

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2008/749/CFSP

of 19 September 2008

on the European Union military coordination action in support of UN Security Council resolution 1816 (2008) (EU NAVCO)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14, the third paragraph of Article 25, and Article 28(3) thereof,

Whereas:

(1) In resolution 1816 (2008) on the situation in Somalia, adopted on 2 June 2008, the UN Security Council expressed its concern at the threat that acts of piracy and armed robbery against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, the safety of commercial maritime routes and international navigation. The UN Security Council encouraged, in particular, States interested in the use of commercial maritime routes off the coast of Somalia to increase and coordinate their efforts to deter acts of piracy and armed robbery at sea in cooperation with the Transitional Federal Government of Somalia (TFG). It authorised, for a period of six months from the date of the resolution, States cooperating with the TFG for which advance notification had been provided by the TFG to the UN Secretary-General to enter the territorial waters of Somalia and to use, in a manner consistent with relevant international law, all necessary means to repress acts of piracy and armed robbery at sea. The UN Security Council further called upon States to coordinate with other participating States their actions taken pursuant to the above provisions.

(2) In its conclusions of 26 May 2008 the Council expressed its concern at the upsurge of piracy attacks off the Somali coast, which affect humanitarian efforts and international maritime traffic in the region and contribute to continued violations of the UN arms embargo. The Council also commended the sequenced initiatives of some EU Member States to provide protection to

World Food Programme vessels. It stressed the need for wider participation by the international community in these escorts in order to secure the delivery of humanitarian aid to Somali populations.

(3) On 16 June 2008 the Council requested the Council General Secretariat and the Commission to study possible options for implementing all the commitments contained in its conclusions of 26 May 2008, as well as for how best to contribute to the implementation of UN Security Council resolution 1816 (2008).

(4) On 5 August 2008 the Council approved a crisis management concept for EU action to contribute to the implementation of UN Security Council resolution 1816 (2008).

(5) The Political and Security Committee (PSC) should exercise political control of the EU military coordination action in support of UN Security Council resolution 1816 (2008), provide it with strategic direction and take the relevant decisions in accordance with the third subparagraph of Article 25 of the EU Treaty.

(6) Under Article 28(3) of the EU Treaty, the operating expenditure arising from this Joint Action, which has military or defence implications, should be charged to the Member States. Notwithstanding the fact that expenditure arising from an EU military coordination action such as that envisaged by this Joint Action is not provided for under Council Decision 2007/384/CFSP of 14 May 2007 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena)⁽¹⁾, the expenditure arising from this coordination action should, in this specific case and by way of exception, be managed in accordance with that Decision.

⁽¹⁾ OJ L 152, 13.6.2007, p. 14.

- (7) The financial reference amount for the common costs of the EU military coordination action constitutes the best current estimate and is without prejudice to the final figures that are to be included in a budget to be approved in accordance with the rules laid down in Decision 2007/384/CFSP.
- (8) In accordance with Article 6 of the Protocol on the position of Denmark annexed to the EU Treaty and to the Treaty establishing the European Community, Denmark does not participate in the elaboration and implementation of decisions and actions of the Union which have defence implications. Denmark is not participating in the implementation of this Joint Action and is therefore not participating in the financing of the EU military coordination action,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Objective

The European Union shall conduct a military coordination action in support of UN Security Council resolution 1816 (2008), named EU NAVCO.

Article 2

Mandate

1. In pursuit of the objective laid down in Article 1, the aim of the EU military coordination action shall be to support the activities of Member States deploying military assets in theatre, with a view to facilitating the availability and operational action of those assets, in particular by setting up a coordination cell in Brussels, hereinafter referred to as the 'EU Coordination Cell'.
2. In fulfilment of this mandate, the EU Coordination Cell shall perform the tasks set out in the implementation plan approved by the Council.

Article 3

Appointment of the Head of the EU Coordination Cell

Captain Andrés A. BREJJO CLAÚR is hereby appointed Head of the EU Coordination Cell.

Article 4

Establishment of the EU Coordination Cell

The EU Coordination Cell shall be located in Brussels.

Article 5

Implementation plan and launching of the EU military coordination action

1. The implementation plan for EU NAVCO is hereby approved.

2. The EU military coordination action shall be launched on the date of adoption of this Joint Action by the Council.

Article 6

Political control and strategic direction

1. Under the responsibility of the Council, the Political and Security Committee (PSC) shall exercise the political control and strategic direction of the EU military coordination action. The Council hereby authorises the PSC to take the relevant decisions in accordance with Article 25 of the EU Treaty. This authorisation shall include powers to amend the implementation plan. It shall also include the powers to take further decisions on the appointment of the Head of the EU Coordination Cell. The powers of decision with respect to the objectives and termination of the EU military coordination action shall remain vested in the Council, assisted by the Secretary-General/High Representative.

2. The PSC shall report to the Council at regular intervals.

3. The PSC shall receive reports from the Head of the EU Coordination Cell regarding the conduct of the EU military coordination action at regular intervals. The PSC may invite the Head of the EU Coordination Cell to its meetings, as appropriate.

Article 7

Military direction

1. The EU Military Committee (EUMC) shall monitor the proper execution of the EU military coordination action conducted under the responsibility of the Head of the EU Coordination Cell.

2. The EUMC shall receive reports from the Head of the EU Coordination Cell at regular intervals. The PSC may invite the Head of the EU Coordination Cell to its meetings, as appropriate.

3. The Chairman of the EUMC shall act as the primary point of contact with the Head of the EU Coordination Cell.

Article 8

Coherence of the EU response

1. The Presidency, the Secretary-General/High Representative, the Head of the EU Coordination Cell, and the Member States deploying military assets in theatre shall ensure close coordination of their respective activities with regard to the implementation of this Joint Action.

2. The Member States shall in particular be invited to provide the EU Coordination Cell with any relevant information on their operational activities in theatre and on the current situation in the area, including exchanges of information with merchant vessels.

Article 9

Relations with the United Nations, the African Union, the International Maritime Organisation and other actors

1. The Secretary-General/High Representative, assisted by the European Union Special Representative to the African Union, shall, in close coordination with the Presidency and in liaison with the Head of the EU Coordination Cell, act as the primary point of contact with the United Nations and the African Union.

2. At operational level the Head of the EU Coordination Cell shall act as the point of contact with, in particular, ship-owners' organisations, the relevant departments of the UN Secretariat, the World Food Programme and the International Maritime Organisation, and with Combined Task Force 150 within the framework of Operation Enduring Freedom.

Article 10

Support of third States

1. The PSC may authorise on a case-by-case basis the Head of the EU Coordination Cell to provide, under the same conditions as those laid down for the Member States, the coordination of action undertaken by third States implementing UN Security Council resolution 1816 (2008) which have requested such coordination.

2. To that end, the Head of the EU Coordination Cell shall be authorised to enter into administrative and technical arrangements with those States' competent authorities.

Article 11

Liability

1. The Member State which has seconded staff to the EU Coordination Cell shall be responsible for answering any claims linked to the secondment, whether from or concerning a staff member. The Member State in question shall be responsible for bringing any action against the seconded staff member.

2. Member States shall be responsible for answering any claims from third parties arising from naval operations conducted by vessels flying their flags in connection with those States' participation in implementing UN Security Council resolution 1816 (2008).

Article 12

Financial arrangements

1. The following common costs of the EU military coordination action shall be charged to the Member States in accordance with the gross national income scale:

— communications,

— transport/travel,

— administration.

2. The financing of those common costs shall be administered by Athena.

3. The financial reference amount for the common costs of the EU military coordination action shall be EUR 60 000. The percentage of the reference amount referred to in Article 33(3) of 2007/384/CFSP shall be 30 %.

Article 13

Release of information to the United Nations and other third parties

1. The Secretary General/High Representative is hereby authorised to release to the United Nations and to other third parties associated with this Joint Action EU classified information and documents generated for the purposes of the EU military coordination action up to the level of classification relevant for each of them and in accordance with the Council security regulations ⁽¹⁾.

2. The Secretary General/High Representative is hereby authorised to release to the United Nations and to other third parties, associated with this Joint Action, EU non-classified documents relating to the Council's deliberations on the military coordination action which are covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ⁽²⁾.

⁽¹⁾ Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations (OJ L 101, 11.4.2001, p. 1).

⁽²⁾ Council Decision 2004/338/EC, Euratom of 22 March 2004 adopting the Council's Rules of Procedure (OJ L 106, 15.4.2004, p. 22).

*Article 14***Entry into force and termination**

1. This Joint Action shall enter into force on the date of its adoption.
2. The EU military coordination action shall terminate on a date to be decided by the Council and shall be reassessed at the end of the period of validity of UN Security Council resolution 1816 (2008).
3. This Joint Action shall be repealed on the date on which the EU Coordination Cell closes and without prejudice to the relevant provisions of Decision 2007/384/CFSP.

*Article 15***Publication**

1. This Joint Action shall be published in the *Official Journal of the European Union*.
2. The PSC's decisions on the subsequent appointment of the Head of the EU Coordination Cell shall likewise be published in the *Official Journal of the European Union*.

Done at Brussels, 19 September 2008.

For the Council
The President
B. KOUCHNER
