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Sent: 28 March 2018 12:06
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Subject: Flash meeting HOME / MEP - NGO Proactiva Open Arms 27/3/18

Yesterday HOME C1 & C2 [REDACTED] met with some representatives of the NGO Proactiva Open Arms together with MEP Ernest Urtasun.

They made a short description of the **SAR event which involved their vessel last Friday when operating in Central Med**. After several exchanges which involved the Italian MRCC but also the Flag State (Spain), the vessel was granted with permission to disembark the 218 migrants in Italy. At the disembarkation the master of the vessel and the operation coordinator were called by the Italian Police and **the vessel was seized by the Italian prosecutor**. An investigation has been opened by the Italian Judicial authority against the **charges of facilitation of illegal immigration (migrant smuggling)**.

The discussion focussed first on the **legal aspects**, with questions on our intentions vis-à-vis the **Facilitators Package and the humanitarian exemption clause**. As a start, HOME recalled that COM had no investigative powers whatsoever nor could interfere with ongoing national investigations. We recalled the outcome of our evaluation, which pointed to the lack of relevant evidence in terms of prosecutions and convictions of humanitarian actors. We discussed the fact that Italy was actually one of the 8 MS that provide for an exemption of criminalisation when facilitation is done for humanitarian purposes. We were asked about the idea of issuing guidelines on the model of the ones issued for the Return Directive, which is not envisaged at the moment. We stressed Com willingness to follow-up on this issue with relevant civil society actors, starting with a workshop to be organised in the coming weeks.

The discussion then touched upon the **declaration of the Libyan SAR area, whose legitimacy is disputed by the NGO**. On this point we shared the available information clarifying that SAR is under the competence of the IMO. As far as we know, the IMO has never formally rejected the declaration of SAR area. In accordance with the relevant international convention the Parties are legitimate to declare unilaterally their own SAR area which remains a functional area without prejudice for sovereignty or boundaries issues. Eventual dispute between neighbouring countries should be settled at bilateral level since the IMO has no jurisdiction power.

On top of that, we illustrated the **overall comprehensive approach to Libya** which includes capacity building, training, equipment and that will bring to the establishment of a full-fledged Libyan MRCC in the framework of the EUTF project implemented by the IT MoI. We took the occasion to mention about the effort under EUNAVFORMED Op Sophia which is running the monitoring mechanism on Libya Coast Guard with the first report issued recently and with the aim to improve progressively the performance of the personnel as follow up to the training.

The NGO clearly indicated the **difficulties linked to the seizure of the vessel** which is now blocked in the port of Pozzallo and subject to all port services fees which represent a cost for the organization, also taking into account the long duration foreseen under the standard Italian judicial system (see the previous case of MV Juventa seized in July, the vessel is still blocked).