

CODE OF CONDUCT
FOR NGOs UNDERTAKING ACTIVITIES IN
MIGRANTS' RESCUE OPERATIONS AT SEA

Migration pressure on Italy does not seem to diminish and indeed is even more impressive than last year, as recognized by the Institutions of the European Union and its Member States.

In this context, the main objective of the Italian Authorities in rescuing migrants is the protection of human life and the rights of the people, in full respect of international conventions. Nevertheless, the rescuing activity cannot be separated from a reception path, sustainable and shared with other Member States, in accordance with the principle of solidarity referred to in Article 80 of the TFEU.

On the occasion of the Informal meeting of the Justice and Home Affairs Ministers, held on 6th July in Tallinn under the Estonian Presidency, the EU's Interior Ministers welcomed the initiative of the Italian authorities to ensure that NGO's vessels involved in Search and Rescue (SAR) activities operate within, and abide by, a set of clear rules, in the form of a code of conduct to be urgently finalised by the Italian authorities, in consultation with the Commission and in cooperation with the relevant stakeholders, including the NGOs themselves. The Italian initiative was also included in the "Action Plan on measures to support Italy, reduce pressure along the Central Mediterranean route and increase solidarity" submitted by the European Commission on 4th July.

The Italian Authorities and the signatory NGOs carrying out SAR activities thus share the need to provide for specific arrangements to address the

complexity of rescue operations in the Mediterranean Sea, in compliance with this Code of Conduct, also safeguard the security of migrants and operators.

The NGOs that subscribe to this Code of Conduct undertake the following commitments:

- **in accordance with relevant international law, commitment not to enter Libyan territorial waters, except in situations of grave and imminent danger requiring immediate assistance and not to obstruct Search & Rescue by the Libyan Coast Guard: *with a view not to hinder the possibility for the competent National Authorities to intervene in their territorial waters, in compliance with international obligations;***
- **commitment to respect the obligation not to turn off or delaying the regular transmission times of AIS (*Automatic Identification System*) and LRIT (*Long Range Identification and Tracking*) signals, whenever on board (Chap. V SOLAS): *in order to ensure safety of navigation and security of vessels, including those not involved in the search and rescue event but navigating in proximity of the area, where the event itself takes place;***
- **commitment not to make communications or send light signals to facilitate the departure and embarkation of vessels carrying migrants, without prejudice to the communications that are necessary in the course of SAR events to preserve the safety of life at sea: *with the intention not to facilitate contacts with migrant smugglers and/or traffickers;***

- **commitment to communicate to the competent MRCC the technical suitability (regarding the vessel, its equipment and the crew's training) for rescuing activities, without prejudice to the applicable domestic and international provisions regarding seaworthiness of vessels and other technical conditions necessary to operate ships:** *NGOs are requested to be equipped with instruments and resort to personnel whose technical suitability and capabilities in mass rescue operations under all conditions are ascertained. This is required in order to guarantee their professional know-how in rescuing activities. Such a commitment concerns, inter alia, the need for providing the ship's master with proper information on stability, on-board reception capacity, individual and collective safety equipment, crew's specific training and relevant capability certification, security aspects, on board hygienic and habitability conditions, preservation capacity of possible corpses. All of the above is without prejudice to the provisions of Article IV (force majeure cases) and Article V (people transportation in emergency situations) of SOLAS;*

- **commitment to ensure that when SAR cases occur where no official SRR is established, the ship's master immediately notifies the competent Authorities of the flag States for security purposes and the MRCC competent for the nearest SRR as "better able to assist", except in case the latter expressly refuses or doesn't respond :** *information to the flag State qualifies more as a commitment, while notification to the competent MRCC recalls an existing obligation of international law;*

- **commitment to respect the obligation under international law to keep constantly updated the competent MRCC or the OSC (On**

Scene Coordinator) appointed by the latter as to the ongoing scenario and the developments of rescuing operations, as well as all the information regarding SAR or navigation security;

- **commitment not to transfer those rescued on other vessels**, except in case of a request of the competent MRCC and under its coordination also based on the information provided by the ship's master: *after the embarkation of survivors, NGO vessels should as a rule complete the operation by disembarking survivors in a safe port under the coordination of the responsible MRCC, except in situations recalled above;*
- **commitment to ensure that the competent Authorities of the flag State are constantly kept updated** on the activities undertaken by the vessel and immediately notified of any relevant event concerning "maritime security", in compliance with the principle of flag State jurisdiction under UNCLOS and other applicable rules of international law;
- **commitment to cooperate with the competent MRCC, executing its instructions and informing** it in advance of any initiative undertaken independently because it is deemed necessary and urgent;
- **commitment to receive on board, possibly and for a period which is strictly necessary, upon request by the competent National Authorities, judicial police officers for information and evidence gathering with a view to conducting investigations related to migrant smuggling and/or trafficking in human beings, without prejudice of the ongoing humanitarian activity.** The above is without

prejudice to the exclusive jurisdiction of the flag State on the vessel under UNCLOS and other applicable rules of international law, to the competences of the shipmaster and to the different mandates and competences of the legal entities involved as provided under national and international law, with which police officers do not, and shall not, interfere: *allowing access on board of their naval assets, upon request by the competent National Authorities, of police personnel who will conduct preliminary inquiries and investigations, also following specific indications by the competent Judicial Authority;*

- **commitment to declare, in conformity with legislation of the flag State, to the competent authorities of the State where NGO is registered, all sources of financing** for their rescuing activity at sea and to communicate, upon request, such information to the Italian authorities, in accordance with the principles of transparency;

- **commitment to loyal cooperation with the Public Security Authority of the migrants' intended place of disembarkation**, including by transmitting relevant information of interest for investigation purposes to the Italian Police Authorities, within the respect of international refugee and data protection law and of the different mandates and competences of the legal entities involved as provided under national and international law,: *such an obligation will result, by way of example and not limited to, in a commitment to provide - at least two hours before the arrival at the port - the documents that should be completed during the phases of rescue and journey to the port, after the primary assistance activities - i.e. the "maritime incident report" (summary document of the event) and the "sanitary incident report" (summary document of health situation on board);*

- **commitment to collect, during the activities, once migrants are rescued and if possible, the makeshift boats and the outboard engines used by migrants' traffickers/smugglers and commitment to immediately notify the ICC (International Coordination Centre) of the Triton Operation; the coordinating MRCC shall anyway be informed on the aspects relating to navigation security and pollution risks:** *such a commitment is an important way of cooperating with the EU Triton Operation and the competent national Authorities against traffickers and smugglers, as well as with the MRCC for information on navigation security and pollution risks.*

Failure to subscribe to this Code of Conduct or to comply with the commitments set out therein may result in the adoption by the Italian Authorities of measures addressed to the relevant vessels, in compliance with applicable domestic and international law and as required in the public interest of saving human lives while guaranteeing shared and sustainable reception of migration flows.

Any failure to comply with the commitments set out in this Code of Conduct will be communicated by the Italian Authorities to the flag State and to the State where the NGO is registered.