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Our reference
2639634

*Please quote date of letter
and our ref. when replying. Do
not raise more than one
subject per letter.*

Date 29 June 2019
Concerning Sea-Watch 3 activities

Dear Colleague,

Thank you for your letter, dated 23 June 2019, regarding the activities of the Sea-Watch 3, registered in the Netherlands.

The Netherlands government shares the concerns of the government of Italy that the Sea-Watch 3 is effectively conducting (semi) permanent Search-and-Rescue (SAR) operations in an area largely affected by the criminal activities of migrant smugglers. The Netherlands is fully committed to the obligation under international law to save people in distress at sea. However, as you rightly state, the operations of the Sea-Watch 3 should not contribute to the criminal activities of smugglers.

Most of the ships carrying migrants departing from Libya are not seaworthy and certainly not sufficiently equipped to reach European shores. Evidently, human smugglers, as well as the migrants themselves, expect them to be picked up at sea. It cannot be excluded that activities by NGO-ships systematically looking for migrants in distress at sea, and assisted by reconnaissance planes and a "hotline", feed that expectation. NGOs should take the business model of migrant smugglers into account, including the likelihood that human traffickers count on them to save people. This means that instructions by responsible SAR authorities, including the Libyan, should be respected and that persons rescued at sea should be carried to a nearby safe port, in line with international legal obligations. Hence disembarkation in a safe port in Northern Africa should be considered as one of the options.

I regret, with you, the choices made by the captain of Sea-Watch 3. She could have let the Libyan Coast Guard proceed with the SAR operation. The situation did not qualify as an emergency, yet she hurried to take the migrants on board. She could have sailed to Tunisia and request permission for disembarkation there. Instead she intentionally, and unilaterally, decided to set course to Lampedusa and enter Italian waters, knowingly breaking Italian law. The captain could also have opted for the home port of Sea-Watch 3 in the Netherlands. Contrary to what you state in your letter, she never requested for disembarkation in the Netherlands.

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Until recently, the Netherlands did not have a separate national legal framework for ships owned by NGOs carrying out SAR activities. Given the operations the Sea-Watch 3 carried out and the ensuing difficulties, in particular this year, the Netherlands considered her situation unsafe and requiring urgent attention. Therefore, a ministerial regulation was published on 3 April 2019, laying down safety and manning requirements for vessels of organizations with idealistic goals carrying out SAR activities on a regular basis. However, the application of the regulation is currently the subject of legal proceedings in the Netherlands initiated by Sea-Watch. The Dutch court has ruled that a transition period must be allowed. Therefore the new regulation will not take effect until 15 August 2019. Subject to the outcome of these proceedings, Sea-Watch 3 must, from that date onwards, comply with the much stricter regulations.

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Regarding the responsibility of a flag state, I refer to the earlier exchanges of diplomatic notes on this subject. It is the captain who is primarily responsible for finding a safe port in coordination with the respective SAR authorities in the region. According to responsibilities assigned by international law, the flag state can provide assistance to the vessel in finding a Port of Safety (PoS). The Netherlands government once again emphasizes that this does not imply an obligation for the flag state to take over rescued persons.

As you know, after a similar situation in January 2019 involving Sea-Watch 3, the Netherlands decided that, in the absence of a prospect of cooperation towards a concrete and structural solution as indicated in the European Council Conclusions of June 2018, it would no longer participate in ad hoc disembarkation schemes. In this context, the Netherlands also explicitly stated that in principle it would no longer take over migrants from Sea-Watch vessels.

I would also like to add that in the case of migrants who do not have a right to international protection, relocation is a waste of effort and tax payers money that should be avoided.

This does not mean that the Netherlands is not taking its responsibility seriously. After the Sea-Watch 3 had again brought itself into a precarious position, the Netherlands made an effort to find a PoS for Sea-Watch 3 in the Mediterranean region, including Italy. Requests were submitted by the Dutch Coast Guard, as well as through diplomatic contacts. However, to no avail. In parallel, the Netherlands has requested the European Commission (EC) to coordinate disembarkation.

The Netherlands is acutely aware of migration pressure on Italy over the past years, and particularly the disproportionate pressure experienced until mid 2017. Thanks to Italy's efforts and support by other member states including the Netherlands, arrivals have dropped dramatically. Due to the ongoing illegal secondary movements however, the Netherlands has not witnessed similar drops in the number of asylum applications. On the contrary, we registered in this post-migration crisis period a continuous high number of asylum applicants, many of whom travel onwards from Italy.

In order to deal with these challenges, we must work together to reform the EU's asylum and immigration system, based on the principles of solidarity and responsibility. This includes a structural solution for disembarkation in the Mediterranean, in accordance with the European Council Conclusions of June 2018. Part of this solution should be implementation of a compulsory European external border procedure, where a swift distinction is made between those who

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are entitled to international protection and those who are not. In case of protracted, disproportionate migration pressure upon the state of disembarkation, persons entitled to international protection could be relocated via an EU-wide programme. Those who are not entitled to international protection should not be allowed to enter Schengen territory, but should be promptly and safely returned to their country of origin.

The upcoming informal Justice and Home Affairs Council in Helsinki provides an excellent opportunity to further discuss these topical issues. I look forward to meeting you there. In addition, as I mentioned to your ambassador in The Hague, I am willing to come to Rome to discuss these challenges with you bilaterally.

Yours sincerely,

Minister for Migration

Ankie Broekers-Knol

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