

EU mounts new maritime operation to tackle Mediterranean people traffickers

On 18 May 2015, the Council established a new Common Security and Defence Policy (CSDP) operation – EUNAVFOR MED, with the aim of disrupting the business model of human smugglers and traffickers in the Mediterranean. The EU is currently seeking both a UN Security Council (UNSC) mandate and consent from Libya for certain aspects of its planned operations.

Background

Conflict, instability and poverty on the southern shores of the Mediterranean, in Africa and the Middle East, have increased migratory flows and led to thousands of people trying to reach the EU by sea. In the first 20 weeks of 2015, some 60 000 migrants [attempted](#) to cross the Mediterranean ([20 times](#) more than in the same period in 2014) and about 1 800 of them died in the attempt. To respond to this situation, the Commission proposed to the Council a [10-point action plan](#) on 20 April 2015. The European Council then [committed](#), at its extraordinary meeting on 23 April 2015, to strengthen the EU's 'presence at sea, to fight the traffickers, to prevent illegal migration flows and to reinforce internal solidarity and responsibility.' On 13 May 2015, the Commission presented a '[European Agenda on Migration](#)' with both internal and external policy measures. A common element of the proposals is the deployment of a CSDP operation targeting vessels used in human trafficking and smuggling.

Objectives and mandate of EUNAVFOR MED

On [18 May 2015](#), the Council approved the [Crisis Management Concept](#) and established EUNAVFOR MED, the EU military operation in the Southern Central Mediterranean ([Decision](#) (CFSP) 2015/778). EUNAVFOR MED is intended to contribute 'to the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean ... by undertaking systematic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers or traffickers', in accordance with international law. The operation is set to be launched at the Council meeting on 22 June 2015. Italy is to provide the operational [headquarters](#) and the EU Operation Commander, [Rear-Admiral Enrico Credendino](#). The financial reference amount is set at €11.82 million for preparations and the 12-month mandate.

EUNAVFOR MED is planned in three phases. The **first phase** consists of gathering and sharing [intelligence](#) about the irregular migration networks and tracking the vessels used or suspected of being used by traffickers, including through patrolling on the high seas and deploying [drones](#). While this phase does not raise legal obstacles, the second and third phases, which entail direct action against such vessels, need a UNSC mandate and/or the consent of the coastal state concerned (Libya). In the **second phase**, EUNAVFOR MED would conduct 'boarding, search, seizure and diversion **on the high seas**' of suspected vessels, in accordance with international law; as well as in the **territorial and internal waters** of the coastal state, if there a UNSC resolution and/or the consent of that state is gained. The **third phase**, also dependant on a UNSC mandate and/or Libyan consent, would enable EUNAVFOR MED forces to 'take all necessary measures' against suspected vessels, 'including through disposing of them or rendering them inoperable', **in the territory of that state** (i.e. in territorial waters, internal waters, and also in ports and coastal areas). The Council Decision leaves the definition of the **area of operation** for further planning documents, although EUNAVFOR MED could also [include](#) 'targeted incursions on the coasts'.

The [force generation](#) process is not expected to encounter delays. At this point, discussions are just beginning on the specific contributions of Member States. Several EU Member States have already [deployed](#) naval forces to the area or [pledged](#) substantial contributions: ships (Italy, France, the [UK](#), [Germany](#) and

[Spain](#)), and also surveillance aircraft (Poland, Czech Republic), satellite capabilities and protection forces. Around 10 or 12 EU Member States are expected to take part in the operation, also open to third countries. Moreover, a coordination mechanism will enable EUNAVFOR to cooperate with all relevant actors: EU States, other EU agencies and bodies (e.g. Frontex; Europol, with its recently launched [Joint Operational Team Mare](#); Eurojust; the European Asylum Support Office) and relevant [CSDP missions](#). The Frontex-managed operations [Triton and Poseidon](#) are currently active in the EU's [territorial waters](#). NATO would also be [ready](#) 'to help if there is a request' from the EU.

The UN Security Council mandate and Libya's consent

On 11 May 2015, the EU's High Representative (HR/VP) [briefed](#) the [UNSC members](#) on the EU's response to the smuggling of migrants in the Mediterranean and called on the UNSC to [support](#) the EU's CSDP operation with an authorisation under [Chapter VII](#) of the UN Charter. The EU members of the UNSC (UK as the drafter, France, Lithuania and Spain), together with Italy, are [promoting a resolution](#) to this end. Nevertheless, a UNSC mandate is not a given, as some of its members have raised concerns about several aspects of the EU operation. For example Russia, a veto-holding UNSC member, and some African states have expressed their opposition to EU [plans](#) to destroy suspects' boats. To facilitate negotiations in the UN, the Council Decision establishing EUNAVFOR MED [replaces](#) language previously employed by the European Council (to 'systematically identify, capture and **destroy** vessels used by smugglers') with the terms 'disposing of' and rendering boats 'inoperable'. Other concerns refer to the protection of human rights and international refugee law and the fate of the irregular migrants taken into custody (any operation must observe the international legal principle of [non-refoulement](#)'), as well as the geographical scope of the resolution and the procedures to authorise the interception of vessels (e.g. whether the consent of the flag state would be required). These issues were on the agenda of an [informal meeting](#) between UNSC and EU Political and Security Committee (PSC) members on 20 May 2015.

The EU pledges to conduct EUNAVFOR MED in accordance with [international law](#), including humanitarian, human rights law and other relevant instruments. The [UN Convention on the Law of the Seas \(UNCLOS\)](#), the [Safety of Life at Sea \(SOLAS\)](#) and the [Search and Rescue \(SAR\)](#) Conventions include the obligation to rescue persons in distress at sea and to bring them to safety. International protection of refugees is based on the [1951 Refugee Convention](#) and the principle of non-refoulement (refugees should not be returned to a country where they face serious threats to life or freedom). The legal [distinction](#) between human trafficking and smuggling must also be observed.

In parallel, the EU is seeking support for the operation from Libyan authorities; however, obtaining an invitation from Libya is problematic in the absence of a united government. Libya's ambassador to the UN has already [criticised](#) the EU's CSDP operation, which [could violate](#) Libya's sovereignty and create additional problems (e.g. difficulty to distinguish between fishermen's and traffickers' boats). [Concerns](#) were also raised about the potential impact of the EU operation on the political process in Libya. HR/VP, Federica Mogherini [explained](#) that a request would be addressed to the EU-recognised Tobruk government, but stated the need to cooperate 'with other relevant authorities in Libya' to dismantle the trafficking networks.

Challenges and criticism

EUNAVFOR MED has met with [criticism](#) from various stakeholders who called on the EU to prioritise the safety of migrants at sea. In considering the options for a CSDP operation in the Mediterranean, the EU turned to the [EUNAVFOR Atalanta](#) naval operation combating piracy off the Horn of Africa as a model. Nevertheless, many elements are [different](#) and observers point to the [dangers of equating](#) the fight against pirates with combating traffickers' vessels full of human cargo. The [UN Secretary General](#) Ban Ki Moon and other [UN agencies and officials](#) have warned against resorting to [military solutions](#) as a response to the crisis in the Mediterranean, and against focusing restrictively on law-enforcement measures without addressing wider EU migration policies and the factors pushing irregular migrants and asylum-seekers to turn to smugglers. They [pointed out](#) that around half of those who reach Europe qualify for international protection as refugees. Also, even if action against smugglers and traffickers is successful, the risk of asylum-seekers remaining trapped in countries where they lack protection and means of subsistence is high. An additional challenge is represented by Islamic extremist fighters [reportedly](#) concealing themselves on the boats.

The **European Parliament** in its [resolution](#) on the latest tragedies in the Mediterranean and EU migration and asylum policies (23 April 2015) underlined 'the need for a holistic EU approach, that will strengthen the coherence of its internal and external policies'.