



## PRESS RELEASE No 138/22

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Judgment of the Court in Joined Cases C-14/21 and C-15/21 | Sea Watch

### **Ships of humanitarian organisations systematically carrying out activities relating to the search for and rescue of persons at sea may be subject to controls by the port State**

*However, the port State may adopt detention measures only in the event of a clear risk to safety, health or the environment, which it is for that State to demonstrate*

Sea Watch is a humanitarian organisation registered in Berlin (Germany). It systematically carries out activities relating to the search for and rescue of persons in the Mediterranean Sea, using ships in respect of which it is both the owner and the operator. Those ships include Sea Watch 3 and Sea Watch 4, which fly the German flag and which have been certified as cargo ships.

During the summer of 2020, those two ships carried out rescue operations and disembarked the persons rescued at sea in the ports of Palermo and Porto Empedocle (Italy). They were then subject to inspections by the harbour master's offices of those ports on the grounds that they were not certified in respect of search and rescue activities at sea and had taken persons on board in much greater numbers than they were authorised to accommodate. Those harbour master's offices also considered that there were technical and operational deficiencies giving rise to a clear risk to safety, health or the environment and making detention of the ships necessary.

Sea Watch brought two actions for the annulment of those measures before the Regional Administrative Court of Sicily (Italy). In that context, it claimed that the harbour master's offices had exceeded the powers of the authorities of the port State, as derived from Directive 2009/16,<sup>1</sup> interpreted in the light of international law.

The Regional Administrative Court of Sicily has referred questions to the Court of Justice for a preliminary ruling in order to clarify the extent of the port State's powers of control and detention over ships operated by humanitarian organisations.

In its judgment delivered today, **the Court, sitting as the Grand Chamber, holds**, in the first place, **that Directive 2009/16 is applicable, in principle, to any ship<sup>2</sup> which is located in a port or in waters within the jurisdiction of a Member State and is flying the flag of another Member State, including ships operated by humanitarian organisations.**

In the second place, the Court points out that **Directive 2009/16**, the objective of which is to increase compliance with the rules of international law and EU legislation relating to maritime safety and security, protection of the marine environment and on-board living and working conditions, **must be interpreted by taking account of the rules of international law with which Member States are required to comply, starting with the Convention on the Law of the Sea<sup>3</sup> and the SOLAS Convention.**<sup>4</sup> The former lays down, in particular, a fundamental duty to

<sup>1</sup> Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ 2009 L 131, p. 57), as amended.

<sup>2</sup> Apart from certain strictly defined exceptions, such as government ships used for non-commercial purposes and pleasure yachts not engaged in trade (Article 3(4) of Directive 2009/16).

<sup>3</sup> The United Nations Convention on the Law of the Sea, which was concluded in Montego Bay on 10 December 1982, was approved on behalf of the European Community by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1).

render assistance to persons in danger or distress at sea. The latter stipulates that persons who are, as a result of a rescue operation at sea, on board a ship, including a ship operated by a humanitarian organisation such as Sea Watch, must not be taken into account when verifying whether the rules on safety at sea have been complied with. The number of persons on board, even if greater than that which is authorised, cannot therefore, in itself, constitute a ground for a control.

However, once such a ship has finished disembarking or transhipping those persons in a port, **the port State has the power to subject it to an inspection intended to verify whether the rules on safety at sea have been complied with. To that end, however, the port State must demonstrate, in a specific and detailed manner, that there are serious indications of a danger to health, safety, on-board working conditions or the environment.** It is for the referring court to verify whether those requirements have been met.

In the third place, as regards **the extent of the port State's powers**, the Court considers that the port State is entitled, for the purpose of demonstrating that there are serious indications of danger, to take account of the fact that ships classified and certified as cargo ships by the flag State are, in practice, being systematically used for activities relating to the search for and rescue of persons. By contrast, **the port State does not have the power to demand proof that those ships hold certificates other than those issued by the flag State or that they comply with all the requirements applicable to another classification.**

Furthermore, **in the event that the inspection reveals the presence of deficiencies, the port State has the power to adopt such corrective measures as it deems necessary.** However, those measures must, in any case, be suitable, necessary and proportionate. In addition, the port State may not make the lifting of the detention of a ship conditional upon the ship having certificates other than those issued by the flag State.

Lastly, in the event that it is demonstrated, following an inspection carried out by the authorities of the port State, that a ship flying the flag of another Member State has deficiencies giving rise to a danger to safety at sea, or even a clear hazard justifying its detention, the Court emphasises the importance of the **principle of sincere cooperation**, according to which the Member States, including the port State and the flag State, are required to cooperate and to consult each other in the exercise of their respective powers.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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<sup>4</sup> The International Convention for the Safety of Life at Sea entered into force on 25 May 1980. The European Union is not a party to that convention, but all the Member States are.