

COUNCIL DECISION 2012/174/CFSP

of 23 March 2012

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 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⁾.
- (2) On 8 December 2009, on 30 July 2010 and 7 December 2010 respectively, the Council adopted Decision 2009/907/CFSP ⁽²⁾, Decision 2010/437/CFSP ⁽³⁾ and Decision 2010/766/CFSP ⁽⁴⁾, amending Joint Action 2008/851/CFSP.
- (3) On 14 November 2011, the Council adopted the Strategic Framework for the Horn of Africa with the aim of developing a comprehensive approach towards the problems emanating from the Horn of Africa. The fight against piracy is part of this effort.
- (4) Acts of piracy and armed robbery on and 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 and generate financial flows against which further efforts need to be undertaken.
- (5) The EU military operation referred to in Joint Action 2008/851/CFSP ('Atalanta') should be extended until 12 December 2014.
- (6) It is also necessary to lay down the financial reference amount intended to cover the common costs of Atalanta for the period from 13 December 2012 to 12 December 2014.
- (7) On 16 December 2008, the United Nations Security Council (UNSC) adopted Resolution 1851 (2008) on the situation in Somalia, authorising States and regional organisations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia for which advance notification has been provided by the Somali Transitional Federal Government (TFG) to the United Nations Secretary-General to undertake all necessary

measures that are appropriate in Somalia for the purpose of suppressing acts of piracy and armed robbery at sea, provided that any such measures shall be undertaken consistent with applicable international humanitarian and human rights law.

- (8) On 22 November 2011, the UNSC adopted Resolution 2020 (2011) renewing the authorisations set out in paragraph 10 of Resolution 1846 (2008) and paragraph 6 of Resolution 1851 (2008).
- (9) By letter of 20 February 2012 the EU made an offer of extended cooperation to the TFG, complementing its offer made by letter of 30 October 2008.
- (10) The TFG notified the United Nations Secretary-General by letter of 1 March 2012 of the offer made by the EU, in conformity with paragraph 6 of UNSC Resolution 1851 (2008) and paragraph 9 of UNSC Resolution 2020 (2011).
- (11) It is necessary to extend the area of operations of Atalanta to include Somali internal waters and Somali land territory.
- (12) It is also necessary to set out the conditions under which suspects arrested and detained in the internal or territorial waters of States other than Somalia may be transferred.
- (13) 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) Article 1 is replaced by the following:

*'Article 1***Mission**

1. The European Union (EU) shall conduct a military operation in support of Resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1846 (2008) and 1851 (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

⁽¹⁾ OJ L 301, 12.11.2008, p. 33.

⁽²⁾ OJ L 322, 9.12.2009, p. 27.

⁽³⁾ OJ L 210, 11.8.2010, p. 33.

⁽⁴⁾ OJ L 327, 11.12.2010, p. 49.

Nations Convention on the Law of the Sea”) and by means, in particular, of commitments made with third States (“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), and
- 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 Resolutions 1846 (2008) and 1851 (2008).

2. The area of operations of the forces deployed to that end shall consist of the Somali coastal territory and internal waters, and 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.

3. In addition, Atalanta shall contribute to the monitoring of fishing activities off the coast of Somalia.;

(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 Atalanta, including when sailing in Somalia’s territorial and internal waters;’

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

‘(c) keep watch over areas off the Somali coast, including Somalia’s territorial and internal waters, in which there are dangers to maritime activities, in particular to maritime traffic;’

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

‘(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 151” maritime force which operates within the framework of “Operation Enduring Freedom”;’

(3) Article 12 is replaced by the following:

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 suspected of intending, as referred to in Articles 101 and 103 of the United Nations Convention of the Law of the Sea, to commit, committing or having committed acts of piracy or armed robbery in Somalia’s territorial or internal 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.

2. Persons suspected of intending, as referred to in Articles 101 and 103 of the United Nations Convention of the Law of the Sea, to commit, committing or having committed acts of piracy or armed robbery who are arrested and detained, with a view to their prosecution, by Atalanta in the territorial waters, the internal waters or the archipelagic waters of other States in the region in agreement with these States, and property used to carry out such acts, may be transferred to the competent authorities of the State concerned, or, with the consent of the State concerned, to the competent authorities of another State.

3. 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.;

(4) in Article 14 the following paragraph is added:

‘3. The financial reference amount for the common costs of the EU military operation for the period from 13 December 2012 until 12 December 2014 shall be EUR 14 900 000. The percentage of the reference amount referred to in Article 25(1) of Council Decision 2011/871/CFSP shall be 0 %.’

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

‘3. The EU military operation shall terminate on 12 December 2014.’

Article 2

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

Done at Brussels, 23 March 2012.

For the Council
The President
C. ASHTON
