

DECISIONS

COUNCIL DECISION (CFSP) 2015/778

of 18 May 2015

on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED)

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 20 April 2015, the Council confirmed a strong commitment to act in order to prevent human tragedies resulting from the smuggling of people across the Mediterranean.
- (2) On 23 April 2015, the European Council expressed its indignation about the situation in the Mediterranean and underlined that the Union will mobilise all efforts at its disposal to prevent further loss of life at sea and to tackle the root causes of this human emergency, in cooperation with the countries of origin and transit, and that the immediate priority is to prevent more people from dying at sea. The European Council committed to strengthening the Union's presence at sea, to preventing illegal migration flows and to reinforcing internal solidarity and responsibility.
- (3) The European Council of 23 April 2015 also committed to fighting the traffickers in accordance with international law, by undertaking systematic efforts to identify, capture and destroy vessels before they are used by traffickers, and invited the High Representative of the Union for Foreign Affairs and Security Policy (HR) to start preparations for a possible Common Security and Defence Policy (CSDP) operation to this effect.
- (4) On 11 May 2015, the HR informed the UN Security Council about the crisis of migrants in the Mediterranean and the ongoing preparation for a possible Union naval operation, in the framework of the Union's Common Security and Defence Policy. In this regard, she expressed the need for the Union to work with the support of the UN Security Council.
- (5) On 18 May 2015, the Council approved the crisis management concept for a CSDP operation to disrupt the business model of smugglers in the Southern Central Mediterranean.
- (6) The Union CSDP operation will be conducted in accordance with international law, in particular with the relevant provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the 2000 Protocols against the Smuggling of Migrants by Land, Sea and Air (the Protocol against the Smuggling of Migrants) and to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the 1974 International Convention for the Safety of Life at Sea (SOLAS), the 1979 International Convention on Maritime Search and Rescue (SAR), the 1976 Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention), the 1951 Geneva Convention relating to the Status of Refugees and the principle of non-refoulement and international human rights law.

The UNCLOS, SOLAS and SAR Conventions include the obligation to assist persons in distress at sea and to deliver survivors to a place of safety, and to that end the vessels assigned to EUNAVFOR MED will be ready and equipped to perform the related duties under the coordination of the competent Rescue Coordination Centre.

- (7) On the high seas, in accordance with relevant domestic and international law, States may interdict vessels suspected of smuggling migrants, where there is flag State authorisation to board and search the vessel or where the vessel is without nationality, and may take appropriate measures against the vessels, persons and cargo.

- (8) Measures may also be taken in the territorial or internal waters, territory or airspace of a State against vessels suspected of involvement in human smuggling or trafficking, with the consent of that State or pursuant to a UN Security Council Resolution, or both.
- (9) A State may take appropriate measures against persons present on its territory whom it suspects of smuggling or trafficking humans with a view to their possible arrest and prosecution, in accordance with international law and its domestic law.
- (10) The Political and Security Committee (PSC) should exercise, under the responsibility of the Council and of the HR, political control over the Union crisis management operation, provide it with strategic direction and take the relevant decisions in accordance with the third paragraph of Article 38 of the Treaty on European Union (TEU).
- (11) Pursuant to Article 41(2) TEU, and in accordance with Council Decision (CFSP) 2015/528 ⁽¹⁾, the operational expenditure arising from this Decision, which has military or defence implications, is to be borne by the Member States.
- (12) In accordance with Article 5 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and implementation of decisions and actions of the Union which have defence implications. Consequently, Denmark is not participating in the adoption of this Decision, is neither bound by it nor subject to its application, and does not participate in the financing of this operation,

HAS ADOPTED THIS DECISION:

Article 1

Mission

1. The Union shall conduct a military crisis management operation contributing to the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean (EUNAVFOR MED), achieved by undertaking systematic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers or traffickers, in accordance with applicable international law, including UNCLOS and any UN Security Council Resolution.
2. The area of operation shall be defined, before the launching of EUNAVFOR MED, in the relevant planning documents to be approved by the Council.

Article 2

Mandate

1. EUNAVFOR MED shall operate in accordance with the political, strategic and politico-military objectives set out in the Crisis Management Concept approved by the Council on 18 May 2015.
2. EUNAVFOR MED shall be conducted in sequential phases, and in accordance with the requirements of international law. EUNAVFOR MED shall:
 - (a) in a first phase, support the detection and monitoring of migration networks through information gathering and patrolling on the high seas in accordance with international law;
 - (b) in a second phase,
 - (i) conduct boarding, search, seizure and diversion on the high seas of vessels suspected of being used for human smuggling or trafficking, under the conditions provided for by applicable international law, including UNCLOS and the Protocol against the Smuggling of Migrants;
 - (ii) in accordance with any applicable UN Security Council Resolution or consent by the coastal State concerned, conduct boarding, search, seizure and diversion, on the high seas or in the territorial and internal waters of that State, of vessels suspected of being used for human smuggling or trafficking, under the conditions set out in that Resolution or consent;

⁽¹⁾ Council Decision (CFSP) 2015/528 of 27 March 2015 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP (OJ L 84, 28.3.2015, p. 39).

(c) in a third phase, in accordance with any applicable UN Security Council Resolution or consent by the coastal State concerned, take all necessary measures against a vessel and related assets, including through disposing of them or rendering them inoperable, which are suspected of being used for human smuggling or trafficking, in the territory of that State, under the conditions set out in that Resolution or consent.

3. The Council shall assess whether the conditions for transition beyond the first phase have been met, taking into account any applicable UN Security Council Resolution and consent by the coastal States concerned.

4. EUNAVFOR MED may collect, in accordance with applicable law, personal data concerning persons taken on board ships participating in EUNAVFOR MED 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. 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.

Article 3

Appointment of the EU Operation Commander

Rear Admiral Enrico Credendino is hereby appointed EU Operation Commander of EUNAVFOR MED.

Article 4

Designation of the EU Operation Headquarters

The Operation Headquarters of EUNAVFOR MED shall be located in Rome, Italy.

Article 5

Planning and launch of the operation

The Decision to launch EUNAVFOR MED shall be adopted by the Council, upon the recommendation of the Operation Commander of EUNAVFOR MED following approval of the Operation Plan and of the Rules of Engagement necessary for the execution of the mandate.

Article 6

Political control and strategic direction

1. Under the responsibility of the Council and of the HR, the PSC shall exercise the political control and strategic direction of EUNAVFOR MED. The Council hereby authorises the PSC to take the relevant decisions in accordance with Article 38 TEU. This authorisation shall include the powers to amend the planning documents, including the Operations Plan, the Chain of Command and the Rules of Engagement. It shall also include the powers to take decisions on the appointment of the EU Operation Commander and the EU Force Commander. The powers of decision with respect to the objectives and termination of the EU military operation shall remain vested in the Council. Subject to Article 2(3) of this Decision, the PSC shall have the power to decide when to make the transition between the different phases of the operation.

2. The PSC shall report to the Council at regular intervals.

3. The Chairman of the EU Military Committee (EUMC) shall, at regular intervals, report to the PSC on the conduct of EUNAVFOR MED. The PSC may invite the EU Operation Commander or the EU Force Commander to its meetings, as appropriate.

*Article 7***Military direction**

1. The EUMC shall monitor the proper execution of EUNAVFOR MED conducted under the responsibility of the EU Operation Commander.
2. The EU Operation Commander shall, at regular intervals, report to the EUMC. The EUMC may invite the EU Operation Commander or the EU Force Commander to its meetings, as appropriate.
3. The Chairman of the EUMC shall act as the primary point of contact with the EU Operation Commander.

*Article 8***Consistency of the Union's response and coordination**

1. The HR shall ensure the implementation of this Decision and its consistency with the Union's external action as a whole, including the Union's development programmes and its humanitarian assistance.
2. The HR, assisted by the European External Action Service (EEAS), shall act as the primary point of contact with the United Nations, the authorities of the countries in the region, and other international and bilateral actors, including NATO, the African Union and the League of Arab States.
3. EUNAVFOR MED shall cooperate with the relevant Member State authorities and shall establish a coordination mechanism, and as appropriate, conclude arrangements with other Union agencies and bodies, in particular FRONTEX, EUROPOL, EUROJUST, European Asylum Support Office and relevant CSDP missions.

*Article 9***Participation by third States**

1. Without prejudice to the Union's decision-making autonomy or to the single institutional framework, and in accordance with the relevant guidelines of the European Council, third States may be invited to participate in the operation.
2. The Council hereby authorises the PSC to invite third States to offer contributions and to take the relevant decisions on acceptance of the proposed contributions, upon the recommendation of the EU Operations Commander and the EUMC.
3. Detailed arrangements for the participation by third States shall be the subject of agreements concluded pursuant to Article 37 TEU and in accordance with the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union (TFEU). Where the Union and a third State have concluded an agreement establishing a framework for the latter's participation in crisis management missions of the Union, the provisions of such an agreement shall apply in the context of EUNAVFOR MED.
4. Third States making significant military contributions to EUNAVFOR MED shall have the same rights and obligations in terms of day-to-day management of the operation as Member States taking part in the operation.
5. The Council hereby authorises the PSC to take relevant decisions on the setting-up of a Committee of Contributors, should third States provide significant military contributions.

*Article 10***Status of Union-led personnel**

The status of Union-led units and personnel shall be defined where necessary in accordance with international law.

*Article 11***Financial arrangements**

1. The common costs of the EU military operation shall be administered in accordance with Decision (CFSP) 2015/528.
2. The financial reference amount for the common costs of EUNAVFOR MED shall be EUR 11,82 million. The percentage of the reference amount referred to in Article 25(1) of Decision (CFSP) 2015/528 shall be 70 % in commitments and 40 % for payments.

*Article 12***Release of information**

1. The HR shall be authorised to release to the third States associated with this Decision, as appropriate and in accordance with the needs of EUNAVFOR MED, EU classified information generated for the purposes of the operation, in accordance with Council Decision 2013/488/EU ⁽¹⁾, 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.
2. The HR shall also be authorised to release to the UN, in accordance with the operational needs of EUNAVFOR MED, EU classified information up to 'RESTREINT UE/EU RESTRICTED' level which are generated for the purposes of EUNAVFOR MED, in accordance with Decision 2013/488/EU. Arrangements between the HR and the competent authorities of the United Nations shall be drawn up for this purpose.
3. The HR shall be authorised to release to the third States associated with this Decision 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 ⁽²⁾.
4. The HR may delegate such authorisations, 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.

*Article 13***Entry into force and termination**

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

EUNAVFOR MED shall end no later than 12 months after having reached Full Operational Capability (FOC).

This Decision shall be repealed as from the date of closure of the EU Operation Headquarters in accordance with the plans approved for the termination of EUNAVFOR MED, and without prejudice to the procedures regarding the audit and presentation of the accounts of EUNAVFOR MED laid down in Decision (CFSP) 2015/528.

Done at Brussels, 18 May 2015.

For the Council
The President
F. MOGHERINI

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