

RESTREINT UE/EU RESTRICTED



**Council of the
European Union**

**Brussels, 12 February 2020
(OR. en)**

5995/20

RESTREINT UE/EU RESTRICTED

**CSDP/PSDC 75
CFSP/PESC 116
MAMA 19
RELEX 110
EUNAVFOR MED 7**

COVER NOTE

From: European External Action Service (EEAS)
To: Permanent Representatives Committee (COREPER)
Subject: Meeting of the Council (Foreign Affairs) on 17 February 2020 - Preparation
c) Libya

Delegations will find attached a Non-paper by the EEAS on EUNAVFOR MED Operation Sophia.

1. Scene setter

At the Berlin Conference on 19 January, the participants committed to implement its conclusions, starting with the overriding priority of translating the truce into a credible and lasting ceasefire. The conference conclusions identify two priorities in the so-called "security and arms embargo baskets"; the commitment to fully respect and implement the arms embargo established by the UN Security Council Resolution 1970 (2011) and the implementation of the ceasefire.

At the FAC on 20 January, the EU expressed a strong level of commitment. We run the risk that, short of concrete action, the EU will become irrelevant and others will continue to determine the development of events in Libya in ways that will not respond to our interests.

In fact, blatant violations of the arms embargo continue and have even increased in the last weeks, undeterred even by forthright reports, notably from the UN Panel of Experts on Libya. In order to protect its interests, the EU has to act in a credible manner that produces changes on the ground and conveys a clear message of determination.

Some valuable steps were taken on 28th January, when PSC invited Operation Sophia's Commander to intensify activities through an increase of aerial monitoring with support provided by satellite surveillance. But more can and should be done to contribute to the implementation of the UN arms embargo.

So far, discussions at PSC level on the revision of the Operation's mandate have not been conclusive over the envisioned redeployment of naval assets in a targeted area. It is the view of the EEAS that naval assets are, however, indispensable to signal the credible commitment and presence of the EU. Without naval assets, the operational effect and political impact will remain limited, and will be assessed as such by other actors.

Redeploying naval assets would send a strong political message about EU's commitment to the international community. It would also allow tackling both sea and air routes for the embargo in a far more efficient way than with only aerial and satellite monitoring and thus create a truly deterrent effect. Ships are the necessary means to ensure a permanent monitoring of the UN arms embargo on the high seas off the coast of Libya and deep into Libya's airspace.

Objections have been raised by some Member States, according to which the re-deployment of naval assets would act as 'pull factor' and lead to an increase of irregular migrants entering into Europe. It must be noted that, the migratory flow through the Central Mediterranean substantially decreased between 2016 and 2019, while Operation Sophia's naval assets were still fully deployed. Migratory pressure would be better alleviated in a medium to long-term if the EU successfully contributes to the stabilisation of Libya.

2. Legal aspects of the arms embargo on Libya

The UN arms embargo established notably by UNSCRs 1970 (2011) and 2292 (2016) creates an obligation for all UN Member States to take the necessary measures to prevent the direct or indirect

provision to Libya of arms and related materiel and the provision of armed mercenary personnel. It authorizes all UN Member States, each on its territory, to inspect all cargo to and from Libya to enforce this embargo. In addition, all UN Member States, acting nationally or through regional organizations, are authorized to inspect, on the high seas off the coast off Libya, vessels bound to or from Libya (except State vessels) which they have reasonable grounds to believe are carrying items prohibited under the embargo, to seize and dispose of such items, and to divert such vessels to a suitable port to facilitate such disposal.

The Panel of Experts on Libya, notably pursuant to UNSCR 1973 (2011) and 2213 (2015), gathers, examines and analyses information from States and regional organisations on the implementation of the arms embargo, in particular incidents of non-compliance, and provides the UN Security Council with an interim and a final report every year. Operation Sophia has been regularly sharing information with the Panel, based on a Memorandum of Understanding signed on 22 February 2019 guaranteeing notably the confidentiality of such information.

In accordance with its mandate, the operation may gather information relating to movements in Libya's territory and airspace. Assets and personnel could only be deployed in Libya, including its airspace, pursuant to a UNSCR or with the consent of Libyan authorities.

3. Operational aspects for deploying naval assets

Aerial assets can only track very few of the many vessels sailing through the area of operations every day. The addition of naval assets has several benefits:

- Permanence of surveillance and information gathering whereas aircrafts can only operate a few hours a day.
- Ability to conduct surveillance activities at long-range (400km), including over the coastal part of the Libyan territory, as ships have usually far more powerful radars than aircrafts.

Maritime assets with air surveillance capability can detect, track and in many cases identify aircrafts coming into/departing from Libya.

- Ability to follow and track suspect vessels over long distances and periods.
- Tangible demonstration of EU political commitment through a visible deployment of powerful State assets.

The satellites, which usually fly over Libya only once a day at predictable times, could provide information on the points of storage and distribution of arms, giving mostly indirect hints on the violations and would possibly enable the monitoring of the build-up of stocks as well as the displacement and movement in harbours and ports as well as on land. End to end process including initial request, acquisition and analysis can be done within 24 hours although this depends on the depth of analysis required. A first impression report can be produced one hour after reception of satellites images.

Surveillance by aerial and naval assets must be intelligence-driven to allow selecting vessels of interest. The information gathered by the Operation will be prerequisite for follow-up actions to be carried out to create decisive effects.

Naval assets can be deployed in the areas most relevant to the implementation of the arms embargo, in the eastern part of the area of operation or at least 100km off the Libyan coast, where chances to conduct rescue operations are lower. Rules of engagement will have to be designed in a conflict sensitive manner.

4. Do you agree with the following statements and actions?

In support of the Berlin process, we need to contribute to the implementation of the arms embargo. Respect of the arms embargo would help de-escalate the conflict, which will in turn facilitate the attainment of a ceasefire. In this regard, it would be important to reach a solid agreement within the Council on the following:

- a) A concrete and forceful demonstration of EU commitment to the Berlin process is necessary to move towards de-escalation.
- b) The EU should contribute to the implementation of the UN arms embargo and of the cease fire in line with the relevant UNSCR.
- c) Operation Sophia's mandate needs to be revised with immediate effect along these lines:
 1. To extend the Operation's mandate for one year.
 2. To change the name of the Operation to "Operation EU Active Surveillance."
 3. The task "contributing to information sharing and implementation of the UN arms embargo" becomes the Operation's core task; "Monitoring activities related to oil smuggling" will also be carried out.
 4. The task "Contributing to the disruption of the business model of human smuggling and trafficking networks in the Southern Mediterranean" becomes a supporting task refocused to "supporting the detection and monitoring of human smuggling and trafficking networks through information gathering and patrolling in accordance with international law ", carried out by aerial assets.
 5. The task "capacity-building and training of the Libyan Coast Guard and Navy" remains unchanged as a supporting task.
 6. To provide the Athena mechanism with the necessary budget for acquiring satellite imagery.
 7. To extend the area of aerial surveillance to include Libyan air space, in respect of international law and subject to any required authorisation.
 8. To deploy naval assets in the relevant zone of its Area of Operations, in order to form a joint operation to contribute to the implementation of the UN arms embargo, in line

with UNSCR 2292 (2016). In order to do so, a solution to disembarkation and distribution of persons rescued at sea will need to be in place, be it a global solution, or an ad-hoc solution (Sea Guardian model; Malta declaration).
