



EUROPEAN COMMISSION
DIRECTORATE-GENERAL for MIGRATION and HOME AFFAIRS

The Deputy Director-General

Brussels,

Médecins sans Frontières (MSF)

Dear [REDACTED],

I would like to thank you for your letter and for your continued efforts in contributing to save lives in the Central Mediterranean sea. There is no doubt that saving lives remains an imperative for the EU and its Member States. The Commission has repeatedly recognised how several NGOs have been acting in support and close coordination with governments and international organisations to provide assistance in this challenging endeavour.

As you know, in line with its "Action Plan on measures to support Italy, reduce pressure along the Central Mediterranean route and increase solidarity", adopted on Tuesday 4 July 2017¹, the Commission supported the Italian initiative to develop a Code of Conduct to ensure the necessary cooperation with NGOs performing search and rescue operations in the Mediterranean. This initiative also received the support of EU Interior Ministers at the informal Justice and Home Affairs Council held in Tallin on 6-7 July².

While by its very nature the Code is not a legally binding instrument, it provides for a set of rules and principles that signatory NGOs committed to respect, in compliance with existing international and humanitarian law. As such, the breach of the Code *per se* would not constitute an autonomous ground for prosecution; it would rather be a matter for the competent national authorities to assess the consequences of any violations from a criminal point of view.

We are aware of reports of alleged violence on the high seas. Whilst we are not in the position to confirm the accuracy of such reports, it is clear that any human rights violation, by any actor, should be condemned. Providing assistance to anyone in distress at sea in full compliance with the existing SAR framework is an obligation under international law, which however does not set out the definition of 'distress' or rules on implementation in domestic law. Ultimately, national authorities are competent to assess what constitutes distress and assistance at sea in each specific case.

¹ SEC(2017)339 final

² <https://tvnewsroom.consilium.europa.eu/event/informal-meeting-of-justice-and-home-affairs-ministers-july--17cbc/press-conference-home-affairs-part-5-qa-17d42>

The Commission has repeatedly recalled that risks of criminalisation of genuine humanitarian assistance should be avoided³. As regards the EU legal framework against facilitation of unauthorised entry, transit and residence⁴, its evaluation⁵ in 2017 revealed a lack of solid evidence supporting the need for a legislative review but identified possible improvements, in particular as regards the clarity of the humanitarian exemption clause. The Commission is actively engaging with civil society on this particular aspect⁶. As you know, a meeting with civil society representatives, including your organisation, and the Fundamental Rights Agency (FRA) took place on 3 June in Brussels, where the exemption of criminalisation of humanitarian assistance to migrants in the framework of migrant smuggling was discussed. The meeting was held in a constructive atmosphere and allowed for open and frank discussions, with participants welcoming the possibility of building up a regular communication channel on such complex issues.

Concerning the case involving Proactiva Open Arms, at this stage the Commission cannot provide any comment on the substance of the case, whose appreciation is within the remit of the competent Italian authorities.

As regards EU engagement, we pursue a comprehensive approach to migration in Libya, in line with international law and in respect of human rights, which goes well beyond enhancing the capacity of the Libyan coastguards to save lives at sea. Our engagement focuses on improving conditions for migrants in Libya, in close cooperation with IOM and UNHCR, opening up safe passageways of resettlement and promoting the development of a reception system in line with international standards. These strands of our work move in parallel and we will continue to pursue the promotion and protection of human rights in Libya, also in the context of the support of the United Nations and the African Union.

This is also why the monitoring of the development of the capacities and in the training of the Libyan Coast Guard and Navy in law enforcement tasks at sea, in particular to prevent human smuggling and trafficking, has been constantly identified as an essential component. The monitoring task was assigned to EUNAVFORMED Op Sophia by Council decision in July 2017⁷, which then developed a monitoring mechanism in cooperation with Libyan Navy coast guard counterparts⁸.

As far as the notification of the SAR region by the Libyan Port and Maritime Transport Authority is concerned, this represents a legitimate constitutive act since Libya is a contracting party of the Hamburg Convention 1979 on SAR. According to our information, Libyan authorities notified a revised SRR to the IMO on 14/12/2017⁹.

³ See for instance the EU Action Plan against migrant smuggling (COM(2015) 285 final) or the Communication on the Delivery of the Agenda on migration (COM(2017) 558 final)

⁴ Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA

⁵ SWD(2017) 117 final

⁶ COM(2017) 558 final

⁷ COUNCIL DECISION (CFSP) 2017/1385 of 25 July 2017

⁸ The first six months report confirmed the appropriate employment of Libya personnel trained under different EU programmes (Op Sophia, Seahorse) as well as an increased amount of activity at sea and a rising capability. It has also highlighted areas for further improvements. Based on initial results of the monitoring mechanism the Libyan Coast Guard has showed gradual improvements in their professional conduct and the Coast Guard Commander confirmed that they set up a lessons learnt process. They also confirmed that in one case disciplinary measures have been taken.

⁹ The notification of the Libyan SRR was indeed initially submitted on the 10.07.2017 but then withdrawn in December on 06.12.2017. On 14.12.2017 a revised notification was submitted to the IMO, correcting the geographical coordinates specified in the previous version, upon suggestion and advice on behalf of the IMO itself. The IMO has not circulated nor rejected the notification yet, but rather solicited the Libyan authorities to complete the information inserted in the Global Integrated Shipping Information System (GISIS). While to date this information has not been fully inserted, it must be stressed that this is not only the case for Libya but also for other parties to the IMO.

While a fully-fledged Libyan MRCC is still in the process of being set up, we are combining efforts to ensure it is fully effective shortly. We do so through the EU Trust Fund project implemented by the Italian Ministry of Interior and the feasibility study led by the Italian Coast Guard. The Libyan Coast Guard is already equipped at this stage with the basic necessary equipment required to start exercising coordination in its area of responsibility. Specific training in this respect is on-going as well as on SAR profile. Recently, in the framework of the Seahorse programme, training for SAR On Scene Coordinator took place in Malta for the personnel of the Libyan Coast Guard. Further training will follow this year by the Italian Coast Guard on SAR mechanism and coordination as well as on radio communication operator.

I hope this answer responds to your concern and I trust in the continued cooperation of MSF in constructively addressing these important matters, with the EU, its Member States and all partner international organisations.

I also remain at your disposal to continue our regular exchange of views on this as well as other matters of mutual interest.

Simon MORDUE

[E-signed]