

The logo for SOS HUMANITY, featuring the words "SOS" and "HUMANITY" in a bold, sans-serif font, enclosed within a yellow rectangular border with a double-line effect.

Photo: Arez Ghaderi

**No Delay in the Disembarkation  
of Survivors!**

## Position Paper:

### Refugee Rights Must Be Respected

#### Survivors are exposed to avoidable risks

The law of the sea is clear: a rescue only ends when survivors go ashore in a place of safety.<sup>1</sup> Nevertheless, those rescued at sea in the central Mediterranean often have to endure days to weeks on board NGO rescue ships. They are regularly exposed to avoidable risks because the responsible European coastal state, Italy, delays or refuses to let them land. It is both illegal and inhumane to delay people's access to fundamental rights, such as the fulfilment of basic needs and urgently needed medical and psychological care. Many have experienced years of flight, imprisonment and inhumane treatment in Libya as well as the imminent risk of death at sea.

From the moment when Italy closed its ports to people rescued at sea in 2020 until November 2022, there were long waits at sea as it took days to weeks for non-governmental rescue ships to be assigned a safe port.<sup>2</sup> Since December 2022, Italy has usually assigned a port

swiftly, but this is often far away in the north or central part of the country and up to 1,600 km – five days' sail – from the place of rescue.<sup>3</sup>

The Italian government justifies the refusal or delay in disembarking from non-governmental rescue ships those rescued from distress at sea by citing the failure within the EU to share the responsibility for the reception of refugees. Legally, however, there is no connection between these two things. According to international maritime law, it must always be ensured that survivors can go ashore in a place of safety as quickly as possible. Under no circumstances should the fastest

<sup>1</sup> IMO (2004): Resolution MSC.167(78)

<sup>2</sup> SOS Humanity: Rescue Report No. 1 (October 2022), p. 7ff; Brot für die Welt: Civil Society Atlas Focus on migrant defenders (2023), pp. 37-43.

<sup>3</sup> Press release (21.04.2023): SOS Humanity takes legal action against Italy's distant port policy.

possible disembarkation of people be dependent on a settlement between different EU states on distribution.

### Disregard for international maritime law is part of inhumane European asylum policy

European states' failure to fulfil their maritime rescue obligations is part of an EU refugee policy that relies on isolation and deterrence, purposely accepting forcible rejections at the EU's external borders, the violation of refugee law and the deaths of thousands of people fleeing to Europe.

The implementation of the current so-called Dublin system<sup>4</sup> is incompatible with the human rights principles enshrined in EU law and has also proven to be fundamentally dysfunctional. The Dublin Regulation not only leads to an imbalance of responsibility between member states, but also to much additional suffering for people fleeing. The reception conditions in member states at the EU's external borders, such as Malta, Italy and Greece, are in part inhumane<sup>5</sup> and are deliberately kept at a poor standard as a means of deterrence. Refugees also have no say in their choice

of host country. This disregards fundamental rights of protection seekers to freedom of movement, self-determination and family reunification as well as their individual needs.

The agreement of the EU member states for a planned reform of the European asylum system in June 2023, offers no prospects for improvement. On the contrary: by maintaining the first-entry criterion, the responsibility continues to rest mainly on the states at the EU's external borders and the needs of protection seekers are not taken into account. Moreover, the individual right to asylum in the EU is de facto being undermined by tightened border procedures and the expansion of the concept of "safe third countries".

<sup>4</sup> Dublin Regulation III (2013)

<sup>5</sup> See legal decisions of the European Court of Human Rights on the inhumane accommodation of refugees on Lampedusa (J.A. and Others v. Italy, no. 21329/18, 30.03.2023) and Samos A.D. v Greece, no. 55363/19, 04.04.2023); Borderline Europe (2022): Streitpflicht Italien. Nicht-Orte

<sup>6</sup> European Council on Refugees and Exiles (ECRE), 09.06.2023, Editorial: Migration Pact Agreement Point by Point.

## Our Demands to the EU and its Member States

### 1. Those rescued from distress at sea must be allowed to go ashore in a place of safety as soon as possible

The EU and its member states must comply with applicable law and ensure that people rescued at sea can go ashore in a place of safety as quickly as possible. As competent coastal states, Italy and Malta must immediately coordinate and assign a safe port in the immediate vicinity of the rescue ship in accordance with applicable maritime law. Due to their human rights situations, Libya and Tunisia cannot be considered safe places for people rescued at sea in terms of international law. Avoidable delays on the part of the coastal states in the allocation of the port of safety as well as the allocation of distant ports for the disembarkation of survivors are unlawful.

### 2. Sharing of responsibility based on solidarity instead of the Dublin system

The rights of people seeking protection must be respected at all times. In order to ensure the right to asylum in the EU, responsibility needs to be shared across the EU based on solidarity and the needs of refugees. The quick, unburdened solutions put in place for those fleeing from

Ukraine show what is possible when the political will is there.

In order to ensure the **the protection of refugees in the EU**, we call on the EU Commission, the EU Member States and the European Parliament not to adopt the planned reform of the Common European Asylum System. Instead, a new and solidarity-based system is needed with the following premises:

- The **safeguarding of the rights and dignity** of people seeking protection must be the basis and goal of the European asylum system.
- Instead of the Dublin system, the **principle of the free choice of member state** by the person seeking protection should be introduced.
- **Equivalent, humane standards of reception conditions, protection and support services** must apply and be respected in all EU member states.
- **Uniform asylum procedures based on the rule of law** and the individual examination of the asylum application must be guaranteed in all EU member states.

## Our Demands to the German Federal Government

As an influential EU member state, Germany shares responsibility for the protection of refugees at Europe's shared external borders, including in the central Mediterranean. In its coalition agreement, the ruling 'traffic light' coalition has set as its goal the "fair distribution of responsibility and competency for reception amongst EU states".<sup>7</sup> Instead of supporting the current reform proposals, which exacerbate the existing problems of the European asylum system, Germany should work vigorously on a solidarity-based reception of arrivals in the EU that focuses more on the rights and needs of those seeking protection. Until a pan-European solution can be reached that de facto replaces the dysfunctional Dublin system, the federal government must take positive steps to counteract the negative effects of this system.

We demand that the federal government:

1. **Makes voluntary acceptance commitments on a larger scale than before** for refugees who reach the EU's external border states. The needs of refugees should also be taken into account.
2. **Implements its pledges on reception quickly, reliably and transparently.**
3. **Stops supporting the planned undermining of the right to asylum in the EU** through the reform of the Common European Asylum System decided by the Council of EU Interior Ministers in June 2023.

<sup>7</sup> Coalition agreement between SPD, Bündnis 90/die Grünen and FDP (November 2021), p. 141.



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