PRIME MINISTER
AUBERGE DE CASTILLE, VALLETTA, MALTA

8th May 2020

Dear Commissioner,

I would like to refer to your letter dated 5th May 2020, concerning Search and Rescue, the disembarkation of rescued persons and the migration scenario in the Central Mediterranean.

Allow me to kindly assure you that Malta has always been, and shall remain committed to saving lives at sea. Indeed, the competent authority in Malta is coordinating Search and Rescue (SAR) operations on an ongoing basis. It has always, and shall continue, to respond effectively and urgently to any situation of distress at sea of which it becomes aware. Malta has consistently abided by this commitment and by other international obligations, and will continue doing so.

As a front-line State, and one of the smallest Member States of the Council of Europe and the smallest in the European Union, Malta is facing unprecedented migratory pressure as a result of increasing numbers of boat arrivals from North Africa over the last few months. Indeed, the number of arrivals has exceeded 3,400 last year and has already reached 1,201 as at the 6th May of this year. This represents a four-fold increase when compared to 301 arrivals in the same period in 2019. These numbers place considerable pressure on Malta's reception and asylum systems, even in normal circumstances but more so now as we try to control the spread of COVID-19. To put these numbers into perspective, on a per capita basis, the figure for 2019 translates into 486,000 arrivals in Italy, 527,000 in France, 646,000 in Germany, 370,000 in Spain and to 4 million across the EU's member states.

Currently, all migrants residing at Ħal Far centre, which is one of the major open centres in Malta, have had to be quarantined following a cluster of positive cases to COVID-19. Since the beginning of April, the number of positive results for the virus at the Ħal Far centre continued to rise and hence, the 14-day quarantine was extended for another 14 days on the orders of the health authorities in order to limit the transmission of the virus amongst the residents.

In the present circumstances, where Malta has declared a state of public health emergency and closed its ports and airport to passenger traffic, we have a duty and obligation to protect the health of all persons living in Malta, including that of migrants who reached Malta by boat in the last few years. We must take measures to ensure that we do not import nor facilitate the spread of COVID-19 cases. This situation poses additional limitations on our capabilities to take in more migrants. In these circumstances, whilst I appreciate the points and support raised in your letter, Malta needs concrete support and action, particularly by way of relocation of migrants. The situation in Malta is far from easy. My government, even in these difficult circumstances, has ensured and will continue to ensure that the authorities carry out their obligations of coordination in our SAR area. Malta is simply not in a 'de facto' position, at present, to ensure a 'safe place' on Maltese territory to any persons rescued at sea. Such a position has been acknowledged by the European Court of Human Rights when, on the 17th of April 2020, it signified its rejection of the request filed by NGO Repubblika under Rule 39 of the Rules of the Court to "order that the Maltese and Italian Governments reverse their declarations to the effect that their ports are closed/or their countries not places of safety, thus preventing the rescue and disembarkation of immigrants at sea due to Covid-10 circumstances."

I also wish to point out that the 2004 amendments made to the IMO Safety of Life at Sea Convention (SOLAS) and the IMO Search and Rescue Convention provide that persons rescued in the SAR area who are not taken on by any State are to be taken on by the Search and Rescue area State. These amendments challenge the traditional view that the duty of the Search and Rescue State in the Search and Rescue area is only to coordinate rescue operations. The amendments are, however, not binding on Malta, which is not in a position to adopt them and has constantly and persistently opposed them.

In the case of Malta, the obligations that are binding in terms of the Search and Rescue Convention are those of coordinating rescue operations of ships in distress within Malta's Search and Rescue Area. This position is also in line with the principle that humanitarian aid should be provided as soon as possible.

Conclusively, it is not prudent to publicly express further views as to the specific merits of recent events which you comment upon from "various recent reports about Malta's handling of the situation of migrants in distress at sea", given that the same are subject to a pending criminal inquiry. My Government would like to assure you that full accountability is ensured for situations taken by the competent authority in Malta with respect to migration at sea. Likewise, my Government would like to assure you that Malta, albeit unable to ensure a safe place for disembarkation, has exhausted its duties towards boats in distress.

In these circumstances, I place my trust in the Council of Europe to actively support Malta's call for solidarity which is really the only viable and lasting solution to these problems.

I eagerly await your feedback on an effective concrete plan of action to ensure proper burden-sharing by all Council of Europe member states. Malta believes in a comprehensive approach towards providing concrete solutions to the complexity and challenges of migration at sea. A co-ordinated contribution from all stake holders, including those from civil society, has to offer an effective response to stop people smugglers from continuing their illicit operations of launching migrants northwards aboard unstable and unseaworthy vessels and purposely sending these innocent people out to peril their lives.

I thank you and look forward to working with you on these issues.

Yours Sincerely,

Robert Abela

Prime Minister

Ms. Dunja Mijatović
Commissioner for Human Rights
Council of Europe