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Dear Wilhelm

I am writing to thank the Presidency for agreeing to Malta's request for an item to be added to next week's JHA Council on the current situation in the central Mediterranean.

As you are aware, over the past weeks, there have been a number of incidents in the central Mediterranean, three of which have received extensive press coverage. Unfortunately, large elements of this coverage have been inaccurate. Equally unfortunate have been the comments made by various personalities based on this inaccurate information.

I am therefore taking this opportunity to give you the facts concerning these three incidents, all of which occurred within the Libyan search and rescue region.

Incident concerning the vessel Budafel - the so called tuna pen incident

The tuna pen in question was situated:

- 62 nautical miles north of Libya;
- 112 nautical miles away from the Italian island of Lampedusa; and
- 120 nautical miles south of Malta.

The incident first came to the Maltese authorities' attention on Friday 24 May at 17:10 hrs. At 17:20 hrs on Friday 24 May (10 minutes after Malta became aware), Libya was informed of this incident in its search and rescue region by both the Maltese Search and Rescue Authorities and the Maltese Ambassador in Tripoli. Libya responded that it would assume coordination of the rescue, later clarifying that it would also send a helicopter with a life raft on board as well as a patrol boat. When later the Maltese authorities asked the Libyan Rescue Coordination Centre to confirm this they stated that a helicopter had already taken off to assist the *Budafel*. In spite of repeated communications from Malta it appears, however, that no action was taken by Libya.

It should be noted that, since the vessel towing the tuna pen was a Maltese vessel, the Maltese authorities had nevertheless repeatedly informed the captain of the vessel that he was duty bound to take the immigrants on board if they were considered to be in distress.

Additionally, without in any way wishing to underplay the hardship suffered by the individuals caught up in this unfortunate incident, it should also be noted that the perception that the marooned migrants were actually in the water during the time-span of the incident is incorrect since they were not in the water but on the walkways of the tuna pen.

The incident concluded by 21:00 hrs on Saturday when all migrants on board the tuna pen had been transferred to the Italian navy vessel *Orione*; reports that the immigrants spent three days on board the pen were therefore also incorrect.

Incident concerning vessel Monfalco

The criticism levelled against the Maltese government regarding a second incident involving the Spanish vessel *Montefalco* is also based on incorrect information.

In this case, the Spanish vessel rescued a number of individuals 91 nautical miles north of Libya. Again, this is well inside the Libyan search and rescue region.

Statements continue to be made by representatives of the Spanish government that these persons had to be brought to Malta which was neither responsible for the search and rescue region nor geographically closer to the location of the incident. Malta cannot accept these statements.

Incident concerning the vessel La Motte Piquet

It is patently not true that the Maltese authorities refused to accept corpses that were picked up by the French military vessel *La Motte Piquet*. Indeed, Malta's Foreign Minister personally called the French Ambassador in Valletta making it clear that Malta was ready to accept the corpses even if Libya would not co-operate in that respect. This was equally an issue of human dignity.

Again, it should be noted that the corpses were picked up well within the Libyan search and rescue region and, to be precise:

- 76 nautical miles north of Libya;
- 101 nautical miles away from the Italian island of Lampedusa; and
- 105 nautical miles south of Malta.

Responsibilities

The claim that Malta should take responsibility for rescued persons outside its search and rescue region apart from being legally incorrect places also an unfair and unreasonable burden on Malta. This is not merely a "legal bureaucratic argument", as Commission Vice-President Franco Frattini called it in *La Repubblica*, but it is an issue that, as we are all aware, has wider ramifications.

The obligation to save lives at sea in the Mediterranean is the responsibility of all countries bordering this sea and not only of EU Member States. In this respect, my authorities believe it imperative that all countries be called upon to honour their international obligations.

Over the past fifteen days alone Malta has rescued and brought ashore 237 illegal migrants in ten separate incidents. Amongst these I would like to highlight an incident 84 nautical miles south of Malta where the Maltese search and rescue services conducted a perilous night operation saving the lives of 24 individuals who were in the sea following the capsizing of their boat.

Despite its limited resources, Malta's track record of saving those in danger clearly demonstrates that it has fulfilled its international obligations to the full. Furthermore, notwithstanding the size of its search and rescue area – at 250,000 square kilometres it is larger than the land area of the United Kingdom – Malta has managed its coordination responsibilities with the utmost professionalism and expertise. Notwithstanding this, there have been calls for Malta to take on responsibilities which belong to others.

Safety of Life at Sea (SOLAS) and the Search and Rescue (SAR) Conventions

In a press conference given by Commission Vice-President Frattini on 6 June 2007 it was stated that Malta had not ratified the Safety of Life at Sea (SOLAS) and the Search and Rescue (SAR) Conventions. This is totally incorrect.

First of all, it must be stressed that Malta, as a maritime nation, has always accepted all the international rules and conventions relating to the rescue of life at sea. Malta signed the SAR Convention in 2002 but, in reality, it had been fulfilling all its obligations before that. Malta has also been a signatory of the SOLAS convention for the last 21 years, that is, since 1986. As a result, Malta has accepted responsibility for the management of rescue operations within its search and rescue region; this includes the established rule that the nearest vessel to the location of a vessel in distress should intervene.

What has probably given rise to Mr Frattini's remark on this issue are the recent amendments to the SOLAS and the SAR Conventions. These provide that "responsibilities, including arrangements for a place of safety for survivors, fall primarily on the contracting governments responsible for that region". It is only this recent amendment, introduced a couple of months

ago, that has not been accepted by Malta as it has always held – and continues to hold – that persons rescued at sea should be disembarked at the nearest safe port; since only this will ensure timely and effective assistance to those rescued.

It is, of course, important to remark that, in any case, this matter has little to do with what has happened in recent weeks since all the incidents referred to above occurred outside Malta's search and rescue region.

Looking Forward

While registering my authorities profound disappointment at the ill-judged way the above matters have been handled, we prefer to look ahead and try and find a way forward to ensure that such incidents will not recur.

At the forthcoming JHA Council, the Deputy Prime Minister and Minister of Home Affairs therefore intends to propose an agreement among EU Member States by which illegal immigrants saved at sea by EU registered vessels in the search and rescue region of a non-EU state which is refusing to assume its responsibilities would be shared between EU Member States on a strictly proportional basis and according to a pre-accepted system. He will also propose that the UNHCR be approached by the Commission so that the number of any immigrants so received would be deducted from the immigrants / refugees quota which such receiving EU country might have agreed with UNHCR.

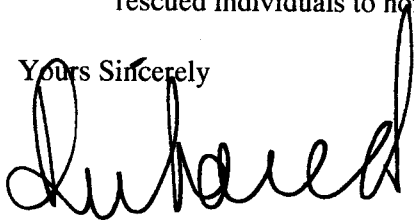
He believes that this arrangement should not only apply to the Mediterranean but to any sea which lies in the European Union's neighbourhood and is confident that it will be received with satisfaction by the other Member States, particularly those that have shown a special interest in the events that have occurred in recent weeks.

In conclusion please allow me to make two further remarks:

- whilst highly appreciative of the participation by certain Member States in the in the upcoming Nautilus II operation in the central Mediterranean, my authorities remain convinced that an improved commitment and active participation by all Member States would enhance the successful outcome of this operation. It is also Malta's belief that had a FRONTEX operation already been in place the incidents referred to might have been avoided;
- while Malta has been targeted for criticism following these incidents, not one single voice has called on the country which was internationally bound to coordinate search and rescue operations in the two incidents as well as to receive the

rescued individuals to honour its obligations.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Richard Cachia Caruana', written in a cursive style.

Richard Cachia Caruana
Ambassador
Permanent Representative

Copy: Permanent Representatives of Member States to the European Union
Jonathan Faull, Director General, Justice, Freedom and Security Directorate
General