

## Statement on a temporary relocation mechanism

The signing organisations, directly involved in and affected by the content of the EU Summit on 23 September in Malta, jointly share the following considerations and recommendations to the European Union. The question of a fair and human needs-based relocation mechanism remains unresolved. In recent months there have been repeated stand-offs of up to 19 days<sup>1</sup> until the EU Member States (MS) have agreed on an ad-hoc distribution scheme of people rescued from distress at sea. This practice contradicts international maritime and human rights law, in particular with regards to the obligation set by search and rescue regulations to bring shipwrecked people to a “place of safety” (PoS)<sup>2</sup> without any delay.<sup>3</sup>

We emphasise that a temporary relocation mechanism, on which France, Germany, Italy and Malta on the Summit agreed, provides only a partial solution for the humanitarian emergency in the Mediterranean Sea. A long-term political solution to the deadlock in the Mediterranean is still needed.

The lack of comprehensive and reliable figures and follow-up on the distribution of disembarked persons results in non-transparent relocation practices, as countries may often receive fewer people than originally pledged.<sup>4</sup> Furthermore, current ad hoc mechanisms with little accountability are maintaining unequal treatment with regards to responsibility-sharing among the EU MS.

In order to meet these concerns, the signing organisations wish to raise several legal and political guidelines regarding future relocation agreements:

### 1. Relocation as an accompanying measure

A temporary relocation mechanism does not replace a long-term solution. A lasting solution requires a reform of the Common European Asylum System (CEAS), including the Dublin Regulation. The European Council is still blocking the reform of Dublin III, ignoring a proposal by the EP which was already submitted in 2017.

### 2. Specific protection and human needs-oriented Criteria for Relocation in full compliance with international human rights law, refugee law and EU asylum law

Any relocation scheme must at the same time ensure that countries of destination are defined by taking into account individual circumstances as family links and language skills, as well as individual vulnerabilities and vulnerable groups including victims of violence, unaccompanied minors, disabled people, potential victims of trafficking and (sexual) exploitation in Europe but also that the relocation happens as swift as possible without avoidable delay. Furthermore, a relocation mechanism has to ensure that the agreement does not leave a gap of responsibility, leaving individuals in a bureaucratic grey area in which no MS is taking responsibility for their applications.

### 3. No pre-screenings

Pre-relocation selection practices such as pre-screenings of individuals by MS harm the principle of non-discrimination of refugees as laid down in international law - selection of persons eligible for relocation means in practice that the persons concerned may be unable to access the rights and benefits they are entitled to under the EU asylum acquis. Individuals must promptly be granted access to an asylum procedure, undergo vulnerability and best interests assessments, and benefit from the right to remain on the territory, as well as

1 On 21 August 2019, the disembarkation of 83 rescued persons from the Open Arms took place after 19 days. The Ocean Viking of SOS MEDITERRANEE also had to wait 14 days for a safe harbour and disembarked 365 rescued people on 23 August 2019.

2 Art.98 UNCLOS, SAR Convention 1979, Annex, Chapter 1, Para 1.3.2

3 Recommended by the International Maritime Organization (IMO) - Resolution MSC.167(78), Guidelines on the treatment of persons rescued at sea, points 6.3, 6.20.

4 In July 2018, the German Minister of the Interior announced that Germany would accept 565 people rescued from distress at sea. Of these, only 225 people have been relocated so far. After the Malta Summit, Seehofer stressed that the relocation quota depends on how many EU member states will accede to the agreement on 8 October 2019 in Luxembourg.

the right to adequate reception conditions such as accommodation and health care. In addition, pre-screenings risk the proliferation of so called hotspots, as the country of arrival would need to create centers for such pre-screenings to take place in. Such centres or hotspots cannot guarantee a sufficient and detailed examination of the individual cases. An adequate relocation mechanism prevents both the maintenance of existing hotspots and the creation of new ones.

#### 4. No ports' rotation mechanism

A rotation mechanism, which means that civil rescue ships are assigned different European ports as Place of Safety (PoS) after rescue operations, is not justifiable from a maritime and humanitarian point of view. In order to make sure that the rescued persons are being disembarked as soon as possible, as defined in international law, only safe ports in immediate proximity can be considered. Furthermore, disembarking in a more distant port entails unnecessary and avoidable risks for the rescued persons on board. These include the medical situation, weather conditions and supply shortage.<sup>5</sup> Additionally, it means a longer absence of rescue capacities in the Central Mediterranean. With a fair and working relocation mechanism, a rotation mechanism would not be necessary.

#### 5. Integration of merchant vessels

The temporary relocation agreement should not only consider people rescued by NGO vessels but also include those rescued by merchant and state vessels as well as refugee boats that arrive on their own. If a swift disembarkation was guaranteed in every rescue case, this would impede further cases of non-assistance and illegal push-backs of rescued people to Libya.

#### 6. Integration of municipalities

The EU member states should not continue to ignore and block the receptiveness of their populations. Until September 2019, more than 90 cities across Europe, including in Germany, Spain and Italy, have declared themselves as "Safe Harbors" or have directly declared their ports open to receive rescued people, stating that they would accept more individuals than officially allocated. A relocation agreement should allow endorsement and commitments from cities and civil society organisations. For that, it is absolutely necessary to design a new, fast-track, tangible and practical reception and relocation scheme at the European level. Any viable reform of the EU asylum and migration system will have to include the communal perspective on migration and the municipal level of government.



<sup>5</sup> See the case of Aquarius, operated by SOS MEDITERRANEE and MSF, which was assigned a safe harbour in Spain in June 2018.