



Sándor Pintér
Hungarian Interior Minister
Presidency of the Council of the European Union

Brussels, 6 May 2011
Our Ref: B1080

Dear Minister,

Justice and Home Affairs Council, 12 May 2011: Migration and border related issues arising from situation in southern Mediterranean

On 12 May, for the third time under your presidency, EU JHA ministers will discuss migration issues which have arisen from events in the southern Mediterranean. The meeting will also discuss the Commission Communication on migration published on 4 May 2011 (COM(2011) 248 final), and address French and Italian calls for, among other things, reinforcement of governance in the Schengen area.¹ We are letting you know our views on the Communication and repeat our concerns over how the EU and member states continue to deal with migration issues.

It is important to put into perspective the EU's migration challenges which arise from the situation in North Africa. As the Communication mentions, countries in the region, primarily Tunisia and Egypt, host the bulk of those who have fled the conflict in Libya. By 4 May this amounted to over 710,000 people. Fewer than 30,000 have arrived on European shores, some 28,000 in Italy, mainly from Tunisia, and about 1,100 in Malta. These numbers ought neither to put protection and reception systems in member states under strain nor justify inward-looking panic, particularly since member states can and should act in solidarity with each other.

Unfortunately, the Communication fails to specify how to deliver the principles of solidarity and fair sharing of responsibility in migration policy, for which Article 80 of the Treaty of Lisbon calls,² so as to overcome dependence of existing schemes and rules (eg the *ad hoc* relocation scheme piloted in 2010 for asylum seekers in Malta, the Temporary Protection Directive or the European Asylum Support Office) on member states' willingness to *volunteer* assistance.

Lack of solidarity is tarnishing the EU's credibility not just internally but also with the North African countries with which it seeks to "overhaul" its relationship. Taken as a whole, the EU's response to UNHCR's appeal to resettle refugees and asylum seekers from the region has been shameful and, with only 5,000 refugees resettled in the

¹ See the joint letter of 26 April 2011 by French President Sarkozy and Italian Prime Minister Berlusconi addressed to the President of the European Council, Van Rompuy, and the President of the European Commission, Barroso.

² Article 80 of the TFEU stipulates that: "The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures giving effect to this principle."

entire EU last year, it only makes a marginal contribution to sharing responsibility for the global refugee population.

We are disappointed that, having failed to suggest any tangible measures to support North African countries, the EU remains obsessed with preventing migration from these countries. Alongside the usual calls to reinforce Frontex's mandate and resources, it is relying on the same discredited approach in its external relations: it makes cooperation with these countries conditional on return and readmission, effective border management and preventing irregular migration.

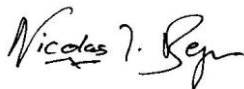
We are concerned that the EU is not acknowledging the failure of its external policies on migration, which are partly responsible for the very challenges it faces. We believe the response to these challenges should focus not on policing borders and blocking migration flows but on encouraging mobility and signalling to North African countries that the EU is serious about ensuring "people-to-people contacts". Cooperation with countries in the region should be based on facilitating mobility with meaningful incentives, like visa-related measures. The suggestion of basing the new relationship on "Mobility Partnerships", which are tools to prevent migration rather than fostering mobility, is totally inadequate.

We also question the assumption that "poorly-managed immigration can affect social cohesion", without addressing widespread anti-immigration and xenophobic political rhetoric which contributes to this. Similarly, a credible migration policy is not so much a question of the "probability of return for irregular migrants" as of realistic labour migration policies which connect labour supply and actual needs. As the Communication acknowledges, the existence of an informal sector is a pull factor for irregular migrants to Europe (which also exposes them to exploitation). However, implementing the Employers' Sanction Directive is not in itself enough to tackle this effectively, given its limitations. Member states must proactively protect migrants and their own nationals against labour exploitation. Regulating the informal sector and migration policies which respond to actual needs rather than arbitrary quotas are essential to achieving this.

Finally, regarding issues concerning Schengen governance, we should welcome the modification of the current Schengen Evaluation System. However, in the context of negotiations on the revised Frontex Regulation, member states seek to ensure that the Schengen Evaluation Mechanism remains an inter-governmental system of peer reviews by ruling out, for instance, participation by Frontex. We believe that evaluating how member state authorities apply the Schengen Border Rules should be independent and subject to democratic oversight, and have called on the Commission to develop a mechanism to do this.³

We hope you will consider our concerns during your discussions. We look forward to continuing our dialogue on these issues.

Yours sincerely,



Dr. Nicolas J. Beger
Director
Amnesty International European Institutions Office



Orsolya Jeney
Director
Amnesty International Hungary

³ See Amnesty International and ECRE, "Briefing on the Commission proposal for a Regulation amending Council Regulation (EC) 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)", September 2010, p15.