



2024/1059

5.4.2024

COUNCIL DECISION (CFSP) 2024/1059

of 4 April 2024

amending Joint Action 2008/851/CFSP on a European Union military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA)

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Whereas:

- (1) On 10 November 2008, the Council adopted Joint Action 2008/851/CFSP⁽¹⁾, which established the European Union military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA). On 12 December 2022, the Council adopted Decision (CFSP) 2022/2441⁽²⁾, amending Joint Action 2008/851/CFSP and extending the mandate of EUNAVFOR ATALANTA until 31 December 2024.
- (2) On 2 December 2008, the United Nations Security Council (UNSC) adopted Resolution 1846 (2008), which authorised States and regional organisations cooperating with the government of Somalia in the fight against piracy and armed robbery at sea off the coast of Somalia to enter into the territorial waters of Somalia and to use in those waters all necessary means to repress acts of piracy and armed robbery at sea. Furthermore, on 16 December 2008, UNSC Resolution 1851 (2008) authorised those States and regional organisations to undertake all necessary measures that are appropriate in Somalia for the purpose of suppressing acts of piracy and armed robbery at sea. Those authorisations were renewed most recently by UNSC Resolution 2608 (2021) for a limited period of time.
- (3) The United Nations Convention on the Law of the Sea includes provisions on piracy under Article 100 et seq. thereof. In particular, Article 105 thereof provides that, on the high seas, or in any place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. In addition, actions to protect vessels or to deter, prevent and repress acts of piracy and armed robbery in territorial waters may be authorised by the government of Somalia.
- (4) UNSC Resolution 1814 (2008) reiterated the UNSC's support for the contribution made by some States to protecting the World Food Programme (WFP) maritime convoys, and called upon States and regional organisations, in close coordination with each other, to take action to protect shipping involved with the transportation and delivery of humanitarian aid to Somalia and United Nations-authorised activities.
- (5) UNSC Resolution 1851 (2008) included an invitation to all States and regional organisations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted for acts of piracy and armed robbery at sea off the coast of Somalia.
- (6) UNSC Resolution 1851 (2008) also included a call by the UNSC, which remains valid, upon States, regional and international organisations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with that Resolution, Resolution 1846 (2008) and international law, by deploying naval vessels and military aircraft and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use.

⁽¹⁾ Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA) (OJ L 301, 12.11.2008, p. 33).

⁽²⁾ Council Decision (CFSP) 2022/2441 of 12 December 2022 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 (OJ L 319, 13.12.2022, p. 80).

- (7) Such calls were renewed in particular by UNSC Resolution 2608 (2021), in which the UNSC, while noting improvements in Somalia: recognised that piracy exacerbates instability in Somalia by introducing large amounts of illicit cash that fuels additional crime, corruption and terrorism; noted the importance of securing the safe delivery of WFP assistance by sea; and welcomed the ongoing work by the WFP, EUNAVFOR ATALANTA and flag States with regard to vessel protection detachments on WFP vessels.
- (8) On 3 March 2022, the authorisation given by paragraph 14 of UNSC Resolution 2608 (2021), which had first been granted by UNSC Resolution 1846 (2008), lapsed. It allowed, until that date, States and regional organisations to enter into the territorial sea of Somalia for the purpose of repressing acts of piracy and armed robbery at sea and to use, within the territorial sea of Somalia, all necessary means to repress acts of piracy and armed robbery at sea.
- (9) The provisions of Joint Action 2008/851/CFSP regarding piracy and armed robbery should be amended accordingly.
- (10) On 1 December 2023, the UNSC adopted Resolution 2713 (2023), which established an arms embargo on Al-Shabaab, and renewed until 15 December 2024 the provisions set out in paragraphs 15 and 17 of UNSC Resolution 2182 (2014), expanded by paragraph 5 of UNSC Resolution 2607 (2021) to cover IED components. The UNSC also adopted Resolution 2714 (2023), which lifted the arms embargo on Somalia established by UNSC Resolution 733 (1992).
- (11) The provisions of Joint Action 2008/851/CFSP on contributing to the United Nations arms embargo on the high seas off the coast of Somalia should be amended accordingly.
- (12) EUNAVFOR ATALANTA should coordinate closely with the EU maritime security operation to safeguard freedom of navigation in relation to the Red Sea crisis (EUNAVFOR ASPIDES), established on 8 February 2024 by Council Decision (CFSP) 2024/583 ⁽³⁾. In addition, close cooperation with like-minded maritime security providers will require the possibility to exchange, on the basis of reciprocity and inclusiveness, EU classified information up to 'SECRET UE/EU SECRET' level with the United States-led Operation Prosperity Guardian and with the Combined Maritime Forces, and the possibility to release EU classified information up to the appropriate level to like-minded partners, in accordance with Council Decision 2013/488/EU ⁽⁴⁾, which lays down the security rules for protecting EU classified information. Relevant provisions for those purposes should be introduced in Joint Action 2008/851/CFSP,

HAS ADOPTED THIS DECISION:

Article 1

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

- (1) Article 1 is replaced by the following:

'Article 1

Mission

1. The European Union (EU) shall conduct a military operation to contribute to maritime security in the West Indian Ocean and in the Red Sea (EUNAVFOR ATALANTA).

1a. In support of Resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1846 (2008) and 1851 (2008) and subsequent relevant Resolutions of the United Nations Security Council (UNSC), in particular Resolution 2608 (2021), 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, EUNAVFOR ATALANTA shall contribute to:

— the protection of vessels of the World Food Programme (WFP) delivering food aid to displaced persons in Somalia, in accordance with the mandate laid down in UNSC Resolutions 1814 (2008) and 2608 (2021), and

⁽³⁾ Council Decision (CFSP) 2024/583 of 8 February 2024 on a European Union maritime security operation to safeguard freedom of navigation in relation to the Red Sea crisis (EUNAVFOR ASPIDES) (OJ L, 2024/583, 12.2.2024, ELI: <http://data.europa.eu/eli/dec/2024/583/oj>).

⁽⁴⁾ 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).

— 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 United Nations Convention on the Law of the Sea.

2. The area of operations of the forces deployed to that end shall consist of the maritime areas off the coasts of Somalia and neighbouring countries within the region of the Indian Ocean, 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. In addition, EUNAVFOR ATALANTA may operate to the same end in the Somali territorial sea, where so authorised by the Somali government.

3. In addition, EUNAVFOR ATALANTA shall contribute on the high seas off the coast of Somalia, as secondary executive tasks, to the implementation of the United Nations arms embargo on Al-Shabaab in accordance with UNSC Resolutions 2182 (2014) and 2713 (2023) and to countering narcotic drugs trafficking off the coast of Somalia in the context of the United Nations Convention on the Law of the Sea and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.

4. Furthermore, EUNAVFOR ATALANTA shall monitor, as a secondary non-executive task, narcotic drugs trafficking, arms trafficking, illegal, unreported and unregulated (IUU) fishing and illicit trade in charcoal off the coast of Somalia in accordance with UNSC Resolutions 2498 (2019) and 2500 (2019) and consistent with the United Nations Convention against Illicit Traffic In Narcotic Drugs And Psychotropic Substances of 20 December 1988.

5. EUNAVFOR ATALANTA may contribute, as a secondary non-executive task, within means and capabilities and upon request, to the EU's integrated approach to Somalia and the relevant activities of the international community, thereby helping to address the root causes of piracy and its network.

6. The EU Military Staff shall support EUNAVFOR ATALANTA by identifying threats and conducting advance planning on decisive factors that could affect the operation, with a view to keeping the Political and Security Committee informed on such threats and factors.;

(2) Article 2 is amended as follows:

(a) point (a) is replaced by the following:

‘(a) provide protection to vessels chartered by the WFP, including by means of the presence on board those vessels of armed units of EUNAVFOR ATALANTA, including when sailing in Somalia's territorial sea upon authorisation by the Somali government;’;

(b) point (l) is replaced by the following:

‘(l) assist through logistical support, provision of expertise or training at sea, upon their request and within means and capabilities, EUCAP Somalia, EUTM Somalia, the EU Special Representative for the Horn of Africa, the EU Delegation to Somalia with respect to their mandates and the area of operation of EUNAVFOR ATALANTA and contribute to the implementation of relevant EU programmes, in particular the regional maritime security programme in force and CRIMARIO;’;

(c) point (n) is replaced by the following:

‘(n) support, in a manner consistent with the United Nations Convention on the Law of the Sea and within existing means and capabilities, the activities of the Panel of Experts on Somalia pursuant to UNSC Resolution 2713 (2023) by monitoring and reporting to that Panel vessels of interest suspected of supporting the piracy networks.’;

(3) in Article 2a(1), in the introductory wording, the words ‘territorial or internal waters’ are replaced by the words ‘territorial waters’;

(4) in Article 2b(1), the first sentence is replaced by the following:

‘For the purpose of contributing to the United Nations arms embargo on Al-Shabaab in accordance with the relevant UNSC Resolutions, in particular Resolutions 2182 (2014) and 2713 (2023), EUNAVFOR ATALANTA shall carry out, as set out in the planning documents and within the agreed area of operation on the high seas off the coast of Somalia, inspections of vessels bound to and from Somalia where there are reasonable grounds to believe that such vessels are carrying weapons or military equipment to Somalia, directly or indirectly, in violation of the arms embargo on Al-Shabaab or that they are carrying weapons or military equipment to individuals or entities designated by the Committee established pursuant to UNSC Resolutions 751 (1992), 1907 (2009) and 2444 (2018).’;

(5) Article 8 is replaced by the following:

'Article 8

Consistency of the Union's response and operational cooperation with other actors

1. The HR shall ensure the implementation of this Joint Action and its consistency with the Union's external action as a whole, including the Union's development programmes and its humanitarian assistance.

1a. EUNAVFOR ATALANTA shall liaise closely with the shipping industry, in particular through the Maritime Security Centre — Horn of Africa (MSCHOA).

1b. EUNAVFOR ATALANTA shall coordinate closely with the European Union maritime security operation to safeguard freedom of navigation in relation to the Red Sea crisis (EUNAVFOR ASPIDES) established by Council Decision (CFSP) 2024/583 (*). In particular, EUNAVFOR ATALANTA shall, as much as possible, facilitate logistical support to EUNAVFOR ASPIDES and close liaison between EUNAVFOR ASPIDES and the shipping industry, in particular through the Maritime Security Centre — Horn of Africa (MSCHOA).

2. EUNAVFOR ATALANTA shall coordinate closely with other relevant CSDP missions and operations, in particular the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia) established by Council Decision 2010/96/CFSP (**), the European Union Capacity Building Mission in Somalia (EUCAP Somalia) established by Council Decision 2012/389/CFSP (***) and the Coordinated Maritime Presences in the North-West Indian Ocean.

2a. EUNAVFOR ATALANTA shall cooperate with Operation AGENOR and shall exchange information with the European Maritime Awareness in the Strait of Hormuz (EMASoH) initiative.

2b. EUNAVFOR ATALANTA shall cooperate with Operation Prosperity Guardian, with the Combined Maritime Forces and with willing States contributing to maritime security in its area of operation.

3. EUNAVFOR ATALANTA shall cooperate with the relevant Member State authorities and with relevant Union agencies and bodies, in particular the European Union Satellite Centre (SATCEN). It shall support, within means and capabilities, the relevant Union programmes.

4. EUNAVFOR ATALANTA shall be supported by SATCEN and by the European Union Intelligence and Situation Centre in gathering information as necessary to fulfil its tasks.

(*) Council Decision (CFSP) 2024/583 of 8 February 2024 on a European Union maritime security operation to safeguard freedom of navigation in relation to the Red Sea crisis (EUNAVFOR ASPIDES) (OJ L, 2024/583, 12.2.2024, ELI: <http://data.europa.eu/eli/dec/2024/583/oj>).

(**) Council Decision 2010/96/CFSP of 15 February 2010 on a European Union military mission to contribute to the training of Somali security forces (OJ L 44, 19.2.2010, p. 16).

(***) Council Decision 2012/389/CFSP of 16 July 2012 on the European Union Capacity Building Mission in Somalia (EUCAP Somalia) (OJ L 187, 17.7.2012, p. 40).;

(6) Article 15 is amended as follows:

(a) the heading is replaced by the following:

'Release and exchange of information';

(b) paragraph 1 is deleted;

(c) paragraphs 2 to 6 are replaced by the following:

'2. The 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 (*). The PSC may designate on a case-by-case basis other third States to which such information may be released.

2a. The HR shall be authorised to release to designated third States, as appropriate and in accordance with the operational needs of EUNAVFOR ATALANTA, EU classified information generated for the purposes of EUNAVFOR ATALANTA, in accordance with Council Decision 2013/488/EU (**), as follows:

- (a) up to the level provided in the applicable security of information agreement concluded between the Union and the third State concerned; or
- (b) up to “RESTREINT UE/EU RESTRICTED” level for information released to other third States designated by the PSC.

3. The HR is hereby authorised to exchange with Operation Prosperity Guardian and with the Combined Maritime Forces, through their Headquarters, classified information relevant to the purposes of EUNAVFOR ATALANTA up to “SECRET UE/EU SECRET” level, where such exchange at theatre level is necessary for operational reasons, in accordance with Decision 2013/488/EU and subject to arrangements between the HR and the competent authorities of those operations.

3a. The release and exchange of information referred to in paragraphs 2, 2a and 3 shall be conducted in full respect of the principles of reciprocity and inclusiveness. Classified information received shall be handled by EUNAVFOR ATALANTA without any distinction between its staff and solely on the basis of operational requirements.

3b. The HR shall be authorised to conclude the arrangements necessary to implement the provisions of this Joint Action on the release or exchange of information.

3c. The HR may delegate the authorisations to release or exchange information as well as the ability to conclude the arrangements referred to in this Article 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.

4. EUNAVFOR ATALANTA is hereby authorised to share with the Panel of Experts on Somalia, the United Nations Office on Drugs and Crime, the CMF, the RMIFC and the ROCC information, other than personal data, gathered on illegal or unauthorised activities during the course of its operations.

5. EUNAVFOR ATALANTA is hereby authorised to release to INTERPOL, in accordance with Article 2, point (h), and to EUROPOL, in accordance with Article 2, point (i), information gathered on illegal activities other than piracy during the course of its operations. In addition, EUNAVFOR ATALANTA is hereby authorised to transmit to the Interpol National Central Bureau in Mogadishu information gathered on suspected IUU fishing in the course of its operations.

6. The release of personal data pursuant to Article 2 shall be carried out in accordance with the law of the State of the vessel or aircraft processing such personal data.

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

(**) 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).²

Article 2

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

Done at Brussels, 4 April 2024.

For the Council

The President

H. LAHBIB