



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Council Decision on the signing and conclusion of the Agreement between the European Union and Montenegro on the participation of Montenegro in the 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)

COUNCIL DECISION 2010/..../CFSP

of

on the signing and conclusion of the Agreement between the European Union and Montenegro
on the participation of Montenegro in the 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)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, in particular Article 37 thereof, and the Treaty on the Functioning of the European Union, in particular Article 218(5) and (6) thereof,

Having regard to the proposal of 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 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).
- (2) Article 10(3) of that Joint Action provides that detailed modalities for the participation by third States shall be the subject of agreements to be concluded in accordance with Article 37 of the Treaty on European Union.
- (3) Following the Decisions by the Political and Security Committee of 21 April 2009 on the acceptance of third States' contributions to operation Atalanta (ATALANTA/2/2009)² and on the setting up of a Committee of Contributors (ATALANTA/3/2009)³, an Agreement has been negotiated between the European Union and Montenegro on the participation of Montenegro in the 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) ("the Agreement").
- (4) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

¹ OJ L 301, 12.11.2008, p. 33.

² OJ L 109, 30.4.2009, p. 52.

³ OJ L 112, 6.5.2009, p. 9 and addendum in OJ L 119, 14.5.2009, p. 40.

Article 1

The Agreement between the European Union and Montenegro on the participation of Montenegro in the 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) ("the Agreement") 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

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 10(1) of the Agreement¹.

¹ The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.

Article 4

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

Article 5

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 MONTENEGRO
ON THE PARTICIPATION OF MONTENEGRO
IN THE 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)

THE EUROPEAN UNION (EU),

of the one part, and

MONTE NEGRO,

of the other part,

hereinafter referred to as the "Parties",

TAKING INTO ACCOUNT:

- the adoption by the Council of the European Union of 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), as amended by Council Decision 2009/907/CFSP of 8 December 2009²,
- the invitation by the EU to Montenegro to participate in the EU-led operation,
- the successful completion of the Force Generation process and the recommendation by the EU Operation Commander and the EU Military Committee to agree on the participation of Montenegro 's forces in the EU-led operation,

¹ OJ L 301, 12.11.2008, p. 33, as corrected in OJ L 253, 25.9.2009, p. 18.

² OJ L 322, 9.12.2009, p. 27.

- the Political and Security Committee Decision ATALANTA/2/2009 of 21 April 2009 on the acceptance of third States' contributions to the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta)¹ and the Political and Security Committee Decision ATALANTA/3/2009 of 21 April 2009 on the setting up of the Committee of Contributors for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta)², which were both amended by Political and Security Committee Decision ATALANTA/7/2009 of 2 October 2009³,
- the decision by Montenegro of 13 August 2009 to participate in operation Atalanta,

HAVE AGREED AS FOLLOWS:

¹ OJ L 109, 30.4.2009, p. 52.

² OJ L 112, 6.5.2009, p. 9 and addendum in OJ L 119, 14.5.2009, p. 40.

³ OJ L 270, 15.10.2009, p. 19.

ARTICLE 1

Participation in the operation

1. Montenegro shall associate itself with 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 (operation Atalanta), as amended by Council Decision 2009/907/CFSP, and with any further Decision by which the Council of the European Union decides to extend the operation, in accordance with the provisions of this Agreement and any required implementing arrangements.
2. The contribution of Montenegro to the European Union-led naval force (EUNAVFOR) is without prejudice to the decision-making autonomy of the European Union.
3. Montenegro shall ensure that its forces and personnel participating in operation Atalanta undertake their mission in conformity with:
 - Joint Action 2008/851/CFSP and possible subsequent amendments;
 - the Operation Plan;
 - any implementing measures.
4. Forces and personnel seconded to the operation by Montenegro shall carry out their duties and conduct themselves solely with the interest of operation Atalanta in mind.

5. Montenegro shall inform the EU Operation Commander in due time of any change to its participation in the operation.

ARTICLE 2

Status of forces

1. The status of the forces and personnel contributed to operation Atalanta by Montenegro shall be governed by the agreement on the status of forces concluded between the European Union and Somalia, Djibouti or any other country in the region with which such an agreement will have been concluded for the purposes of the operation, or by the unilateral declaration on the status of forces issued by Kenya, the Seychelles or any country in the region which will have issued such a declaration for the purposes of the operation.

2. The status of the forces and personnel contributed to headquarters or command elements located outside the joint operation area, shall be governed by arrangements between the Host State of the headquarters and command elements concerned and Montenegro.

3. Without prejudice to the agreements and declarations on the status of forces referred to in paragraphs 1 and 2, Montenegro shall exercise jurisdiction over its forces and personnel participating in operation Atalanta.

4. Montenegro shall be responsible for answering any claims linked to the participation in operation Atalanta, from or concerning any of its forces and personnel. Montenegro shall be responsible for bringing any action, in particular legal or disciplinary, against any of its forces and personnel, in accordance with its laws and regulations.

5. Montenegro undertakes to make a declaration as regards the waiver of claims against any State participating in operation Atalanta, and to do so when signing this Agreement.

6. European Union Member States undertake to make a declaration as regards the waiver of claims, for the participation of Montenegro in operation Atalanta, and to do so when signing this Agreement.

ARTICLE 3

Conditions of transfer of persons arrested and detained with a view to their prosecution

If Montenegro exercises its jurisdiction upon persons having committed or suspected of having committed acts of piracy, or acts of armed robbery in a coastal State's territorial sea, within the area of the Operation, the transfer of persons arrested with a view to their prosecution and detained by EUNAVFOR and seized property in the possession of EUNAVFOR, from EUNAVFOR to Montenegro, shall be carried out under the conditions set out in the Annex, which forms an integral part of this Agreement.

ARTICLE 4

Classified information

1. Montenegro shall take appropriate measures to ensure that EU classified information is protected in accordance with the European Union Council's security regulations, contained in Council Decision .../.../EU of ...* on the security rules for protecting EU classified information¹, and in accordance with further guidance issued by competent authorities, including the EU Operation Commander.
2. Where the EU and Montenegro have concluded an agreement on security procedures for the exchange of classified information, the provisions of such an agreement shall apply in the context of operation Atalanta.

ARTICLE 5

Chain of command

1. All forces and personnel participating in operation Atalanta shall remain under the full command of their national authorities.
2. National authorities shall transfer the Operational and Tactical command and/or control of their forces and personnel to the EU Operation Commander. The EU Operation Commander is entitled to delegate his authority.
3. Montenegro shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States.

* OJ: Please add OJ number and date for doc. 13885/09.

¹ OJ L ..., ..., p.

4. The EU Operation Commander may – following consultations with Montenegro – at any time request the withdrawal of Montenegro 's contribution.

5. A Senior Military Representative (SMR) shall be appointed by Montenegro to represent its national contingent in operation Atalanta. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for day-to-day contingent discipline.

ARTICLE 6

Financial aspects

1. Montenegro shall assume all the costs associated with its participation in the operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 1(1) of this Agreement, as well as in Council Decision 2008/975/CFSP of 18 December 2008 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena)¹.

2. Operation Atalanta shall provide logistic support to the Montenegrin contingent on a cost reimbursement basis under the conditions provided in the implementing arrangements referred to in Article 7. Administrative management of related expenditure shall be entrusted to Athena.

¹ OJ L 345, 23.12.2008, p. 96.

3. In the event of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, Montenegro shall, when its liability has been established, pay compensation under the conditions foreseen in the agreement on status of forces, if available, as referred to in Article 2(1) of this Agreement.

ARTICLE 7

Arrangements to implement the Agreement

Any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the High Representative of the Union for Foreign Affairs and Security Policy or the EU Operation Commander and the appropriate authorities of Montenegro.

ARTICLE 8

Non compliance

Should one of the Parties fail to comply with its obligations laid down in the previous Articles, the other Party shall have the right to terminate this Agreement by serving a notice of one month.

ARTICLE 9

Dispute settlement

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

ARTICLE 10

Entry into force

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.
2. This Agreement shall be provisionally applied from the date of signature.
3. This Agreement shall remain in force for the duration of Montenegro's contribution to the operation.
4. Termination of this Agreement will not affect any benefits or obligations arising out of the application of this Agreement before such termination, including the benefits to any transferred persons as long as they are held in custody or are prosecuted by Montenegro.

After the termination of the Operation, all benefits of EUNAVFOR under the Annex to this Agreement may be exercised by any person or entity designated by the State exercising the Presidency of the Council of the EU. A designated person or entity may, *inter alia*, be a diplomatic agent or consular official of that State accredited to Montenegro. After the termination of the Operation, all notifications that were to be made to EUNAVFOR under this Instrument will be made to the State exercising the Presidency of the Council of the EU.

Done at Brussels, in two originals in the English language.

For the European Union

For Montenegro

ANNEX

PROVISIONS ON THE CONDITIONS AND MODALITIES
FOR THE TRANSFER OF PERSONS SUSPECTED OF HAVING COMMITTED
ACTS OF PIRACY, OR ACTS OF ARMED ROBBERY
IN A COASTAL STATE'S TERRITORIAL SEA,
WITHIN THE AREA OF THE OPERATION, AND DETAINED
BY THE EUROPEAN UNION-LED NAVAL FORCE (EUNAVFOR),
AND SEIZED PROPERTY IN THE POSSESSION OF EUNAVFOR,
FROM EUNAVFOR TO MONTENEGRO
AND FOR THEIR TREATMENT AFTER SUCH TRANSFER

1. Definitions

For the purposes of this Agreement:

- (a) "Piracy" means piracy as defined in Article 101 of UNCLOS;
- (b) "Armed robbery" means acts as defined in paragraph (a) when committed in a coastal State's territorial sea within the area of the Operation;
- (c) "Transferred person" means any person suspected of intending to commit, committing, or having committed, acts of piracy or armed robbery transferred by EUNAVFOR to Montenegro under this Agreement.

2. General principles

- (a) Montenegro may accept, upon the request of EUNAVFOR, the transfer of persons detained by EUNAVFOR in connection with piracy or armed robbery and associated seized property by EUNAVFOR and submit such persons and property to its competent authorities for the purpose of investigation and prosecution.
- (b) EUNAVFOR shall, when acting under this Agreement, only transfer persons to the competent law enforcement authorities of Montenegro.

(c) Montenegro confirms that persons transferred under these provisions, both prior to and following transfer, shall be treated humanely and in accordance with international human rights obligations, including the prohibition against torture and cruel, inhumane and degrading treatment or punishment, the prohibition of arbitrary detention and in accordance with the requirement to have a fair trial.

3. Treatment, prosecution and trial of transferred persons

- (a) Any transferred person shall be treated humanely and shall not be subject to torture or cruel, inhuman or degrading treatment or punishment, shall receive adequate accommodation and nourishment, access to medical treatment and shall be able to carry out religious observance.
- (b) Any transferred person shall be brought promptly before a judge or other officer authorised by law to exercise judicial power, who shall decide without delay on the lawfulness of his detention and shall order his release if the detention is not lawful.
- (c) Any transferred person shall be entitled to trial within a reasonable time or to release.
- (d) In the determination of any criminal charge against him, any transferred person shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

- (e) Any transferred person charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- (f) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - 1) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - 2) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - 3) to be tried without undue delay;
 - 4) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - 5) to examine, or have examined, all evidence against him, including affidavits of witnesses who conducted the arrest, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - 6) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - 7) not to be compelled to testify against himself or to confess guilt.

- (g) Any transferred person convicted of a crime shall be permitted the right to have his conviction and sentence reviewed by or appealed to a higher tribunal in accordance with the law of Montenegro.
- (h) Montenegro shall not transfer any transferred person to any other State for the purposes of investigation or prosecution without prior written consent from EUNAVFOR.

4. Death penalty

No transferred person shall be sentenced or liable to the death penalty or be the subject of an application for the death penalty.

5. Records and notifications

- (a) Any transfer shall be the subject of an appropriate document signed by a representative of EUNAVFOR and a representative of the competent authorities of Montenegro law enforcement authorities.
- (b) EUNAVFOR shall provide detention records to Montenegro with regard to any transferred person. These records shall include, so far as possible, the physical condition of the transferred person while in detention, the time of transfer to Montenegro's authorities, the reason for his detention, the time and place his detention commenced, and any decisions taken with regard to his detention.

- (c) Montenegro shall be responsible for keeping an accurate account of any transferred person, including but not limited to keeping records of any seized property, the person's physical condition, the location of his place of detention, any charges against him and any significant decisions taken in the course of his prosecution and trial.
- (d) These records shall be available to representatives of the EU and EUNAVFOR upon request in writing to the Ministry of Foreign Affairs of Montenegro.
- (e) In addition, Montenegro shall notify EUNAVFOR of the place of detention of any person transferred under this Agreement, any deterioration of his physical condition and of any allegations of alleged improper treatment. Representatives of the EU and EUNAVFOR shall have access to any person transferred under this Agreement as long as such persons are in custody and shall be entitled to question them.
- (f) At their request, national and international humanitarian agencies shall be allowed to visit persons transferred under this Agreement.
- (g) For the purposes of ensuring that EUNAVFOR is able to provide timely assistance to Montenegro, with attendance of witnesses from EUNAVFOR and the provision of relevant evidence, Montenegro shall notify EUNAVFOR of its intention to initiate criminal trial proceedings against any transferred person and the timetable for provision of evidence, and the hearing of evidence.

6. EUNAVFOR Assistance

- (a) EUNAVFOR, within its means and capabilities, shall provide all assistance to Montenegro with a view to the investigation and prosecution of transferred persons.
- (b) In particular, EUNAVFOR shall:
 - 1) hand over detention records drawn up pursuant to paragraph 5(b) of these provisions;
 - 2) process any evidence in accordance with the requirements of the competent authorities of Montenegro as agreed in the implementing arrangements described in paragraph 8;
 - 3) endeavour to produce statements of witnesses or affidavits by EUNAVFOR personnel involved in any incident in relation to which persons have been transferred under these provisions;
 - 4) hand over all relevant seized property in the possession of EUNAVFOR.

7. Relationship to other rights of transferred persons

Nothing in these provisions is intended to derogate or may be construed as derogating from any rights that a transferred person may have under applicable domestic or international law.

8. Implementing arrangements

- (a) For the purposes of the application of these provisions, operational, administrative and technical matters may be the subject of implementing arrangements to be approved between the competent authorities of Montenegro on the one hand and the competent EU authorities as well as the competent authorities of the States providing a national contingent for EUNAVFOR on the other hand.
- (b) Implementing arrangements may *inter alia* cover:
 - 1) The identification of competent law enforcement authorities of Montenegro to which EUNAVFOR may transfer persons.
 - 2) The detention facilities where transferred persons will be held.
 - 3) The handling of documents, including those related to the gathering of evidence, which shall be handed over to the competent law enforcement authorities of Montenegro upon transfer of a person.
 - 4) Points of contacts for notifications.
 - 5) Forms to be used for transfers.