

Committee on Civil Liberties, Justice and Home Affairs
The Chairman

IPOL-COM-LIBE D(2023)3733

Ylva Johansson
Commissioner for Home Affairs
European Commission
Rue de la Loi, 200
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Dear Commissioner,

I am writing to you to express the deep concerns of the LIBE Committee of the European Parliament in regards to the law decree, signed by the Italian President on 2 January 2023 that introduces another set of rules against civilian SAR vessels.

We are concerned that this decree could have a significant impact on the right to life enshrined in the Charter of fundamental rights, as civilian rescue ships are now being required to immediately head to an assigned Italian port after each rescue, while other people could be at distress at sea and be in need of rescue, this being contrary to the Duty to Rescue as enshrined in article 98 UNCLOS Convention. Furthermore, the assignment of distant ports like the port of Ancona or Ravenna to SAR vessels has put the life of people who have just been rescued and are in an extremely vulnerable situation at further risk since the decree was signed.

We believe that these measures seem not to be in line with the international obligations to assist people in distress and to disembark persons as soon as possible to a place of safety without undue delay, nor with the Articles 10, 11 and 117 of the Italian Constitution that entail that ratified international law and international Conventions cannot be derogated from by any domestic legislation.

Furthermore, we believe that the obligation to collect data aboard rescue vessels from people rescued about their intent to apply for international protection seem not to be in line with the Asylum Procedures Directive. This is the duty of state authorities¹, and such a procedure can only be carried out after immediate needs are covered and on land by state authorities. Lastly, the obligation to rescue any person found in distress at sea applies regardless of their potential individual legal status, as stated in Par. 2.1.10 Annex SAR Convention ratified by Italian Law 147/1989. Thus, only when the disembarkation is completed, the legal evaluation of their status shall be carried out. We also have to highlight that the majority of people who are rescued in the Central Mediterranean who have come from Libya are survivors of torture and as such should be provided with special support and procedural guarantees that cannot be provided on board of a vessel.

¹ According to Article 4 Directive 2013/32 each state shall appoint specific authorities accountable for processing asylum applications, handling cases under procedures foreseen in the Dublin Regulation, or refusing entry as part of border procedures: the Italian competent authorities for the procedures mentioned above is the Territorial Commissions, the Dublin Unit and the border police (Article 26 Italian Decree-Law 25/2008).

In the light of the above, we believe the national law decree raises questions of legal certainty. Over the years, the LIBE Committee has consistently called for a permanent, robust and effective Union response in SAR operations at sea as well as for safe and legal pathways. We have called on EU Member states and Frontex to step up their efforts in support of search and rescue operations in the Mediterranean and deplore that Member states have increasingly not abided by their responsibility in this area since the end of Mare Nostrum.

While we are fully aware that Search and Rescue is a Member state's competence, search and rescue is also a full part of the European Integrated Border Management Strategy and of Frontex mandate. Based on this, the Commission has been facilitating cooperation at EU level "in order to ensure rapid response in case of events at sea as well as maintaining safety of navigation and ensuring effective migration management". In this framework, our Committee would like to call on the Commission:

- to ensure NGOs carrying out private SAR as well as shipmasters associations are informed and consulted in the work carried out in the European contact group on search and rescue. As the working group terms of reference adopted on 11th March 2021 stated, the group was supposed to be a "key tool to reinforce cooperation and coordination among Member states and with relevant stakeholders, including entities and associations operating or representing private and commercial vessels". However, these actors have never been invited to any of the meetings nor consulted. We urge the Commission to ensure the consultation of key stakeholders on this issue, in line with the partnership principle.
- to provide to our Committee the outcome of the questionnaire that was circulated to Member States in the framework of the contact group as well as the annual report that the contact group was tasked to publish on the implementation of the Commission recommendation C(2020)6468, including in particular information on what specific investments have been made to enhance the coordination of search and rescue operations in line with this Commission recommendation;
- to keep our Committee fully informed about the work of the contact group, including by providing to our Committee the minutes and background documents of the meetings of the 17th and 31st January;
- to engage in talks with the Italian government and other EU Member states to ensure the right to life is respected as well as EU asylum acquis, including the respect of the principle of non-refoulement;
- to position itself in terms of compatibility of the new Italian Decree with EU and international maritime law and call on the Italian government to immediately withdraw its newly issued decree.

We are confident of your commitment to ensuring the respect of fundamental rights, including the right to life, at our external borders and look forward to your response in regards to our concerns.

Yours sincerely,

Juan Fernando LÓPEZ AGUILAR