



## European Contact Group on Search and Rescue Questionnaire for Members

*Since 2014, thousands of people have been attempting to cross the Mediterranean to reach Europe, requiring a multifaceted response by the European Union and its Member States with a view to avert loss of life, improve migration management, address the root causes of irregular migration and disrupt organised crime groups of migrant smugglers and traffickers in human beings.*

*Providing assistance to any persons found in distress at sea is a legal obligation of Member States established in international customary and conventional law, in particular the International Convention for the Safety of Life at Sea (SOLAS Convention, 1974), the United Nations Convention of the Law of the Sea (UNCLOS, 1979), and the International Convention on Maritime Search and Rescue (SAR Convention, 1979), as well as Union law.*

*Search and rescue operations in emergency situations require coordination and rapid disembarkation in a place of safety (POS) and respect for the fundamental rights of rescued people, in conformity with the EU Charter of Fundamental Rights obligations, including the principle of non-refoulement, and with customary and conventional international human rights and maritime law.*

*In the context of the work of the European Contact Group on Search and Rescue, as referred to in the Commission Recommendation (EU) 2020/1365<sup>1</sup>, this questionnaire aims at gathering information on rules and practices developed and implemented at national level, in order to contribute to develop common understanding and practices in this field with a view to reducing fatalities at sea, maintaining safety of navigation and ensuring effective migration management, in compliance with relevant legal obligations.*

### Coordination of SAR operations

1. What national legislative acts regulate the coordination of Search and Rescue (SAR) operations in your country?

**The Dutch Coastguard, together with Rijkswaterstaat, has written an incident mitigation plan (IBP North Sea). For the Waddensea area, rules and procedures are described in the**

---

<sup>1</sup> Commission Recommendation (EU) 2020/1365 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.

**Incidentbestrijdingsplan Waddenzee. The scope of both plans covers more than just SAR-operations. There is close communication and cooperation with the Coastguard and the German neighbours (Eems).**

**For the SAR-service: Regulation SAR-service 1994.**

2. According to the relevant national legislation, how is the coordination of SAR events organized in your country?

*Please provide general information on the Rescue coordination centre and possible rescue sub-centres, the SAR unit, the SAR facilities, the operating procedures, etc. and please explain if a permanent patrol by SAR assets is carried out, regardless of an ongoing SAR event.*

**The NL Coastguard holds responsibility for coordination and maintains a continuous monitoring on DSC and VHF Ch 16. All VTS-services cooperate with the Dutch Coastguard (KWC) and the Coastguard NL Den Helder can transfer several tasks to any VTS-service. The RCC is in Den Helder. Also checks are likely to be performed to ensure all available information was received correctly.**

3. Can you provide information on the SAR capacities of your country and the relevant assets deployed?

*Please also explain how the SAR capacities of your country have evolved over the last years and if you consider them sufficient in view of reducing fatalities at sea and maintaining safety of navigation.*

**Roles and procedures are described in the OPLAN SAR handbook (maintained by the Coast Guard), see <https://www.kustwacht.nl/sites/default/files/2016-06-28%20OPLAN%20SAR%20Versie%201.1.pdf>**

**The NL Coastguard has an agreement with the KNRM (royal Dutch rescue organization) and several government assets (ships, helicopters and airplanes). During incidents the coast guard is the SMC (SAR mission coordinator).**

4. Can you provide examples of the most relevant good practices that your country applies or has developed and regularly implements when coordinating a SAR event?

**In the Incident mitigation Plan North Sea (IBP Noordzee) various different kind of incident types have been identified and specifically described in so called “Scenario charts”. This method allows for a methodical approach in incident management and the coordination of an SAR event.**

**Furthermore, rescue exercises are held frequently by the Coast guard in cooperation with the KNRM, SAR helicopters and other assets, such as LIVEX 2019, Sarex and Bright eye. All exercises are evaluated and findings implemented in relevant procedures and processes.**

5. Based on the international legal framework, which criteria are applied by your country for determining that a vessel or craft is in a distress situation?

**Any distress alert either under GMDSS or otherwise, will be processed by the Netherlands Coastguard under the rules and procedures as stated in the Incident Mitigation Plans and OPLAN SAR handbook. For various kind of incidents so called “scenario cards” are available for determining the nature of the incident and the so called “Action Plans”**

6. Based on the international legal framework, which criteria are applied by your country for identifying the place of safety (POS) for the disembarkation of rescued people?

**Not applicable.**

7. How does your country take account of the role of the European Border and Coast Guard Agency (Frontex) on SAR?

**NL would like to stress that SAR operations should be conducted in accordance with the international legal framework and standard operating procedures. With regards to the role of Frontex, NL is of the opinion that on the basis of the EBCG Regulation, Frontex provides solely technical and operational assistance to Member States and third countries in support of search and rescue operations for persons in distress at sea, which may arise during border surveillance operations at sea. Thus, Frontex should not be deployed for specific SAR-operations.**

8. How does your country cooperate with other countries within the International Maritime Organization (IMO) on SAR matters?

**The Dutch Coastguard uses the International Search and Rescue database for cooperation with passenger ships from the UK:**

**<https://www.gov.uk/government/publications/international-sar-co-operation-plans-index>. There is cooperation between CG and the seagoing ferry companies.**

#### **Private vessels carrying out SAR activities as their predominant activity**

*Since the beginning of the migration crisis in the Mediterranean Sea, a number of private vessels have been operating for the specific purpose of carrying out SAR activities and/or rendering assistance to persons in distress at sea.*

9. Are there any private vessels that carry out SAR activities as their predominant activity, which fly the flag of your country?

9.1 If yes, do the entities operating such vessels declare SAR as their main scope of activity or do they indicate a different type of activity as their main focus?

**In the Mediterranean, there are currently no operational private vessels flying the Dutch flag that carry out SAR activities as their predominant activity.<sup>2</sup>**

10. Are there in your legal order rules providing for a specific registration and certification for private vessels carrying out SAR activities as their predominant activity?

10.1 If yes, please, explain how these requirements help to ensure that the vessels are certified to meet the safety and health requirements provided for by your national law, so as not to pose a danger to the crew on board or the persons rescued, while at the same time not being unduly obstructed from carrying out their activity of saving lives at sea.

**In the Dutch legal order, the rules regarding the safety and certification of seagoing vessels are laid down in the Ships Act (*Schepenwet*), the Ships Decree 2004 (*Schepenbesluit 2004*) and the Regulation on the safety of seagoing vessels (*Regeling veiligheid zeeschepen*). In response to the safety risks that are involved in routinely carrying out rescue operations at sea, a policy change has been implemented in 2018.<sup>3</sup> In line with this policy change, vessels that are registered in the Dutch flag register in the same category as recreational crafts or as a cargo vessel, require certification if they are engaged in routinely rescuing people in distress at sea. In accordance with article 20a(1) of the Regulation on the safety of seagoing vessels, vessels with a length of less than 24 metres should meet the safety requirements as specified in annex 3b to the Regulation (national requirements), as well as the requirements that are laid down in the ISM (International Safety Management)-Code. In accordance with article 20b(2) of the Regulation on the safety of seagoing vessels, vessels with a length of 24 metres or more should meet the safety requirements that are laid down in the SPS (Special Purpose Ships)-Code 2008 and the ISM-Code.**

**In order to ensure that the safety requirements for vessels that are engaged in routinely rescuing people in distress at sea are effective and proportional, the requirements for vessels with a length of 24 metres or more are aligned with the requirements in the SPS-Code 2008, which concern ships that take on board large groups of people. These requirements concern *inter alia* construction and subdivision, stability, fire protection and firefighting measures, life-saving appliances and navigation and communication. The requirements in annex 3b of the Regulation that apply to vessels with a length of**

---

<sup>2</sup> European Union Agency for Fundamental Rights, 'June 2021 Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights', 18 June 2021, <https://fra.europa.eu/en/publication/2021/june-2021-update-ngo-ships-sar-activities#TabPubTable-NGOshipsinvolvedinSARoperations1>.

<sup>3</sup> Regeling van de Minister van Infrastructuur en Waterstaat, van 1 april 2019, nr. IENW/BSK-2019/53132, tot wijziging van de Regeling veiligheid zeeschepen en de Regeling zeevarenden in verband met schepen gebezigd voor het stelselmatig aan boord nemen van drenkelingen, *Stcrt.* 2019, 15450.

less than 24 metres are mostly aligned with the requirements that apply to other small (cargo)vessels, although some specific safety requirements apply in light of the special nature of the activity of routinely rescuing people in distress at sea. These additional requirements concern the freeboard, the draft mark, intact stability and stability after damage.<sup>4</sup>

Lastly, in order to make clear that only recreational crafts which are actually used for recreational purposes are exempted from the crew requirements that flow from the Seafarers' Act (*Wet zeevarenden*), a provision to this effect (article 1.3c) has been added to the Seafarers' Regulation (*Regeling zeevarenden*). As a result, the Seafarers' Regulation puts beyond doubt that private vessels which are engaged in routinely rescuing people in distress at sea fall under the scope of the Seafarers' Act, and thus need to conform to all applicable national and international crew requirements.<sup>5</sup>

11. Does your national legislation provide for any specific conditions that apply to private vessels flying your flag and carrying out SAR activities as their main activities?

**See the answer to the previous question.**

12. Does your country have an ongoing dialogue at the national level with the organizations that operate these vessels or does it envisage doing so, in order to ensure more coordinated and effective action in the field of SAR?

**No. There are currently no operational vessels that fly the Dutch flag and routinely carry out SAR activities in the Mediterranean.**

In view of the Commission *Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence*<sup>6</sup>, has your country made any legislative changes or has plans to introduce changes to its legislation to exempt facilitation of unauthorised entry and transit from being criminalised, when carried out for humanitarian assistance?

- 12.1 In view of the Commission *Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence* does your country have an ongoing dialogue with the organizations that may be concerned, or does it envisage doing so?

**In the Netherlands, the criminal offense of people smuggling is laid down in article 197a of the Dutch Criminal Code (DCC). This article implements Directive 2002/90/EG and Framework Decision 2002/946. In implementing Directive 2002/90/EG, the humanitarian exception clause has not been incorporated in article 197a DCC. However,**

---

<sup>4</sup> *Stcrt.* 2019, 15450.

<sup>5</sup> *Stcrt.* 2019, 15450.

<sup>6</sup> Commission C(2020) 6470, *Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence.*

when in a particular case it becomes clear that a person accused of people smuggling has acted on humanitarian grounds, the public prosecutor may decide not to pursue charges. People smuggling is the facilitation of unauthorized border crossings. Facilitation of unauthorized border crossings may *inter alia* consist of providing means of transport. Whether the activities of NGOs or other non-state actors constitute people smuggling should be determined by taking into account all the circumstances of the case, as well as the relevant EU and international legal framework.<sup>7</sup>

In the Netherlands, there is a special multidisciplinary team targeting migrant smuggling. In this team all relevant actors and authorities in the are involved. The aim of this team is better coordination and exchange of information. This multidisciplinary team also links with several operational actions within Empact. At the EU level, the Netherlands cooperates closely with other Member States in the context of the Europol European Multidisciplinary Platform Against Crime Threat (EMPACT)-project. At the international level, the Netherlands cooperates with liaisons in other countries to counter people smuggling. In addition, the Netherlands has developed a “Barrier Model to counter migrant smuggling”, which is designed to provide insights into the various means of intervention that are at the disposal of governments and partners.<sup>8</sup>

13. Please indicate any legal and policy documents relevant to these matters, and where to find them if publicly available.

[Regeling van de Minister van Infrastructuur en Waterstaat, van 1 april 2019, nr. IENW/BSK-2019/53132, tot wijziging van de Regeling veiligheid zeeschepen en de Regeling zeevarenden in verband met schepen gebezigd voor het stelselmatig aan boord nemen van drenkelingen, Stcrt. 2019, 15450.](#)

BNC Fiche Aanbeveling samenwerking inzake operaties Search and Rescue ([Kamerstuk 22 112, nr. 2962](#))

BNC Fiche Mededeling EU-regels inzake definitie en preventie van mensensmokkel ([Kamerstuk 22112, nr. 2964](#))

‘Barrièremodel Mensensmokkel’, January 2016,  
[https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2020/01/27/barrieremodel-mensensmokkel/Barrieremodel+Mensensmokkel+-+overzicht+interventies\\_NL.pdf](https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2020/01/27/barrieremodel-mensensmokkel/Barrieremodel+Mensensmokkel+-+overzicht+interventies_NL.pdf) .

## Challenges and possible steps ahead

---

<sup>7</sup> Kamerstuk 22112, nr. 2964.

<sup>8</sup> *Aanhangsel Handelingen II* 2020-2021, 3283.

14. Based on your experience, what are the main challenges that need to be addressed both at national and European level in the field of international SAR?

**The Netherlands emphasises the need for finding structural solutions as opposed to *ad hoc* solutions in order to address the main challenges in the field of international SAR. In this regard, the international legal obligation to rescue those in distress at sea should always form the starting point. However, rescue operations of private vessels with idealistic goals should not lead to the continuation of criminal activities of migrant smugglers and human traffickers who put human lives at risk. In light of this, the main challenge is to develop clear agreements and frameworks with all parties involved, in order to work towards a normalization of SAR and disembarkation practices in the Mediterranean. This includes defining and establishing SAR zones, safe havens and well-functioning coast guards with sufficient capacity. The normalisation of practices should result in predictable and responsible mechanisms for people that have been rescued.<sup>9</sup>**

15. How does your country consider that the means of cooperation, especially between flag and disembarkation States, could be improved, in order to reduce fatalities at sea, maintain safety of navigation and ensure effective migration management, in compliance with relevant legal obligations?

**Cooperation between Member States with regard to SAR operations should take place in correspondence with the relevant national EU and international provisions, such as the Sea Border Regulation (EU) No 656/2014. The Netherlands would like to emphasize that the Member State responsible for the search and rescue region in which a SAR operations takes place bears primary responsibility for pointing to or organising a safe haven for the disembarkation of people that have been rescued at sea.<sup>10</sup>**

16. Which information does your country consider it would be useful to exchange with other States in order to improve SAR operations management?

**The Netherlands underscores the importance of complying with existing requirements regarding the sharing of information between authorities of different Member States regarding SAR activities. See also the answer to question 15.**

17. Does your country cooperate with other countries outside the Contact Group with regard to SAR matters, or does it consider it would be useful to do so? If yes, how?

**As indicated in the answer to previous questions, the Netherlands cooperates closely with neighbouring countries in matters relating to SAR operations.**

---

<sup>9</sup> Kamerstuk 22 112, nr. 2962.

<sup>10</sup> Paragraph 3.1.9. of the SAR Convention.

18. How does your country consider the Contact Group on Search and Rescue could be further used to improve coordination and cooperation in this field?

**It is the view of the Netherlands that the Contact Group can be further used to contribute to a normalization of SAR-practices in Mediterranean. In order to achieve this, it is important that clear guidelines on SAR activities are established between all parties involved, especially in relation to operations carried out by private NGO vessels. Experiences in the past with several ships have demonstrated a need to reflect more on procedures and standards, which is why the Netherlands has addressed issues related to certification of vessels in national legislation. Further, the Contact Group can be used to address the need to establish clear frameworks and agreements regarding the disembarkation in non-EU ports of safety, so that progress can be made towards a normalization of disembarkation practices.**

19. Which other stakeholders does your country consider the Contact Group on Search and Rescue should have a dialogue with?

**The Netherlands wishes to realize structural solutions, the Netherlands stresses the need for intensified cooperation between third countries, as well as UNHCR and IMO.<sup>11</sup> Together with clear rules of conduct for non-state actors, intensified cooperation can contribute towards a normalization of SAR practices in the Mediterranean.**

---

<sup>11</sup> Kamerstuk 32317, nr. 627.