Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

REGULATION (EU) No 656/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (d) of Article 77(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) The objective of Union policy in the field of the Union external borders is to ensure the efficient monitoring of the crossing of external borders including through border surveillance, while contributing to ensuring the protection and saving of lives. The purpose of border surveillance is to prevent unauthorised border crossings, to counter cross-border criminality and to apprehend or take other measures against those persons who have crossed the border in an irregular manner. Border surveillance should be effective in preventing and discouraging persons from circumventing the checks at border crossing points. To this end, border surveillance is not limited to the detection of attempts at unauthorised border crossings but equally extends to steps such as intercepting vessels suspected of trying to gain entry to the Union without submitting to border checks, as well as arrangements intended to address situations such as search and rescue that may arise during a border surveillance operation at sea and arrangements intended to bring such an operation to a successful conclusion.

(2) The policies of the Union in border management, asylum and immigration and their implementation should be governed by the principle of solidarity and fair sharing of responsibility between the Member States pursuant to Article 80 of the Treaty on the Functioning of the European Union (TFEU). Wherever necessary, Union acts adopted in the framework of those policies are to contain appropriate measures to give effect to

that principle and promote burden-sharing including through the transfer, on a voluntary basis, of beneficiaries of international protection.

(3) The scope of application of this Regulation should be limited to border surveillance operations carried out by Member States at their external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ('the Agency') established by Council Regulation (EC) No 2007/2004[(2)]. Investigative and punitive measures are governed by national criminal law and the existing instruments of mutual legal assistance in the field of judicial cooperation in criminal matters in the Union.

(4) The Agency is responsible for the coordination of operational cooperation between Member States in the field of management of the external borders, including as regards border surveillance. The Agency is also responsible for assisting Member States in circumstances requiring increased technical assistance at the external borders, taking into account the fact that some situations may involve humanitarian emergencies and rescue at sea. Specific rules with regard to border surveillance activities carried out by maritime, land and aerial units of one Member State at the sea border of other Member States or on the high seas in the context of operational cooperation coordinated by the Agency are necessary to further strengthen such cooperation.

(5) Cooperation with neighbouring third countries is crucial to prevent unauthorised border crossings, to counter cross-border criminality and to avoid loss of life at sea. In accordance with Regulation (EC) No 2007/2004 and insofar as full respect for the fundamental rights of migrants is ensured, the Agency may cooperate with the competent authorities of third countries, in particular as regards risk analysis and training, and should facilitate operational cooperation between Member States and third countries. When cooperation with third countries takes place on the territory or the territorial sea of those countries, the Member States and the Agency should comply with norms and standards at least equivalent to those set by Union law.

(6) The European Border Surveillance System (Eurosur) established by Regulation (EU) No 1052/2013 of the European Parliament and of the Council[(3)] aims to strengthen the information exchange and operational cooperation between Member States and with the Agency. That is to ensure that the situational awareness and reaction capability of Member States improves considerably, also with the support of the Agency, for the purposes of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants at their external borders. When coordinating border surveillance operations, the Agency should provide Member States with information and analysis concerning those operations in accordance with that Regulation.

(7) This Regulation replaces Council Decision 2010/252/EU[(4)] which was annulled by the Court of Justice of the European Union ('the Court') by its judgment of 5 September 2012 in Case C-355/10. In that judgment, the Court maintained the effects of Decision 2010/252/EU until the entry into force of new rules. Therefore, as of the day of entry into force of this Regulation, that Decision ceases to produce effects.

(8) During border surveillance operations at sea, Member States should respect their respective obligations under international law, in particular the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the United Nations Convention relating to the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Convention on the Rights of the Child and other relevant international instruments.

(9) When coordinating border surveillance operations at sea, the Agency should fulfil its tasks in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union ('the Charter'), and relevant international law, in particular that referred to in recital 8.

(10) In accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council[(5)] and general principles of Union law, any measure taken in the course of a surveillance operation should be proportionate to the objectives pursued, non-discriminatory and should fully respect human dignity, fundamental rights and the rights of refugees and asylum seekers, including the principle of *non-refoulement*. Member States and the Agency are bound by the provisions of the asylum *acquis*, and in particular of Directive 2013/32/EU of the European Parliament and of the Council[(6)] with regard to applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of Member States.

(11) The application of this Regulation should be without prejudice to Directive 2011/36/EU of the European Parliament and the Council[(7)], in particular as regards assistance to be given to victims of trafficking in human beings.

(12) This Regulation should be applied in full compliance with the principle of *non-refoulement* as defined in the Charter and as interpreted by the case-law of the Court and of the European Court of Human Rights. In accordance with that principle, no person should be disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a country where, inter alia, there is a serious risk that he or she would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another country in contravention of the principle of *non-refoulement*.

(13) The possible existence of an arrangement between a Member State and a third country does not absolve Member States from their obligations under Union and international law, in particular as regards compliance with the principle of *non-refoulement*, whenever they are aware or ought to be aware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that third

country amount to substantial grounds for believing that the asylum seeker would face a serious risk of being subjected to inhuman or degrading treatment or where they are aware or ought to be aware that that third country engages in practices in contravention of the principle of *non-refoulement*.

(14) During a border surveillance operation at sea, a situation may occur where it will be necessary to render assistance to persons found in distress. In accordance with international law, every State must require the master of a vessel flying its flag, in so far as he can do so without serious danger to the vessel, the crew or the passengers, to render assistance without delay to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress. Such assistance should be provided regardless of the nationality or status of the persons to be assisted or of the circumstances in which they are found. The shipmaster and crew should not face criminal penalties for the sole reason of having rescued persons in distress at sea and brought them to a place of safety.

(15) The obligation to render assistance to persons found in distress should be fulfilled by Member States in accordance with the applicable provisions of international instruments governing search and rescue situations and in accordance with requirements concerning the protection of fundamental rights. This Regulation should not affect the responsibilities of search and rescue authorities, including for ensuring that coordination and cooperation is conducted in such a way that the persons rescued can be delivered to a place of safety.

(16) When the operational area of a sea operation includes the search and rescue region of a third country, the establishment of communication channels with the search and rescue authorities of that third country should be sought when planning a sea operation, thereby ensuring that those authorities will be able to respond to search and rescue cases developing within their search and rescue region.

(17) Pursuant to Regulation (EC) No 2007/2004, border surveillance operations coordinated by the Agency are conducted in accordance with an operational plan. Accordingly, as regards sea operations, the operational plan should include specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation, pilot project or rapid intervention takes place, including references to Union and international law regarding interception, rescue at sea and disembarkation. The operational plan should be established in accordance with the provisions of this Regulation governing interception, rescue at sea and disembarkation in the context of border surveillance operations at sea coordinated by the Agency and having regard to the particular circumstances of the operation concerned. The operational plan should include procedures ensuring that persons with international protection needs, victims of trafficking in human beings, unaccompanied minors and other vulnerable persons are identified and provided with appropriate assistance, including access to international protection.

(18) The practice under Regulation (EC) No 2007/2004 is that for each sea operation, a coordination structure is established within the host Member State, composed of officers from the host Member State, guest officers and representatives of the Agency, including

the Coordinating Officer of the Agency. This coordination structure, usually called International Coordination Centre, should be used as a channel for communication between the officers involved in the sea operation and the authorities concerned.

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

(20) Since the objective of this Regulation, namely to adopt specific rules for the surveillance of the sea borders by border guards operating under the coordination of the Agency, cannot be sufficiently achieved by the Member States due to the differences in their laws and practices, but can rather, by reason of the multinational character of the operations, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(21) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(22) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*[(8)] which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC[(9)].

(23) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[(10)] which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[(11)].

(24) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the