

With due respect to Members States' sovereignty on their territorial seas, a primary objective of this proposal is to achieve an increased degree of cooperation among Member States in the context of the Frontex coordinated operations, always subject to the authorisation of the Member State concerned for action on their territorial sea.

While the primary responsibility for ensuring that adequate asylum systems and border management systems are in place lies with the States, the TFEU as well as the Stockholm Programme requires an increased level of solidarity and fair responsibility sharing between the EU institutions as well as the Member States in the development of the Common European Asylum System and the gradual establishment of an integrated management system for external borders. Currently, the EU legal framework already offers a variety of solidarity and responsibility-sharing tools and instruments that can assist in addressing the protection gaps and flaws in Member States' asylum systems and border management systems and enhance the overall quality of the Common European Asylum System.

It is up to the Member State concerned to activate that range of tools at its disposal, including human, technical and financial resources. The intra-EU system of relocation of persons who have obtained a legal status after disembarkation still has to be further developed. The 2010 EUREMA - EU relocation Malta project involving 10 EU Member States, is a good example of enhancing solidarity.