

General Director of Immigration and Border Police  
Dr. Giovanni PINTO

Via NFPoC of Italy

Concerns about engagement of Frontex deployed assets in activities outside the operational area

Our ref: 19846/25.11.2014  
Please quote when replying.

Warsaw, 25 November 2014

Dear Director General,

First of all I would like to thank to Italy for hosting and contributing to Frontex coordinated activities.

As you are aware, Frontex is the European Agency for the Management of the Operational Cooperation at the External Borders of the European Union. More specifically, Frontex implements joint operations in defined areas of a high irregular migration pressure, in agreement with the Host Member State (HMS), and deploys additional resources from other Member States (MS) in charge for border management or related security responsibilities. This aims to reinforce the national efforts of the HMS in regard to the border control.

It is important to highlight that the operational aim of Frontex joint maritime operations is to implement coordinated operational activities at the external sea borders of EU MS in order to control irregular migration flows towards the territory of the European Union and to tackle cross border crime. Frontex appreciates that during the entire planning of JO EPN Triton there was always a common understanding between Frontex and the competent Italian authorities on the relevance of this operational aim. Moreover, as discussed during several technical meeting before launching JO EPN Triton there were special conditions for tactical use of the surface assets for maritime border surveillance introduced. In accordance with the Annex 3 of the Operational Plan of EPN Triton 2014 (page No 12), *"The surface patrolling activities will be implemented within the 30 NM limit of the coastal line or islands of Italy and Malta"*.

Within the operational objectives, Frontex is ready to support well-grounded national efforts of MS as regards international Search and Rescue (SAR) obligations. In this regard, Operational Plan defines that the SAR activities within Frontex coordinated activities always remain under the coordination of the HMS. Frontex deployed assets, upon request of the competent Maritime Rescue Coordination Centre (MRCC), suspend their patrolling activities and contribute to the SAR activities following the instructions of the competent MRCC, as based on EU Regulation 656/2014 and is defined in the Annex 3 of the Operational Plan (page 16 ): *"Frontex has indication on SAR situations: "(a) When, in the course of the operation, the participating units have reason to believe that they are facing a phase of uncertainty, alert or distress as regards a vessel or any person on board, they shall promptly transmit all available information to the*

*Rescue Coordination Centre (RCC) responsible for the search and rescue region in which the situation occurs and they shall place themselves at the disposal of that RCC."*

Furthermore, during such SAR cases the other neighbouring EU MS should be involved as stipulated in the 1979 SAR Convention Paragraphs 3.1.1 and 5.3.4.1: *"1 when a rescue co-ordination centre or rescue sub-centre is notified of the existence of an emergency phase and is unaware of other centres taking appropriate action, it shall assume responsibility for initiating suitable action and confer with neighbouring centres with the objective of designating one centre to assume responsibility forthwith;"*

We would like to underline that Operational Plan Annex 3 (page No 12) also has specific reference on use of Offshore Patrol Vessels - *"OPV: Detections / tracking / identification / interceptions (for a proper cost-effective management of the assets deployed, the OPVs deployed within JO EPN Triton should not be involved, as a rule, in the transfer of migrants from point of interception or rescue to the place of disembarkation), apart from emergency situations;"*

Referring to the few SAR cases recently occurred within EPN Triton 2014, more precisely in the period 14-17 November 2014 in Libya's SAR region, Frontex is concerned about the engagement of Frontex deployed assets in the activities happening significantly outside the operational area.

Based on information available, Portuguese (PT) OPV, patrolling within M1 operational area, via request of the ICC Rome, has been diverted by MRCC Rome on 14.11 at 09:30 LT to support SAR event at approximately 51 NM from Tripoli (around 75 NM out of M1 operational area and up to almost 6 sailing hours from that area to the location SAR took place). In addition, as Frontex is aware, at the time when the request has been made by MRCC Rome, there were three Italian Navy vessels deployed in the vicinity of the above mentioned SAR area, meaning much closer to the area of SAR case than Portuguese OPV (see map attached).

Hereby, I deem it useful to provide more information on the recent SAR case:

- On 16 November at 19:30 LT, PT OPV was sent to a boat of migrants out of the operational area of the joint operation and after several hours of navigation was redirected to another one because the first one had been taken over by Italian Navy vessel. On the way to the second incident after a couple of hours PT OPV received an information that another Italian Navy vessel has rescued the migrants and it can go back to M1 area.
- On 20 November at 16:56 LT MRCC Rome gave instructions to the ES OPV to head towards a location received via the satellite phone to investigate the possible presence of a target in distress. Frontex is of the opinion that a satellite phone call is not per se a SAR event and strongly recommends that actions should be taken to investigate and verify (e.g. by using FWA or tasking vessels available in vicinity to monitor) and only afterwards, and in case of distress, activate other maritime assets. Frontex doesn't consider the use of the OPV for such initial investigations outside the operational area as necessary operational and cost-effective activities. Moreover, MRCC Rome is invited to take in consideration the given location and distances between the possible targets (mainly in Libyan SAR area) and Frontex deployed assets in the operational area. We would like to underline that for the SAR cases timely response is crucial, therefore recommendations of 1979 SAR Convention Paragraph 5.3.3 might be taken in to account: *".5 request at an early stage any help which might be available from aircraft, vessels or services not specifically included in the search and rescue organization, considering that, in the majority of distress situations in ocean areas, other vessels in the vicinity are important elements for search and rescue operations."*

- On 20 November at 16:56 LT the ICC Rome has received request from MRCC Rome, to activate Frontex deployed asset not to support a SAR event, but to sail to a given area according to the fact of numerous satellite phone calls received. According to the operational plan, FX assets can be requested by the competent MRCC to support a SAR event. However, general instructions to move to an area outside EPN Triton operational area are not coherent with the operational plan and unfortunately will not be considered for the future. Assignment to a SAR event has to be clear to the extent possible. Therefore indication of a state of emergency (Uncertainty phase; Alert phase; Distress phase) before involving Frontex deployed assets is needed as stated in the 1979 SAR Convention Paragraph 5.1.3 "Rescue co-ordination centres and rescue sub-centres shall, immediately upon receipt of information concerning a vessel in a state of emergency, evaluate such information and determine the phase of emergency in accordance with paragraph 5.2 and the extent of operation required. Frontex assets should get information which phase have been assigned".

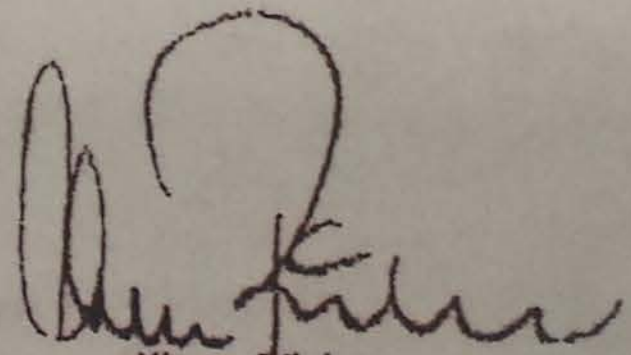
Also in the aforementioned communications from MRCC Rome to ICC Rome in most of the cases Italian language was used which we believe is not entirely in line with operational plan and international SAR procedures, this should be avoided.

Based on aforementioned information, we would kindly ask to consider following suggestions:

- To involve, the closest neighbouring EU MS MRCC in the incidents in Libyan SAR area.
- If responsible MRCC Rome could engage vessels, which are located in the proximity of the endangered persons, to perform the rescue operation.
- To ensure management of Frontex deployed assets in SAR events especially OPVs in line with Operational Plan.
- To determine the phase of emergency and the extent of operation required. Frontex assets should get information which phase have been assigned and who has been designated on-scene commander.
- All communication in the framework of EPN Triton especially concerning requests for SAR support and tasking of assets has to be made in English.

Yours sincerely,

*with my best regards,*



Klaus Rösler  
Director of Operations Division

Cc: ICC Rome