



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 November 2007

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INFORMATION NOTE

From : General Secretariat

To : Council

Subject : Rescue at sea

- Information from the Spanish and Italian delegations

Delegations will find annexed a contribution from the ES delegation on the abovementioned subject in support of their intervention under "any other business" at the TTE Council on 29 - 30 November 2007.

Statement by the Spanish Delegation

The Government of Spain contemplates with great concern the phenomenon of irregular immigration by sea in precarious crafts and the conditions under which operations are frequently carried out to rescue castaways or those persons who are in danger as a result of this very high risk migratory phenomenon, established in the weakest layers of developing societies and countries.

This concern has increased in the light of the circumstances in which various recent incidents relating to Maritime Rescue have taken place, involving vessels flying a European Union flag and various ports and governments of coastal States.

In the development of these incidents it has been detected a lack of efficient community legislation in connection with the rescue of castaways and the duty of the Masters of vessels who face up to a situation of shipwreck or an imminent risk that this may occur, as well as that of the coastal States, to offer assistance to those persons in danger at sea. This may mean serious risks for the fulfilment of fundamental principles of solidarity and assistance and rescue of castaways at sea.

This concern has already been expressed jointly by the Spanish Minister of Public Works and the Italian Transport Minister in their respective interventions in the Council of Transport Ministers of the European Union on 7 June 2007 and in a letter jointly signed by both Ministers, dated 31 July and addressed to Commissioner Barrot.

The effort made by the different European countries affected by the maritime rescue problems to resolve them should be positively assessed, as well as the surveillance effort made by FRONTEX, although the question posed is far from being resolved.

The phenomenon of irregular immigration and the means used for its solution are complex, and they should be studied and solved in a coordinated manner from diverse spheres of action, as pointed out in the Blue Book on Maritime Policy.

Nevertheless, the Transport Council of the European Union can not remain aloof or in the background regarding this problem, of undeniable human and political importance, and it must act unequivocally and decidedly in those matters of its competence such as, among others, all the actions leading to the saving of life at sea, whatever it is the condition of the castaways, and the protection of the main parties who act in the rescue areas, that is the Masters and crews of the EU who undertake a maritime rescue operation.

For this reason we now reiterate our request that, with its authority and capacity for influence and mediation, the Commission intervene and that agreements be reached which favour an unequivocal position and a decided intervention of the European Union in this matter.

To this effect it could be appropriate for the European Union to study and, if applicable, propose a package of specific and efficient measures, which includes, among others, a legislative regulation integrating all the regulations of the Law of the Sea on the rescuing of castaways, providing a harmonized regulation of the rescue procedures in all member States, from the moment when the rescue of the persons in danger take place until their disembarkation in a safe place. In this way it may be possible to close the loopholes which exist on this subject as well as to specify certain general principles which currently allow Member States responsible for its fulfilment an unduly large degree of discretion. This legislative regulation, since it deals with necessary law, would reinforce the obligations of search, rescue and disembarkation by means of the application, if appropriate, of sanctions against those who do not comply with it.

Likewise, and within this package of measures, it should be studied the establishment of mechanisms for collaboration and coordination with third countries in rescue actions, both in the aspect of assistance with material means and in the training of their personnel via the Agreements currently available or those which should be signed on this subject in the future.

Lastly, and without prejudice to the obligations contemplated in international maritime law, and specifically in the SOLAS and SAR Conventions and related directives, it should be developed an active policy of action by the European Union and the Member States within the IMO which allow to include the European proposals on the subject in its own rules and guidelines, to increase their compulsory compliance and immediate application in all the Member States of this International Organisation.

Based on the above, it is proposed that, within this package of measures and in particular the possible legislative regulation which would integrate all the regulations of the Law of the Sea regarding the rescue of castaways, the following points should be studied and, if applicable, included:

- The establishment of the obligation for all vessels flying an EU flag, to rescue those persons who are in danger at sea, irrespective of whether or not they are in waters belonging to the jurisdiction of the European Union States or in their SAR areas. To this end, an protocol of action should be established to be put into practice by the Masters after receiving a distress call (to attend as rapidly as possible provided that this does not endanger the crew of the ship, to locate and notify to the rescue services, etc.).
- Encourage the said obligation via the creation of compensation mechanisms for vessels which have been economically affected as a consequence of the rescue of castaways at sea, so that the fact of having carried out the said operation does not cause them any detriment.

- Establish sanctions against vessels which ignore, do not inform or do not attend, in an unjustified manner, to distress calls from crafts.
- Create surveillance and alert systems, of a permanent nature, on the coasts of the European Union States, either incorporated within the national surveillance and rescue services or within the FRONTEX Agency itself, in order to adopt the necessary measures to proceed with the immediate rescue of persons in danger at sea.
- Draw up the possible most specific definition of “port or place of refuge”, which, in any case, should contain as a minimum the following elements:
 - that the life and safety of the survivors is no longer threatened.
 - that their basic human needs, such as food, shelter and medical assistance can be satisfied.
 - that agreements may be reached for transporting the survivors to their next or final destination.
- Ensure the obligation of the European States to have adequate rescue means at one’s disposal which guarantee a certain level of effectiveness in the waters of their jurisdiction or in their SAR area of responsibility. That should include:
 - establishment of adequate systems of monitoring and communication to receive notification from vessels that find persons in danger at sea;
 - technical means of intervention, with capacity and navigational range suitable for the rescue of persons, which allow them to arrive in an adequate period of time at the place of the shipwreck or the craft in danger, in the case where it has not been possible for the persons needing assistance to be rescued by the vessel which sent the rescue notification.

- sufficient personnel duly trained in salvage and rescue techniques.
 - The establishment of the necessary subsidies to attend to the previous obligations.
- Guarantee the cooperation, coordination and collaboration among the different Authorities of the Member States and between the latter and those of third countries at the origin of the immigration or as stopping points of the same, via the establishment of systems of alert and rapid intervention for rescue situations.

Europe must initiate a process of reflection regarding this serious problem for the safety of life at sea in its aspect associated with the rescue of castaways at sea by community vessels and their crews and the obligations which concern to the coastal States. For this reason, we consider essential that this Council begin a profound and calm debate, which allows a consensus to be reached on measures which guarantee that the duty of assistance at sea is respected by all the parties involved: Masters and crews, ports, as well as national and European authorities, extended to third countries.

And to this end, we wish to invite the Commission to take the leadership of this initiative and to set up a process of analysis of the current situation and assessment of existing international and community regulations, in order to, finally, propose the necessary measures and the adequate procedures for their effective application.
