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: VM/46/25.11.2014  
Please quote when replying.

Warsaw, 25 November 2014

Dear Director General,

First of all I would like to thank 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.

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: “. . . 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;”

Referring to the few SAR cases recently occurred within EPN Triton.

Based on information available, and OPV patrolling within the operational area, via request of the RCC Rome, has been diverted by MRCC Rome 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 SAR area than Portuguese OPV (see map attached).

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

- 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.”

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 OPV received an information that another Italian Navy vessel has rescued the migrants and it can go back to it.

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: “. . . request on 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.”
FRONTEX

On behalf of the Frontex, we have received requests from MRCC Rome, to activate Frontex deployed assets 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, FS assets can be requested by the competent MRCC to support a SAR event.

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 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,

Klaus Rösler
Director of Operations Division

Cc: ICC Rome

Commented [A12]: This part contains specific information on the time of an event occurring during the implementation of operational activities. Disclosure of such information would harm the performance of future operational tasks taking place at the related area and would facilitate performance of illegal activities and therefore it would harm the public interest as regards public security. In this regard the text is not disclosed pursuant to the exception laid down in the first indent of Article 4(1)(e) of Regulation (EC) 1049/2001.

Commented [A13]: This part contains specific information on the time of an event occurring during the implementation of operational activities, but also on modus operandi and operational area. Disclosure of such information would harm the performance of current and future operational tasks and would facilitate the performance of illegal activities. Therefore, it would harm the public interest as regards public security. In this regard the text is not disclosed pursuant to the exception laid down in the first indent of Article 4(1)(e) of Regulation (EC) 1049/2001.
The non-disclosed text contains information on operational activities, in particular regarding the organization of operational activity. Disclosure of such information would harm the performance of ongoing and future operational tasks taking place at the related area and would facilitate performance of illegal activities and therefore it would harm the public interest as regards public security. In this regard the text is not disclosed pursuant to the exception laid down in the first indent of Article 4(1)(a) of Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents.

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This part contains detailed information regarding the operational and tactical features of the operation. Disclosure of such information would harm the performance of current and future operational tasks and would facilitate the performance of illegal activities. Therefore, it would harm the public interest as regards public security. In this regard the text is not disclosed pursuant to the exception laid down in the first indent of Article 4(1)(a) of Regulation (EC) 1049/2001.

This part contains specific information on the location of border surveillance assets. Disclosure of such information would harm the performance of ongoing and future operational tasks taking place at the related area and would facilitate performance of illegal activities and therefore it would harm the public interest as regards public security. In this regard the text is not disclosed pursuant to the exception laid down in the first indent of Article 4(1)(a) of Regulation (EC) 1049/2001.

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