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Mr Vít Rakušan

First Deputy Prime Minister and Minister for the Interior

Czech Republic

23 November 2022

Dear Mr Rakušan,

URGENT STEPS TO ADDRESS ONGOING CHALLENGES IN THE CENTRAL MEDITERRANEAN

We are writing to you in view of the extraordinary Justice and Home Affairs Council to take place on 25 November 2022, which has been called following the recent standoff between member states on the disembarkation of refugees and migrants rescued by NGO vessels in the Central Mediterranean Sea. We wish to outline our key concerns regarding the current situation, identify shortcomings with the Commission's proposed Action Plan, and highlight our proposals for EU institutions and Member States to address immediate challenges in an effective, principled and sustainable manner.

In recent weeks, we have been witnessing – again – a shameful spectacle of delays in assigning a place of safety (POS) for disembarkation and delays or non-responses to distress calls which put migrants' and refugees' lives at great risk. We are also seeing an attempt by a group of Member States to disparage private (NGO) vessels, by falsely accusing them of operating in an uncoordinated manner and in autonomy from the competent State authorities.¹ This misleading reconstruction hides the fact that it is States' SAR authorities themselves which fail to uphold duties to communicate with private vessels, coordinate search and rescue (SAR) events and assign POS, in line with the existing legal framework concerning SAR operations. The same legal framework, on the other hand, assigns shipmasters an obligation to rescue people in distress, even when they are not specifically instructed to do so by competent authorities.

We are alarmed by the recent instances where Italian authorities ordered ships, that were carrying people rescued at sea, to leave the territorial waters without ensuring disembarkation of all the people on board – a practice that would amount to *refoulement*. The decrees issued by Italian authorities to some NGO ships including *Humanity 1* on 4 November and subsequent days, while giving effect to controversial Italian legislation,² are not in line with the International Law of the Sea, which under Art. 18 of the United Nations Convention on the Law of the Sea (UNCLOS) provides that States ought to guarantee “innocent passage” in territorial waters at all times, in so far as “rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress”. The decrees also refer to Italy's responsibility to ensure “efficient surveillance of the crossing of the EU's external borders” under Article 77 of the Treaty on the Functioning of the EU, while in fact violating the EU Charter

¹ https://www.interno.gov.it/sites/default/files/2022-11/joint_statement.pdf

² Art. 1(2) of Decree Law 130/2020

on Fundamental Rights and international refugee law, as enshrined in the EU Treaties, by denying the right to asylum and protection from collective expulsion.

Under international law and standards, governments should make every effort to minimize the time survivors remain aboard assisting ships, and to this end they should cooperate with each other with regard to providing suitable places of safety for survivors, and should handle matters relating to the status of survivors only *after* having delivered them to a place of safety.³ Political negotiations between Member States can never justify delays in the execution of SAR operations and the disembarkation of survivors. Amnesty International however recognizes the need to ensure adequate responsibility-sharing in the provision of assistance to people disembarked following SAR operations. Indeed, in the absence of a wider reform of the Dublin system, the voluntary solidarity mechanism set up in June 2022 represents an insufficient but meaningful step in the right direction. Amnesty International encourages EU Member States and Institutions to leverage and improve the existing mechanism, to ensure that as many people can promptly benefit of relocation. Similarly, efforts should be ensured to increase the number of people who can reach Europe through resettlement or other safe and regular channels.

Amnesty International remains concerned by the EU's ongoing cooperation with Libyan authorities in enabling the interception of thousands of migrants and refugees at sea and their return to Libya, where they continue to be exposed to a litany of horrors, including indefinite arbitrary detention, unlawful killings, sexual violence, torture and forced labour. As we have repeatedly highlighted, this is bolstered by the EU's own border agency, Frontex, which continues to operate aerial assets over the Central Mediterranean and well into the Libyan SAR region to identify refugee and migrant boats at sea and report their position to the Libyan authorities.⁴

Regrettably, the Action Plan drafted by the European Commission for the Central Mediterranean, which you will discuss on 25 November, continues to have as a central pillar reinforced cooperation with partner countries, such as Libya, to address migration challenges, including by strengthening Libya's capacity to ensure better border management and management of migration.⁵

While the Commission's Action Plan mentions reinforced Frontex support, including through joint operations, aerial and maritime surveillance, or other actions, it is key that any initiatives prioritise saving lives and ensuring safe disembarkation.

EU Member States and institutions keep blaming rescue NGOs for a presumed lack of coordination and "pull-factor", without providing any adequate evidence. Relevant calls for new codes of conduct, or other measures to hinder the life-saving work of rescue NGOs, are misplaced. Amnesty International considers that the issues affecting SAR operations in the central Mediterranean are not due to the presence of NGO ships, but rather to continuing breaches of international law by Member States responsible for coordinating operations and instructing rescue vessels on where to disembark survivors; to differing legal obligations and interpretations by Italy and Malta; to the setting up of a system designed to let Libyan authorities carry out interceptions and disembarkations in Libya, even if Libya is unable to provide any place of safety; and to the absence of a European state-led proactive rescue operation.

Unfortunately, the Action Plan neither recognises nor offers solutions to these central issues.

Amnesty International would like you to draw the Ministers' attention to our comprehensive Plan of Action published last year, with the European Council on Refugees and Exiles (ECRE) and Human Rights Watch, to address the ongoing challenges along the Central Mediterranean route. This Plan of Action contains 20 concrete steps which we recommend EU institutions and Member States take to enhance the cooperation and rights' protection in the following areas:

³ IMO, Res. MSC.167/78, Guidelines on the treatment of persons rescued at sea, adopted on 20 May 2004

⁴ Amnesty International, *No one will look for you*: Forcibly returned from sea to abusive detention in Libya, 15 July 2021

⁵ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7068

1. Proactive and State-led search and rescue operations
2. Rights-compliant migration-related cooperation with Libya
3. Effective and predictable disembarkation and relocation
4. Global responsibility-sharing through safe and regular pathways
5. Accountability for human rights violations

Please find the Plan of Action attached. We hope this could be helpful in informing the discussion and would welcome an opportunity to discuss your feedback and concerns.

Yours sincerely,

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