

ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO



Refugee Migration at Sea and Maritime Law

Questionnaire

THE CURRENT REFUGEE and MIGRANT CRISIS

A. What measures were taken by your jurisdiction in relation to massive refugee/migrant flows?:

(i) In relation to the rescue from boats?

The rescue activities at sea within the Italian Search and Rescue (SAR) area falls with the authority of the Italian Coast Guard (*ITCG – Corpo delle Capitanerie di Porto - Guardia Costiera Italiana*), which is a body of the Ministry of Infrastructure and of Sustainable Mobility (MIMS).

People rescued at sea by the Italian Coast Guard are brought to the nearest port, whereby they are received within governmental centres of first assistance. In particular, it is worth mentioning the Extraordinary Reception Centres CAS (*Centri di Accoglienza Straordinaria*) the Centres of reception for asylum seekers, CARA (*Centri di Accoglienza per Richiedenti Asilo*) and the Hotspot Centres which are destined to make a distinction between economic migrants and asylum seekers.

In the event that the number of people rescued by Non-Governmental Organisations' (NGO) vessels is substantial, the Interior Ministry immediately verifies through the European Commission whether other Member States are available, on a voluntary basis, to agree a redistribution of the migrants.

In the event that such redistribution is positively obtained, the migrants are disembarked in the port indicated by the Ministry of Interior. Thereafter, once health screening *identification procedures, fingerprinting and photo-signalling* operations are carried out in accordance Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, the migrants are transferred to the particular Member States which agreed to the redistribution.

As far as rescue of migrants by NGO's vessels, in 2017 Italy proposed to the NGOs involved in rescue operations to sign a Code of Conduct aimed at providing a clear set of rules for the NGOs' vessels involved in SAR activity and at strengthening coordination within all the actors involved in the said operations.

The Code of Conduct, which was drafted in consultation with the European Commission, but under an initiative of the Italian Government, was signed by a restricted number of NGOs and criticised by others.

It is worth stressing that the Code of Conduct does not have legislative power and it cannot derogate the principles set out by International Conventions, to which Italy is a party, for the rescue of life at sea and for determining the rights of refugee seekers, including the obligation to disembark rescued people at a place of safety and the non-refoulement obligation introduced under the Convention Relating to the Status of Refugees of 28 July 1951 (ratified by Italy through Act no. 722 of 24 July 1954) and its subsequent Protocol of 1967 (ratified by Italy through Act no.95 of 14 February 1970).

ii) In relation to the landing of rescued persons from boats?

All the landing activities fall within the authority of the Ministry of the Interior. Whilst the operations of health screening, identification procedures, fingerprinting and photo-signalling under Council Regulation (EC) No 2725/2000 are being carried out within the governmental immigration centres, the migrants are allowed to submit before the State Police office located in the centres an application for international protection.

(ii) In relation to granting humanitarian protection/refugee status to those rescued?

As said, migrants are entitled to file an application for international protection before the State Police office located within the immigration centre. Under a procedural perspective, the application of international protection is formalised through the filling and the signing of a specific application form, the so called C3 Form. Such form contains, among other things, the personal data of the asylum seeker, her/his country of origin, a brief description of her/his story and of the means of travel, as well as the grounds of her/his escape. The Form is filled in before the State Police Office located in the Immigration Centres. In order to assist asylum seekers in completing the said form, migrants have been granted the support of cultural mediators and of officers of the EUAA (*European Asylum Agency, former Easo*), thanks to a cooperation agreement between the EUAA and the National Commission for the asylum right.

Thereafter, the form C3 is sent by the Police to the territorial commissions for the recognition of international protection.

B. Which authority (Department of State or Organisation) in your jurisdiction is responsible for implementing SAR activities?

(i) Which authority is responsible for deciding on the measures?

(ii) Which authority is responsible for providing support in implementing the measures?

As mentioned under questions A (i) and (ii), Governmental SAR operations are carried out by vessels of the Italian Coast Guard.

Italy ratified the International Convention on Maritime Search and Rescue made in Hamburg on 27 April 1979 through Act no. 147 dated 3 April 1989. Further, by Presidential Decree no. 662 dated 28 September 1994, a regulation for adopting measures under the SAR Convention was enacted, by which the Head office of the Italian Coast Guard (MARICOGECAP) has been named as the body in chief of SAR operations.

The same presidential decree created a centre for coordination and rescue (IMRCC) and other peripheric centres (RCS).

Further, in case of emergency, it is established that the naval units of the Italian Navy, of the Custom and Fiscal Police units, as well as merchant vessels navigating close to the rescue area, might provide assistance.

In the event that the Italian maritime Authority receives a rescue request from a SAR area under the jurisdiction of another State, it will have to immediately contact the Rescue Coordination Centre having territorial competency and to alter all the units transiting in the area. However, in the event that the State under whose authority the SAR operation should be carried out does not possess capacity intervention, the principle of first call, which allows the intervention of Italian authorities is applied without delay.

(iii) Did your authority implement measures to transfer those rescued to the state of origin(i.e. the State from which they started their journey)?

(iv) Did your authority implement measures to transfer those rescued to the state whose they are nationals?

As mentioned, Italy ratified the 1951 Geneva Convention and therefore the principle of refoulement applies in Italy, under which no measures are foreseen in the Italian legal system for the repatriation of migrants rescued in the Italian SAR area.

On the contrary, such operations might be carried out once the migrants are landed in the

Italian territory if permitted by the law.

To deal with the migration pressure, within the ambit of the so called Security Decree (Decree no. 113 dated 4 October 2018) Italy adopted through the interministerial decree dated 4 October 2019 signed by the Interior Ministry, the Ministry of Foreign Affairs and of International Cooperation, a list of safe countries of origin. Such list was recently revised by decree dated 9 March 2022 issued by the Ministry of Foreign Affairs, the Ministry of Interior and the Ministry of Justice.

(v) Which authority or authorities is or are responsible for enforcing the various measures?

See replies under questions (i), (ii); (iii), (iv)

(vi) Were maritime administrations within your jurisdiction consulted in relation to decisionstaken within your jurisdiction?

The Maritime Authorities involved in SAR operations are constantly cooperating and consulting with the Ministry of the Interior which is responsible for Immigration and Asylum.

C. Are those who take decisions in your jurisdiction aware of the requirements of:

(i) Geneva Convention on the status of refugees (1951)?

Italy ratified the Convention Relating to the Status of Refugees of 28 July 1951 (through Act no. 722 of 24 July 1954), as well as its subsequent Protocol of 1967 (through Act no.95 of 14 February 1970).

Furthermore, the Geneva Convention is the legislative base for all the EU Directives dealing with migration issues and in particular:

- *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in Member States*, internally implemented by Legislative Decree 30 May 2005 no. 140 and subsequent amendments;

- *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*. Such Directive has been implemented through Legislative Decree 9 November 2007 no. 251 and subsequent

amendments;

- *Council Directive 2005/85/EC of 1° December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status*, internally implemented by Legislative Decree n. 25/2008 and subsequent amendments.

(ii) The ILO Conventions (nos. 97 and 143)?

Italy has ratified the ILO Convention n. 97 on Migration for employment (revised) 1949, through ratification Act no. 1305 of 2 August 1952.

Italy has ratified the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), by ratification Act no. 158 of 10 April 1981.

(iii) The SAR Convention?

Italy ratified the International Convention on Maritime Search and Rescue made in Hamburg on 27 April 1979 through Act no. 147 dated 3 April 1989.

D. In relation to free pratique:

(i) Are you aware if your jurisdiction has denied port access/free pratique to any vessel due to the fact that they carried rescued persons?

The current legislation does not foresee a general port access/free pratique denial to vessels engaged in rescue activities of migrants at sea. Rather, it foresees that such rescue vessels are directed by the competent authority to a safe port determined taking into account a geographical criterium (the nearest port) as well as the number of available spots within reception centres.

However, in cases of extreme migration pressures and lack of spots within reception centres, the Italian Government retains the right to withhold access to an Italian port pending consultation with the EU Commission for redistribution of migrants among members States.

Whilst such consultations are being carried out, migrants in the need of urgent medical needs and care are disembarked and transported by helicopter or naval unit to the nearest hospital.

(ii) Are you aware if the current COVID-19 pandemic impacted the behavior of your jurisdiction regarding port access/free pratique to any vessel due to the fact that they carried rescued persons?

In order to manage the Covid-19 emergency, the Civil Protection Department (body under control of the Italian Presidency of the Council of Ministries) adopted the Decree dated 12 April 2020 by which the so called quarantine vessels were created. The specific vessels were chosen through a procurement procedure.

In particular, according to such decree, rescued people after identification operations were being submitted to a quarantine period of 14 days under assistance of the Italian Red Cross.

Only in the event of exceptional circumstances under which vulnerable categories fall with (pregnant women, unaccompanied minors, elder people and disabled persons) it was foresaw that quarantine should be carried within governmental centres. Notwithstanding the fact the Covid emergency does not longer applies, quarantine vessels are still operating.

In any event, the Covid-19 pandemic imposed stricter rules as to the health measures.

(iii) Are you aware if the *most recent Ebola outbreak (ongoing in the Democratic Republic of the Congo since August 2018) pandemic impacted the behavior of your jurisdiction regarding port access/free pratique to any vessel due to the fact that they carried rescued persons?*

No elements are available to reply to this question.

31 May 2022