The ongoing deadlock of EU Member States (MS) on the reform of the Common European Asylum System (CEAS), and the Dublin Regulation in particular[1], has led to a "disembarkation crisis" in the Central Mediterranean, which has made disembarkation of rescued people conditional to reaching ad hoc agreements based on the will of single MS.

This practice is in contrast with international maritime law and human rights law, in particular with regards to the obligation set by search and rescue regulations to bring shipwrecked people to a "place of safety" "without any delay". The resulting infringement of human rights has led to several appeals at the ECHR (for the Diciotti case, August 2018 and the Sea-Watch case, January 2019), denouncing inhumane and degrading treatment and deprivation of liberty. The rescues carried out by vessels chartered or owned by NGOs in 2019 have resulted in an unreasonably prolonged presence of the rescued people on board, for up to 19 days, while a group of MS engaged in voluntary ad hoc responsibility-sharing arrangements, including France, Spain, Portugal, Malta, Italy, Germany, Luxembourg, Belgium, the Netherlands, Ireland, Romania and Norway.[2]

Although these arrangements are welcome expressions of responsibility, questions regarding the compliance with asylum standards remain and must be addressed immediately. If MS do not develop a temporary relocation scheme which is compliant with international maritime and human rights law, this crisis will undoubtedly worsen throughout 2019.

As shown by the JHA Meeting at the beginning of February in Bucharest, several MS are imposing harsh conditions on relocation agreements. These conditions have only been formulated during internal meetings like the JHA Meeting. As these conditions are not public, it is nearly impossible for national parliaments to monitor whether past commitments have been abided by. The lack of comprehensive and reliable figures and follow-up on the distribution of disembarked persons results in non-transparent relocation practices, as countries may often receive fewer people than originally pledged. Furthermore, current ad hoc mechanisms with little accountability are maintaining unequal treatment with regards to responsibility-sharing and further the risk of incentivising more Mediterranean countries to use port closures as leverage to realise relocation. Moreover, there are reports of disembarked persons being held in detention without grounds and being denied access to asylum.

1 The European Council is still blocking the reform of Dublin III, ignoring a proposal by the EP which was already submitted in 2017.

2 Following the informal JHA Meeting in Bucharest on 7 and 8 February, the following MS are generally willing to be part of a temporary relocation solution so far: LUX, GER, FRA, SPAI, NETH, BEL, MLT, SLOW, FIN, GRE, POR, CYP.

In order to meet these concerns, Sea-Watch wishes to raise several legal and political guidelines regarding future relocation agreements:

1. **Specific protection and human rights oriented Criteria for Relocation in full compliance with international human rights law, refugee law and EU asylum law**
   Countries of destination must be defined by taking into account individual circumstances as family links and language skills, as well as individual vulnerabilities and vulnerable groups including victims of violence, unaccompanied minors, disabled people, potential victims of trafficking and (sexual) exploitation in Europe. Furthermore, any relocation scheme has to ensure that the agreement does not leave a gap of responsibility, leaving individuals in a bureaucratic grey area in which no MS is taking responsibility for their applications.

2. **Compliance with international maritime law (closest port of safety)**
   As required by international maritime law, individuals shall always be disembarked at the closest port of safety (POS)[3]. When determining a POS, international human rights law has to be taken into account[4]. Therefore the reloction mechanism cannot include disembarkation in any North African country.

3. **Swift relocation after disembarkation**
   Every MS shall relocate people immediately. Some countries of disembarkation have arbitrarily deprived rescued people of their liberty and obstructed their right to seek asylum[5]. The existing EU acquis is clear on national authorities' duty to register and process asylum applications and to offer adequate reception conditions to individuals seeking protection. These obligations are set out in legally binding EU instruments and must be complied with.

4. **Integration of merchant vessels**
   The temporary relocation agreement should not only consider people rescued by NGO vessels but also include those rescued by merchant and military vessels. Such an agreement would impede further cases of non-assistance and illegal push-backs by merchant vessels to Libya. By guaranteeing a POS for all vessels, including commercial and military vessels, incidents like the illegal return of rescued people to Libya by merchant vessel Asso Ventotto[6] will be prevented. Additionally, merchant vessels would not need to fear crossing waters close to Libya or be prohibited from entering European ports.

5. **Accountability mechanisms to monitor implementation**
   Relocation agreements need to be followed up consistently and rigorously to ensure that MS are complying with their commitments. In order to ensure that such accountability activity can take place, it is vital that relevant agreements and conditions imposed by specific MS are made public.

3 Art.98 UNCLOS, SAR Convention 1979, Annex, Chapter 1, Para 1.3.2

4 IMO Resolution MSC.167(78)

5 Malta: disembarked persons are detained in the Marsa Initial Reception Centre without being allowed to lodge an asylum application and people remain detained in the facility without holding asylum seeker status until their transfer to other countries. Spain: people have only been given the opportunity to indicate whether or not they wish to be transferred to France, without the possibility of prior access to the asylum procedure or of receiving sufficient information on the process.

6 On 30 July 2018, an Italian vessel disembarked people at the coast of Libya.

6. **No pre-screenings**

   Pre-relocation selection practices such as pre-screenings of individuals by MS harm the principle of non-discrimination of refugees as laid down in international law - selection of persons eligible for relocation means in practice that the persons concerned may be unable to access the rights and benefits they are entitled to under the EU asylum acquis. Individuals must promptly be granted access to an asylum procedure, undergo vulnerability and best interests assessments, and benefit from the right to remain on the territory, as well as the right to adequate reception conditions such as accommodation and health care.

   In addition, pre-screenings risk the proliferation of so called hotspots, as the country of arrival would need to create centers for such pre-screenings to take place in. Such centres or hotspots cannot guarantee a sufficient and detailed examination of the individual cases and therefore violate the rights of the individual.

7. **Relocation as an accompanying measure**

   Planned relocation agreements should never replace a European agreement on the CEAS reform but must be seen as an accompanying measure of temporary nature, responding to the current emergency situation.

8. **Integration of Municipalities**

   In 2018, more than 40 cities across Europe, including in Germany, Spain, Italy, have declared themselves as “Safe Harbors” or have directly declared their ports open to receive rescued people, stating that they would accept more individuals than officially allocated. A relocation agreement should allow endorsement and commitments from cities and civil society organisations.