



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

Brussels, 21 February 2011
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Dear Minister,

Justice and Home Affairs Council, 24-25 February 2011: Migration challenges following unrest in North Africa

Ahead of the next Justice & Home Affairs Council's anticipated discussions on the migration challenges following recent unrest in Tunisia and other North African countries, we are submitting a series of recommendations on how the EU and member states should respond. Italy has called the recent influx a "humanitarian emergency" and sought the EU's help including from its Borders Agency, Frontex. The EU has agreed to help. We believe that the response by the EU, its agencies and other European countries to Italy's current migration challenges should essentially seek to meet humanitarian needs, rather than merely policing borders and blocking migration flows. This means that boats carrying migrants and asylum-seekers from North Africa must not be pushed back, and anyone who reaches EU territory must be treated with dignity, offered help and access to a fair asylum procedure. We particularly recommend that:

- Patrols of national and international waters should focus on the immediate humanitarian needs of people found at sea; patrol boats should prioritise helping vulnerable people like pregnant women, unaccompanied children and people who need immediate medical treatment. All operations, including those under Frontex, should fully comply with international human rights, refugee laws and standards, and Law of the Sea obligations, eg duty of search and rescue¹
- Everyone should have the chance to claim asylum and be given access to fair and effective procedures. People should be told about their rights. Organisations which explain asylum procedures, principally the UNHCR, must have unrestricted access to migrants and asylum-seekers, wherever they may be accommodated
- Anyone arriving should be housed in open centres. Any decision to restrict individual liberties should only be taken following case-by-case examination of its necessity, proportionality and appropriateness, and only after available alternatives have been considered. Detention should always be the last resort, never automatic. Vulnerable people should not be detained, particularly not children

¹ Frontex operations are also bound by the 2010 Guidelines for operations at sea. See Council Decision supplementing the Schengen Borders Code regarding surveillance of maritime external borders in the context of the operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders, [2010] OJ L 111/20.

- There should be effective safeguards to ensure that, for states to comply with human rights and refugee law, people are not summarily expelled or otherwise removed before they have an effective opportunity to challenge their removal if they wish

EU countries should share the responsibility for providing help to people rescued at sea or who reach Italian shores, whenever the situation unfolds in a way that makes efforts of the Italian authorities insufficient.

We would be concerned to see any response by the EU and other European countries which focused on policing and which involved operational initiatives, particularly by Frontex, which sought to prevent people from arriving. Any such response would fail to tackle the underlying causes of migration, which is mostly driven by political instability and huge inequality. When control-based operational initiatives shut off migratory routes, people who want to migrate are likely to take other, often more dangerous, routes and increasingly fall into the clutches of smugglers and traffickers.

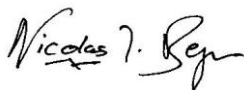
The EU and its member states should comprehensively review their approach to migration challenges, starting by assessing the human rights impact of current policies to counter irregular migration. The EU should particularly ensure that there is greater coherence between external and internal policy when seeking the cooperation of third countries of origin and transit in managing migration. This should accord with the principles inspiring the EU's external action.² The tendency by the EU and its member states to engage third countries to control the movement of people to Europe is incompatible with EU values. Restricting free passage also contravenes the right to seek and enjoy asylum and the right to leave one's own country.

We believe the EU should take a better and more comprehensive approach to migration which considers all aspects of irregular migration. This approach should be based particularly on the following:

- Human rights conditionality when engaging with third countries to control irregular migration
- Guaranteeing access to asylum and full respect for the principle of *non-refoulement*
- Tackling the root causes of migration by supporting social and economic development
- Renewing in-depth talks on developing credible and accessible systems for legal migration to the EU

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

Yours sincerely,



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² See Treaty on the European Union, Article 21.1: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law."