

**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**

2018

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List of abbreviations

EASO - European Asylum Support Office

EUNAVFOR MED Operation Sophia - European Union military operation in the Southern Central Mediterranean

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

JRCC - Joint Rescue Coordination Centre

MAS - Multipurpose Aerial Surveillance

MRCC - Maritime Rescue and Coordination Centre

MS - Member State

NATO - North Atlantic Treaty Organization

NCC - National Coordination Centre

SAR - Search and Rescue

SASEMAR - Maritime Safety and Rescue Society (Spain)

SIR - Serious Incident Reporting

UNHCR - United Nations High Commissioner for Refugees (UN Refugee Agency)

Introduction

The Regulation 656/2014 of the European Parliament and of the Council of 15 May 2014 which 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 maritime operations launched in 2018 that included surveillance of the EU external sea borders. It reflects the operational calendar of activities foreseen in the Programme of Work 2018 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 Themis.
- The third part contains the general assessment made by Frontex of the implementation of the Regulation during the joint maritime operations in 2018 as well as it identifies some operational consequences or strategic questions to the EU institutions arising from a five years’ experience since the entry into force of the Regulation and the impacts of the renewed and expanded mandate of the Agency².
- The fourth part presents the independent observations of Frontex’s Fundamental Rights Officer.

1. Provisions introduced to the Operational Plans

The following joint maritime operations coordinated by Frontex in 2018³ included the surveillance activity at the external sea borders:

- Themis 2018

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).

² 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 (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

³ Periods from 1 January to 31 January 2018 of the joint operations Triton, Poseidon and Indalo were addressed in Frontex’s Annual Report 2017 on the implementation on the EU Regulation 656/2014 published on 11 July 2018.

- Poseidon 2018
- Indalo 2018
- Hera 2018

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 Equipment Mission Reports, applicable to both, host and participating Member States⁴ assets taking part in Frontex coordinated maritime operations.

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 Plan⁵; 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 Member States, composed of the officers from the host Member States, National Officials representing assets deployed by participating Member 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.

⁴ 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.

⁵ 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."

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 2018, Frontex deployed assets were involved directly in rescuing approximately 24 276 persons in the frame of Frontex coordinated joint operations.

In line with international law and maritime conventions which obliges all captains of vessels to provide assistance to any persons found in distress at sea, providing “operational and technical support to search and rescue” is an integral part of Frontex’s maritime activities as one of the components of the European Integrated Border Management.

It has to be noted that Frontex support to Member States does not cease after the migrants are being disembarked at the host Member 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 for risk analysis purposes 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 Themis 2018

2.1.1. Period of implementation and operational areas

JO Themis 2018 started on 1 February 2018⁶ and ended on 28 February 2019. The operational area was established in the south of Italy (Puglia and Calabria) including Sicily, Sardinia and the Pelagic Islands.

Lampedusa, Pozzallo, Taranto, Trapani (it became a Pre-return centre at the end of September 2018) and Messina were the locations nominated as hotspots in Italy.

Upon the request of the Italian authorities, the operational area of the JO Themis 2018 was readjusted from the operational area of JO Triton implemented in 2017, by reducing the operational area in the Central Mediterranean and enlarging the operational area in the Adriatic Sea.

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 Themis, no assessment of the general situation in Third Countries was made by Italy.

2.1.3. Disembarkation in Third Countries

In the Operational Plan Italy had authorised disembarkations of all persons apprehended subsequently to interception (law enforcement activity) in its territory by the participating units within the framework of JO Themis 2018. The Operational Plan also stated that it should be ensured that coordination and cooperation with the relevant SAR authorities is carried out in such a way that the persons rescued by the participating maritime assets can be delivered to a place of safety in accordance with Article 10 of the Regulation within the operational area.

⁶ Period from 1 January to 31 January 2018 was addressed in Frontex’s Annual Report 2017 on the implementation on the EU Regulation 656/2014 published on 11 July 2018.

These stipulations of the Operational Plan were further clarified and agreed during the operation, so that no person rescued within a SAR incident, by a participating maritime asset, would be handed over to Third Country authorities or disembarked in the territory of a third country.

All migrants intercepted or rescued by Frontex assets were therefore 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 were, during their normal patrolling activities and in SAR cases, able to provide first aid and medical support. All of the participating surface assets crews were highly trained on SAR in order to comply both with the EU and international legislation. The Frontex co-financed participating assets were properly equipped for assisting maritime search and rescue missions.

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

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 Themis area

EUNAVFOR MED Operation Sophia vessels⁷ and aircraft 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 Themis and EUNAVFOR Med Operation Sophia was based on Standard Operating Procedures⁸.

The exchange of operational Liaison Officers⁹, between EUNAVFOR MED Operation Sophia and the joint operation Themis, continued in 2018 and contributed to an enhanced level of operational cooperation and information exchange between the two actors.

In addition, several vessels¹⁰ of Non-governmental organizations operated off the coast of Libya, rendering assistance to the migrants' boats departing from Libya.

⁷ The Regulation does not apply to the assets of EUNAVFOR MED Operation Sophia.

⁸ SOP is under revision currently.

⁹ No Frontex Liaison Officer deployed on EUNAVFOR MED Operation Sophia flagship as from 1 January 2019.

¹⁰ The Regulation does not apply to the assets of Non-governmental organizations.

2.2. Joint Operation Poseidon 2018

2.2.1. Period of implementation and operational areas

The joint operation Poseidon 2018 started on 1 February 2018¹¹ and ended on 31 January 2019.

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

Five islands, namely Lesvos, 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 7 December 2017. Based on the general assessment, the host MS, the participating Member 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 had been considered, in practice such disembarkations did not take place during the joint operation Poseidon 2018. 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 comprising medical, first aid and search and rescue experts and boarding teams as well. The Frontex co-financed participating assets were properly equipped for assisting maritime search and rescue missions.

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, 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.

¹¹ Period from 1 January to 31 January 2018 was addressed in Frontex's Annual Report 2017 on the implementation on the EU Regulation 656/2014 published on 11 July 2018.

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 assets¹² 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 boats¹³ of Non-governmental organisations operating mainly in the Northern area of Aegean, thus being a part of the Greek Search and Rescue Plan, and rendering the assistance in search and rescue under the coordination of the Hellenic Joint Rescue Coordination Centre.

2.3. Joint Operation Indalo 2018

2.3.1. Period of implementation and operational areas

The joint operation Indalo 2018¹⁴ started on 6 February 2018 and ended on 28 February 2019.

The operational area was divided in five zones covering Cadiz, Malaga, Granada, Almeria and Murcia. Execution of joint operational activities in operational area took place covering Spanish and international waters from Cadiz, in the Atlantic Ocean side of the Strait of Gibraltar, going North-East along the coast of the Iberian Peninsula, until the coast of Alicante province's eastern-most point.

2.3.2. Assessment of the general situation in Third Countries

Due to the fact that the disembarkations 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. On the basis of a proposals from Spain, a provision was included in the Operational Plan that should the situation change during the implementation of the joint operation, Spain would provide the required assessment.

2.3.3. Disembarkation in Third Countries

The Operational Plan stated that the participating units are authorised by Spain to disembark in its territory the persons apprehended subsequently to interception within the framework of the joint operation Indalo where, in accordance with the Regulation, disembarkation is not possible in the Third Country from which the migrants' vessels are assumed to have departed. Operational Plan also stated that no person rescued (in or outside the operational area within a SAR incident) or apprehended by a participating maritime asset, will be disembarked in, forced to enter or conducted to the territory of a Third Country nor handed over to its authorities, unless there is a positive assessment of the general

¹² The Regulation does not apply to NATO Aegean Activity (SNMG2) assets.

¹³ Regulation does not apply to Non-governmental organisations' assets.

¹⁴ Period from 1 January to 31 January 2018 was addressed in Frontex's Annual Report 2017 on the implementation on the EU Regulation 656/2014 published on 11 July 2018.

situation of that Third Country in accordance with Article 4 of Regulation 656/2014 in place. During the Joint Operation, no general assessments were issued by Spain.

The Operational Plan indicated that the responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the State responsible for the SAR region in which the rescued persons were recovered, as set forth in relevant applicable international legal instruments.

All migrants intercepted or rescued by Frontex assets were 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 coast guards involved in the operation. Most 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, such as boarding teams. The Frontex co-financed participating assets were properly equipped for assisting maritime search and rescue missions.

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 organisations ensuring the examination of the status of person in need of international protection and addressing the special needs of children victims of trafficking in human beings, persons in need of urgent medical assistance, disabled persons, elderly people, pregnant women, single parents with minor children, persons with mental disorders and persons who could have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence and other persons in a particularly vulnerable situation.

2.3.5. Communication and cooperation channels

The fact that 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 2018

2.4.1. Period of implementation and operational areas

The joint operation started on 16 August 2018 and ended on 15 November 2018.

The operational area extended to the land area of the Canary Islands, to the territorial waters and Exclusive Economic Zone of Senegal, as well as its airspace.

2.4.2. Assessment of the general situation in Senegal

The assessment of the general situation in Senegal was conducted by the Spanish authorities on 1 August 2018 and communicated to Frontex on 2 August 2018.

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 the European Border and Coast Guard Regulation (Article 73(3) of the Regulation 1896/2019), a status agreement should be concluded by the EU with the Third Country concerned in order to enhance the concept of the joint operation Hera.

2.4.3. 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 2018. During the implementation of the joint operation, no migrant boats were intercepted at sea in the operational area.

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 all national authorities involved in joint operation. Some of the participating surface assets, with adequate size and operational capacity, embarked particularly for this activity special teams comprising medical, first aid and search and rescue experts and boarding teams as well. The Frontex co-financed participating assets were properly equipped for assisting 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 Canarias, 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 Local Coordination Centre provided further valuable information.

3. Main conclusions

It should be emphasised that Frontex has ensured the application of provisions of Regulation 656/2014 in its coordinated joint maritime operations. In this respect, the disembarkations in the Third Countries did not take place in any Frontex joint operation in 2018.

When disembarkation in Third Countries was envisaged (in case of joint operations Poseidon 2018 and Hera 2018), Frontex required the host Member States to provide a “general assessment” of the Third Countries concerned. In general, the quality of the general assessments of the Third Countries, with the support provided by Frontex, improved by deriving relevant information from a broader range of sources.

As regards information on the main principles of fundamental rights, the mechanism of search and rescue activities, including follow-up measures upon disembarkation of persons, as well as the role of national authorities to which Frontex deployed members of the teams have to refer persons in need of international protection, have been provided for all participants of the joint operations, including crew members, during the operational briefings.

However, although Frontex has complied with the requirements of the Regulation 656/2014, there are still concerns, which render hosting Frontex maritime joint operations less attractive and more cumbersome for the coastal Member States.

Firstly, the current Regulation 656/2014 treats Frontex joint operations differently since national authorities of the Member States acting alone are not bound by this Regulation. Thus, Member States acting without Frontex's support can, in a less complex way, proceed with disembarkations in Third Countries provided that the principle of *non-refoulement* is fully respected. In addition, other actors such as the EU Common Security and Defence Policy (CSDP) military operations, NATO, Non-governmental organisations or private rescuers as well as other EU Agencies such as the European Maritime Safety Agency (EMSA) and the European Fisheries Control Agency (EFCA) are not bound by the Regulation 656/2014. Instead, they follow the international maritime law, in particular the provisions regarding the place of safety. In that context, it is difficult to justify why Frontex joint operations should be a subject to different and stricter legal obligations. This situation is even less understandable in view of the development of the European coast guard functions, which Frontex, EMSA and EFCA have jointly undertaken within the remit of the respective mandates revised in 2016.

Secondly, the European Border and Coast Guard Regulation envisages Status Agreements (SA) concluded with the Third Countries, for potential Frontex joint operations with executive powers on the territory of the Third Countries. So far, the EU has concluded SA, or they are under ratification procedures, with Western Balkans countries. Moreover, Regulation 2019/1896¹⁵ allows SA to be concluded with any Third Country, without geographical restrictions. On the other hand, Regulation 656/2014, for example, does not foresee the possibility of a Third Country taking part in Frontex maritime joint operations as a Host Country nor the possibility for a Third Country to establish the International Coordination Centre in charge for the command and control of the joint operation. This is not addressed in Regulation 656/2014. Consequently, this open question has an impact for planning and implementing the Frontex maritime joint operations under SA. This includes the same set of limited rules of disembarkation, as well as the necessity to provide a general assessment of the Host Third Country, *inter alia* in the Adriatic Sea and the Western Balkans countries.

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) Themis 2018, JO Indalo 2018, JO Poseidon 2018 and JO Hera 2018. 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 procedures regarding **identification and referral of persons with international protection needs** and in a particularly vulnerable situation.

¹⁵ 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 (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

4.1.1 Assessment of the general situation in a third country

The FRO notes that in the operational plans for JO Themis 2018 and JO Indalo 2018 general assessments of the situation in third countries were not provided due to the fact that the possibility of disembarkation of the rescued or intercepted migrants in a third country was not considered in these joint operations. The JO Poseidon 2018 and JO Hera 2018 operational plans contained a reference to assessments carried out for Turkey by the Hellenic authorities and for Senegal carried out by the Spanish authorities respectively.

The FRO, as repeatedly indicated in earlier reports, is concerned about the scope of the assessments, content and methodology. In general, it is advised they present a 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. In addition, the assessments should incorporate findings on international and domestic human rights, protection and asylum mechanisms as well as other UN relevant monitoring mechanisms that report about implementation of obligations deriving from the international conventions in the analysed third countries. It is also recommended that the assessments are based on 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, the assessments did not 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.

As reported by the Agency, no disembarkation in third country took place during the implementation of the aforementioned operational plans. Nevertheless, the FRO recommends to the Agency to request from the host MS to expand the assessments, as well as to incorporate in operational plans on procedures a reference 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.

When it comes to the Central Mediterranean area, in 2018, an increasing number of migrants were rescued by the Libyan Coast Guard and disembarked in Libya, mainly as a consequence of reducing the operational area of JO Themis 2018 as compared to the operational area of JO Triton implemented in 2017. These changes led to a widening SAR gap and a progressive delegation of tasks to Libyan authorities. Against this background, the FRO stresses the need to review whether Libya meets the criteria for being considered a place of safety as per the International Convention on Maritime Search and Rescue, in view of “the volatile security situation in [the country in] general and the particular protection risks for third-country nationals.”¹⁶

In this context, it should be recalled that the scope of Article 4 of Regulation 656/2014 regarding the “protection of fundamental rights and the principle of non-refoulement” is not limited to disembarkations in third countries, but covers as well situations where rescued people are “forced to enter, conducted to or otherwise handed over to the authorities of a country where, inter alia, there is a serious risk that [they...] would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment...”. As a result, any activity that would lead to the disembarkation of third country nationals, even through indirect assistance, to a country that cannot be deemed “safe” according to EU and international law, shall be prohibited.

4.1.2 Assessment of personal circumstances

The FRO welcomes the inclusion in JO Poseidon 2018, Indalo 2018 and Hera 2018 operational plans of a reference to the obligation of participating units in operations coordinated 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

¹⁶ UNHCR Position on Returns to Libya - Update II, September 2018, p.22

disembarkation in the proposed place would be in violation of the principle of non-refoulement. FRO recommends to include such a reference also in other operational plans.

Likewise, the FRO welcomes the inclusion of a provision in the above mentioned 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 the 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.

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 about 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 lists 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.l) of the Regulation 2016/1624, a questionnaire elaborated by FRO to request information about the referral mechanism - relevant to operations in 2018 - was submitted to host Member States in December 2017. The FRO welcomes MS feedback and would like to emphasise the importance of timely submission prior to the initiation of operational activities and availability of the data to the officers participating in the Frontex operations.

Finally, the FRO notes that the proposal to include a specific fundamental rights-related operational objective was only taken into consideration in Hera 2018 operational plan. 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 needs¹⁷, 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. Furthermore, 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 three (3) Serious Incident Reports (SIR) involving alleged violations of fundamental rights were submitted to Frontex, none of which took place in Frontex sea operations. At the same time, the FRO observes a significant decrease in a number of received SIRs comparing to the previous year (2017) in which nine (9) fundamental rights

¹⁷ 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".

related SIRs were received. In this context, FRO highlights the importance of raising awareness and incorporating separate sessions on the SIR mechanism in all briefings and trainings for officers to be deployed in Frontex sea operations.

No complaints under the Frontex Complaints Mechanism¹⁸ were received concerning sea surveillance operations in the covered period. FRO underlines that information material, such as booklets and posters on the complaints mechanism, were distributed in operational areas during 2018 as a part of the awareness raising activities for the Frontex complaints mechanism.

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 in the joint operations as well as the obligation to train participants on fundamental rights and access to international protection in sea surveillance operations. Moreover, operational briefings were often supported by several representatives of the Frontex Consultative Forum on Fundamental Rights. The FRO welcomes such cooperation and encourages its expansion to other Frontex 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.

Following trainings held since 2016, the FRO continued delivering regularly in 2017 and 2018 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. In 2018, the FRO also contributed to the development of the Common Core Curriculum for Mid-Level officers. The manual includes key fundamental rights provisions as an integral part and provides these officers with knowledge and competence to manage borders, including sea border, with a rights based and protection sensitive approach.

¹⁸ Article 72 of the Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard