

(SJ)

From: LADENBURGER Clemens (SJ)
Sent: Tuesday 26 June 2018 15:19
To: [REDACTED] (HOME)
Cc: MORDUE Simon (HOME); MUSCHEL Laurent (HOME); [REDACTED]
Subject: RE: disembarkation note

Dear [REDACTED],

Herewith our comments to the paper.

We remain at your disposal.

Regards,

Clemens



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From: [REDACTED] (HOME)
Sent: Tuesday, June 26, 2018 1:06 PM
To: LADENBURGER Clemens (SJ) <Clemens.Ladenburger@ec.europa.eu>; [REDACTED]
Cc: MORDUE Simon (HOME) <Simon.MORDUE@ec.europa.eu>; MUSCHEL Laurent (HOME) <Laurent.Muschel@ec.europa.eu>; [REDACTED] (HOME)
Subject: disembarkation note

<< File: disembarkation note.docx >>

Dear Clemens and [REDACTED],

As discussed please find attached a revised note on disembarkation. The note needs to be sent to the President's cabinet today.

Grateful therefore for your feedback asap.

Many thanks,

[REDACTED]

Follow-up to the Informal Meeting of 24 June 2018
The legal and practical feasibility of disembarkation options

This note presents a first assessment of the legal and practical feasibility of the three different scenarios on disembarkation presented at the Informal Meeting of 24 June 2018. Under international maritime law, people rescued at sea must be disembarked at a place of safety. International law sets out elements of what a place of safety can be and how it can be designated, without excluding the possibility of having regional arrangements for disembarkation.

Scenario 1: a regional arrangement for disembarkation (and setting up disembarkation centres) in third countries for migrants rescued in the territorial sea of a third country or in international waters

- **Legal feasibility:** Disembarkation in a third country where the Search and Rescue is carried out in the territorial sea of that third country by its coast guard or by other non-EU State or other vessel, engages **only** the responsibility of the third country in question.
If the search and rescue occurs in international waters and involves an EU State's **flag** vessel (including in the context of an European Border and Coast Guard sea operation) disembarkation can still take place in a third country, provided that the principle of *non-refoulement* is respected. To ensure that the individuals would have access to a procedure, which could take the form of a local solution **offering protection** or access to resettlement, centres should be established in third countries under the auspices of UNHCR. Under this scenario, individuals rescued would not acquire the right to access the asylum procedure in an EU Member State.
- **Practical feasibility:**
 - no need for changes in EU legislation; however swift adoption of the Union Resettlement Framework would be useful as flanking measure; increase resettlement efforts and target them to respond to the needs of the disembarkation centres would in any event be required;
 - need to identify partner third countries; secure the agreement of the third country by offering financial and other possible incentives;
 - need to invest in further developing the capacity building of third-country coast guard;
 - need to make sure that the centres are set up under the auspices of UNHCR;
 - need to facilitate voluntary return to the country of origin in close cooperation with IOM.

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Scenario 2: a regional arrangement for disembarkation (and setting up disembarkation centres) in Member States for migrants rescued in the territorial sea of a Member State or in international waters

- **Legal feasibility:** Search and rescue operations carried out in the territorial sea of a Member State engage the responsibility of Member States, under Union law. In particular, rescued migrants would acquire **a right to access the asylum procedure in a Member State**. Union law on asylum provides for simplified procedures enabling a swift handling of asylum applications at the

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external borders , under certain conditions in order to decide the admissibility of an application or the substance in cases manifestly infounded , with possibilities of detention where duly justified [detention can never be systematic, not even under the new Procedures Regulation]. This applies as well in the case that an EU State vessel is involved in search and rescue in international waters and disembarks rescued migrants on EU territory.

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- **Practical feasibility:**

- o to further streamline procedures at the border, the border procedure may need to be made mandatory in certain cases and provide for a sufficient but limited time period (agreement on the Asylum Procedures Regulation; adoption of Reception Conditions Directive and Qualification Regulation would be useful), while ensuring effective judicial protection.
- o reinforce the "hotspot" approach, notably by:
 - increasing reception/detention capacity at the external borders;
 - ensuring coordinated support by the European Border and Coast Guard Agency and the future EU Asylum Agency to handle identification, registration, screening, fingerprinting, support with the asylum claims and returns,
- o as part of the regional arrangement among Member States, a solution will need to be found for those with well-founded claims/beneficiaries of international protection that will remain in the Union. At the same time, those not in need of protection will have to be swiftly returned to the relevant third countries.

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[Scenarios 1 and 2 are not mutually exclusive – to be made clear in this paper?]

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Scenario 3: External processing of asylum applications and/or the return procedure in a third country

Under this scenario, applicants or irregular migrants would be sent directly to the territory of a third country without any form of processing in the territory of the EU Member States. Such an option has far reaching implications from both a legal and political perspective.

External processing of EU asylum applications

- **Legal and practical feasibility:**

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Externally-located return centres

- **Legal and practical feasibility:** Under the current legal set-up, irregular migrants cannot be returned against his/her will to a country other than his/her own or one which he/she transited through (based on readmission agreement).

