

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2008/851/CFSP

of 10 November 2008

on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast

THE COUNCIL OF THE EUROPEAN UNION,

international law, all necessary means to repress acts of piracy and armed robbery at sea.

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

Whereas:

(1) In its Resolution 1814 (2008) on the situation in Somalia, adopted on 15 May 2008, the United Nations Security Council (UNSC) has called on States and regional organisations, in close coordination with one another, to take action to protect shipping involved in the transport and delivery of humanitarian aid to Somalia and in activities authorised by the United Nations.

(2) In its Resolution 1816 (2008) on the situation in Somalia, adopted on 2 June 2008, the UNSC expressed its concern at the threat that acts of piracy and armed robbery against vessels pose to the delivery of humanitarian aid to Somalia, the safety of commercial maritime routes and international navigation. The UNSC encouraged, in particular, States interested in the use of commercial maritime routes off the coast of Somalia to increase and coordinate their efforts, in cooperation with the Transitional Federal Government of Somalia (TFG), to deter acts of piracy and armed robbery at sea. It authorised, for a period of six months from the date of the resolution, States cooperating with the TFG, of which advance notification had been given by the TFG to the UN Secretary-General, to enter the territorial waters of Somalia and to use, in a manner consistent with relevant

(3) In its Resolution 1838 (2008) on the situation in Somalia, adopted on 7 October 2008, the UNSC commended the ongoing planning process towards a possible European Union (EU) naval operation, as well as other international or national initiatives taken with a view to implementing Resolutions 1814 (2008) and 1816 (2008), and urged States that have the capacity to do so, to cooperate with the TFG in the fight against piracy and armed robbery at sea in conformity with the provisions of Resolution 1816 (2008). The UNSC also urged States and regional organisations, in conformity with the provisions of Resolution 1814 (2008), to continue to take action to protect the World Food Programme (WFP) maritime convoys, which is vital to bring humanitarian assistance to the affected populations in Somalia.

(4) 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 Member States to provide protection to WFP 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 the Somali population.

(5) On 5 August 2008, the Council approved a crisis management concept for action by the EU to help implement UNSC Resolution 1816 (2008) and for peace and international security in the region.

- (6) On 15 September 2008, the Council reaffirmed its serious concern at the acts of piracy and armed robbery off the Somali coast, deploring, in particular, their recent resurgence. As regards the EU's contribution to the implementation of UNSC Resolution 1816 (2008) on combating piracy off the Somali coast and to the protection, under Resolutions 1814 (2008) and 1816 (2008), of vessels chartered by the WFP and bound for Somalia, the Council decided to establish a coordination cell in Brussels with the task of supporting the surveillance and protection activities carried out by some Member States off the Somali coast. On the same day, it approved, on the one hand, a plan for the implementation of this military coordination action (EU NAVCO) and, on the other, a strategic military option for a possible EU naval operation for which those Member States wishing to cooperate with the TFG under Resolution 1816 (2008) would make available military resources for the deterrence and repression of acts of piracy and armed robbery off the Somali coast.
- (7) On 19 September 2008, the Council adopted Joint Action 2008/749/CFSP on the European Union military coordination action in support of UN Security Council Resolution 1816 (2008) (EU NAVCO) ⁽¹⁾.
- (8) On the launch of the Atalanta military operation, the tasks of the military coordination cell will be exercised under this Joint Action. The coordination cell should then be closed.
- (9) The Political and Security Committee (PSC) should exercise political control over the EU military operation in order to help deter acts of piracy off the Somali coast, provide it with strategic direction and take the relevant decisions in accordance with third subparagraph of Article 25 of the Treaty.
- (10) Under Article 28(3) of the Treaty, the operational expenditure, arising from this Joint Action, which has military or defence implications, should be borne by the Member States in accordance with 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) ⁽²⁾ (hereinafter referred to as 'Athena').
- (11) Article 14(1) of the Treaty calls for Joint Actions to lay down the means to be made available to the European Union. The financial reference amount, for a twelve-month period, for the common costs of the EU military operation constitutes the best current estimate and is without prejudice to the final figures to be

included in a budget to be approved in accordance with the rules laid down in the decision regarding Athena.

- (12) By letter dated 30 October 2008, the EU made an offer to the TFG, pursuant to point 7 of Resolution 1816 (2008), which contains proposals for States other than Somalia to exercise jurisdiction over persons captured in Somali territorial waters who have committed, or are suspected of having committed, acts of piracy or armed robbery.
- (13) In accordance with Article 6 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not participate in the elaboration and implementation of decisions and actions of the European Union which have defence implications. Denmark does not participate in the implementation of this Joint Action and therefore does not participate in the financing of the operation,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mission

1. The European Union (EU) shall conduct a military operation in support of Resolutions 1814 (2008), 1816 (2008) and 1838 (2008) of the United Nations Security Council (UNSC), in a manner consistent with action permitted with respect to piracy under Article 100 *et seq.* of the United Nations Convention on the Law of the Sea signed in Montego Bay on 10 December 1982 (hereinafter referred to as 'the United Nations Convention on the Law of the Sea') and by means, in particular, of commitments made with third States, hereinafter called 'Atalanta' in order to contribute to:

- the protection of vessels of the WFP delivering food aid to displaced persons in Somalia, in accordance with the mandate laid down in UNSC Resolution 1814 (2008),
- the protection of vulnerable vessels cruising off the Somali coast, and the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast, in accordance with the mandate laid down in UNSC Resolution 1816 (2008),

2. The forces deployed to that end shall operate, up to 500 nautical miles off the Somali coast and neighbouring countries, in accordance with the political objective of an EU maritime operation, as defined in the crisis management concept approved by the Council on 5 August 2008.

⁽¹⁾ OJ L 252, 20.9.2008, p. 39.

⁽²⁾ OJ L 152, 13.6.2007, p. 14.

*Article 2***Mandate**

Under the conditions set by the relevant international law and by UNSC Resolutions 1814 (2008), 1816 (2008) and 1838 (2008), Atalanta shall, as far as available capabilities allow:

- (a) provide protection to vessels chartered by the WFP, including by means of the presence on board those vessels of armed units of Atalanta, in particular when cruising in Somali territorial waters;
- (b) provide protection, based on a case-by-case evaluation of needs, to merchant vessels cruising in the areas where it is deployed;
- (c) keep watch over areas off the Somali coast, including Somalia's territorial waters, in which there are dangers to maritime activities, in particular to maritime traffic;
- (d) take the necessary measures, including the use of force, to deter, prevent and intervene in order to bring to an end acts of piracy and armed robbery which may be committed in the areas where it is present;
- (e) in view of prosecutions potentially being brought by the relevant States under the conditions in Article 12, arrest, detain and transfer persons who have committed, or are suspected of having committed, acts of piracy or armed robbery in the areas where it is present and seize the vessels of the pirates or armed robbers or the vessels caught following an act of piracy or an armed robbery and which are in the hands of the pirates, as well as the goods on board;
- (f) liaise with organisations and entities, as well as States, working in the region to combat acts of piracy and armed robbery off the Somali coast, in particular the 'Combined Task Force 150' maritime force which operates within the framework of 'Operation Enduring Freedom'.

*Article 3***Appointment of the EU Operation Commander**

Rear admiral Phillip Jones is hereby appointed EU Operation Commander.

*Article 4***Designation of the EU Operational Headquarters**

The EU Operational Headquarters shall be located at Northwood, United Kingdom.

*Article 5***Planning and launch of the operation**

The Decision to launch the EU military operation shall be adopted by the Council following approval of the Operation Plan and the Rules of Engagement and in the light of the notification by the TFG to the Secretary-General of the United Nations of the offer of cooperation made by the EU pursuant to point 7 of UNSC Resolution 1816 (2008).

*Article 6***Political control and strategic direction**

1. Under the responsibility of the Council, the Political and Security Committee (hereinafter referred to as the 'PSC') shall exercise the political control and strategic direction of the EU military operation. The Council hereby authorises the PSC to take the relevant decisions in accordance with Article 25 of the EU Treaty. This authorisation shall include the powers to amend the planning documents, including the Operation Plan, the Chain of Command and the Rules of Engagement. It shall also include the powers to take decisions on the appointment of the EU Operation Commander and/or EU Force Commander. The powers of decision with respect to the objectives and termination of the EU military operation shall remain vested in the Council, assisted by the Secretary-General/High Representative (hereinafter referred to as the 'SG/HR').

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

3. The PSC shall receive reports from the chairman of the EU Military Committee (EUMC) regarding the conduct of the EU military operation, at regular intervals. The PSC may invite the EU Operation Commander and/or EU Force Commander to its meetings, as appropriate.

*Article 7***Military direction**

1. The EUMC shall monitor the proper execution of the EU military operation conducted under the responsibility of the EU Operation Commander.

2. The EUMC shall receive reports from the EU Operation Commander at regular intervals. It may invite the EU Operation Commander and/or EU Force Commander to its meetings as appropriate.

3. The chairman of the EUMC shall act as the primary point of contact with the EU Operation Commander.

*Article 8***Coherence of EU response**

The Presidency, the SG/HR, the EU Operation Commander and the EU Force Commander shall closely coordinate their respective activities regarding the implementation of this Joint Action.

*Article 9***Relations with the United Nations, neighbouring countries and other actors**

1. The SG/HR, in close coordination with the Presidency, shall act as the primary point of contact with the United Nations, the Somali authorities, the authorities of neighbouring countries, and other relevant actors. Within the context of his contact with the African Union, the SG/HR shall be assisted by the EU Special Representative (EUSR) to the African Union, in close coordination with the presidency.

2. At operational level, the EU Operation Commander shall act as the contact point with, in particular, ship-owners' organisations, as well as with the relevant departments of the UN General Secretariat and the WFP.

Article 10

Participation by third States

1. Without prejudice to the decision-making autonomy of the EU or to the single institutional framework, and in accordance with the relevant guidelines of the European Council, third States may be invited to participate in the operation.

2. The Council hereby authorises the PSC to invite third States to offer contributions and to take the relevant decisions on acceptance of the proposed contributions, upon the recommendation of the EU Operation Commander and the EUMC.

3. Detailed modalities for the participation by third States shall be the subject of agreements concluded in accordance with the procedure laid down in Article 24 of the Treaty. The SG/HR, who shall assist the Presidency, may negotiate such agreements on behalf of the Presidency. Where the EU and a third State have concluded an agreement establishing a framework for the latter's participation in EU crisis management operations, the provisions of such an agreement shall apply in the context of this operation.

4. Third States making significant military contributions to the EU military operation shall have the same rights and obligations in terms of day-to-day management of the operation as Member States taking part in the operation.

5. The Council hereby authorises the PSC to take relevant decisions on the setting-up of a Committee of Contributors, should third States provide significant military contributions.

6. The conditions for the transfer to a State participating in the operation of persons arrested and detained, with a view to the exercise of jurisdiction of that State, shall be established when the participation agreements referred to in paragraph 3 are concluded or implemented.

Article 11

Status of EU-led forces

The status of the EU-led forces and their personnel, including the privileges, immunities and further guarantees necessary for the fulfilment and smooth functioning of their mission, who:

- are stationed on the land territory of third States,
- operate in the territorial or internal waters of third States,

shall be agreed in accordance with the procedure laid down in Article 24 of the Treaty. The SG/HR, who shall assist the Presidency, may negotiate such arrangements on behalf of the Presidency.

Article 12

Transfer of persons arrested and detained with a view to their prosecution

1. On the basis of Somalia's acceptance of the exercise of jurisdiction by Member States or by third States, on the one hand, and Article 105 of the United Nations Convention on the Law of the Sea, on the other hand, persons having committed, or suspected of having committed, acts of piracy or armed robbery in Somali territorial waters or on the high seas, who are arrested and detained, with a view to their prosecution, and property used to carry out such acts, shall be transferred:

- to the competent authorities of the flag Member State or of the third State participating in the operation, of the vessel which took them captive, or
- if this State cannot, or does not wish to, exercise its jurisdiction, to a Member States or any third State which wishes to exercise its jurisdiction over the aforementioned persons and property.

2. No persons referred to in paragraphs 1 and 2 may be transferred to a third State unless the conditions for the transfer have been agreed with that third State in a manner consistent with relevant international law, notably international law on human rights, in order to guarantee in particular that no one shall be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment.

Article 13

Relations with the flag States of protected vessels

The conditions governing the presence on board merchant ships, particularly those chartered by the WFP, of units belonging to Atalanta, including privileges, immunities and other guarantees relating to the proper conduct of the operation, shall be agreed with the flag States of those vessels.

Article 14

Financial arrangements

1. The common costs of the EU military operation shall be administered by Athena.

2. The financial reference amount for the common costs of the EU military operation shall be EUR 8 300 000. The percentage of the reference amount referred to in Article 33(3) of Athena shall be 30 %.

*Article 15***Release of information to the United Nations and other third parties**

1. The SG/HR is hereby authorised to release to the United Nations and to other third parties associated with this Joint Action, classified EU information and documents generated for the purposes of the EU military operation up to the level of classification appropriate for each of them and in accordance with the Council's security regulations ⁽¹⁾.

2. The SG/HR is hereby authorised to release to the United Nations and to other third parties associated with this Joint Action, unclassified EU documents relating to Council deliberations on the operation which are covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ⁽²⁾.

*Article 16***Entry into force and termination**

1. This Joint Action shall enter into force on the date of its adoption.

2. Joint Action 2008/749/CFSP shall be repealed as from the date of closure of the coordination cell put in place by that Joint Action. It shall be closed on the launch date of the operation referred to in Article 6 of this Joint Action.

3. The EU military operation shall terminate 12 months after the initial operating capability is declared, subject to the prolongation of UNSC Resolutions 1814 (2008) and 1816 (2008).

4. This Joint Action shall be repealed following the withdrawal of the EU force, in accordance with the plans approved for the termination of the EU military operation, and without prejudice to the relevant provisions of Athena.

*Article 17***Publication**

1. This Joint Action shall be published in the *Official Journal of the European Union*.

2. The PSC's decisions on the appointment of an EU Operation Commander and/or EU Force Commander, as well as the PSC's decisions on the acceptance of contributions from third States and the setting-up of a Committee of Contributors shall likewise be published in the *Official Journal of the European Union*.

Done at Brussels, 10 November 2008.

For the Council

The President

B. KOUCHNER

⁽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).