



EUROPEAN UNION

Permanent Delegation to the United Nations Office
and other international organisations in Geneva

Head of Delegation

NOTE VERBALE

The Permanent Delegation of the European Union to the United Nations and other international organisations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights.

With the reference to the Communication of 8 August 2017 by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions requesting for clarifications on the situation of migrants and asylum-seekers attempting to cross the Mediterranean, the Permanent Delegation of the European Union to the United Nations and other international organisations in Geneva is herewith transmitting the reply jointly drafted by the European External Action Service (EEAS) and the European Commission (EC) Services in Brussels, to the 5 questions of the Special Rapporteur, Mrs Agnes Callamard.

The Permanent Delegation of the European Union to the United Nations and other international organisations in Geneva takes this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurance of its highest consideration.



Geneva, 19 October 2017

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1. *Please provide any additional information and/or comment (s) you may have on the issue set above*

We thank you for your letter of 8 August 2017.

As repeatedly stated by High Representative/Vice President Mogherini, the European Union's work is beginning to yield clear results on the path towards a system for managing migration – **jointly, sustainably, and in a manner respectful of human rights**. The EU's work continues to ensure safety and dignity, provide protection to those in need of protection, manage migration in order to reduce irregular flows and prevent dangerous journeys, while also enabling migrants to stay closer to home and helping the development of third countries to address the long-term root causes of migration through economic development, job creation and sustainable development.

The EU's first and foremost priority is **saving lives**. Since the start of their operations, EUNAVFOR Med Operation Sophia and Joint Operation Triton combined have saved more than 300, 000 lives in the Mediterranean Sea.

To address the situation along the Central Mediterranean Route, the European Union has put in place a comprehensive set of measures in line with the Joint Communication on the Central Mediterranean Route, 'Managing flows, Saving Lives' (25 January 2017)¹ and the Malta Declaration (3 February 2017²).

The European Council of 22-23 June called for further action highlighting among others that "training and equipping the **Libyan Coast Guard is a key component of the EU approach and should be speeded up**"³. With the Action Plan from 4 July⁴, the Commission followed up this call by identifying specific actions each actor can and should take to implement these commitments.

Migration management is a highly complex phenomenon which requires strong partnership with **international organisations**, such as those of the United Nations system, e.g. the International Organisation for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR). The EU is working with those international organisations, but also with Libyan authorities, to protect the migrants' rights and improve the humanitarian conditions of the migrants inside Libya.

Through the EU support, IOM is notably in charge of providing material support to improve the reception services during the rescue at sea operations. In parallel, IOM and UNHCR are expanding protection and assistance services at disembarkation points, e.g. documentation, primary health care and cash based interventions.

As highlighted by Commission's President Juncker in his State of the Union address of 12 September 2017, **migrants' living conditions in Libya need to be urgently improved**. The EU is in constant contact with our Libyan counterparts to ask them to help the international organisations to have full access to improve the living conditions of the migrants. Alternatives are offered by supporting the

¹https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20170125_migration_on_the_central_mediterranean_route_-_managing_flows_saving_lives_en.pdf

²<http://www.consilium.europa.eu/en/press/press-releases/2017/01/03-malta-declaration/>

³<http://www.consilium.europa.eu/en/press/press-releases/2017/06/23-euco-conclusions/>

⁴http://europa.eu/rapid/press-release_IP-17-1882_en.htm

IOM programme to assist those who want to voluntarily return. More than 8,100 people have been helped since the beginning of the year.

Access to international protection and alternatives to detention should be further developed, in particular for women and minors, including unaccompanied children, working closely with international organisations. In parallel, the EU is working on opening up safe and legal pathways through resettlement – to allow those in need of protection to come to Europe without having to risk their lives in the desert and at sea. Building on the progress achieved in the implementation of the current EU resettlement schemes, the Commission on 27 September called on Member States to offer at least 50,000 new resettlement places for the most vulnerable persons in need of international protection over the next two years. The Commission has set aside €500 million from the EU budget to support Member States' efforts in reaching this target. This new resettlement scheme will contribute to the UNHCR's global call to resettle a further 40,000 refugees from Libya and the surrounding countries.

Migration is a global challenge. The New York Declaration for Refugees and Migrants, adopted at the UNGA Summit on 19 September 2016, forms an important milestone for the international community to develop global responses in addressing large movements of people, at the same time reaffirming the need to protect the rights of all migrants, irrespective of their status. The EU played a strong role in the preparation of the NY Declaration, and intends to do the same, with the full support of our Member States, in the development of the Global Compacts on Migration and on Refugees. The Global Compact on Migration should aim at facilitating safe, orderly and regular migration, which recognises both opportunities and challenges. It should also draw on the 2030 Agenda; its transformative vision for a sustainable future; and its principle of leaving no-one behind.

The EU recognises the importance of the due diligence policy, also mentioned in your letter. As provided for in its 2015-2019 Action plan for human rights and democracy⁵, the EU is in the process of developing a 'human rights due diligence policy' outlining measures to ensure that EU and Member States' support to the security sector is in compliance with/contributes to the promotion, protection and enforcement of international human rights and international humanitarian law, and is consistent with the EU's human rights policies.

We would also like to present the following clarifications on some statements made in your letter:

- **The letter states that Triton and Sophia are both Frontex Operations with a border control mission (page 2)**

EUNAVFOR Med Operation Sophia is a European military operation under the auspices of the Common Security and Defence Policy (CSDP), which is mandated by the EU Member States; it is not a Frontex operation, nor does it have a border control mission. The Triton operation is an operation by a Justice and Home affairs (JHA) agency of the EU, namely the European Border and Coast Guard Agency (formerly named Frontex). Operation Sophia and Operation Triton are thus separate activities stemming from different parts of the EU based on different mandates and legislative arrangements. EUNAVFOR Med Operation Sophia's mandate focusses on countering smuggling of migrants and trafficking in human beings by taking action against the criminal networks and disrupting the smugglers business model.

⁵ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/joint_communication_on_human_rights_and_democracy_en.pdf

Whilst the Joint Operation Triton, launched in November 2014, **primarily focuses on screening and surveillance of irregular migration activities**, its focus has been expanded to also contribute to the detections of drug smuggling, illegal fishing and maritime pollution. A total of 26 EU countries take part in Joint Operation Triton by deploying either equipment or border guards. Officers deployed also assist the Italian authorities in the registration of the arriving migrants; collect intelligence about people smuggling networks operating in Libya and other African countries on the smuggling routes and share this information with the Italian authorities and Europol. All Triton vessels and aircraft operate under the command of the Italian Ministry of Interior as Italy is the host member state. The operational area of Triton covers the territorial waters of Italy as well as parts of the search and rescue (SAR) zones of Italy and Malta and at its furthest extent is 138 NM south of Sicily.

EUNAVFOR Med Operation Sophia was launched in June 2015 as part of the EU's broader action to provide a comprehensive response to the global migration and refugee crisis and to encourage stability in Libya. As of 4 September 2017 the Operation contributed to the apprehension of 117 suspected smugglers and traffickers and has neutralised 477 assets. While operating on the high seas off the coast of Libya, Operation Sophia **has also rescued more than 40,000 lives**. In June 2016, Operation Sophia's mandate was broadened to include two supporting tasks, namely capacity building and training of the Libyan Navy and Coastguard, and contributing to the implementation of the UN arms embargo in accordance with UN Security Council Resolution 2292.

Whilst it is not a task of the Operation, assets deployed in the framework of Operation Sophia conducted a significant number of search and rescue operations in accordance with their obligations under international law. All rescued migrants and apprehended individuals are transferred under the facilitation and coordination of Operation Triton. Under this arrangement, the aforementioned individuals are disembarked to Italy and the operation has maintained in this regard close relationships with the Italian Coastguard as the coordinating authority through the Italian maritime rescue coordination centre (MRCC). Consequently Operation Sophia (and Joint Operation Triton) do not return migrants or apprehended individuals to Libya.

While being two separate missions, EUNAVFOR Med Operation Sophia and Operation Triton nonetheless cooperate regularly in the Central Mediterranean by regular sharing of data and information and the deployment of liaison officers, including at sea on Operation Sophia vessels to facilitate interaction with Italian National authorities at points of disembarkation. Operation Sophia also works together with Europol via the deployment of a liaison officer and the strengthening of information exchange capability.

- **It is stated that Operations Triton and Sofia "have not matched Mare Nostrum in terms of preventing mass casualties and loss of life at sea" (page 2).**

One should note that the number of organisations and ships in the Mediterranean executing SAR has increased exponentially and therefore the number of migrants rescued per organisation has decreased.

Operation Mare Nostrum was launched by the Italian Government on 18 October 2013, as a military and humanitarian operation aimed at tackling the humanitarian emergency in the Strait of Sicily, due to the dramatic increase in migration flows. The Operation ended on 31 October 2014, coinciding with the start of Joint Operation Triton. In total Mare Nostrum rescued about 150,000 migrants.

Whereas Mare Nostrum was an Italian national military operation, as previously outlined, Operation Triton was launched to assist Italy with the increased migratory pressure on its external borders. It

takes place in a different operational area, involves civilian assets, and is not, nor was it ever intended to be, a substitute for Mare Nostrum.

Since May 2015 the deployment of sea- and airborne assets under Joint Operation Triton has been significantly reinforced and this increased level has been maintained since then. The number of assets deployed in Triton largely exceeds those deployed in Operation Mare Nostrum. The current Triton deployment consists of 2 off-shore patrol vessels, 6 coastal patrol vessels, 1 coastal patrol boat, 3 helicopters and 3 aircraft.

Assets coordinated by the European Border and Coast Guard Agency are continuously and directly involved in rescuing migrants: **Since spring 2015 until the end of August 2017, over 122,000 migrants in the Central Mediterranean and another 137,000 migrants in the Eastern Mediterranean** have been rescued by those assets, which is in terms of total numbers and efficiency de facto far above any military operation, such as Mare Nostrum.

2. Please indicate how the European Commission is planning to fulfil its obligations to prevent the loss of life on the Mediterranean. Please indicate specifically the responsibility-sharing measures that are taken, and which EU SAR operation (s) are out in place, if any, in light of the possible end of SAR operations carried out by NGOs?

All ships have an obligation to render assistance to those in distress at sea without regard to their nationality, status or the circumstances in which they are found. This is an obligation under international law that applies to all vessels and must be respected.

The **Code of Conduct** is an initiative by the Italian authorities, with the Commission consulted on the initiative and with the political endorsement of EU Interior Ministers. The Code of Conduct is about providing greater clarity and ensuring guidance, better coordination and collaboration among all actors engaged in search and rescue operations and to ensure that NGO vessels operate within, and abide by, a clear set of rules.

This Code of Conduct should in particular ensure that all operators working in the Mediterranean cooperate in good faith and that all operations at sea are conducted in an orderly manner and any risks of incidents or uncoordinated activities are avoided. In this context the commitment not to make any trans-shipments on other vessels is to be applied. However, this commitment does not apply in case of imminent danger for the safety of life at sea requiring immediate assistance. The circumstances shall be assessed by the responsible Maritime Rescue Coordination Centre (MRCC), based on the information provided by the ship's master on a case by case basis.

3. Please elaborate on what risk assessments, if any, have been or will be carried out by the European Commission for the above mentioned 46 million Euro project designed to support Libya in its SAR capabilities. Please set out any and all conclusions reached regarding the project's possible negative impact on the situation of human rights of migrants and refugees in that country. Please indicate specifically who the recipients of the project budget will be and the guarantees received that those recipients are or will be able to protect the human rights of migrants and refugees in Libya. Please also indicate what guarantees have been received that Libyan authorities involved in implementation of this project are also not involved in armed groups, smuggling or trafficking networks. If no risk assessment has been carried out, please explain why.

We welcome your statement that the Libyan coastguard's search and rescue capabilities have to be improved to contribute to saving lives at sea. With the action the EU and Italy are currently preparing,

the EU intends to reinforce their ability to both rescue lives and confront the smuggling networks. This is also part of a broader effort and eventual goal to increase stability in the country and re-establish functioning institutions.

The political and social turmoil that affects Libya since October 2014 has contributed to the plight of migrants currently stranded in Libya. In addition to human tragedy and deaths along the route across the Mediterranean Sea for migrants seeking to reach Europe, reports on violations of the rights of migrants in Libya are numerous, including detention in inhuman conditions, exploitation, ill-treatment, torture, rape. Irregular migration routes are also being exploited by criminal organisations involved in trafficking in human beings to traffic their victim to the EU, predominantly women and girls trafficked for the purpose of sexual exploitation. The protection of most vulnerable people in Libya has been a priority of the EU over the past years. With the setting up of the EU Emergency Trust Fund for Africa in November 2015, a strong focus has been put on tackling the drivers of vulnerabilities arising from irregular migration in Libya.

In 2016-2017, **four programmes** worth EUR 162 million have been committed so far for Libya, EUR 112.8 has been contracted and payments amount to almost EUR 54 million under the EU Trust Fund for Africa:

1) Managing mixed migration flows in Libya through expanding protection space and supporting local socio-economic development programme (EUR 90 million) adopted on 12 April 2017. The programme is articulated along two pillars to enhance the protection space for migrants, refugees and host communities in Libya and support socio-economic development at municipal level and local governance. All contracts (with IOM, UNHCR, UNDP, GiZ and UNICEF) have been successfully signed and payments amount to EUR 50.3 million.

2) Support to Integrated border and migration management in Libya – First phase programme (EUR 46 million) adopted in July 2017 aiming at stepping up activities in support of the Libyan Border- and Coast Guards. The programme will be implemented by the Italian Ministry of Interior and co-financed by Italy; it is yet to be contracted.

3) Supporting the protection and humanitarian repatriation and reintegration of vulnerable migrants in Libya programme (EUR 20 million) adopted in December 2016 aiming to step up efforts to tackle the migration situation with a focus on support for rescued at sea at disembarkation ports, alternatives to detention, voluntary return and reintegration as well as the provision of life-saving equipment, capacity building and training. EUR 16.8 million has been allocated to the IOM from this programme, EUR 3 million remains to be contracted with civil society organisations.

4) Strengthening the protection and resilience of displaced populations in Libya programme (EUR 6 million) adopted in June 2016 focusing on protection and resilience of refugees, migrants, IDPs and host communities (implemented by a Consortium composed of the Danish Refugee Council, Save the Children, CESVI, Première Urgence and the International Rescue Committee). The contract was signed in January 2017 and first payment amounts to EUR 2.6 million.

The EUR **46 million project** has been adopted against this background, once the protection-related projects were up and running. When formulating the project, protection-related main implementing partners have been consulted and informed, and possible consequences of increased and improved search and rescue operations by the Libyan Coast Guards have been discussed in order to possibly adapt activities to the changing situation. As you may have noticed, the reinforcement of border management foreseen in the programme, and in particular in the south of Libya, is made conditional

on improved access of humanitarian actors in Libya, and application of internationally recognised standards for protection of human rights.

It goes without saying that a reinforcement of border control capacity must go hand in hand with the two other aspects of our work in Libya: development, and protection. Smuggling networks cannot be confronted only by fighting them but also by creating economic alternatives for the Libyan and migrant population. That is why the EU has started a number of actions addressing community stability and development. These are part of both the 90 million programme adopted in April 2017 and the 46 million programme recently adopted.

4. Please explain which measures have been taken by the European Commission to ensure that any training provided to Libyan institutions that engage with migrants, in particular the Libyan coast guard, is accompanied by careful vetting and comprehensive efforts to protect the right to life of migrants and refugees. In this context, please also explain how the situation of migrants and refugees after their interception by the Libyan coast guard will be monitored for possible violations

Following the addition of training of the Libyan coastguard and Navy to the mandate of EUNAVFOR MED in June 2016, as a supporting task, the operation's Headquarters started engaging with Libyan interlocutors to put a framework in place. This led to the signing of a memorandum of understanding with a Libyan committee of coastguard experts established at the request of Libyan PM Sarraj. The decision was underpinned by the need for continuity and accountability. In this respect, it was agreed from the outset that a **thorough vetting process** would be put in place ahead of the training.

This vetting process is usually organized in several phases entailing notably reception of documents from the Libyan Committee of Experts, feedback from vetting partners within EU Member States and relevant organisations, such as the International Criminal Court and Europol, internal checks conducted by the operation or the Member States hosting the training programme. The operation has adopted a Standard Operations Procedure detailing the conduct of the vetting, which relies on the support of partners cross-checking candidates' data against more databases, increasing the number of sources as well as feedback and overall effectiveness.

The **training programme** developed by EUNAVFOR Med Operation Sophia includes a human rights/refugee law component, which is tailored to the needs of the Libyan Navy and Coastguard and adapted to the unique operational scenario of the Southern Central Mediterranean. The provision of lectures is aimed at ensuring the highest level of learning among the trainees. The goal is to improve the understanding of Libyan Navy and Coastguard personnel in providing assistance to individuals rescued at sea, so that the respect of human rights in their duties may become a substantial part of the trainees' professionalism and daily service. Specific lectures are devoted to topics such as human rights law norms, principles and standards. Other topics covered include the existence of vulnerable persons and groups and the necessity to ensure a higher level of protection to them (including reducing the risk of trafficking of such individuals once disembarked ashore). This component was performed by UNHCR. Significant support was also provided by IOM. The package 2 training was launched on 24 September in Italy, IOM and UNHCR have been fully associated.

A strong emphasis is put in the operation's OPLAN on **monitoring** of what is being put in place to support the building of an effective Libyan Coast guard capacity. An Annex to the Memorandum of Understanding agreed last year with the Libyan committee of experts was signed to reflect this commitment. The overall objective is to monitor the Libyan Navy/ Libyan Navy and Coast Guard's general behaviour and operational performance; the maintenance of EU donated equipment but also the conduct of the Libyan Navy/ Libyan Navy and Coast Guard's personnel on duty.

5. Please elaborate on the proposed timeline for the implementation of the 46 million Euro project and foreseen monitoring and evaluation processes

The EUR 46 million programme has been adopted at the end of July 2017 and the Commission is currently in the contracting phase with the Italian Ministry of Interior. Activities are expected to start this autumn.

As part of the EUR 46 million programme, the Commission has foreseen a comprehensive monitoring mechanism along a number of levels: presence of Italian monitors in the country and in particular in the operational bases of the border guards, mentoring and training of the Libyan guards on human rights by the same monitors, contracting of third party monitoring that will supplement and reinforce Italian monitors, contracting ad hoc external audits that will independently verify the operations of the Libyan guard and international monitors. We obviously operate in a complex environment with noticeable risks and no quick solutions.