

COUNCIL DECISION (CFSP) 2016/2314**of 19 December 2016****amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 42(4) and 43(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 18 May 2015, the Council adopted Decision (CFSP) 2015/778 ⁽¹⁾.
- (2) On 20 June 2016, the Council adopted Decision (CFSP) 2016/993 ⁽²⁾ which amended Decision (CFSP) 2015/778 by adding two supporting tasks to EUNAVFOR MED operation SOPHIA's mandate, namely capacity building and training of the Libyan Coast Guard and Navy, and contributing to information sharing and the implementation of the United Nations (UN) arms embargo on the high seas off the coast of Libya.
- (3) The vetting of possible trainees from the Libyan Coast Guard and Navy should be made more efficient by exchanging information with INTERPOL, the International Criminal Court and the United States of America as well as with Member States, the United Nations Support Mission in Libya (UNSMIL), the European Police Office (EUROPOL) and the European Border and Coast Guard Agency (Frontex).
- (4) Information exchange in the context of implementing the UN arms embargo on the high seas off the coast of Libya should be authorised up to the level 'SECRET UE/EU SECRET'.
- (5) The possibility should be introduced for EUNAVFOR MED operation SOPHIA to exchange information with INTERPOL in the context of the fight against trafficking in human beings or the arms embargo.
- (6) In addition, the Political and Security Committee (PSC) should be empowered to authorise the High Representative of the Union for Foreign Affairs and Security Policy (HR) to exchange information with relevant third States and international organisations as necessary to meet the operational needs of EUNAVFOR MED operation SOPHIA.
- (7) The HR should be authorised to delegate the authorisations to release classified information and to conclude the arrangements to that effect referred to in Decision (CFSP) 2015/778.
- (8) The necessity for EUNAVFOR MED operation SOPHIA to comply with applicable law when it collects, stores and exchanges personal data and evidence should be emphasised.
- (9) Decision (CFSP) 2015/778 should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision (CFSP) 2015/778 is amended as follows:

- (1) in Article 2, paragraph 4 is replaced by the following:

'4. EUNAVFOR MED operation SOPHIA may collect and store, in accordance with applicable law, personal data concerning persons taken on board ships participating in EUNAVFOR MED operation SOPHIA related to characteristics likely to assist in their identification, including fingerprints, as well as the following particulars, with the

⁽¹⁾ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA) (OJ L 122, 19.5.2015, p. 31).

⁽²⁾ Council Decision (CFSP) 2016/993 of 20 June 2016 amending Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA) (OJ L 162, 21.6.2016, p. 18).

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. It may transmit such data and data related to the vessels and equipment used by such persons to the relevant law enforcement authorities of Member States and/or to competent Union bodies.;

(2) in Article 2a, paragraph 5 is replaced by the following:

‘5. Insofar as required by the supporting task referred to in paragraph 1, EUNAVFOR MED operation SOPHIA may collect, store and exchange with Member States, competent Union bodies, UNSMIL, EUROPOL, INTERPOL, Frontex, the International Criminal Court and the United States of America the information, including personal data, gathered for the purpose of the vetting procedures on possible trainees, provided that they have given their consent in writing. Moreover, EUNAVFOR MED operation SOPHIA may collect and store necessary medical information and biometric data on trainees provided that they have given their consent in writing.;

(3) in Article 2b, paragraph 1 is replaced by the following:

‘1. As part of its supporting task to contribute to the implementation of the UN arms embargo on the high seas off the coast of Libya, EUNAVFOR MED operation SOPHIA shall gather and exchange information with relevant partners and agencies through the mechanisms in the planning documents in order to contribute to a comprehensive maritime situational awareness in the agreed Area of Operation as defined in the relevant planning documents. Where such information is classified up to “SECRET UE/EU SECRET”, it may be exchanged with relevant partners and agencies in accordance with Council Decision 2013/488/EU (*) and based on arrangements concluded at the operational level in accordance with Article 12(9) of this Decision, and in full respect of the principles of reciprocity and inclusiveness. Classified information received shall be handled by EUNAVFOR MED operation SOPHIA without any distinction between its staff and solely on the basis of operational requirements.

(*) Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).;

(4) in Article 2b, paragraph 3 is replaced by the following:

‘3. In accordance with the relevant UN Security Council Resolutions, including UNSCR 2292 (2016), EUNAVFOR MED operation SOPHIA may, in the course of inspections carried out in accordance with paragraph 2, collect and store evidence directly related to the carriage of items prohibited under the arms embargo on Libya. It may transmit such evidence to the relevant law enforcement authorities of Member States and/or to competent Union bodies in accordance with applicable law.;

(5) Article 12 is replaced by the following:

‘Article 12

Release of Information

1. The HR shall be authorised to release to designated third States, international organisations and international agencies, as appropriate and in accordance with the needs of EUNAVFOR MED operation SOPHIA, any EU non-classified documents connected with the deliberations of the Council relating to the operation and covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure (*). The PSC shall designate on a case-by-case basis the third States, international organisations and international agencies concerned.

2. The HR shall be authorised to release to designated third States, international organisations and international agencies, as appropriate and in accordance with the needs of EUNAVFOR MED operation SOPHIA, and in full respect of the principles of reciprocity and inclusiveness, EU classified information generated for the purposes of the operation, in accordance with Decision 2013/488/EU, as follows:

(a) up to the level provided in the applicable Security of Information Agreements concluded between the Union and the third State concerned; or

(b) up to the “CONFIDENTIEL UE/EU CONFIDENTIAL” level in other cases.

The PSC shall designate on a case-by-case basis the third States, international organisations and international agencies concerned.

3. Classified information received shall be handled by EUNAVFOR MED operation SOPHIA without any distinction between its staff and solely on the basis of operational requirements.

4. The HR shall also be authorised to release to the UN, in accordance with the operational needs of EUNAVFOR MED operation SOPHIA, EU classified information up to “RESTREINT UE/EU RESTRICTED” level which are generated for the purposes of EUNAVFOR MED operation SOPHIA, in accordance with Decision 2013/488/EU.
5. The HR shall be authorised to release to INTERPOL relevant information, including personal data, in accordance with the operational needs of EUNAVFOR MED operation SOPHIA.
6. Pending the conclusion of an agreement between the Union and INTERPOL, EUNAVFOR MED operation SOPHIA may exchange such information with the National Central Bureaux of INTERPOL of the Member States, in accordance with arrangements to be concluded between the EU Operation Commander and the Head of the relevant National Central Bureau.
7. In the event of specific operational need, the HR shall be authorised to release to legitimate Libyan authorities any EU classified information up to “RESTREINT UE/EU RESTRICTED” level generated for the purposes of EUNAVFOR MED operation SOPHIA, in accordance with Decision 2013/488/EU.
8. The HR shall be authorised to conclude the arrangements necessary to implement the provisions on information exchange in this Decision.
9. The HR may delegate the authorisations to release information as well as the ability to conclude the arrangements referred to in this Decision to EEAS officials, to the EU Operation Commander or to the EU Force Commander in accordance with section VII of Annex VI to Decision 2013/488/EU.

(*) Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).'

Article 2

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

Done at Brussels, 19 December 2016.

For the Council
The President
L. SÓLYMOS