



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Council Decision concerning the conclusion of the Agreement between the European Union and the Republic of Djibouti on the status of the European Union-led forces in the Republic of Djibouti in the framework of the EU military operation Atalanta

COUNCIL DECISION 2008/.../CFSP

of

concerning the conclusion of the Agreement between the European Union
and the Republic of Djibouti on the status of the European Union-led forces
in the Republic of Djibouti
in the framework of the EU military operation Atalanta

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

- (1) On 15 May 2008 the United Nations Security Council (UNSC) adopted Resolution 1814 (2008) calling on States and regional organisations to take action to protect shipping involved in the transport and delivery of humanitarian aid to Somalia and in activities authorised by the United Nations.
- (2) On 2 June 2008, the UNSC adopted Resolution 1816 (2008) authorising, for a period of six months from the date of that Resolution, States cooperating with the Transitional Federal Government of Somalia (TFG), to enter the territorial waters of Somalia and to use, in a manner consistent with relevant international law, all necessary means to repress acts of piracy and armed robbery at sea. These provisions were extended for an additional period of 12 months by UNSC Resolution 1846 (2008), adopted on 2 December 2008.
- (3) On 10 November 2008, the Council adopted 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 coast¹ (operation Atalanta).

¹ OJ L 301, 12.11.2008, p. 33.

- (4) Article 11 of that Joint Action provides that the status of the European Union-led forces and their personnel who are stationed on the land territory of third States, or operate in the territorial or internal waters of third States, shall be agreed in accordance with the procedure laid down in Article 24 of the Treaty. By letter dated 1 December 2008 sent to the Secretary-General/High Representative (SG/HR), the Government of the Republic of Djibouti stated its agreement to the deployment of a European force on its territory and its intention to conclude to that end an agreement on the status of the forces.
- (5) Following authorisation by the Council on 18 September 2007, in accordance with Article 24 of the Treaty, the Presidency, assisted by the SG/HR, negotiated an Agreement between the European Union and the Republic of Djibouti on the status of the European Union-led forces in the Republic of Djibouti.
- (6) That Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Union and the Republic of Djibouti on the status of the European Union-led forces in the Republic of Djibouti in the framework of the EU military operation Atalanta is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the European Union.

Article 3

This Decision shall take effect on the day of its adoption.

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE REPUBLIC OF DJIBOUTI
ON THE STATUS OF THE EUROPEAN UNION-LED FORCES
IN THE REPUBLIC OF DJIBOUTI
IN THE FRAMEWORK OF
THE EU MILITARY OPERATION ATALANTA

THE EUROPEAN UNION (EU),

of the one part, and

THE REPUBLIC OF DJIBOUTI, hereinafter referred to as "the Host State",

of the other part,

Together hereinafter referred to as the "Parties",

Concerned by the upsurge in piracy and armed robbery against vessels transporting humanitarian aid and vessels sailing off the Somali coast,

TAKING INTO ACCOUNT:

- United Nations (UN) Security Council Resolutions 1814 (2008), 1838 (2008) and 1846 (2008),
- the letter from the Republic of Djibouti dated 1 December 2008 accepting in particular the presence of members of the EU naval force on its territory,
- Joint Action 2008/851/CFSP of the Council of the European Union of 10 November 2008 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"),
- that this Agreement will not affect the Parties' rights and obligations under international agreements and other instruments establishing international courts and tribunals, including the Statute of the International Criminal Court,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Scope and definitions

1. This Agreement shall apply to the European Union-led forces and to their personnel.
2. This Agreement shall apply only within the territory of the Host State, including its internal waters, territorial sea and airspace.
3. For the purpose of this Agreement:
 - (a) "European Union-led forces (EUNAVFOR)" shall mean EU military headquarters and national contingents contributing to the operation, their vessels, their aircraft, their equipment and their means of transport;
 - (b) "operation" shall mean the preparation, establishment, execution and support of the military mission further to the mandate arising out of UN Security Council Resolutions 1814 (2008) and 1816 (2008) and any subsequent relevant UN Security Council Resolutions and the UN Convention on the Law of the Sea signed on 10 December 1982;
 - (c) "Operation Commander" shall mean the Commander of the Operation;
 - (d) "EU Force Commander" shall mean the Commander in the theatre of operations;

- (e) "EU military headquarters" shall mean the military headquarters and elements thereof, whatever their location, under the authority of EU military commanders exercising the military command or control of the operation;
- (f) "national contingents" shall mean units, vessels, aircraft and elements, in particular protection detachments and embarked military forces on board merchant vessels, belonging to the Member States of the European Union and to other States participating in the operation;
- (g) "EUNAVFOR personnel" shall mean the civilian and military personnel assigned to EUNAVFOR as well as personnel deployed for the preparation of the operation, personnel on mission and police personnel escorting persons arrested by EUNAVFOR, for a Sending State or an EU institution in the framework of the operation, present, except as otherwise provided in this Agreement, within the territory of the Host State, with the exception of personnel employed locally and personnel employed by international commercial contractors;
- (h) "personnel employed locally" shall mean personnel who are nationals of or permanently resident in the Host State;
- (i) "facilities" shall mean all premises, accommodation and land required for EUNAVFOR and EUNAVFOR personnel;
- (j) "Sending State" shall mean a State providing a national contingent for EUNAVFOR;

- (k) "waters" shall mean the internal waters and territorial sea of the Host State and the airspace above those waters;
- (l) "official correspondence" shall mean all correspondence relating to the operation and its functions.

ARTICLE 2

General provisions

1. EUNAVFOR and EUNAVFOR personnel shall respect the laws and regulations of the Host State and shall refrain from any action or activity incompatible with the objectives of the operation.
2. EUNAVFOR shall inform the government of the Host State, in advance and on a regular basis, of the number of EUNAVFOR personnel transiting through or stationed within the Host State's territory and of the identity of the vessels, aircraft and units operating in the waters of the Host State or making calls to its ports.

ARTICLE 3

Identification

1. EUNAVFOR personnel present on the land territory of the Host State must carry passports or military identity cards with them at all times.

2. EUNAVFOR vehicles, aircraft, vessels and other means of transport shall carry distinctive EUNAVFOR identification markings and/or registration plates, of which the relevant Host State authorities shall be notified in advance.

3. EUNAVFOR shall have the right to display the flag of the European Union and markings such as military insignia, titles and official symbols on its facilities, vehicles and other means of transport. The uniforms of EUNAVFOR personnel shall carry a distinctive EUNAVFOR emblem. National flags or insignia of the constituent national contingents of the operation may be displayed on EUNAVFOR facilities, vehicles and other means of transport and uniforms, as decided by the EU Force Commander.

ARTICLE 4

Border crossing and movement within the Host State's territory

1. EUNAVFOR personnel shall enter the Host State's territory only on presentation of a valid passport and, in the case of first entry, except for the crews of EUNAVFOR vessels and aircraft, of an individual or collective movement order issued by EUNAVFOR. They shall be exempt from immigration inspections and customs control on entering, leaving or within the Host State's territory. The crews of EUNAVFOR vessels and aircraft shall be exempt from visa regulations.

2. EUNAVFOR personnel shall be exempt from the Host State's regulations on the registration and control of aliens, but shall not acquire any right to permanent residence or domicile within the Host State's territory.
3. The Host State shall be provided, for information purposes, with a general list of EUNAVFOR assets entering its territory. These assets shall carry EUNAVFOR identification markings. EUNAVFOR shall be exempt from any requirement to produce other customs documentation, and from any inspection.
4. EUNAVFOR personnel may drive motor vehicles, navigate vessels and operate aircraft within the Host State's territory provided they have valid national, international or military driving licences, ship master's certificates or pilot licences, as appropriate, issued by one of the Sending States.
5. For the purpose of the operation, the Host State shall grant EUNAVFOR and EUNAVFOR personnel freedom of movement and freedom to travel within its territory, including its waters and air space. Freedom of movement within the territorial sea of the Host State shall include stopping and anchoring.
6. For the purpose of the operation, EUNAVFOR may carry out, within the Host State's waters, the launching, landing or taking on board of any aircraft or military device.
7. For the purpose of the operation, EUNAVFOR and the means of transport that it charters may use public roads, bridges, ferries, airports and ports without the payment of taxes and similar charges. EUNAVFOR shall not be exempt from charges for services requested and received.

ARTICLE 5

Privileges and immunities of EUNAVFOR granted by the Host State

1. EUNAVFOR's facilities, vessels and aircraft shall be inviolable. However, the Host State's agents shall be allowed to enter them with the consent of the EU Force Commander.
2. EUNAVFOR, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process.
3. EUNAVFOR's facilities, their furnishings and other assets therein as well as its means of transport shall be immune from search, requisition, attachment or execution.
4. EUNAVFOR's archives and documents shall be inviolable at any time, wherever they may be.
5. The official correspondence of EUNAVFOR shall be inviolable.
6. The Host State shall permit the entry of articles for the operation and grant them exemption from all custom duties, taxes and similar charges other than charges for storage, cartage and other services rendered.

7. In respect of purchased and imported goods, services provided and facilities used by EUNAVFOR for the purposes of the operation, EUNAVFOR shall be exempt from all national, regional and communal dues, taxes and charges of a similar nature. EUNAVFOR shall not be exempt from fees or other charges that represent payment for services rendered.

ARTICLE 6

Privileges and immunities of EUNAVFOR personnel granted by the Host State

1. EUNAVFOR personnel shall not be liable to any form of arrest or detention. Should a police authority of the Host State observe an offence in the act of being committed on a public thoroughfare, it shall be allowed, where the offender has violated the physical integrity of a Host State national, to detain him in order to ensure his protection pending the arrival of the competent EUNAVFOR authorities.
2. Papers, correspondence and property of EUNAVFOR personnel shall enjoy inviolability, except in case of measures of execution which are permitted pursuant to paragraph 6.
3. EUNAVFOR personnel shall enjoy immunity from the criminal jurisdiction of the Host State.

The immunity from criminal jurisdiction of EUNAVFOR personnel may be waived by the Sending State or EU institution concerned, as the case may be. Such waiver must always be in writing.

4. EUNAVFOR personnel shall enjoy immunity from the civil and administrative jurisdiction of the Host State in respect of words spoken or written and all acts performed by them in the exercise of their official functions.

If any civil proceeding is instituted against EUNAVFOR personnel before any Host State court, the EU Force Commander and the competent authority of the Sending State or EU institution concerned shall be notified immediately. Prior to initiation of the proceeding before the court, the EU Force Commander and the competent authority of the Sending State or EU institution concerned shall certify to the court whether the act in question was committed by EUNAVFOR personnel in the exercise of their official functions.

If the act was committed in the exercise of official functions, the proceeding shall not be initiated and the provisions of Article 15 shall apply. If the act was not committed in the exercise of official functions, the proceeding may continue. The Host State shall ensure that the court recognises the certification by the EU Force Commander and the competent authority of the Sending State or EU institution concerned.

The initiation of a civil proceeding by EUNAVFOR personnel shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

5. EUNAVFOR personnel are not obliged to give evidence as witnesses.

6. No measures of execution may be taken in respect of EUNAVFOR personnel, except in the case where a civil proceeding not related to their official functions is instituted against them. Property of EUNAVFOR personnel which is certified by the EU Force Commander to be necessary for the fulfilment of their official functions shall be free from seizure for the satisfaction of a judgement, decision or order. In civil proceedings EUNAVFOR personnel shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.
7. The immunity of EUNAVFOR personnel from the jurisdiction of the Host State does not exempt them from the jurisdictions of the respective Sending States.
8. EUNAVFOR personnel shall be exempt from any form of taxation in the Host State on the salary and emoluments paid to them by EUNAVFOR or the Sending States, as well as on any income received from outside the Host State.
9. The Host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on articles for the personal use of EUNAVFOR personnel.

The personal baggage of EUNAVFOR personnel shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles that are not for the personal use of EUNAVFOR personnel, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the Host State. Such inspection shall be conducted only in the presence of the EUNAVFOR personnel concerned or of an authorised representative of EUNAVFOR.

ARTICLE 7

Personnel employed locally

Personnel employed locally shall enjoy no privileges or immunities. However, the Host State shall exercise its jurisdiction over that personnel in such a manner as not to interfere unduly with the performance of the functions of the operation.

ARTICLE 8

Criminal jurisdiction

The competent authorities of a Sending State shall have the right to exercise on the territory of the Host State, in cooperation with the Host State's competent authorities, all the criminal jurisdiction and disciplinary powers conferred on them by the law of the Sending State with regard to all EUNAVFOR personnel subject to the relevant law of the Sending State.

ARTICLE 9

Uniform and arms

1. The wearing of uniform shall be subject to rules adopted by the EU Force Commander.

2. For the purpose of the operation, EUNAVFOR military personnel, and the police personnel escorting persons arrested by EUNAVFOR, may carry or transport arms and ammunition on condition that they are authorised to do so by virtue of their orders.

ARTICLE 10

Host State support and contracting

1. The Host State agrees, if requested, to assist EUNAVFOR in finding suitable facilities.
2. Within its means and capabilities, the Host State shall assist in the preparation, establishment, and execution of and support for the operation.
3. The law applicable to contracts concluded by EUNAVFOR in the Host State shall be determined by the contract.
4. The contract may stipulate that the dispute settlement procedure referred to in Article 15(3) and (4) shall be applicable to disputes arising from the application of the contract.
5. The Host State shall facilitate the implementation of contracts concluded by EUNAVFOR with commercial entities for the purposes of the operation.

ARTICLE 11

Change to facilities

EUNAVFOR shall be authorised to construct, alter or otherwise modify facilities as requested for its operational requirements, with prior permission of the Host State.

ARTICLE 12

Deceased EUNAVFOR personnel

1. The EU Force Commander shall have the right to take charge of and make suitable arrangements for the repatriation of any deceased EUNAVFOR personnel, as well as that of their personal property.
2. No autopsy shall be performed on any deceased member of EUNAVFOR without the agreement of the State concerned and the presence of a representative of EUNAVFOR and/or the State concerned.
3. The Host State and EUNAVFOR shall cooperate to the fullest extent possible with a view to early repatriation of deceased EUNAVFOR personnel.

ARTICLE 13

Security of EUNAVFOR and military police

1. The Host State shall take all appropriate measures to ensure the safety and security of EUNAVFOR and its personnel outside their facilities.
2. EUNAVFOR shall be authorised, on the land territory of the Host State and its internal waters, to take the measures necessary to protect its facilities, vessels and aircraft, as well as the vessels that it protects, against any external attack or intrusion, in cooperation with the Host State's competent authorities.
3. The EU Force Commander may establish a military police unit in order to maintain order in EUNAVFOR facilities.
4. The military police unit may also, in consultation and cooperation with the military police or the police of the Host State, act outside those facilities to ensure the maintenance of good order and discipline among EUNAVFOR personnel.
5. EUNAVFOR personnel transiting through the territory of Djibouti to escort persons arrested by EUNAVFOR shall be authorised to apply the necessary measures of restraint with respect to these persons.

ARTICLE 14

Communications

1. EUNAVFOR may install and operate radio sending and receiving stations, as well as satellite systems. It shall cooperate with the Host State's competent authorities with a view to avoiding conflicts in the use of appropriate frequencies. The Host State shall grant access to the frequency spectrum in accordance with its legislation in force.
2. EUNAVFOR shall enjoy the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile and other means, as well as the right to install the equipment necessary for the maintenance of such communications within and between EUNAVFOR facilities, including the laying of cables and land lines for the purpose of the operation.
3. Within its own facilities EUNAVFOR may make the arrangements necessary for the conveyance of mail addressed to and from EUNAVFOR and/or EUNAVFOR personnel.
4. The implementing arrangements for this article shall be agreed with the competent authorities of the Host State.

ARTICLE 15

Claims for death, injury, damage and loss

1. Claims for damage to or loss of civilian or government property, as well as claims for death of or injury to persons and for damage to or loss of EUNAVFOR property, shall be settled by amicable agreement.
2. These claims shall be forwarded to EUNAVFOR via the competent authorities of the Host State, as far as claims brought by legal or natural persons from the Host State are concerned, or to the competent authorities of the Host State, as far as claims brought by EUNAVFOR are concerned.
3. Where no amicable settlement can be found, the claim shall be submitted to a claims commission composed on an equal basis of representatives of EUNAVFOR and representatives of the Host State. Settlement of claims shall be reached by common agreement.
4. Where no settlement can be reached within the claims commission, the dispute shall:
 - (a) for claims up to and including EUR 80 000, be settled by diplomatic means between the Host State and EU representatives;
 - (b) for claims above the amount referred to in point (a), be submitted to an arbitration tribunal, the decisions of which shall be binding.

5. The arbitration tribunal shall be composed of three arbitrators, one arbitrator being appointed by the Host State, one arbitrator being appointed by EUNAVFOR and the third one being appointed jointly by the Host State and EUNAVFOR. Where one of the parties does not appoint an arbitrator within two months or where no agreement can be found between the Host State and EUNAVFOR on the appointment of the third arbitrator, the arbitrator in question shall be appointed by the President of the Supreme Court of the Republic of Djibouti.

6. An administrative arrangement shall be concluded between EUNAVFOR and the administrative authorities of the Host State in order to determine the terms of reference of the claims commission and the tribunal, the procedure applicable within these bodies and the conditions under which claims are to be lodged.

ARTICLE 16

Liaison and disputes

1. All issues arising in connection with the application of this Agreement shall be examined jointly by the representatives of EUNAVFOR and the Host State's competent authorities.

2. Failing any prior settlement, disputes concerning the interpretation or application of this Agreement shall be settled exclusively by diplomatic means between the Host State and the EU representatives.

ARTICLE 17

Other provisions

1. Whenever this Agreement refers to the privileges, immunities and rights of EUNAVFOR and of EUNAVFOR personnel, the government of the Host State shall be responsible for their implementation and for compliance with them on the part of the appropriate Host State local authorities.
2. Nothing in this Agreement is intended or may be construed to derogate from any rights that may attach to an EU Member State or to any other State contributing to EUNAVFOR under other agreements.

ARTICLE 18

Implementing arrangements

For purposes of the application of this Agreement, operational, administrative, financial and technical matters may be the subject of separate arrangements to be concluded between the EU Force Commander and the Host State's administrative authorities.

ARTICLE 19

Entry into force and termination

1. This Agreement shall enter into force on the day on which it is signed and shall remain in force for a period of twelve months. It shall subsequently be renewed tacitly for successive periods of three months. Each Party shall give the other at least one month's notice of its intention not to renew the Agreement.
2. Notwithstanding paragraph 1, the provisions contained in Articles 4(7), 5(1), (2) and (3), 5(6) and (7), 6(1), 6(3) and (4), 6(6), 6(8) and (9) and Articles 11 and 15 shall be deemed to have applied from the date on which the first EUNAVFOR personnel were deployed if that date was earlier than the date of entry into force of this Agreement.
3. This Agreement may be amended by written agreement between the Parties.
4. Termination of this Agreement shall not affect any rights or obligations arising out of the execution of this Agreement before such termination.

Done at Djibouti,, in two originals in the French language.

For the European Union

For the Host State
