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From:	Mr Fabrice LEGGERI, Executive Director of Frontex
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To:	Mr Horst Seehofer, Federal Minister of the Interior, Building and Community, Germany

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Subject:	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 (2019)
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DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (20.10.2020)

Delegations will find attached a copy of a letter from Mr Fabrice Leggeri, Executive Director of Frontex, received by the General Secretariat of the Council on 2 September 2020 together with the "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 (2019)".

Mr Horst Seehofer
Federal Minister of the Interior, Building and Community

Our ref: CAB/DOJU/7283/2020

Warsaw, 27 August 2020

Dear Minister,

Pursuant to Article 13 of EU Regulation No 656/2014 of the European Parliament and 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 Border and Coast Guard Agency, please find attached the Annual Report on the practical application of the Regulation mentioned above related to 2019 activities.

Yours sincerely,



Fabrice Leggeri
Executive Director

CC: Ms Christine Roger, Director-General Justice and Home Affairs, Council of the European Union

**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**

2019

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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 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.

The requirements of the Regulation have 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 2019 that included surveillance of the EU external sea borders. It reflects the operational calendar of activities foreseen in the Programme of Work 2019 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 2019 and Themis 2019.
- The third part contains the general assessment made by Frontex of the implementation of the Regulation during the joint maritime operations in 2019 as well as it identifies some operational consequences or strategic questions to the EU institutions arising from the Regulation and the impacts of the expanded mandate of the Agency.
- 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 2019² included the surveillance activity at the external sea borders:

- Themis 2019
- Poseidon 2019
- Indalo 2019
- Focal Points 2019 Sea (Multipurpose Maritime Operation in the Black Sea)

¹ 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). Before its entry into force (5 December 2019), Frontex followed 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 Period from 1 January to 31 January 2019 of the joint operations Themis, Poseidon and Indalo were addressed in Frontex’s Annual Report 2018 on the implementation on the Regulation (EU) 656/2014

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 - Use of Force) and the Technical Equipment Mission Reports, applicable to both, host and participating Member States³ 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 Plan⁴; 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 Member 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) in conjunction with Article 4(1) and (4) of the Regulation.
- A special template for reporting on disembarkation in Third Countries has been 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 coordination 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 of the host Member State concerned.

Frontex coordinated joint operations are set up with the main operational aim for supporting Member State authorities in regards to their external border control. Frontex deployed assets operate under the tactical 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 the coordination 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 2019, Frontex deployed assets were involved in rescuing approximately 28 000 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.

³ 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.

⁴ 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.”

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 also deploys screening, debriefing, fingerprinting and advanced level document experts to its activities. 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 2019

2.1.1. Period of implementation and operational areas

JO Themis 2019 started on 1 March 2019⁵ and ended on 29 January 2020. The operational area was established in the south of Italy (Puglia and Calabria) including Sicily, upper Adriatic coast, Sardinia and the Pelagic Islands.

Lampedusa, Pozzallo, Taranto and Messina were the locations nominated as Hotspots in Italy.

2.1.2. Assessment of the general situation in Third Countries

Due to the fact that the possibility of disembarkation of the rescued or intercepted migrants in a Third Country was not considered in the joint operation Themis, no assessment of the general situation in Third Countries was provided by the host Member State (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 2019. 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 4 and 10 of the Regulation within the operational area.

No person rescued within a SAR incident, by a participating maritime asset, was 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 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 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 equipped for assisting maritime search and rescue missions.

⁵ Period from 1 January to 31 January 2019 was addressed in Frontex's Annual Report 2018 on the implementation on the EU Regulation 656/2014. Due to the fact that the joint operation Themis 2018 was extended by 28 February 2019, this report covers the period from 1 February 2019 until 29 January 2020.

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 assisting to ensure 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 search and rescue incidents.

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

EUNAVFOR MED Operation Sophia vessels⁶ 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 Procedures⁷.

According to the Standard Operating Procedures, the operational cooperation and information exchange between the two actors was performed by the exchange of Operational Liaison Officers. In 2019, due to a lack of maritime assets⁸ deployed within EUNAVFOR MED Operation Sophia and limited offers of human resources from the participating Member States deployed within joint operations Themis 2019, the information exchange continued mainly by EUNAVFOR MED Operation Sophia Liaison Officers deployed to the International Coordination Centre in Rome and the European Union Regional task Force in Catania.

In addition, several vessels⁹ of Non-governmental organizations operated off the coast of Libya, rendering assistance to the migrants' boats departing from Libya.

2.2. Joint Operation Poseidon 2019

2.2.1. Period of implementation and operational areas

The joint operation Poseidon 2019 started on 31 January 2019¹⁰ and ended on 29 January 2020.

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 and Patras.

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 14 January 2019. Based on the general assessment, the host MS, the participating Member States and Frontex agreed that the apprehended third country nationals 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 of the principle of the person's fundamental rights and the principle of *non-refoulement*.

⁶ The Regulation does not apply to the assets of EUNAVFOR MED Operation Sophia.

⁷ Op. Sophia finished on 31 March 2020 and new Operation Irini was launched on 1 April 2020. New SOP is currently under elaboration.

⁸ On 29 March 2019 the EU Council temporarily suspended the deployment of maritime assets within EUNAVFOR MED Operation Sophia.

⁹ The Regulation does not apply to the assets of Non-governmental organizations.

¹⁰ Period from 1 January to 31 January 2019 was addressed in Frontex's Annual Report 2018 on the implementation on the EU Regulation 656/2014,

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 waters as well as in all operational area, even beyond its territorial waters. 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 2019. 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. Participating vessels, with adequate size and 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 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.

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 assets¹¹ 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 vessels, 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 vessels¹² 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.

¹¹ The Regulation does not apply to NATO Aegean Activity (SNMG2) assets.

¹² Regulation does not apply to Non-governmental organisations' assets.

2.3. Joint Operation Indalo 2019

2.3.1. Period of implementation and operational areas

The joint operation Indalo 2019¹³ started on 1 March 2019 and ended on 20 May 2020.

The operational area of the JO was established in the Strait of Gibraltar, Western Mediterranean Sea and Alboran Sea and was divided into six zones covering Cadiz, Malaga, Granada, Almeria, Murcia and Alicante.

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 2019, no assessment of the general situation in Third Countries was provided 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 situation of that Third Country in accordance with Article 4 of Regulation 656/2014 in place. During the Joint Operation, no general assessments of Third Countries 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 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 assisting to ensure 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.

¹³ Period from 1 January to 31 January 2019 was addressed in Frontex's Annual Report 2018 on the implementation on the EU Regulation 656/2014. Due to the fact that the joint operation Indalo 2018 was extended by 28 February 2019, this report covers the period from 1 February 2019 until 20 May 2020.

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 Focal Points 2019 Sea

The Joint Operation Focal Points 2019 Sea started on 7 May 2019 and ended on 29 January 2020. Four different specific activities were implemented during the implementation period of the joint operation, out of which only one (Multipurpose Maritime Operation in the Black Sea) included surveillance activity at the external sea borders.

2.4.1. Multipurpose Maritime Operation (MMO) in the Black Sea

2.4.1.1. Period of implementation and operational areas

The Multipurpose Maritime Operation in the Black Sea started on 07 May 2019 and ended on 15 June 2019.

The activities were carried out in the operational area established in the Black Sea, which included Romanian and Bulgarian territorial waters, contiguous zones and economic exclusive zones.

2.4.1.2. Assessment of the general situation in Third Countries

The assessment of the general situation in Third Countries was conducted by Host MSs and made available to Frontex by Bulgaria (assessment on Turkey) on 12 June 2019, and by Romania (assessment on Turkey and Ukraine) on 1 July 2019.

2.4.1.3. Disembarkation in Third Countries

The Bulgarian and Romanian maritime assets were authorized to disembark the persons, intercepted and apprehended in the operational area, in Bulgaria respectively in Romania. Disembarkation in third countries was not carried out during the implementation period of the MMO.

2.4.1.4. Communication and cooperation channels

The Focal Point Sea (Maritime Centre) in Burgas (BGR) and Constanta (ROU) facilitated the communication flow between different entities. In case of search and rescue, the Maritime Rescue Coordination Centres in Varna (BGR) and Constanta (ROU) took over the coordination and, in case of need, cooperated with each other.

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 2019.

When disembarkation in Third Countries was envisaged (in case of joint operation Poseidon 2019), 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 2019/1896¹⁴ 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.

¹⁴ 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. 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 (EU) 656/2014 were expressed in general terms in all relevant operational plans concerned, i.e.: Joint Operation (JO) Themis 2019, JO Indalo 2019, JO Poseidon 2019 and JO FPs Sea 2019. 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:

- a. Need to enhance the quality and comprehensiveness of the assessment as well as an update of the **general situation in a non-EU country**;
- b. 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;
- c. Insufficient information/clarity in relation to procedures regarding **identification and referral of persons with international protection needs** and in a particularly vulnerable situation.

4.1.1 Assessment of the general situation in a non-EU country

The FRO notes that in the operational plans for JO Themis 2019 and JO Indalo 2019 general assessments of the situation in non-EU countries were not provided due to the fact that the possibility of disembarkation of the rescued or intercepted migrants in a non-EU country was not considered in these joint operations. The JO Poseidon 2019 operational plans contained a reference to assessments carried out for Turkey by the Hellenic authorities.

As repeatedly indicated in earlier reports, it is advised the general assessments present a conclusive analysis or reference on whether the practices on the non-EU 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 non-EU 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 (EU) 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 asylum¹⁵. 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 2019, a decreasing trend in the number of arrivals compared to JO Themis 2018 has been noted¹⁶. According to Frontex Evaluation Report (FER) it is directly related to the gradually reduced intensity of the migratory flow of migrants from Libya. Among the factors contributing to this trend is a high share of departures performed by the Libyan Coast Guard, a change in disembarkation policy adopted by the Italian government as well as assuming responsibility by Italy, Malta and Libya in their respective Search and Rescue (SAR) areas (Libya accepted the disembarkation of all migrants intercepted in their SAR zone which is 57% of the total departures reported from LYB).

¹⁵ <https://www.hrw.org/news/2019/07/26/turkey-forcibly-returning-syrians-danger>, <https://www.amnesty.org/download/Documents/EUR4411022019ENGLISH.pdf>, <https://www.theguardian.com/global-development/2019/aug/23/its-not-legal-un-stands-by-as-turkey-deports-vulnerable-syrians>, <https://www.politico.eu/article/syrians-report-deportations-as-turkey-takes-harder-line-on-refugees/>.

¹⁶ According to Frontex Evaluation Report of JO Themis 2019, draft from 25.05.2020.

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.”¹⁷ 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.

Finally, the FRO notes that the cooperation between the JO Themis and other maritime operations was established (EUNAVFOR Med Operation Sophia, Operation Iriini). FRO considers the new SOP currently under elaboration shall be consulted with FRO in order to ensure compliance with fundamental rights.

4.1.2. Assessment of personal circumstances

The FRO welcomes the inclusion in JO Poseidon 2019 operational plan 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 disembarkation in the proposed place would be in violation of the principle of non-refoulement. Likewise, the FRO welcomes the inclusion of a provision in the above mentioned operational plan 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. FRO recommends to include such references also in other operational plans.

As foreseen in Article 5 of the Regulation 656/2014, there is a provision requesting from the host Member States and relevant third countries to ensure the availability of shore-based medical staff, interpreters, legal advisors and other relevant experts to support personal assessment of the persons intercepted or rescued at the designated point of disembarkation.

The FRO echoes her observations to JO Poseidon 2019 operational plan when recommending to report on situations in which the personal assessment is carried out and to include at least age and nationality of persons transferred, disembarked or handed over to the authorities of a third country. Article 4.3 of the Regulation 656/2014 specifically provides that, before disembarkation, forcing to enter, conducting to or otherwise handing over of intercepted or rescued persons to the authorities of a third country, the participating units shall use all means to assess their personal circumstances. As set by operational plan JO Poseidon 2019, each participating unit appoints an Officer responsible to decide on personal assessment and to collect all information. FRO recommends the responsible Officer collects, among others, number of personal assessments carried out, information on age and nationality of persons concerned. This is a basic requirement to carry out quantitative and qualitative assessment of the procedures set to guarantee the respect and protection of principle of non-refoulement in accordance to the aforementioned Article.

¹⁷ Council of Europe Commissioner for Human Rights, *Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean*, June 2019.

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

The FRO welcomes the fact that referral procedures as foreseen in the operational plans were established and applied during interception and disembarkation (*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 Members States, as well as international and non-governmental organizations which were assisting to ensure the examination of the status of persons in need of international protection and addressing the special needs of persons in a particularly vulnerable situation.*). The FRO also notes missing part on collection of sex and age disaggregated data as a basis for the identification of children and gender-specific needs¹⁸, 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. FRO welcomes the fact that starting from 2020 the fundamental rights general instructions were annexed to the operational plan, including for maritime operational activities. FRO will closely monitor on how they will be implemented in the coming years.

4.2. Reported Serious Incidents (SIR) and Complaints

During the reporting period and within the framework of Frontex operations, a total of eleven Serious Incident Reports (SIR) involving alleged violations of fundamental rights were submitted to Frontex, out of which one took place in Frontex sea operations. The incident took part under JO Poseidon 2019 and was related to the alleged improper behaviour of the cultural mediator when interacting with migrants. At the same time, the FRO observed an increase in a number of received SIRs comparing to the previous year (2018) in which four fundamental rights 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 Mechanism¹⁹ 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 as a part of the awareness raising activities for the Frontex complaints mechanism.

4.3. Awareness and capacity building activities

The FRO welcomes that 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. 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. Moreover, in the reported period FRO provided input on the curricula for the EBCG Standing Corps. The standing corps curricula was designed based on the CCC which had been consulted with FRO and the Consultative Forum, and is intended to integrate fundamental rights horizontally in this standing corps training.

Finally, following trainings held since 2016, the FRO continued in 2019 delivering regularly 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.

¹⁸ 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".

¹⁹ Article 72 of the Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard