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NOTE

from :	Presidency
to :	Council
Subject :	Draft Council Conclusions on initiating dialogue and cooperation with Libya on migration issues

In November 2002, in the framework of its conclusions on intensified cooperation on the management of migration flows with third countries, the Council considered it essential to initiate cooperation with Libya on this issue.

Following the agreement of the Council, on 14 April 2003, that an expert mission should be sent to Libya to initiate talks on combating illegal immigration, the Commission organised an exploratory mission in May 2003, to assess Libya's willingness to cooperate.

Given the results of this exploratory mission, the Council decided, on 16 June 2003, to give the go-ahead for a follow-up mission of a purely technical nature. The terms of reference for that mission were approved by Coreper on 23 July 2003.

Due to political reasons, the mission was postponed until the Council agreed, on 11 October 2004, to embark upon a policy of engagement with Libya and gave its green light for the technical mission to examine arrangements for combating illegal immigration to be conducted as soon as possible.

The technical mission to Libya on illegal immigration was carried out, by the Commission Services, with the participation of Member States experts, between 28 November and 6 December 2004. The Commission Services' report on this mission was presented to Coreper on 6 April and to the Justice and Home Affairs (JHA) Council on 14 April 2005, which tasked its preparatory bodies to prepare draft operational Council conclusions on the basis of the recommendations contained in the report.

The draft Council conclusions established by the Presidency were discussed by the High Level Group on Asylum and Migration on 20 May, by the JHA Counsellors on 23 May, and by the Permanent Representatives Committee on 26 May 2005.

The Council is invited to examine the draft Council conclusions on initiating dialogue and cooperation with Libya on migration issues, attached to the present note, with a view to their adoption.

DRAFT COUNCIL CONCLUSIONS
ON
INITIATING DIALOGUE AND COOPERATION WITH LIBYA
ON MIGRATION ISSUES

THE COUNCIL:

1. Recalling the conclusions of the European Council recognizing that insufficiently managed migration flows can result in humanitarian disasters and expressing its utmost concern about the human tragedies that take place in the Mediterranean as a result of attempts to enter the EU illegally;
2. Mindful of the call of the European Council upon all States to intensify their cooperation in preventing further loss of life;
3. Recalling the November 2004 European Council Conclusions which call upon the EU to take a more effective, joint approach to cross-border problems such as illegal migration and trafficking in and smuggling of human beings;
4. Recalling the provisions of the Hague Programme regarding border checks and the fight against illegal immigration, in particular the need for solidarity and fair sharing of responsibility between Member States;¹
5. Recalling its conclusions of November 2002 where the Council considered that cooperation with Libya in the field of migration was both essential and urgent and reiterating its concern about the level of illegal traffic across the Mediterranean from or via Libya;

¹ ES, IT and MT reservation. These delegations wish to add "including its financial implications".

6. Recalling that Libya's full integration into the Barcelona Process would be welcomed and remains the overall objective of engagement with Libya; reiterating that participation in the Barcelona Process remains subject to Libya's formal application to the Process and acceptance of the whole Barcelona acquis and that the possibilities for cooperation with Libya will remain limited until such participation;
7. Recalling its conclusions of 11 October 2004 and its decision to embark upon a policy of engagement with Libya and inter alia that a technical mission to Libya should be conducted by the Commission as soon as possible to examine arrangements for combating illegal migration in accordance with the Terms of reference elaborated in response to the Council's mandate of 16 June 2003;
- [8. Recalling that the Council of 11 October 2004 invited Libya to respond positively to the EU's proposed policy of engagement. In this light, it insisted that Libya resolve remaining EU concerns, notably the case of the Bulgarian and Palestinian medical workers and all outstanding bilateral issues with EU Member States, and work towards stronger relations in the future, bilaterally and in multilateral frameworks;]¹
9. Welcoming the report of the Commission services on the technical mission to Libya on illegal migration which was carried out between 28 November and 6 December 2004;
10. Underlining the need for EU partnership with countries and regions of origin as well as those of transit and that, in line with the Hague programme, there is also a need for intensified cooperation and capacity building with the countries on the Southern borders of the EU and with a number of important African countries of origin and transit to enable these countries to better manage migration and provide protection for refugees;

¹ The whole text of this paragraph will be subject to further consideration after the 31 May.

Malta suggested to end the second sentence after "medical workers", and to start a new sentence which reads as follows: "Libya should also demonstrate its willingness to solve other outstanding bilateral issues.....".

11. Recalling the Programme of measures to combat illegal immigration across the maritime borders of the Member States of the European Union adopted in November 2003 and recognizing the EU's responsibility for controlling the external border of the EU and in particular for undertaking humanitarian efforts to try and prevent loss of life in the Mediterranean;
12. Recalling Member States' obligations under International and Community law on asylum and international protection, in particular to ensure access to dignified reception conditions and to asylum determination procedures.

HAS ADOPTED THE FOLLOWING CONCLUSIONS:

The Council:

- Shares the Commission's assessment that there is a need for a comprehensive and integrated approach to migration in the Mediterranean which encompasses dialogue and cooperation with Libya, other Mediterranean partners and main African countries of origin and transit, in full compliance with the objectives of the strategic framework established by the European Neighbourhood policy referred to in the Hague Programme for the external dimension of asylum and migration.
- Underlines that cooperation between the EU and third countries is guided by the principles of full respect for human rights, respect for democratic principles, the rule of law and the demonstration by those countries of a genuine commitment to fulfil their obligations under the Geneva Convention on Refugees or other relevant international conventions.

- Calls on the Libyan authorities to demonstrate a genuine commitment to fulfil their obligations under the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa which recognises that the Geneva Convention on Refugees constitutes the basic and universal instrument relating to the status of refugees and which requires effective cooperation with the UNHCR and the respect of the principle of 'non-refoulement'. Invites the Commission to explore ways in which the Libyan authorities could be assisted in fulfilling their obligations.
- Agrees to launch an ad hoc dialogue on migration issues between the EU and Libya and to gradually develop concrete cooperation on such issues with the Libyan authorities. The extent and development of such a cooperation will depend on Libya's commitments on asylum and fundamental rights as stated above.¹
- Invites the Commission to engage, on the basis of the suggestions contained in the Annex and as soon as possible, in exploratory discussions with the Libyan authorities to identify practical measures to tackle illegal migration in areas such as training, reinforcement of institution building, asylum issues and increasing public awareness of the dangers of illegal migration, and to discuss the conditions under which such cooperation could take place.
- Invites the Commission to report on the outcome of its exploratory discussions with the Libyan authorities in order for the Council to consider further action.
- Stresses that as long as Libya does not fully integrate into the Barcelona process, any cooperation with Libya can only be limited in scope and take place on a technical ad hoc basis.
- Calls upon the Commission to extend this cooperation to the main countries of origin and transit on the African continent in close relation with the relevant regional organisations to develop a wider approach to migration management on the African continent.

¹ BE and SE scrutiny reservation. MT reservation.

- Calls upon the Member States and the Commission to implement swiftly the measures listed in the Annex, and calls upon the Member States to intensify, in particular in the framework of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (the “Agency”), their cooperation on maritime external borders in the Mediterranean area and invites the Agency to include among its priorities in the working programme for 2005 and 2006 concrete operational actions on this issue.

- Invites the Commission to provide regular reports on progress in cooperation with the main African countries of origin and transit and in the implementation of the measures to intensify cooperation within the EU.

Measures to intensify cooperation within the EU

- Reinforce systematic operational co-operation between the respective national services responsible for the sea borders, especially by inviting Member States to present concrete operational actions at sea to be initiated in the framework of the ARGO programme and to examine the participation in upcoming joint sea operations.
- Invites the ad hoc Sea Borders Centres to develop, in the framework of the Agency and at the appropriate level, common operations in the Mediterranean sea and to examine the creation of a temporary¹ EU Task Force to which EU Member State vessels and aircrafts could be made available.
- Swift finalisation of the Risk Assessment Report on Africa.
- Invites Member States to send ILOs to Libya and ensure coordination and reinforcement of the Immigration Liaison Officers' Networks, including exchange of information and working rules for those based in Libya (Tripoli airport, seaports).
- Encourage the use of ICONet as a means of exchanging information on the countries, routes of migrants, forgery issues etc.
- Reinforce specific training for services of the external borders including on asylum issues (e.g. interview techniques, working with vulnerable applicants, working with interpreters), taking into account the ERF.
- Explore ways to assist those countries most affected by the sudden arrival of migrants, e.g. by exchanging best practices and by exchanging interpreters.
- Identify best practices with regard to acquisition of travel documents for and removal of illegal immigrants.
- Draw up a Head of Delegation report for the main African countries of origin.
- Consider the scope for organising a mission to sub-Saharan countries of origin such as Niger to explore the potential for supporting those countries in managing their migratory flows.

¹ EL scrutiny reservation.

Suggestions for exploratory discussions with Libya

Short term

- Launch urgent discussions with the Libyan side on short-term action aimed at preventing further lost of life at sea.
- Thematic training programmes to cover *inter alia* basic external border controls, illegal immigration, asylum and human rights issues.
- Specific visits to Member States by Libyan decision-makers and practitioners involved in Border issues (priority on staff/officials responsible for coastal border control) and Seminar for relevant Libyan authorities explaining the functioning of the European Union.
- Invitation to Libya to be associated with concrete operational initiatives to be developed by Member States in the framework of the ARGO programme (2005) and with projects funded under the AENEAS programme 2005.
- Carrying out a joint risk analysis on illegal migration towards Libya and the EU.
- Define search and rescue area for Libya and set up technical arrangements for life saving appliances in line with the development of marine evacuation systems (SOLAS).
- Explore possibilities for an intensified cooperation and capacity building concerning migration management and protection of refugees in cooperation with UNHCR.
- Provide assistance for those who voluntarily wish to repatriate and who do not seek protection or, after an independent asylum procedure in accordance with international standards, have been found not to need such protection.

Medium Term¹

- Strengthening of the legal framework and promoting administrative coordination (border controls, visas, entry conditions, residence permits, asylum, document security) with a view to improving migration management.
- Project at Tripoli International Airport to strengthen border control to prevent illegal immigration, e.g. by improving training on documentation forgeries, interviewing techniques and upgrading pre-departure checks etc.
- Define concrete operational arrangements for preventing smuggling of migrants by sea, land and air and trafficking of human beings (inspired by the Palermo Protocol).

Suggestions for dialogue and cooperation with other African countries

- Launch dialogue with the main countries of origin of flows of migrants and the main trafficking routes arriving in the EU through Libya or other Mahgreb countries in the region.
- Explore the potential for developing cooperation with the main African countries of origin and transit in a bilateral or multilateral framework and for intensifying the AU-EU dialogue.

¹ ES, IT and MT wish to insert the two following bullet points:

- Explore possibilities and clear the way for formalised cooperation in the field of return of illegal immigrants to Libya, fully respecting human rights and ensuring the sustainability of such returns.
- Technical and financial contributions to joint operational projects between Libya and neighbouring countries (such as Egypt, Niger).