

**COUNCIL DECISION 2010/766/CFSP****of 7 December 2010****amending Joint Action 2008/851/CFSP 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,

Having regard to the Treaty on European Union, and in particular Article 28 and Article 43(2) thereof,

Whereas:

(1) On 10 November 2008, the Council adopted Joint Action 2008/851/CFSP 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 <sup>(1)</sup>.

(2) On 8 December 2009 and on 30 July 2010 respectively, the Council adopted Decision 2009/907/CFSP <sup>(2)</sup> and Decision 2010/437/CFSP <sup>(3)</sup> amending Joint Action 2008/851/CFSP.

(3) Acts of piracy and armed robbery off the Somali coast continue to threaten shipping in the area and especially the delivery of food aid to the Somali population by the World Food Programme.

(4) On 23 November 2010, the United Nations Security Council adopted Resolution 1950 (2010).

(5) The European Union military operation referred to in Joint Action 2008/851/CFSP ('EU military operation') should be extended until 12 December 2012.

(6) The definition of persons likely to be transferred pursuant to Article 12 of Joint Action 2008/851/CFSP should be clarified in accordance with the provisions of the United Nations Convention on the Law of the Sea.

(7) In the light of experience from the first 2 years of the EU military operation, amendments to Joint Action 2008/851/CFSP are required in order to allow for the collection of physical characteristics and transmission of certain personal data, such as fingerprints, of suspected persons, with a view to facilitating their identification and

traceability and their possible prosecution. Such processing should be carried out in accordance with Article 6 of the Treaty on European Union.

(8) It is also necessary for practical reasons to provide for the possibility of exchanging classified information in the theatre of operations.

(9) Joint Action 2008/851/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Joint Action 2008/851/CFSP is hereby amended as follows:

(1) in Article 2, point (e) is replaced by the following:

'(e) in view of prosecutions potentially being brought by the relevant States under the conditions in Article 12, arrest, detain and transfer persons suspected of intending, as referred to in Articles 101 and 103 of the United Nations Convention on the Law of the Sea, to commit, committing or 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 or armed robbers, as well as the property on board;'

(2) in Article 2, the following points are added:

'(h) collect, in accordance with applicable law, data concerning persons referred to in point (e) related to characteristics likely to assist in their identification, including fingerprints;

(i) for the purpose of circulating the data via INTERPOL's channels and checking it against INTERPOL's databases, transmit to the National Central Bureau ('NCB') of the International Criminal Police Organisation – INTERPOL located in the Member State where the Operational Headquarters is stationed, in accordance with arrangements to be concluded between the EU Operation Commander and the Head of the NCB, the following data:

<sup>(1)</sup> OJ L 301, 12.11.2008, p. 33.

<sup>(2)</sup> OJ L 322, 9.12.2009, p. 27.

<sup>(3)</sup> OJ L 210, 11.8.2010, p. 33.

- personal data concerning persons referred to in point (e) related to characteristics likely to assist in their identification, including fingerprints, as well as the following particulars, with the exclusion of other personal data: surname, maiden name, given names and any alias or assumed name; date and place of birth, nationality, sex; place of residence, profession and whereabouts; driving licenses, identification documents and passport data. This personal data shall not be stored by Atalanta after its transmission to INTERPOL,
- data related to the equipment used by such persons.;

(3) in Article 12, paragraph 1 is replaced by the following:

'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 suspected of intending, as referred to in Articles 101 and 103 of the United Nations Convention on the Law of the Sea, to commit, committing or 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 Member State or of the third State participating in the operation, of which the vessel which took them captive flies the flag, or
- if that State cannot, or does not wish to, exercise its jurisdiction, to a Member State or any third State which

wishes to exercise its jurisdiction over the aforementioned persons and property.;

(4) in Article 15, the following paragraph is added:

'3. The HR is hereby authorised to release to the United States-led Coalition Maritime Force ('CMF'), through its Headquarters, as well as to third States not participating in CMF and to international organisations, which are present in the area of the EU military operation, classified EU information and documents generated for the purposes of the EU military operation at the level RESTREINT UE, on the basis of reciprocity, where such release at theatre level is necessary for operational reasons, in accordance with the Council's security regulations and subject to arrangements between the HR and the competent authorities of the third parties referred to above.;

(5) in Article 16, paragraph 3 is replaced by the following:

'3. The EU military operation shall terminate on 12 December 2012.'

#### *Article 2*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 7 December 2010.

*For the Council*  
*The President*  
D. REYNDEERS