

# Promising Words from the EU Commission on Sea and Rescue Operations – Yet Real Change Remains Absent

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In the following, I discuss the recent developments of the European Union's (EU) approach towards search and rescue (SAR) operations carried out at its sea borders, especially the ones conducted by vessels from civil society organisations in the Mediterranean.

The strong statement from Ursula von der Leyen, President of the European Commission, that “saving lives at sea is not optional“ (von der Leyen, 2020, m. 1:12) when releasing the New Pact for Migration and Asylum by the European Commission in the end of September 2020, set expectations and hopes high to make up for the mistakes and failings of the last years. The Pact includes a specific document on recommendations for SAR in the Union, which shows that the Commission indeed acknowledges the problems at the sea borders and the urgent need for changes in the current system. The *Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities* outlines the principles on which SAR is based and the direction it should develop to (European Commission, 2020).

To understand the importance of this recommendation, it is helpful to look at the development of the last years. In 2013, Italy started the SAR operation *Mare Nostrum*, responding to several shipwrecks in the Mediterranean that year. This operation was able to rescue about 150.000 migrants in 10 months (IOM, 2014). It was succeeded by Frontex's *Triton* operation and the military operation *EU Naval Force Mediterranean Sophia* (EUNAVFOR MED) in 2014 and 2015, that already focused less on rescue but rather on border management and reduction of illegal border crossings (Cusumano, 2018). At the moment, there are three Frontex operations in the Mediterranean, supporting Member States (MSs) in border control and surveillance, identification and registration of migrants and SAR:

- *Themis*, which succeeded *Triton* in 2018 and supports Italy (Frontex b, n.d.)
- *Poseidon*, supporting Greece (Frontex a, n.d.)
- *Indalo*, supporting Spain (Frontex c, n.d.)

Until March 2020, the military operation *Sophia* was still running with an expanded mandate that included the training of Libyan coastguards (European Council, 2020).

Although the recommendation frames these operations as a reinforced effort of the EU and its MSs to rescue people at sea, with over 600.000 saved lives since 2015, the crossing of the Mediterranean to reach Europe is still one of the most dangerous, leading to recorded deaths of 19.749 persons since 2014 (IOM, n.d.).

Always pointing to the allegedly risk of supporting and stimulating smuggling and irregular migration, the operations focus on border management and since 2020 there is prove that Frontex was and is involved in illegal pushbacks of migrants (Cusumano, 2018 & Christides et al., 2020). During a pushback, migrants and their boats are forced to return to non-EU waters, in order to get rid of the responsibility over them.

To counter the hypocrisy of the EU, several civil society organisations (CSOs) stepped in and started operating their own vessels in the Mediterranean to save lives. Organisations like Sea Watch and Open Arms continue to undertake SAR and surveillance missions at the sea and from the air (FRA European Union Agency for Fundamental Rights, 2020). These missions are more and more hindered by MSs, preventing the CSOs from operating or complicating their work. Repeatedly, vessels are not allowed to enter the nearest safe port in Italy or Malta and have been detained by authorities under the pretext of irregularities (Medecins sans frontieres, 2020).

Although the recommendation recognizes the “significant contribution” (European Commission, 2020, p.1) of these organisations and the need to avoid the criminalisation of the CSOs, it is at the same moment relating it to the need of criminal sanctions against smugglers, which again creates a dangerous proximity of humanitarian missions and smuggling, which the CSOs are regularly accused of (European Commission, 2020 & Rackete, 2019). The operations of

CSOs in the Mediterranean are further portrayed as a risk to attract smuggling and human trafficking networks that could take advantage of their rescue operations. In reality, this is more an issue for the EU operations, as has been seen during a meeting in Italy, where a human trafficker attended to discuss the issue of migration from Libya (European Commission, 2020 & Tondo, 2019).

When Carola Rackete, captain of the Sea-Watch 3, addressed the European Parliament in autumn 2019, after she had entered and disembarked rescued migrants at the port of Lampedusa against the directions of the Italian authorities which then opened investigations against her, her speech was rewarded with standing ovations (Rackete, 2019). But despite the growing awareness about these practices performed by the EU and its MSs, the recommendation does not represent a clear move away from criminalisation and prevention of SAR carried out by CSOs, nor points out any solutions or measures for disembarkation and rescue (European Commission, 2020).

Instead, attention is directed to the importance that private vessels need to be “suitably registered and properly equipped [...] so as not to pose a danger to the crew or the persons rescued.” (European Commission, 2020, p. 3). Obviously, the equipment and registration of the vessels is not the problem that makes MSs close their harbours for disembarkation, but rather it is used by them to detain vessels. This can be seen in the case of the Sea-Watch 4, which was detained because of too many life jackets on board and a sewage system not designed for the number of rescued persons (Tagesschau, 2020). The recommendation thereby circumvents questions that need to be answered in order to make SAR operations and the disembarkation of rescued persons a structured and clear responsibility sharing between all MSs. The recommendation emphasises that such a strategic and sustainable approach is indeed needed and that a framework based on cooperation and solidarity between the MSs should be established but misses to introduce concrete measures (European Commission, 2020).

The only specific measure introduced in the recommendation is the establishment of an interdisciplinary Contact Group in which is meant to improve the cooperation and coordination of activities between MSs to implement the recommendation and identify best practices, lessons learned and national rules and practices (Ibid). By law, MSs are allowed to deny access to their harbours even when a vessel is in an emergency situation, because states are only obliged to

help, which they can do by delivering medical support and ensuring supply. That means that the circumstances for civil society vessels asking for a safe harbour to disembark rescued persons will remain difficult, as long as there is no clear agreement between the MSs of the EU on sharing the responsibility for migrants arriving at its borders (Matz-Lück, 2019). The situation at the Mediterranean represents just a symptom of the great inability of the EU and its MSs to equally share responsibility, abolish the Dublin regulation which opposes this and agree on a truly European migration and asylum system that ensures the right for asylum.

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