

AGREEMENT

between the European Union and the Republic of Croatia on the participation of the Republic of Croatia in the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Operation Atalanta)

THE EUROPEAN UNION (EU),

of the one part, and

THE REPUBLIC OF CROATIA,

of the other part,

hereinafter referred to as the 'Parties',

TAKING INTO ACCOUNT:

- the adoption by the Council of the European Union of 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 ⁽¹⁾ (operation Atalanta),
- the invitation by the EU to the Republic of Croatia to participate in the EU-led operation,
- the successful completion of the Force Generation process and the recommendation by the EU Operation Commander and the EU Military Committee to agree on the participation of the Republic of Croatia's forces in the EU-led operation,
- the Political and Security Committee Decision ATALANTA/2/2009 of 21 April 2009 on the acceptance of third States' contributions to the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) ⁽²⁾ and the Political and Security Committee Decision ATALANTA/3/2009 of 21 April 2009 on the setting up of the Committee of Contributors for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) ⁽³⁾, both as amended by Political and Security Committee Decision ATALANTA/5/2009 of 10 June 2009 ⁽⁴⁾,
- the decision by the Republic of Croatia of 3 April 2009 to participate in Operation Atalanta,

HAVE AGREED AS FOLLOWS:

Article 1

Participation in the operation

1. The Republic of Croatia shall associate itself with 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 (operation Atalanta), and with any Joint Action or Decision by which the Council of the European Union decides to extend the EU military crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.

2. The contribution of the Republic of Croatia to operation Atalanta is without prejudice to the decision-making autonomy of the European Union.

3. The Republic of Croatia shall ensure that its forces and personnel participating in the EU military crisis management operation undertake their mission in conformity with:

- Joint Action 2008/851/CFSP and possible subsequent amendments,
- the Operation Plan,
- any implementing measures.

4. Forces and personnel seconded to the operation by the Republic of Croatia shall carry out their duties and conduct themselves solely with the interest of the EU military crisis management operation in mind.

⁽¹⁾ OJ L 301, 12.11.2008, p. 33.

⁽²⁾ OJ L 109, 30.4.2009, p. 52.

⁽³⁾ OJ L 119, 14.5.2009, p. 40.

⁽⁴⁾ OJ L 148, 11.6.2009, p. 34.

5. The Republic of Croatia shall inform the EU Operation Commander in due time of any change to its participation in the operation.

Article 2

Status of forces

1. The status of the forces and personnel contributed to operation Atalanta by the Republic of Croatia shall be governed by the agreement on the status of forces concluded between the European Union and Somalia, Djibouti or any other country in the region with which such an agreement will have been concluded for the purposes of the operation, or by the unilateral declaration on the status of forces issued by Kenya or any country in the region which will have issued such a declaration for the purposes of the operation.

2. The status of the forces and personnel contributed to headquarters or command elements located outside the joint operation area, shall be governed by arrangements between the Host State of the headquarters and command elements concerned and the Republic of Croatia.

3. Without prejudice to the agreement on the status of forces referred to in paragraph 1, the Republic of Croatia shall exercise jurisdiction over its forces and personnel participating in the EU military crisis management operation.

4. The Republic of Croatia shall be responsible for answering any claims linked to the participation in operation Atalanta, from or concerning any of its forces and personnel. The Republic of Croatia shall be responsible for bringing any action, in particular legal or disciplinary, against any of its forces and personnel, in accordance with its laws and regulations.

5. The Republic of Croatia undertakes to make a declaration as regards the waiver of claims against any State participating in operation Atalanta, and to do so when signing this Agreement.

6. European Union Member States undertake to make a declaration as regards the waiver of claims, for the participation of the Republic of Croatia in operation Atalanta, and to do so when signing this Agreement.

Article 3

Conditions of transfer of persons arrested and detained with a view to their prosecution

If the Republic of Croatia exercises its jurisdiction upon persons having committed or suspected of having committed acts of piracy, or acts of armed robbery in Somali territorial waters, the transfer of persons arrested with a view to their prosecution and detained by European Union-led naval force (EUNAVFOR) and seized property in the possession of EUNAVFOR, from EUNAVFOR to the Republic of Croatia, shall be carried out

under the conditions set out in Annex, which forms an integral part of this Agreement.

Article 4

Classified information

The provisions of the Agreement between the European Union and the Republic of Croatia on security procedures for the exchange of classified information⁽¹⁾ shall apply in the context of operation Atalanta.

Article 5

Chain of command

1. All forces and personnel participating in the EU military crisis management operation shall remain under the full command of their national authorities.

2. National authorities shall transfer the Operational and Tactical command and/or control of their forces and personnel to the EU Operation Commander. The EU Operation Commander is entitled to delegate his authority.

3. The Republic of Croatia shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States.

4. The EU Operation Commander may — following consultations with the Republic of Croatia — at any time request the withdrawal of the Republic of Croatia's contribution.

5. A Senior Military Representative (SMR) shall be appointed by the Republic of Croatia to represent its national contingent in the EU military crisis management operation. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for day-to-day contingent discipline.

Article 6

Financial aspects

1. The Republic of Croatia shall assume all the costs associated with its participation in the operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 1(1) of this Agreement, as well as in Council Decision 2008/975/CFSP of 18 December 2008 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena)⁽²⁾.

2. Operation Atalanta shall provide logistic support to the Croatian contingent on a cost reimbursement basis under the conditions provided in the implementing arrangements referred to in Article 7. Administrative management of related expenditure shall be entrusted to Athena.

⁽¹⁾ OJ L 116, 29.4.2006, p. 74.

⁽²⁾ OJ L 345, 23.12.2008, p. 96.

3. In the event of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, the Republic of Croatia shall, when its liability has been established, pay compensation under the conditions foreseen in the agreement on status of forces, if available, as referred to in Article 2(1) of the Agreement.

Article 7

Arrangements to implement the Agreement

Any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy or the EU Operation Commander and the appropriate authorities of the Republic of Croatia.

Article 8

Non compliance

Should one of the Parties fail to comply with its obligations laid down in the previous Articles, the other Party shall have the right to terminate this Agreement by serving a notice of one month.

Article 9

Dispute settlement

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

Article 10

Entry into force

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.

2. This Agreement shall be provisionally applied from the date of signature.

3. This Agreement shall remain in force for the duration of the Republic of Croatia's contribution to the operation.

Done at Brussels on 27 July 2009 in two originals in the English language.

For the European Union

For the Republic of Croatia



ANNEX

Provisions on the conditions and modalities for the transfer of persons suspected of having committed acts of piracy or acts of armed robbery in Somalia's territorial sea, and detained by the European Union-led naval force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to the Republic of Croatia and for their treatment after such transfer

1. Definitions

For the purposes of this Agreement:

- (a) 'Piracy' means piracy as defined in Article 101 of UNCLOS;
- (b) 'Armed robbery' means acts as defined in paragraph (a) when committed in a coastal State's territorial sea within the area of the Operation;
- (c) 'Transferred person' means any person suspected of intending to commit, committing, or having committed, acts of piracy or armed robbery transferred by EUNAVFOR to the Republic of Croatia under this Agreement.

2. General principles

- (a) The Republic of Croatia may accept, upon the request of EUNAVFOR, the transfer of persons detained by EUNAVFOR in connection with piracy or armed robbery and associated seized property by EUNAVFOR and submit such persons and property to its competent authorities for the purpose of investigation and prosecution.
- (b) EUNAVFOR shall, when acting under this Agreement, only transfer persons to the competent law enforcement authorities of the Republic of Croatia.
- (c) The Republic of Croatia confirms that persons transferred under these provisions, both prior to and following transfer, shall be treated humanely and in accordance with international human rights obligations, including the prohibition against torture and cruel, inhumane and degrading treatment or punishment, the prohibition of arbitrary detention and in accordance with the requirement to have a fair trial.

3. Treatment, prosecution and trial of transferred persons

- (a) Any transferred person shall be treated humanely and shall not be subject to torture or cruel, inhuman or degrading treatment or punishment, shall receive adequate accommodation and nourishment, access to medical treatment and shall be able to carry out religious observance.
- (b) Any transferred person shall be brought promptly before a judge or other officer authorised by law to exercise judicial power, who shall decide without delay on the lawfulness of his detention and shall order his release if the detention is not lawful.
- (c) Any transferred person shall be entitled to trial within a reasonable time or to release.
- (d) In the determination of any criminal charge against him, any transferred person shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- (e) Any transferred person charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- (f) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - 1. to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - 2. to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - 3. to be tried without undue delay;
 - 4. to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

5. to examine, or have examined, all evidence against him, including affidavits of witnesses who conducted the arrest, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 6. to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 7. not to be compelled to testify against himself or to confess guilt.
- (g) Any transferred person convicted of a crime shall be permitted the right to have his conviction and sentence reviewed by or appealed to a higher tribunal in accordance with the law of Republic of Croatia.
- (h) The Republic of Croatia shall not transfer any transferred person to any other State for the purposes of investigation or prosecution without prior written consent from EUNAVFOR.
4. Death penalty
- No transferred person shall be sentenced or liable to the death penalty or be the subject of an application for the death penalty.
5. Records and notifications
- (a) Any transfer shall be the subject of an appropriate document signed by a representative of EUNAVFOR and a representative of the competent authorities of the Republic of Croatia law enforcement authorities.
- (b) EUNAVFOR shall provide detention records to the Republic of Croatia with regard to any transferred person. These records shall include, so far as possible, the physical condition of the transferred person while in detention, the time of transfer to the Republic of Croatia's authorities, the reason for his detention, the time and place his detention commenced, and any decisions taken with regard to his detention.
- (c) The Republic of Croatia shall be responsible for keeping an accurate account of any transferred person, including but not limited to keeping records of any seized property, the person's physical condition, the location of his place of detention, any charges against him and any significant decisions taken in the course of his prosecution and trial.
- (d) These records shall be available to representatives of the EU and EUNAVFOR upon request in writing to the Ministry of Foreign Affairs of the Republic of Croatia.
- (e) In addition, the Republic of Croatia shall notify EUNAVFOR of the place of detention of any person transferred under this Agreement, any deterioration of his physical condition and of any allegations of alleged improper treatment. Representatives of the EU and EUNAVFOR shall have access to any person transferred under this Agreement as long as such persons are in custody and shall be entitled to question them.
- (f) At their request, national and international humanitarian agencies shall be allowed to visit persons transferred under this Agreement.
- (g) For the purposes of ensuring that EUNAVFOR is able to provide timely assistance to the Republic of Croatia, with attendance of witnesses from EUNAVFOR and the provision of relevant evidence, the Republic of Croatia shall notify EUNAVFOR of its intention to initiate criminal trial proceedings against any transferred person and the timetable for provision of evidence, and the hearing of evidence.
6. EUNAVFOR Assistance
- (a) EUNAVFOR, within its means and capabilities, shall provide all assistance to the Republic of Croatia with a view to the investigation and prosecution of transferred persons.
- (b) In particular, EUNAVFOR shall:
1. hand over detention records drawn up pursuant to paragraph 5(b) of these provisions;
 2. process any evidence in accordance with the requirements of the competent authorities of the Republic of Croatia as agreed in the implementing arrangements described in paragraph 8 below;
 3. endeavour to produce statements of witnesses or affidavits by EUNAVFOR personnel involved in any incident in relation to which persons have been transferred under these provisions;
 4. hand over all relevant seized property in the possession of EUNAVFOR.

7. Relationship to other rights of transferred persons

Nothing in these provisions is intended to derogate or may be construed as derogating from any rights that a transferred person may have under applicable domestic or international law.

8. Implementing arrangements

(a) For the purposes of the application of these provisions, operational, administrative and technical matters may be the subject of implementing arrangements to be approved between the competent authorities of the Republic of Croatia on the one hand and the competent EU authorities as well as the competent authorities of the States providing a national contingent for EUNAVFOR on the other hand.

(b) Implementing arrangements may, inter alia, cover:

1. The identification of competent law enforcement authorities of the Republic of Croatia to which EUNAVFOR may transfer persons.
 2. The detention facilities where transferred persons will be held.
 3. The handling of documents, including those related to the gathering of evidence, which shall be handed over to the competent law enforcement authorities of the Republic of Croatia upon transfer of a person.
 4. Points of contacts for notifications.
 5. Forms to be used for transfers.
-