

COMMISSION RECOMMENDATION (EU) 2020/1365**of 23 September 2020****on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Providing assistance to any persons found in distress at sea is a legal obligation of Member States established in international customary and conventional law, in particular the International Convention for the Safety of Life at Sea (SOLAS Convention, 1974), the United Nations Convention of the Law of the Sea (UNCLOS, 1979), and the International Convention on Maritime Search and Rescue (SAR Convention, 1979), as well as Union law. The European Union is a contracting Party to UNCLOS.
- (2) Since 2014, thousands of people have been attempting to cross the Mediterranean to reach Europe, requiring a multifaceted response by the European Union and its Member States with a view to avert loss of life, improve migration management, address the root causes of irregular migration and disrupt organised crime groups of migrant smugglers and traffickers in human beings.
- (3) While irregular migration to the EU has decreased in the last 2 years and fewer lives have been lost at sea, the risky use of small, unseaworthy vessels in the Mediterranean remains a feature of the migratory landscape, continuing to fuel organised crime and causing unacceptable deaths. According to the International Organization for Migration, the total deaths in the Mediterranean so far in 2020 exceed 500, with over 1 880 in 2019 and over 20 300 overall since 2014, making in particular the Central Mediterranean route to Europe the deadliest worldwide.
- (4) Since 2015, search and rescue capacity, coordination, and effectiveness in the Mediterranean have been enhanced considerably in response to the migratory crisis, including with significant contributions from coastal states and the increased involvement of private and commercial vessels. The EU and the Member States have reinforced their capacity in the Mediterranean, including through national operations and operations led by the European Border and Coast Guard Agency (Frontex), such as Themis (formerly Triton), Poseidon and Indalo, as well as, previously, the EU naval operation EUNAVFOR MED Sophia, which have helped to rescue over 600 000 people at sea since 2015.
- (5) In this context, several non-governmental organisations (NGOs) have also been operating private vessels, mostly in the Central Mediterranean area, significantly contributing to the rescue of persons at sea, who are then brought to EU territory for safe disembarkation. As already stressed in the EU Action Plan against Migrant Smuggling (2015-2020) and further clarified in the Commission Guidance on the Facilitators Package (C(2020) 6470), there is a need to avoid criminalisation of those who provide humanitarian assistance to people in distress at sea, while ensuring that appropriate criminal sanctions against smugglers are in place.
- (6) In its resolution of 18 April 2018 on progress on the UN Global Compacts for Safe, Orderly and Regular Migration and on Refugees (2018/2642(RSP)), the European Parliament called for greater search and rescue capacities for people in distress, for greater capacities to be deployed by all states, and for the support provided by private actors and NGOs in carrying out rescue operations at sea and on land to be acknowledged.
- (7) Search and rescue operations in emergency situations require coordination and rapid disembarkation in a place of safety, and respect for the fundamental rights of rescued people, in conformity with the EU Charter of Fundamental Rights obligations, including the principle of non-refoulement, and with customary and conventional international human rights and maritime law, including the International Maritime Organisation (IMO) Maritime Safety Committee (MSC) Guidelines on the treatment of persons rescued at sea.
- (8) A new form of search and rescue operations in the European maritime landscape has emerged in recent years whereby vessels operated by NGOs in the Central Mediterranean Sea have been engaged, as their predominant activity, in search and rescue operations, which they have performed under the coordination of national Maritime Rescue Coordination Centres or on their own initiative. In many cases, these vessels conducted consecutive rescue operations before disembarking those rescued at a place of safety.

- (9) Migrant smuggling by sea is a criminal offence, which may put people's lives at risk and is sanctioned both under European and international law. The European Union and its Member States are contracting Parties to the United Nations Convention against Transnational Organised Crime (UNTOC) and the Protocols thereto, including the Protocol against the Smuggling of Migrants by land, sea and air, supplementing the UNTOC. In this context, it is essential to avoid a situation in which migrant smuggling or human trafficking networks, including criminal organisations trafficking people or engaging in forms of exploitation assimilated to slavery, take advantage of the rescue operations conducted by private vessels in the Mediterranean.
- (10) It is recalled that the SAR Convention obligates contracting parties to participate in the development of search and rescue services and to take urgent steps to ensure that the necessary assistance is provided to any person who is, or appears to be, in distress at sea; the relevant parties should coordinate and cooperate so that those assisted are disembarked from the assisting ship and delivered to a place of safety as soon as reasonably practicable. In line with the IMO Guidelines on the treatment of persons rescued at sea, the selection of a place of safety for disembarkation should take into account a variety of important factors and the particular circumstances of each case. Among others, the need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened should be taken into account in the case of asylum-seekers and refugees recovered at sea. Moreover, the IMO Guidelines require responsible State authorities to make every effort to expedite arrangements to disembark survivors from the ship, while underlining that in some cases the necessary co-ordination may result in unavoidable delays.
- (11) The regular presence of NGO vessels carrying out search and rescue activities in the Mediterranean triggers specific operational needs of enhanced coordination and cooperation between the vessels carrying rescued persons and national authorities, and concerns Member States in different ways: some are the States which coordinate the search and rescue operations; some are those which receive the rescued persons, who are disembarked on their territory; some are those where the non-governmental organisations are legally established; and others are those where the vessels used in the search and rescue activities have obtained their flag.
- (12) Private vessels engaged in rescue efforts in the Mediterranean are involved in complex and often recurring search and rescue operations, which may concern large numbers of people in relation to the vessel capacity and involve a broad range of actors, from rescue to the disembarkation. It is therefore a matter of public policy, including safety, that these vessels be suitably registered and properly equipped to meet the relevant safety and health requirements associated with this activity, so as not to pose a danger to the crew or the persons rescued. These activities need to take place in a coordinated framework, through reinforced cooperation and coordination between private operators and national authorities.
- (13) The continued disembarkations of rescued people in coastal Member States have direct consequences on their migration management systems and place increased and immediate pressure on their migration and asylum systems, including on their reception and processing capacity.
- (14) In addition to other initiatives, on 4 July 2017 the Commission adopted an 'Action plan on measures to support Italy, reduce pressure along the Central Mediterranean route and increase solidarity', which included the development by Italy, of a code of conduct for NGOs carrying out search and rescue activities in the Mediterranean, in consultation with the Commission and on the basis of a dialogue with NGOs.
- (15) Beyond coordination efforts established so far, including under the Shared Awareness and De-confliction in the Mediterranean (SHADE MED) forum set up by the EU naval Operation Sophia, there remains a need to address the specificity of the search and rescue practice which has arisen in the Mediterranean over the past years by setting up a more structural, reliable and sustainable framework, in line with EU competences and relevant international standards. This framework should lay down specific rules for solidarity between Member States, and address the need for reinforced cooperation among in particular the flag and coastal Member States. Cooperation with private entities that own or operate vessels for the purpose of carrying out search and rescue activities and bringing rescued people into EU territory is also necessary; such a framework should also aim to provide appropriate information as regards the operations and the administrative structure of these entities, in line with the principle of proportionality and the EU Charter of fundamental rights, and enhance safety, in compliance with the applicable international legislation in the interests of all those on board.

- (16) The Commission will establish an interdisciplinary Contact Group in which Member States can cooperate and coordinate activities in order to implement this Recommendation. The Group will compile an overview of national rules and practices, identify lessons learnt, assess the possibility to create improved means of cooperation between the flag and coastal states with regard to their tasks and responsibilities, and develop best practices which would reflect the needs ensuing from the search and rescue operations as they have developed over the past years. It will liaise regularly with relevant stakeholders, including EU agencies, notably Frontex, and, as appropriate, non-governmental organisations carrying out search and rescue activities in the Mediterranean, academics and international organisations, such as the IMO, in order to exchange knowledge and maintain coherence of activities with the international legal and operational framework. Member States should provide the Commission with all relevant information on the implementation of this Recommendation. The Contact Group will monitor the implementation of the Recommendation and issue, once a year, a report to the Commission.
- (17) The Commission will take into account the work of the Contact Group and the implementation of this Recommendation when developing the European Asylum and Migration Management Strategy and the annual Migration Management Reports set out in the Asylum and Migration Management Regulation, as appropriate. On this basis, the Commission will also assess and recommend future initiatives, as needed.
- (18) This Recommendation is without prejudice to any duty of cooperation and any other obligation stemming from relevant international and Union law,

HAS ADOPTED THIS RECOMMENDATION:

1. Member States should cooperate with each other in relation to operations carried out by privately owned or operated vessels for the purpose of search and rescue activities, with a view to reducing fatalities at sea, maintaining safety of navigation and ensuring effective migration management in compliance with relevant legal obligations.

In particular, flag and coastal Member States should exchange information, on a regular and timely basis, on the vessels involved in particular rescue operations and the entities that operate or own them, in accordance with international and Union law, including the EU Charter of Fundamental Rights and the protection of personal data.

2. Member States should cooperate with each other, and with the Commission, in particular through its Contact Group, liaising with all relevant stakeholders, including as appropriate private entities owning or operating vessels for the purpose of carrying out search and rescue activities, with a view to identifying best practices and take any necessary actions to ensure:
 - (a) increased safety at sea; and
 - (b) the availability to the competent authorities of all information that they require to monitor and verify compliance with standards for safety at sea as well as relevant rules on migration management.
3. Member States should provide the Commission with any relevant information on the implementation of this Recommendation, at least once a year, by 31 March of the year following the reference year.

Done at Brussels, 23 September 2020.

For the Commission
Ylva JOHANSSON
Member of the Commission
