

Dimitris AVRAMOPOULOS

Member of the European Commission

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Ares(2017)

Dear Members of the European Parliament,

I would like to thank you for the joint declaration regarding "*search and rescue in the Mediterranean Sea*". Please accept my apologies for the delay of my reply.

Tackling migrant smuggling to and within Europe while preventing loss of lives at sea, constitutes a key priority for the EU's migration policy, as expressed in the EU action plan against migrant smuggling (2015-2020) and, most recently, by the Malta Declaration on the external aspects of migration: addressing the Central Mediterranean route.

The objective of our actions at EU level is disrupting the criminal networks that make significant profits out of the smuggling of migrants and not prosecuting citizens and organisations, that provide genuine assistance to those in need. On the contrary, the European Commission has consistently recalled that the duty to render assistance to persons or vessels in distress at sea is an obligation under international law. International law is binding on States, who are obliged to subject shipmasters of private, commercial or military vessels to the corresponding duty to render assistance. The shipmasters of vessels of non-governmental organisations (NGO) are therefore bound to respect the same duties as shipmasters of State vessels.

The European Union is committed to save lives at sea and to disrupt the business model of migrant smugglers, who cause increasing harm in particular along the Central Mediterranean migration route. To this effect, the EU, together with its Member States, has mobilised efforts, including through the naval Operation Sophia and European Border and Coast Guard Agency-led operations, which resulted in saving 400 000 lives so far, and the dedicated European Migrant Smuggling Centre in Europol to step up operational cooperation against smuggling criminal groups and seizing their illicit proceeds.

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Today, apart from merchant vessels and naval assets participating in Operation Sophia and coast guard assets (including vessels deployed in the framework of Joint Operation Triton coordinated by the European Border and Coast Guard Agency), which follow the instructions of the responsible Maritime Rescue Coordination Centre, a growing number of vessels deployed by NGOs have been carrying out rescue operations.

While general assumptions on the role of all civil society organizations, which have mostly acted in support and close coordination with governments and international organisations to provide assistance, must be avoided, the relevant facts and circumstances of any Search and Rescue (SAR) event must be considered on a case-by-case basis.

The Risk Analysis 2017 by the European Border and Coast Guard Agency does not include *per se* as an accusation of NGOs having cooperated or colluded with criminal smuggling networks to intentionally facilitate unauthorised entry to the EU. This Risk Analysis states the fact that migrant smugglers, who organise departures from the Libyan shores, have adapted their *modus operandi* to the increased presence of maritime assets, including of the vessels deployed by the NGOs, close to the Libyan shores. They use in most cases poor quality, unseaworthy inflatable boats with more than ever migrants embarked per boat with a minimum amount of fuel and other supplies provided for. It has also led to increasing difficulties for the competent national authorities to gather meaningful evidence and thus carry out effective investigations and prosecutions.

These facts serve as a reminder that close coordination between all participants in the SAR operations in the Mediterranean is key to the effective implementation of the existing SAR rules and to ensure the safety of all concerned, migrants and crews alike. Regular coordination fora, such as the SHADE-MED meetings¹ can contribute to ensure this objective.

So far however, apart from enquiries being conducted by the Italian Senate and some prosecutor's offices, to the exclusive aim of gathering knowledge on the existing situation, the Commission has not received any official information from Member States authorities, who ultimately are competent in such matters, about investigations or prosecutions for migrant smuggling of NGOs involved in search and rescue.

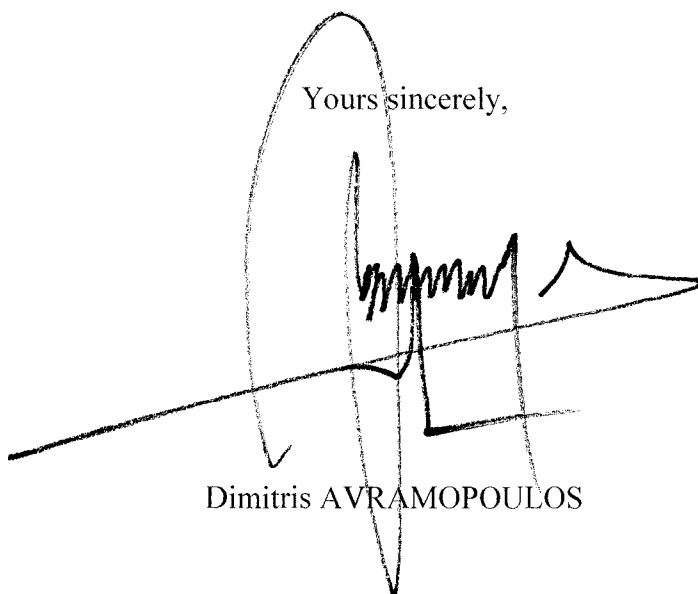
Concerning the review of Directive 2002/90/EC, as you are aware, the Commission has conducted an evaluation of the existing EU legal framework against facilitation of unauthorised entry, transit and residence to the EU. Its outcome has been shared with the European Parliament on 22 March 2017. Among the Member States that have already included forms of explicit exemption from criminalization in national law, in accordance with the option set out by Directive 2002/90/EC, there are States such as Italy, Greece, Malta and Spain, which are first line receiving countries when it comes to smuggling by sea.

¹ https://eeas.europa.eu/headquarters/headquarters-homepage_en/41/Shade-Med

As a result of the evaluation, the Commission intends to engage with relevant players, primarily national authorities as well as Eurojust and the European Union Agency for Fundamental Rights (FRA), but also civil society organisations, to get a better understanding of the application of the existing rules and support the effective implementation of the existing legal framework and a reinforced exchange of knowledge and good practice between prosecutors, law enforcement and civil society. This should contribute to strengthening of the effective implementation of the Facilitation directive, and to achieving a common interpretation of the rules related to the humanitarian exemptions provided for in the Directive.

Should any changes to the current situation occur or new evidence become available to the Commission, including when the implementation of the EU Action Plan will have reached greater maturity and data availability improved, further consideration will be given to the need for a legislative revision.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, sweeping loop on the left and a series of sharp, jagged peaks on the right, crossing a horizontal line.

Dimitris AVRAMOPOULOS

Copy: Miguel Urbán Crespo, Barbara Spinelli, Elly Schlein, Jordi Solé, Estefanía Torres Martínez, Tania González Peñas, Xabier Benito Ziluaga, Lola Sánchez Caldentey, Barbara Lochbihler, Keith Taylor, Stefan Eck, Maria Heubuch, Bodil Valero, Bart Staes, Jose Bove, Paloma López Bermejo, Sabine Lösing, Marina Albiol, Margrete Auken Ernest Urtasun, Javier Couso, Marisa Matías, Ana Maria Gomes