

Technical meeting 11.7 in FX HQ on possible revision of concept Joint Operation Triton

Participants: BE, CZ, DE, DK, EL, ES, FI, FR, IT, LT, MT, NL, NO, PL, RO, SE, FX

Chairperson: Frontex Executive Director

Meeting was opened by the chairperson who gave the floor to IT for their opening statement. IT announced that the meeting was called upon due to the constant flow of migrants into Italian shores. IT acknowledges the fact that even though this number represents merely 10% of the total migratory increase it is still significant - counting to as many as 180 000 people.

IT has analysed work of NGOs involved in the search and rescue activities (SAR) of migrants and came to a conclusion that 41% SAR were performed by NGOs - twice as much as done by EUNAFORMED and operation Triton all together. This is related to the fact that NGOs can work closer to the Libyan shore than the vessels working under operation Triton. Nevertheless, IT has no plans to modify Triton operation until the end of the year 2017 but requests to take the role of NGOs into account when developing new operational plan.

After political consideration and in light of the fact that many of NGO's vessels sail under the MS flags IT deems necessary to establish a working group to deal also with this situation. The idea of this working group is to develop a new Triton operational plan for 2018 to better reflect the current situation in the Central Mediterranean Sea. This working group will also take into account the need for dealing with the critical and crisis situation. If it happens that the massive influx of migrants will arrive to the shores this working group will be able to assess the needs and work on finding a common solution.

IT stressed that it doesn't want to deliver entire load of arrivals to the other MS but there is a concrete need to assess this issue not just from the perspective of IT but also from other MS as well as globally including the situation at the Libyan coast. What is needed is factual evaluation of what is happening in the Mediterranean, so that new operational plan provides with better preparedness for the different situations.

As of summary IT reiterated its request for the establishment of the working group already in summer 2017. The operational plan should also include the role of NGOs at the sea, fight against trafficking of human beings and control over external borders of the EU. The plan should include alternative solutions to prevent situations in which IT is now and any future challenges that 2018 can bring.

Having thanked IT for their presentation Chairman clarified that operational plan is agreed between FX and host Member State. Chairman agreed on establishing working group as well as possible changes to operation Triton. Possible to establish group between IT and FX but in later stage in September group of all participating MS should be briefed on the changes and proposals to the new operational plan.

In a reference to FX mandate Chairman brought up examples of Agency's responsibilities and projects such as MAS (Multipurpose Aerial Surveillance), where FX received the clearance to fly over Libyan flight information zone. Thus the mandate of the working group can be used to expand operation Triton, connect it with other FX activities and help fight against criminal activities. FX welcomes the

principle of a Code of Conduct (COC) for NGOs to be established between IT and COM, and offers its expertise to support it. FX is not in favor to include COC into operational plan. In regards to relations with third countries Chairman stated that Libya is at this point not a reliable partner and there is a limited place for maneuver. Greece is still under pressure and Spain has also seen an increase of arrivals by 100%.

Chairman opened the floor to MS participants.

DE in principal supports IT proposal on working group and changes to operation Triton. DE acknowledges the efforts of FX in the frame of the extended mandate and is asking to support DE with return operations. It also agrees that it is important to consider the presence of NGOs in the Central Mediterranean Sea and underlines that COC is much needed to have the actions carried out by them in proper way. DE raised concerns about the point from COC regarding the obligation for NGO to notify MRCC of their flag state. DE proposes that MS could redeploy, share or rotate HR between operations Poseidon and Triton, depending when and where is more needed.

IT responded to DE that the obligation for NGO to notify MRCC of their flag state is important because state should know about the activities done by their NGO vessels.

EL understands the need to support IT but fails to see added value of EL responsibility in IT area. EL admitted that the situation in their country looks better than in 2015, but they need to constantly monitor that the situation doesn't worsen. This in mind, it is not possible to manage two frontlines at the same time with limited resources. Merging operations Poseidon and Triton will jeopardize operation Poseidon and the EU-Turkish agreement. EL also doesn't agree on opening the ports to vessels which should land in IT as this would make EL a hosting country without its consent.

ES agrees to adopt measures to handle difficult situation which IT is dealing with. ES underlined that SAR regulation and international law is very clear and should prevail in the rescue activities in the Central Mediterranean Sea. ES also pointed out that the country has worked hard and invested a lot of money in cooperation with third countries such as Morocco but it still faces high amount of arrivals. ES as one of the biggest contributors to operation Triton, would like to be included in the proposed working group of IT. Regarding the COC for NGOs, ES is welcoming a possible framework for NGO activities but sees possible challenges with the obligation for NGOs to notify MRCC of their flag state and the disembarkation rules.

EL agrees with ES regarding the SAR regime, the framework that governs the search and rescue work of FX activities at sea. EL emphasizes the fact that based on international regime, each SAR should be treated differently on case by case basis as well as foreseeing ad hoc selection criteria for the disembarkation. This concludes that every change in SAR regime (example could be COC for NGOs) should be examined against the international law.

RO appreciates IT determination to examine work of NGOs and their SAR activities as well as COC for NGOs and working group. RO Border Police pledges to continue supporting FX activities and operations. RO asked IT for clarification to their statement on whether NGO should inform MRCC from the MS which flag its carrying.

IT responded to EL regarding the legal rules on disembarkation is establishing that every coastal state shall promote the establishment, operation and maintenance of adequate and effective search and rescue service regarding the safety on and over the sea and where the circumstances require by way of mutual arrangements between regional partners .

It is envisaged in the article that if the conditions apply, countries should cooperate to assess the particular issue. Italy raised the issue since there was a game changer in the Central Mediterranean namely the NGOs. So for this reason an assessment of the ongoing situation is absolutely necessary. Since objectively the situation has changed from when originally the Triton concept had been drafted and implemented.

IT then responded to RO that this has been already addressed in the COC of NGOs. It should be stressed that the text is here but IT is not circulating it since it is still under ongoing discussion with the EC. Italy is not just suggested the COC but it took active part in drafting this code.

COC is a mixture of both operational and organizational aspects. [REDACTED]

Commented [A1]: The not disclosed text contains sensitive information related to the effectiveness of border security. Its disclosure would reveal the existing vulnerabilities which, once public, may be explored by the criminal networks of migrant smuggling and of trafficking of human beings. Thus, the disclosure of such information would harm the public interest as regards public security. In this regard the text is not disclosed pursuant to the exception laid down in the first indent of Article 4(1)(a) of Regulation (EC) 1049/2001

SE as a destination country appreciates the work of frontline MS such as IT. SE finds it necessary to reconsider the non-refoulement policy. SE also points out that FX should focus on all borders, not only on the big operations such as Triton and Poseidon.

DE disagrees with IT regarding the responsibilities of MRCC of NGOs flag states and stresses that the COC should allow IT to have more control over the activities of NGOs. DE raised a concern regarding the flag state principle which may cause more flexibility for NGOs and take flexibility from the MS and from the operational plan. As an example DE brought up a case of NGO vessels sailing under Marshall Island flag.

EL in principle agrees with COC for NGOs, but would like to clarify issues about the right of NGO boats to enter Libyan water and transport migrants to EU in case of emergency – main question is who will decide what and when is the emergency? Under which convention we will take into account to allow the officers to examine migrants on NGO boats? Will this COC be official EU document or only Italian?

Chairman reminds MS that NGOs should sign COC with hosting authority, which in the case of operation Triton is IT. He also pointed out that the purpose of working group is to propose amendments to operational plan of Triton and not to draft COC for NGOs. Chairman proposed to discuss the issues related to Triton activities on the shore, specifically increase support on hotspot and beef up on return operations; specifically resources by MS such as fingerprinting, screening, detentions centers, etc.; risk of secondary movements, security of EU external border as such; and guidelines for working group regarding disembarkation (landing in other MS with consent of the country).

Hotspot and return operations:

IT requests revision of operational plan Triton for 2018, not only amendment, even to consider creating a new JO. IT underlines that the issues concerning the capacity of detention centres and return operations have no direct relation with JO Triton and should not be treated in the same context as the operational plan of Triton. IT stated that it will build new hotspots for repatriation and continue with guarantying the fingerprinting of all migrants out of the ports. IT is also working on bilateral agreement with Senegal, Nigeria and Gambia, admitting that it should improve its activities in the return operations.

DE agrees that FX should under its mandate cooperate closer with third countries, especially regarding the return operations. DE emphasized that they are ready supporting via return pools.

DK shares the view of IT and understands challenges regarding return operations. DK is concerned regarding the efficiency of the 24-72 hours fast track procedures and pointed out that we should also proceed with rapid track return procedures.

FI shares the opinion to strengthen return activities and is ready to support the rapid return interventions.

CZ informed MS that they have sent official letter of support to IT and said that they will support them financially and with human resources in the return activities as well as participation in operation Triton.

IT said that repatriation activities were already discussed on EU level and that this activity is part of a road map already agreed with the Commission. The only way in which return activities can be enhanced is not by adding financial or human resources but rather to enhance the activities in three fundamental areas: detention centers; cooperation with 3rd countries; and issuing of travel documents. However, Italy stressed that these activities are not related to the content of the revision of the operational plan of JO Triton for 2018.

Security (security screening, procedures, FX activities to support IT):

No comments on this topic.

Influx of migrants

Chairman requested for comments on how to deal with influx of migrants, he asked if we should task a working group to draft the procedures in order to establish the points of disembarkation with the consent of MS.

EL's opinion is that this is radical idea which should not be part of simple amendment to the Triton operational plan but it is more relevant to the implementation of EU IBM concept. Until this strategy is completed, it is not so safe to proceed with proposed activities. EL also points out that this kind of changes should be brought to and decided by FX Management Board.

DE proposes that FX uses all the tools that it got with new mandate regarding the return activities and work on the establishing relations with third countries which are responsible for the current situation. DE is pleased to hear that IT is working on return activities.

MT considers that this kind of change goes beyond the operation plan of Triton. MT is reserved to the idea of operation working on region level as it considers that it should be common effort and approval of all countries involved in it and not just those that are pushing for the change.

Chairman's Conclusions: agreeing on amendment of operational plan of Triton; enhancing the cooperation with 3rd countries; immediate establishment of the working group which will work on operational plan for JO Triton 2018 (changes, amendments, maybe even name) which will be agreed by the host MS after approval of FX while being consulted with participating MS. When amending operational plan it will take into account all angles of integrated border management (SAR, fighting criminal activities, law enforcement and security activities) and it will be consulted upon in September with MS that would possibly participate or have experiences in this field (ES, EL). While changing operational plan we will have to take into consideration our future cooperation with other EU institutions such as Europol and Eurojust, as well as reestablish cooperation with EU missions such as

EUNAVFOR MED Sofia. FX could also consider how aerial surveillance could be of use in the new operational plan and how to use information which are collected with MAS (Multipurpose Aerial Surveillance), and with who to share it on the other side of the Mediterranean, for example EUBAM Libya. This all should be taken into consideration before new Joint Operation starts in 2018.

FX and MS are strongly committed to support IT in their struggles. FX will have bilateral talks with IT to see how its activities could support them. On short term FX should look at the resources and gaps which should be filled in and ensure sustainability from MS to support operation Triton.

IT thanked all MS and FX and expressed gratitude for provided support, and looking forward to finding solution.

PT had a remark that MS have to communicate on ABN until mid-September 2017 and asked if MS can amend their contributions based on the changes in operational plan. Chairman assured that until October 2017 when ABN will be held, general situation about operational plan 2018 should be clarified.

