



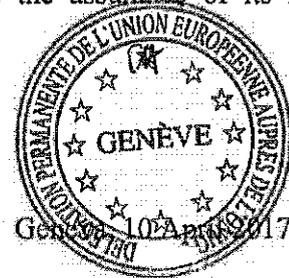
**EUROPEAN UNION**  
Permanent Delegation to the United Nations Office  
and other international organisations in Geneva  
**Chargé d'Affaires**

## NOTE VERBALE

The Permanent Delegation of the European Union to the United Nations and other international organisations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and thanks for the Joint Communication from OHCHR Special Procedures of 2 February 2017 sent by the Working Group on Arbitrary Detentions, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The Joint Communication was addressed to Mr Donald Tusk, President of the European Council, Ms Federica Mogherini, High Representative of the European Union for Foreign Affairs and Security Policy and Mr Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship. The Permanent Delegation of the European Union to the United Nations and other international organisations in Geneva has the honour to transmit their reply.

The Permanent Delegation of the European Union to the United Nations and other international organisations in Geneva takes this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurance of its highest consideration.



### Annex.

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## ANNEX

We would like to thank the Working Group on Arbitrary Detentions, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for the Joint Communication of 2 February 2017.

The European Union is founded on the values of respect for human rights, freedom, democracy, equality, the rule of law and respect for human dignity. Respecting and promoting the right to asylum and protecting the asylum-seekers is central to the Union's efforts to build an area of freedom, security and justice.

The European Union has put in place the tools needed for a comprehensive migration management system, in full respect for fundamental and human rights, both internally and externally and which can function in times of normal and in times of high migratory pressure. Better management of migration while respecting human rights standards has been a fundamental principle in all our efforts to address the migration crisis.

Our priorities have been and remain ensuring safety and dignity, saving lives and providing protection to those in need of protection, managing migration in order to reduce irregular flows and prevent dangerous journeys, while also enabling migrants to stay closer to home and helping the development of third countries to address the long term root causes of migration through economic development, job creation and sustainable development.

In 2015, in response to the increased migratory flows crossing the Mediterranean, the European Union agreed the European Agenda on Migration. Action to prevent further human tragedies was at the core of the Agenda. In the short term, amongst other measures, additional funding was provided to European Border and Coast Guard Agency, the role of Europol was strengthened, Common Security and Defence operations were launched in the Mediterranean, a hub to address a key transit point in Niger was established, and a relocation system for asylum seekers was designed. To better manage migration in the longer term, the European Agenda established four pillars building on the Global Approach to Migration and Mobility (GAMM): reducing incentives for irregular migration, securing external borders to save lives, strengthening the common asylum policy and developing a new policy on legal migration. The European Agenda on Migration prioritizes respect for human rights across each pillar of action.

In November 2015, European and African Heads of State or Government meeting at the Valetta Summit on Migration recognised that migration is a shared responsibility for countries of origin, transit and destination, which needs to be managed in partnership. They committed to an elaborate action plan that aimed at addressing the root causes of irregular migration and forced displacement, enhancing cooperation on legal migration, reinforcing protection of

migrants and asylum seekers, preventing and fighting irregular migration, human trafficking and migrant smuggling and enhancing cooperation on return, readmission and reintegration. The EU Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa was launched in 2015. It initially mobilised EUR 1.8 billion, mainly from the European Development Fund. The overall Valetta approach was confirmed at the Senior Officials meeting in Valetta on 8-9 February 2017.

Building on the spirit of shared responsibility and partnership and the result-oriented way of working of the Valetta Summit, the EU proposed the Partnership Framework for migration in June 2016. Together with a group of priority countries (Ethiopia, Mali, Niger, Nigeria and Senegal), the EU has developed a cooperation which aims to define priorities and clear results in full partnership, tailored to the circumstances of each country. The approach also inspires relations beyond the five priority countries. With the Partnership Framework approach, migration was embedded in EU foreign policy, making use of all available instruments, policies and tools to develop in partnership a bilateral political agenda to contribute to third countries' development, encouraging a sustainable social and economic model and refocusing the EU's support to development in order to tackle the root causes. To support this approach further an ambitious and innovative European External Investment Plan (EIP) was proposed, dedicating EUR 3.35 billion from the EU budget and the European Development Fund to target the mobilisation of up to EUR 44 billion of investments to help create opportunities, with tackling the root causes of migration.

The "Third Progress Report on the Partnership Framework with third countries under the European Agenda on migration" from the Commission to the European Parliament, the European Council and the Council of 2 March 2017 reflects a renewed focus on the Central Mediterranean route. This follows up the Joint Communication of the European Commission and High Representative of the Union for Foreign Affairs and Security Policy to the European Parliament, the European Council and the Council: "Migration on the Central Mediterranean route – Managing flows, saving lives" of 25 January 2017 and sets out the first steps to implement the actions agreed by the members of the European Council in the Malta Declaration on the external aspects of migration of 3 February 2017, notably measures to save lives, step up the fight against smugglers and traffickers, protect migrants and improve migration and border management, in close cooperation with North African countries, and in particular with Libya.

Human rights are at the core of all these actions, from training of coast guards to working to improve conditions for migrants in *Libya*. The European Union is engaging the Libyan authorities in a continuous dialogue, and is also closely working with international partners, in particular with the International Organisation for Migration and the Office of United Nations High Commissioner for Refugees to improve the living conditions in detention centres for migrants, with a particular attention to vulnerable persons and minors. The protection of children has been embedded in all aspects of the European migration policy. On 6 March 2017, the EU adopted revised EU Guidelines on the Promotion and Protection of the Rights of the Child. These Guidelines set out the EU's overarching strategy to strengthen efforts to ensure every child is reached by EU policies and action, in particular the most marginalised,

by promoting a systems-strengthening approach. They also underline the importance of a rights-based approach, encompassing all human rights, and how it can be operationalised.

Migration, refugee and asylum issues feature strongly in the *EU Action Plan on Human Rights and Democracy (2015-2019)*. Objective 24 of the Action Plan focuses on migration, smuggling of migrants and asylum policies as well as trafficking in human beings and outlines concrete actions being implemented by the European Commission, EEAS, and EU Member States in this regard.

Migration is a global challenge and a shared priority for the EU and an integral part of the EU's dialogue with partners. The "*New York Declaration for Refugees and Migrants*", adopted in September 2016, provides for an overall political framework, based on the principles of global solidarity and responsibility-sharing among all actors involved. The EU stands behind the Declaration as an excellent and balanced basis for collective, multilateral action, promoting the obligation to fully protect the human rights and fundamental freedoms of all migrants, regardless of their status and ensuring that human rights are at the centre of all policies. The EU actively continues its engagement in the development of the future UN Global Compacts for Safe, Orderly and Regular Migration and UN Global Compact on Refugees. The Office of the United Nations High Commissioner for Human Rights (OHCHR), the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR) are regularly invited to the Council preparatory bodies to present their views on further elaboration and co-ordination in the development of the Compacts.

Please see below our further observations on the matters you have raised in your letter.

***1. Please provide all information or additional comments in relation to these allegations***

We are aware of the allegations mentioned in the Joint Communication from OHCHR Special Procedures of 2 February 2017 and are gravely concerned about them.

We would like to point out at the outset that the Joint Communication of the European Commission and the High Representative to the European Parliament, the European Council and the Council: "*Migration on the Central Mediterranean route – Managing flows, saving lives*" of 25 January 2017, to which the Joint Communication from OHCHR Special Procedures of 2 February 2017 refers, identifies key operational actions that can have direct impact and focuses on those which can be set in motion in a relatively short period of time, targeting the various stages along the Central Mediterranean route. All these actions and projects include a cross-cutting human rights dimension.

Regarding the conditions in *detention centres*, we are aware of the appalling human rights conditions in these centres in Libya. Addressing these conditions with a view to meeting international human rights standards is central to all the EU's work with the Libyan authorities, to counter irregular migration and address the needs of migrants in Libya, with a particular focus on those in detention centres. The EU has also stepped up co-ordination with EU Member States and the UN on human rights and migration issues. Furthermore, it

regularly consults with local and international non-governmental organisations (NGOs) and civil society organisations active on the ground on migration issues.

The Joint Communication of 25 January underlines the EU's commitment to work with the Libyan authorities and international organisations including IOM and UNHCR to ensure that detention centres provide adequate conditions in line with human rights standards. Alternatives to detention should be further developed, in particular for women and minors, working closely with international organisations.

***2. Please provide information on the measures and precaution taken to ensure that any agreement signed with the Government of Libya is in compliance with European Union Member States' obligations under international law. In particular, to ensure that migrants intercepted at sea will be taken to places of safety, in accordance to international human rights obligations and standards, particularly the principle of non-refoulement.***

We recall that all EU Member States are Parties to the Geneva Convention of 1951, which enshrines the principle of non-refoulement and as Parties to this Convention the EU Member States are under the obligation to respect this principle as a matter of international law.

In accordance with Article 78 of the Treaty on the Functioning of the EU (TFEU), the EU common policy on asylum, subsidiary protection and temporary protection must be in accordance with the Geneva Convention of 1951 and the Protocol of 31 January 1967 and the Union strictly implements this obligation. In addition, the principle of non-refoulement is enshrined also in Articles 18 and 19 of the Charter of Fundamental Rights of the EU and, therefore, the EU institutions, bodies, offices and agencies, as well as the EU Member States when implementing EU Law, must respect this principle on that basis as well.

The Joint Communication of 25 January 2017, to which the letter refers, does not foresee the return of asylum seekers to Libyan shores by EU Member States or by Union – led operations and cannot be described neither directly nor indirectly as undertaking acts of refoulement. The EU is supporting Libya to fulfil its international law obligations, including under the UN Convention against transnational organised crime. Therefore, the implementation of the measures envisaged in the Joint Communication of 25 January 2017 does not give rise to any shortcomings in the application of the principle of non-refoulement by the EU Member States and/or by the Union and is fully in line with international law and EU Law.

***3. Please explain whether any analysis and/or consultation has been undertaken to assess the impact such a plan of action has on the human rights of vulnerable migrants, asylum seekers, refugees as well as trafficked persons and those at risk of trafficking from among them. Please share the outcome of any such analysis or consultation.***

The set of measures proposed in the Joint Communication of 25 January 2017 are aimed at producing a positive impact on the situation of all the migrants in Libya, and most particularly of those belonging to vulnerable categories or in need of international protection, notably because they are expected to contribute, in Libya, to enhance the possibility for IOM and

~~UNHCR to have access and deliver their assistance to these persons, and to disrupt the criminal networks of smugglers and traffickers of which these persons become victims.~~

While developing and implementing the mentioned policy documents, the EU is constantly and closely engaging with different stakeholders at various level, which include also discussions on possible human rights implications.

The European Commission services and the European External Action Service are in constant dialogue with partners from civil society whose expertise is essential in helping find ways to better promote human rights throughout EU's migration policy. The High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission Federica Mogherini recently met with a group of human rights defenders active on Libya and carefully took note of discussed human rights related issues. In 2016, the EU continued its support for human rights defenders and started a project financed under the European Instrument for Democracy and Human Rights, aiming to reinforce the capacity of NGOs working in the field of human rights in Libya.

***4. In this regard, please share the European Commission's strategy with respect to the assessment of human rights implications of any migration management programmes and policies that the European Union might implement, renew or reinforce in coordination and partnership with the Government of Libya.***

Protection of human rights is enshrined in the founding Treaties of the European Union. As provided for in Article 21 of the Treaty on European Union, the Union's action on international scene shall be guided by, inter alia, the principles of universality and indivisibility of human rights and fundamental freedoms and respect for human dignity, as well as that the Union shall define and pursue common policies and actions and shall work for a high degree of cooperation in all fields of international relations in order to, inter alia consolidate and support human rights. All measures undertaken by the Union in the field of migration are in full respect of these provisions. In elaborating EU financial instruments, programmes and individual projects, the human rights dimension is always taken into account.

The following programmes have been funded by the EU to support Libyan authorities in assisting, protecting and increasing the resilience of migrants and of host communities and they are directly addressing protection of human rights of migrants:

- Support to right-based migration management in Libya: the International Federation of Red Cross and Red Crescent Societies (IFRC) is implementing a EUR 6 million project to improve migrants' living conditions, including in migrants' retention centres.
- Repatriation assistance for vulnerable migrants stranded inside Libya and stabilisation of communities in southern Libya: the EUR 3.5 million programme implemented by IOM started in May 2016 and aims to provide alternatives to irregular migration across the Mediterranean and to foster community stabilization and good coexistence of displaced, migrants and host communities in the South of Libya (Sabha and Qatrun). Another

component of the project focusses on the rehabilitation of community infrastructure through small grant facilities, and provision of short term employment opportunities for host, migrant and IDP communities.

- Regional Development and Protection Programme for North Africa – under the Asylum, Migration and Integration Fund (AMIF) 2015 Work Programme: two projects of EUR 2.247 million under a grant agreement with the Italian Ministry of Interior, implemented by IOM and UNHCR. The key elements of these projects include training of the Libyan Coast Guard for procedures after the disembarkation of migrants, direct assistance to migrants, refugees and asylum seekers present in or disembarked on Libyan shores, and the rehabilitation of selected detention centres. Under the AMIF 2016 Work Programme, an additional envelope of EUR 7.5 million is foreseen for the Regional Development and Protection Programme for North Africa, including Libya.

- A programme implemented by a consortium led by the Danish Refugee Council of EUR 5.9 million has begun in early 2017, with the objective to improve the protection and the resilience of refugees, migrants, including in detention centres, IDPs and host communities, and to pilot an 'alternative to detention' initiative.

- The EUR 20 million programme "Supporting protection and humanitarian repatriation and reintegration of vulnerable migrants in Libya" has been approved on 16 December 2016 and will assist migrants rescued at sea in Libyan territorial waters and disembarked in Libya; improve protection and address the most urgent needs of migrants in detention centres and host communities; scale up repatriation and reintegration in the home countries of vulnerable migrants stranded in Libya, with a first target of 5.000. It will be mainly implemented by IOM. A EUR 3 million Protection Fund will allow for a swift response to the needs of migrants, through allocation of grants to civil society organisations.

- Humanitarian programmes funded by the Humanitarian Aid Regulation (HAR), which benefit populations affected by conflict, also target migrants to that extent that they are part of such populations (total funding for 2016 for the overall humanitarian response in Libya amounted to EUR 10.8 million).

An important part of the EU's approach is to support close cooperation with international organizations, such as IOM, UNHCR, UNDP and UNICEF, all of whom operate in line with human rights standards and international humanitarian law.

***5. Please provide information on existing mechanisms to promote capacity-building and support search and rescue operations conducted by Libyan authorities under already existing partnership framework approaches, as well as their respective human rights implications assessments, in accordance to the European Union member states' obligations under international law.***

As indicated in the reply to Question No 2, the EU is providing Libya with the means to fulfil its international law obligations under the UN Convention against transnational organized crime, in particular to its Protocol to Prevent, Suppress and Punish Trafficking in Persons and that our actions help Libya to fulfil its obligations under this Convention.

Since October 2016, as a supporting task, EU Naval Force (EUNAVFOR MED) operation SOPHIA (hereinafter ENFM<sup>1</sup>) has been assisting in the development of the capacities and in the training of the Libyan navy and coastguard. This includes training of navy and coastguard personnel in law enforcement tasks at sea, with a focus on disrupting migrant smuggling/human trafficking and enhancing the Libyan capability to perform coastguard functions and search and rescue activities to save lives in Libyan territorial waters.

The training programme includes an important human rights/refugee law component, which is tailored to the needs of the Libyan navy and coastguard and adapted to the unique operational scenario of the Central Southern Mediterranean. The overall approach is that of presenting smuggled and trafficked individuals as “human rights holders” vis-à-vis States as “duty bearers”, so that the rights of the former correspond to the obligations of the latter under international human rights and refugee law.

Training in human rights and refugee law is provided by UNHCR, significant support is also provided by IOM. The number of ENFM partners involved in training activities is increasing. Recently, EUNAVFOR MED operation SOPHIA invited OHCHR to enhance its cooperation in practical ways.

In complementarity with EUNAVFOR MED, a training of the Libyan Coast Guard is also ongoing since 2013 in the framework of the EU Seahorse Mediterranean (project funded by the European Commission) on various subjects, including maritime training, search and rescue, and respect of migrants' human rights.

***6. Please specify how trainings to Libyan authorities address the human rights of migrants, victims of trafficking and those at risk of trafficking.***

The training by leading actors in the fields of human rights and refugee law is aimed at improving the capacity of Libyan navy and coastguard personnel in providing assistance to individuals rescued at sea, so that the respect of human rights in their duties may become a central part of the trainees' professionalism and daily service, applying human rights-based approach to address migrant smuggling and human trafficking.

Specific lectures, followed by practical exercises and drills, are devoted to topics such as human rights law norms, principles and standards (e.g. the prohibition of torture and other inhuman or degrading treatment, the respect of the right to life and right to liberty in law enforcement activities at sea, the principles of equality and non-discrimination, universality of all rights and the rule of law, etc.). Other topics covered include differentiating between migrant smuggling and human trafficking, the existence of vulnerable persons and groups and the necessity to ensure a higher level of protection to these people (including to reduce the risk of trafficking of such individuals once disembarked ashore), and the non-criminalization of victims of human trafficking and smuggled people (solely on the grounds of having been smuggled).

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<sup>1</sup> ENFM's mandate, provided for in EU Council Decision (CFSP) 2016/993, is consistent with paragraph 2 of UN Security Council Resolution 2312 (2016) and acknowledged in the preamble of the same Resolution

*7. Please provide information regarding how the proper identification of all potential protection needs and respect for international and human rights law – particularly with regard to the principle of non-refoulement – are taken into account when carrying out the plan of action proposed in the Communication of 25 January 2017.*

The main objectives guiding the adoption of the Joint Communication of 25 January 2017 are to save lives at sea and reduce the irregular migration flows. As indicated in the reply to Question No 2, the measures foreseen in the Joint Communication of 25 January 2017 rather relate to enhancing Libya's capacity to control its Southern border and to increasing Libya's capacity to control its territorial waters. Therefore, the implementation of the measures envisaged in the Joint Communication of 25 January 2017 does not give rise to the application of the principle of non-refoulement by the EU Member States and/or by the Union and is fully in line with international law and EU Law.

In addition, as mentioned in the Joint Communication of 25 January 2017, since the end of 2014, the Triton and Sophia Operations have resulted in more than 200,000 migrants having been rescued at sea in the full respect of human rights and international law. The UNHCR plays an important role in the identification of persons in need of international protection and up to date there has not been a single case of refoulement from the EU.

The Joint Communication of 25 January 2017 identifies the protection of migrants, support in assisted voluntary returns and resettlements as a key targeted action. In this regard the EU will support, in cooperation with Libyan authorities, international organisations including IOM and UNHCR in addressing the situation of the persons in need of international protection, including the possibility of resettlement.