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Nr. 61 Letter from the Minister of Justice

To the President of the House of Representatives

The Hague, September 3, 2010

With this letter I keep my promise, made during the debate on 18 June 2008, to brief your House about the operational requirements for Frontex operations at sea. I also come here after the commitment undertaken by the then State Secretary for European Affairs on 16 June 2009 to your Chamber, about the procedure to be followed if a request for asylum is made on a Dutch ship during Frontex operations at sea.

### **Introduction**

FRONTEX coordinates the operational cooperation between independent States which are competent for the management of external borders. Different operations of member states under the coordination of Frontex have been carried out in this framework. Due to a call by the European Council for clear rules and uniformity in the implementation of Frontex operations at sea, in 2007 the Commission was mandated to draw the requirements for the Agency's maritime operations.

### **Operational requirements for Frontex operations at sea**

The creation of these rules was a laborious and lengthy process. Based on the results of an extensive debate within a group of experts from the European Commission, the European Commission has drafted rules for Frontex operations at sea in the context of the surveillance of the external borders, in order to prevent illegal migration. The attached decision that embeds these rules, is a supplement to the Schengen Borders Code and applies since 4 May 2010.

In Part I of the Annex, the Decision contains a number of mandatory requirements for the interception of migrants in the contiguous zone and on the high seas. Part II of the Annex to the decision includes a number of non-binding rules on the search and rescue of people in distress during Frontex operations at sea, concerning the safe debarkation of survivors.

These requirements are a specification of the international norms and regulations on the interception and the search and rescue of people in distress at sea, contained in the UN Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue.

In the Decision it is stated that these requirements are included and elaborated in the operational plans for each operation set up by the Agency. The arrangements for the rescue and debarkation of migrants in distress are also included in the operational plan. Furthermore, Section No. 1.2 of the Annex I to the Decision explicitly indicates the principle of non-refoulement.

The rules contained in the decision will contribute to create a greater uniformity of action between Member States during FRONTEX maritime operations and will make it possible to address Member States when they deviate from the norms concerning the activities related to the interception and the search and rescue of people at sea.

### **Procedure to request asylum on Dutch ships during Frontex operations at sea**

An asylum request can only be submitted to the responsible authority of the state in which territory – including the territorial waters – the application is made. A Dutch ship is not part of the Dutch territory and on a Dutch ship there is no authority responsible for handling applications, being the commander of the ship not entitled to receive them. However, on a Dutch ship the Dutch jurisdiction applies.

In this regard, it is the responsibility of a Dutch ship's commander that if a migrant on board expresses a wish to submit an application, this is not left without consequences. This requires that an alien who thinks to need protection has to be returned only after his/her request has been assessed and there is no reason to grant the protection in question. These migrants should therefore be given the opportunity to submit an application to a competent authority.

In the operational requirements for Frontex maritime operations it is provided that Member States should clarify in the operational plan for Frontex operations the steps to be taken with regard to intercepted or rescued people who are in need of protection and the place of their debarkation, according to international law and all the applicable bilateral agreements.

This means that the operational plan may include an explicit provision on that it is the host nation which is responsible for handling the applications of intercepted or rescued migrants made on board the Dutch ship. The Netherlands considers the inclusion of this provision as a condition to participate in a Frontex operation.

Member States are always bound by the principle of non-refoulement under the 1951 Refugee Convention and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

In addition, during the training provided by Frontex much attention is given to the preparation of border guards in the field of asylum and refugee law, focusing in particular on the identification of asylum seekers within mixed migration flows. Courses are aimed to even better prepare border guards to properly identify the protection needs of refugees.

The Minister of Justice,

E.M.H. Hirsch Ballin