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NOTE

from : French delegation

Subject : Migration situation in the Mediterranean: establishing a partnership with migrants' countries of origin and of transit, enhancing Member States' joint maritime operations and finding innovative solutions for access to asylum procedures

Delegations will find attached the abovementioned note from the French delegation.

Migration situation in the Mediterranean:
establishing a partnership with migrants' countries of origin and of transit, enhancing
Member States' joint maritime operations and finding innovative solutions
for access to asylum procedures

Less than one year after the adoption of the European Pact on Immigration and Asylum, the migration situation in the Mediterranean calls for more targeted approaches and responses, so as to assist those Member States which are most exposed to the permanent pressure being placed on the EU's external borders.

As well as maintaining efforts at Member States' air and land borders, it is important that activities should now be focused on the Mediterranean, one of the most visible gateways to Europe and the scene of repeated tragedies. In view of what is at stake for all the Member States, the solution can only be found at European level. The search for such a solution will also test the effectiveness of EU action.

The current situation in the Mediterranean requires even greater harmonisation of all the measures comprised in the European immigration and asylum policy. It must also encourage reflection on new measures and pilot projects.

Resolving the Mediterranean migration crisis calls for the coordination of several measures: a partnership with third countries based on reciprocal requirements and operational support and tighter checks at the external maritime borders, all the while ensuring that those concerned have access to the guarantees provided by the right to asylum. This means finding innovative solutions to the handling of asylum applications outside the EU's borders.

1. A partnership with third countries of transit and of origin based on reciprocal requirements and operational support

The European Union must not only maintain a strong political dialogue with the main **countries of transit** (Libya and Turkey), but also draw up strategies based on existing **migration routes**.

1.1. Within the framework of its partnership with **Libya and Turkey**, the European Union must issue a firm reminder of its requirements while offering its support to those countries' operational capacities. To that end, **practical cooperation in terms of combating illegal immigration and monitoring the external borders** needs to be improved if it is to constitute a truly operational tool. In particular, building on the provisions of Regulation (EC) No 377/2004, cooperation should be stepped up between third-country authorities and European immigration liaison officers stationed in such countries.

As regards **readmission**, negotiations need to be completed on an agreement between the EU and Turkey, a mandate for which was given to the Commission in 2002. Pending that, the EU must support the implementation of the bilateral readmission agreement between Turkey and Greece, bearing in mind the importance of that border. It is also important to bring to a successful conclusion the negotiations on the provisions on readmission in the framework agreement with Libya. More generally, the readmission agreements must be given a more prominent status in the EU's external policies and in general relations with the main third countries concerned, if they are to play a significant role in deepening such relations.

Moreover, Libya must undertake to define its **search and rescue (SAR) area** and implement tools enabling it to assume responsibility in that area.

1.2. Beyond these specific relationships, certain subjects require an approach based on geographical areas and, more precisely, **migration routes**.

Priority must therefore be given to establishing a **plan to combat organised crime** on routes originating in Afghanistan, Iraq and East Africa. Meetings of experts could be organised, and the subject could be incorporated into both the political declarations and – in cooperation with the relevant third countries – the national indicative programmes used as the basis for the allocation of European funds.

Regional fora, such as the EU-Africa strategic partnership and the Rabat/Paris process for West Africa, must also be utilised. It must be ensured that Libya plays an effective role as co-director of the EU-Africa partnership, and that an appropriate follow-up is given to the Paris Conference in Dakar in 2011, under the Belgian Presidency.

In addition, the **financial resources required by the countries in question** in order to establish an effective policy for managing and controlling migration flows need to be clarified so that their efforts may be accorded appropriate support via the various Community resources, with due regard for the relevant allocation rules. Care must be taken to ensure the consistency of such financial support with respect to different countries on the same migration route.

Finally, adopting the **tools of the comprehensive approach to migration** in the medium term would enable us to better structure our relations in the region, subject to the methodical use of such tools.

2. Enhancing joint maritime operations at the EU's external borders

2.1. FRONTEX's *modus operandi* in the Mediterranean should be reviewed in order to cope with crisis situations at the maritime borders. The French delegation will announce initiatives to that end, linked to the strengthening of that agency, at the next JHA Council. In short, three situations should be identified, each calling for specific intervention measures:

- **situation 1: maritime intervention by the coastal State of departure closest to the illegal immigrants' place of embarkation.** This constitutes the most relevant level of action as it takes place right at the start of the process.

- **situation 2: offshore (high-sea) intervention.** High-sea interceptions often have a perverse effect, as they may be "hijacked" by criminal networks which make use of such operations to transport migrants, deliberately placing them in danger in order to "provoke" their rescue. They also represent a risky method of intervention given the areas to be covered, and are costly in terms of the deep-sea resources which must be deployed. It would therefore seem advisable to give preference to air surveillance patrols, which allow rescue operations to go ahead without creating a "magnetic" effect. In any case, establishing the port of disembarkation of persons intercepted at sea is a matter which must be settled at European level.

- **situation 3: maritime intervention at the point closest to the immigrants' coast of destination.** Such intervention is an effective means of preventing illegal disembarkations and subjecting the intercepted persons to the standard legal procedures (application for asylum at the border, admission and refusal of entry into the territory), especially when arrivals are at a peak.

2.2. Coordinating these three courses of action requires **adequate financial resources** to provide for concomitant and complementary action as close as possible to third-country and European coasts, supported by high-sea surveillance. Current Community financing, which is split between the solidarity programme and the programmes in favour of third countries, is not sufficiently flexible to cover such coordinated action. Consequently, FRONTEX should be allowed to help finance **the whole of this chain of intervention from its own funds; this will mean increasing its financial resources.**

2.3. Finally, this policy must be supported by a **comprehensive return policy**. In order to avoid a situation whereby each Member State has to negotiate the organisation of return flights on its own, the EU must give this policy greater consideration. FRONTEX should systematically charter "return" flights from the Mediterranean Member States. The other Member States must also show their solidarity by helping those countries obtain consular or European laissez-passers. Finally, the third countries of transit should be able to rely on European financial assistance to organise their own "return" flights, while complying with their obligations as regards respect for the right to asylum.

3. Innovative solutions concerning asylum

The resolve with which measures to combat illegal maritime immigration networks are conducted must remain in keeping with the EU's values and international commitments in terms of asylum and the protection of fundamental rights. Every care must be taken to ensure that persons apprehended during interceptions or rescues at sea are not exposed either directly or indirectly, in the country to which they are to be repatriated, to the risk of any punishment or treatment which violates the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. **Such persons must be given a genuine opportunity to request and – if a need is established – to obtain international protection.**

Against that background, we propose that the European Commission should be asked to consider the following two possibilities:

– the holding of tripartite negotiations with the UNHCR, Libya and the IOM with a view to examining the possibility of **establishing an *ad hoc* protection programme in that country** for persons intercepted at sea and subsequently repatriated. Under that arrangement, the UNHCR would be responsible for identifying persons in need of protection and falling within its remit. The European Union would support that operation and, in accordance with procedures yet to be determined and within the framework of resettlement operations, would undertake to receive persons recognised as refugees and requiring settlement on a long-term basis. At the same time, special consideration would have to be given to the situation of such persons and to the guarantees which would be accorded to them in the first country of refuge while their applications were being examined, supported if necessary by the IOM.

– the possibility of introducing, **in Member States' diplomatic representations** in Libya, and with the logistical support of the European Asylum Support Office (making the establishment of that body in 2010 all the more essential) **a specific procedure for the examination of applications for asylum**. Such a procedure would aim to identify applications which, in accordance with criteria which would have to be defined jointly (since Community law does not apply outside EU territory), did not appear to be manifestly unfounded. Here again, particular consideration would have to be given to the situation of and guarantees accorded to such persons in the country concerned while their applications were being examined. Persons whose applications were not considered to be manifestly unfounded would be authorised to enter EU territory, in accordance with procedures yet to be defined, in order to submit an application for asylum there. This option would have to comply with the principle of solidarity between Member States and ensure a balance in Member States' respective obligations.

France would be grateful if its partners could state their positions regarding the above three avenues for discussion.

ANNEX: Mediterranean plan of action

Partnership with migrants' countries of transit and of origin based on reciprocal requirements and operational support:

- EU support for the operational capacities of Libya and Turkey in connection with combating illegal immigration and monitoring the external borders;
- completion of negotiations for the EU-Turkey readmission agreement and for the provisions on readmission in the EU-Libya framework agreement;
- definition of the Libyan search and rescue (SAR) area;
- establishment of a plan to combat organised crime on routes originating in Afghanistan, Iraq and East Africa;
- precise identification of the financial requirements of the countries concerned for the purposes of managing their migration flows.

Enhancing controls at the EU's external maritime borders:

- review of FRONTEX's *modus operandi* in the Mediterranean, with the implementation of specific adapted measures depending on whether the intervention takes place close to the point of departure of the illegal immigration flows, on the open sea or close to the European coasts;
- adaptation of the existing financial resources and participation of FRONTEX in the financing of the whole of this chain of intervention from its own funds;
- systematic organisation of return flights by FRONTEX.

Access to asylum procedures outside the EU:

- compliance with the principle of non-refoulement;
- examination of the possible procedures for establishing, in partnership with the UNHCR and the IOM, an *ad hoc* protection programme in Libya for persons intercepted at sea and subsequently repatriated to that country;
- the simultaneous development of European resettlement operations;
- examination of possible procedures for the pre-treatment of applications for asylum in Member States' diplomatic representations in Libya, with the logistical support of the European Asylum Support Office.