

Malta Summit - External aspects of migration

FOLLOW UP DOCUMENT to Coreper breakfast (19 January) prepared by the Presidency in agreement with the President of the European Council

On 3 February, the 28 Heads of State or Government will meet in Malta to address the external aspects of migration, focusing on the Central Mediterranean route and Libya.

A useful discussion took place last week during informal exchanges of Permanent Representatives on the basis of a document prepared by the Presidency in agreement with the President of the European Council. There was an overall support to the approach presented in the paper.

A number of issues were raised during the discussion, which will be taken into account in further work and when drafting the Malta Declaration. Building on remarks and contributions of Member States and representatives of the Commission and of the External Action Service, the annexed fiches develop some lines of action to be pursued by the European Union¹. The Communication to be adopted by the Commission on 25 January will also bring further elements for consideration.

Member States, the Council, the Commission, the High Representative, as well as various EU agencies and bodies all have a responsibility in the follow-up and monitoring of the lines of action to be agreed.

In particular, Coreper will continue to deal with this issue, with the support of the Integrated Political Crisis Response arrangements (IPCR).

Given the need for a coordinated approach among actors involved, it could prove useful to appoint a specific Coordinator, in the same way that a Coordinator was appointed to oversee the implementation of the EU-Turkey Statement.

The EU should substantially increase its cooperation with IOM and UNHCR as the most important international partners for the EU in the implementation of its migration policy, in particular by financially supporting an increase of their activities in Libya and the region.

¹ This note also takes into account the results of the IPCR High Level Roundtable on the Central Mediterranean route held on 20 January 2017.

FICHE 1: Financing

Many delegations underlined the importance of appropriate funding for our policies.

(1) What needs to be financed?

In Libya:

- Empowerment of Libyan forces through capacity building: starting with the training of the Libyan Navy Coast Guards already undertaken under EUNAVFOR MED Operation SOPHIA, Seahorse Mediterranean Network and EUBAM. The main objective is to get national Coast Guards fully trained and operational, able to monitor and control the country's sea borders.
- Financing should include training, equipment and daily operational costs (including of required personnel's costs) and the establishment of a Maritime Rescue Coordination Centre. Where appropriate, this should be done in close coordination with Member States (notably IT and MT) and other actors, such as the European Border and Coast Guard, to ensure coherence.
- Reliable, long-term sources of financing need to be ensured - for instance through the European Neighbourhood Instrument (ENI), the EU Trust Fund for Africa (EUTF) or the Instrument contributing to Stability and Peace (IcSP), in order not to be solely dependent on Member States' voluntary contributions.
- Establishment of legal and operational frameworks for migration management and asylum systems and fight against smugglers (part of Valletta Action Plan - link to EUTF), if conditions allow.
- Activities of IOM and UNHCR and other international stakeholders incl. civil society organisations operating in Libya (doubling of funding for Assisted Voluntary Returns (AVR) and for running necessary reception facilities in Libya and in neighbouring countries).
- Local communities (especially coastal cities, but also in the border region with Niger): improving socio-economic situation (in areas such as health, education, infrastructure, job opportunities, including food and other living costs - both EUTF and ENI may provide financial assistance), integration capacity and creation of economic opportunities for migrants.
- Cross-border and regional cooperation via the Seahorse Mediterranean network and the European border and Coast Guard with neighbouring countries on border control, coordination of patrolling and rescue activities, intelligence gathering and sharing (for instance, expansion of Eurosur Fusion Services managed by the European Border and Coast Guard and by using AFIC - Africa-FRONTEX Intelligence Community).
- Support to projects gradually enhancing the Libyan capacity to control their Southern borders.

- Enhance information campaigns targeted at migrants, in support/cooperation with local actors and organisations (IOM/UNHCR) and building on the work already initiated by the Commission's Migration Information Task Force.

In neighbouring countries:

- Step up bilateral cooperation with neighbouring coastal States (Egypt, Tunisia, Algeria) in addition to pursuing work on upstream flows already underway in the framework of the "compacts".
- Support setting up biometric databases for nationals and transit migrants to facilitate and speed up returns.
- Consider a second phase for the border component in of the security sector reform programme in Tunisia.
- Focus and develop projects on enhancement of law enforcement capacity to crackdown on smuggling in priority areas such as, if not already covered by other instruments (e.g. ENI regional):
 - drafting and implementing of legislation penalising smuggling,
 - enhancing the protection of victims,
 - enhancing crime investigation and prosecution capabilities in particular by developing criminal intelligence gathering and analysis, biometric capacity and exploitation of digital evidence, in conjunction with Europol, CEPOL and Interpol,
 - expansion of joint investigation teams (as is the case already in Niger - financed by EUTF).
- Activities of IOM and UNHCR, for instance through pilot jointly-run reception centres.
- Enhancement of Regional Development and Protection Programmes (RDPPs) in North Africa.
- Cross-border cooperation between these countries and Libya.
- Encourage participation of Tunisia, Algeria and Egypt in the Seahorse Mediterranean network while ensuring full coordination with EUNAVOR MED SOPHIA training activities.
- Enhancement of local communities' capacity to integrate migrants in transit.
- Enhance information campaigns targeted at migrants, in support/cooperation with local actors and organisations (IOM/UNHCR).

(2) Possible funding sources:

- EUTF, primarily through the North Africa window which prioritises migration management as a whole (this includes asylum systems, protection of migrants, community stabilisation and alternatives to detention, fight against irregular migration, fight against trafficking and smuggling, integrated border management as well as cross-border cooperation).

- ENI can if necessary cover support to State institutions and local development. The Sahel/Lake Chad window of the EUTF can complement for countries upstream on the migration route.
- Where relevant, the limited external dimension component of AMIF, ISF-Borders and ISF-Police could be used for RDPPs, Readmission Capacity Building Facility, Consular Cooperation and Mobility Partnership Agreements.
- Instrument contributing to Stability and Peace (IcSP).

FICHE 2: Anti-smuggling activity

Disrupting the business model of the smugglers is a key pillar of our strategy, building on bilateral efforts.

(1) Collection of evidence and intelligence, analysis, dissemination to all relevant actors

Considering its analytical capability, Europol's European Migrant Smuggling Centre (EMSC) needs to be the central criminal intelligence analysis hub. This implies that all relevant actors (Member States, Frontex, CSDP missions, third countries, Interpol and other international partners) are legally in a position to supply Europol with information and do so effectively. Information sharing from Member States most involved will be crucial in this process. Europol's analysis will be disseminated to all contributors, relevant actors and third countries.

To this end, other actions would include:

- An early review of CSDP missions and operations to identify possible gaps in their terms of reference, which need to be addressed to enhance their role in fighting migrant smuggling and to further facilitate the provision of information to Europol and between missions and operations.
- Ensure an operational Seahorse Mediterranean Network by spring 2017 by connecting the Libyan Coast Guard with the Member States.
- Strengthening operational cooperation between Europol and Frontex, which should be clearly defined and further developed. Liaison officers between agencies and CSDP missions (e.g. EUROPOL/SOPHIA) should intensify cross-sector cooperation to support this process.
- Monitoring of departure points in third countries and detecting and tracking of suspicious vessels (including by using ship reporting systems, satellite and aerial surveillance) via the Eurosur Fusion Centre managed by Frontex. Ensuring the transmission of information to Europol. Cooperation with international partners (International Maritime Organisation, Maritime Analysis and Operations Centre - Narcotics (MAOC (N))) could contribute to enhancing our situational picture.
- Study the feasibility of sharing information between military and law enforcement capacities deployed in the region, including the establishment of an information clearing house to ensure the swift and targeted dissemination of such information. This process could be accelerated by involving specialised police forces (e.g. European Gendarmerie Force or police forces with military status).
- Enhancing the role of the Operational Action Plan (OAP) "Disrupting the facilitation of illegal immigration" of the EU POLICY CYCLE and support its operational actions in the Central Mediterranean area.
- Cooperation with neighbouring countries (Tunisia/Niger/Egypt) to be enhanced via capacity building (collection and analysis of biometrics ante and post mortem; creation of national Automated Fingerprint Identification System (AFIS); collection and exploitation of digital evidence) and information exchange, in close cooperation with Europol/CEPOL/Interpol.

- Enhance the cooperation between the security advisors in EU delegations and EU agencies.

(2) Disrupting the supply chain

Acting upon the information collected as described above:

- Engaging with the private sector (manufacturers, suppliers, retailers of dinghies and engines, etc.) and with neighbouring countries' law enforcement authorities and through enhanced international cooperation, relevant third countries and the support of Interpol. Europol should be tasked to take this forward.
- Supporting Member States active on the ground.

FICHE 3: Application and possible modifications of the acquis

The overwhelming majority of migrants reaching Europe illegally through the Central Mediterranean route are economic migrants risking their lives at sea. Many delegations underlined that this was not sustainable and that adequate measures should be developed, in accordance with the relevant EU and international standards. A number of avenues could be explored. In some instances, further guidance on implementation should be considered in order to achieve greater convergence. Some issues will need to be addressed in the context of the ongoing legislative process (reform of the Common European Asylum System), while others might require new legislative proposals, in particular to address existing loopholes.

(1) As regards the Return Directive (2008/115/EC)

- The Return Directive should be analysed to identify what would make its implementation more effective, through further guidance by the Commission on implementation by Member States (for instance through a possible adaptation of the Return Handbook ²) on, *inter alia*:
 - the application of measures in order to avoid absconding or, where appropriate, by developing effective alternatives to detention,
 - systematic promotion of voluntary returns,
 - criminalisation of 'irregular entry and/or stay', within the limits of the ECJ case law,
 - systematic use of entry bans and for longer periods, and enhanced enforcement through their introduction into the SIS.
- Effective sanctions against employers of irregularly staying third-country nationals.
- Appropriate solutions should be devised to deal with the challenging issue of 'non-removable' illegally-staying third-country nationals.
- The collection of statistics, their analysis and dissemination should be further encouraged, in particular through a speedy implementation of the Integrated Return Management Application (IRMA).

(2) As regards the concept of safe country of origin and safe third country

- The speeding up of asylum procedures and tackling of abuse should be further addressed in the context of the ongoing examination in Council preparatory bodies of the Commission proposal for an Asylum Procedures' Regulation which aims at improving the rules on the procedural consequences of applying safe country concepts (Articles 44 - 50).
- In that same context, and in order to facilitate further convergence in the application of procedures and to deter secondary movements, priority should be given to the replacement of national safe country lists with EU lists, making it mandatory to use the concepts of first country of asylum and safe third country for rejecting applications as inadmissible, and to use the accelerated examination procedure.

² Commission recommendation of 1 October 2015 [C(2015) 6250 final] *establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks*. The "Return Handbook" contains common guidelines, best practices and recommendations and is to be updated regularly.

- In the meantime, Member States could be invited to make use of the following possibilities under the current EU acquis:
 - where applicants are clearly not in need of international protection because they come from a safe country of origin, making it possible for applications to be dealt with under the accelerated examination procedure. Where an application is rejected as manifestly unfounded on this basis, there should be no automatic suspensive effect of the appeal, but only on a case-by-case basis;
 - where applicants have already found a first country of asylum where they enjoy protection or where their applications can be examined by a safe third country, applications should be declared inadmissible.
- The Council could adopt conclusions (as those adopted on 20 July 2015) recommending that Member States would list (more) third countries considered as safe countries of origin and/or safe third countries pursuant to the applicable criteria, thus, allowing Member States to speed up the relevant asylum procedures. Pending the adoption of EU lists, and where applicable criteria are met, the Council could invite all Member States to provisionally adopt national lists of first countries of asylum and safe third countries.

(3) As regards non-refoulement, the interpretation of this principle raises complex legal issues, both under European law and under international law, including the case law of the Court of Justice of the European Union and of the European Court of Human Rights. The Commission could examine how to interpret and apply this principle which would better take into account the circumstances prevailing in crisis situations.