

Council Decision (CFSP) 2020/2188 of 22 December 2020
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

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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 10 November 2008, the Council adopted Joint Action 2008/851/CFSP⁽¹⁾ establishing the EU military operation Atalanta.
- (2) On 30 July 2018, Council Decision (CFSP) 2018/1083⁽²⁾ amended Joint Action 2008/851/CFSP and extended Atalanta until 31 December 2020.
- (3) The United Nations Convention against Illicit Traffic In Narcotic Drugs And Psychotropic Substances, signed on 20 December 1988, provides that the Parties are to cooperate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea.
- (4) On 15 November 2019, the United Nations Security Council (UNSC), in its Resolution 2498 (2019), reaffirmed that all States are to, for the purposes of establishing peace and stability in Somalia, implement the embargo on weapons and military equipment to Somalia initially imposed by paragraph 5 of its Resolution 733 (1992) and paragraphs 1 and 2 of its Resolution 1425 (2002).
- (5) In its Resolution 2498 (2019), the UNSC also condemned any exports of charcoal from Somalia in violation of the total ban on the export of charcoal and reaffirmed its decision regarding the ban on the import and export of Somali charcoal, as set out in paragraph 22 of its Resolution 2036 (2012) and paragraphs 11 to 21 of its Resolution 2182 (2014).
- (6) On 4 December 2019, the UNSC in its Resolution 2500 (2019) renewed its call upon States and regional organisations that are able to do so to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, called upon all States to cooperate in the investigation and prosecution of all persons responsible for or

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associated with such acts and recognised the successful prosecution of piracy cases by Seychelles.

- (7) In its Resolution 2500 (2019), the UNSC further expressed serious concern over reports of illegal, unreported and unregulated (IUU) fishing in Somalia's Exclusive Economic Zone and recognised that IUU fishing can contribute to destabilisation among coastal communities.
- (8) On 25 February 2020, Operation Agénor, the military component of the European-led Maritime Situation Awareness in the Strait of Hormuz (EMASOH) initiative, reached full operational capacity.
- (9) On 12 November 2020, the UNSC in its Resolution 2551 (2020) renewed the authorisations granted in its Resolution 2182 (2014) in order to ensure strict implementation of the arms embargo on Somalia and the ban on the import and export of Somali charcoal, and encouraged Atalanta to enhance its contribution to regional cooperation on responding to illicit maritime flows and disrupt all forms of trafficking in licit and illicit goods that may finance terrorist activities in Somalia.
- (10) The Strategic Review of Atalanta in 2020 led to the conclusion that the operation's mandate should be extended to 31 December 2022 and amended to introduce a secondary non-executive task of monitoring narcotic drugs trafficking, arms trafficking, IUU fishing and illicit trade in charcoal off the coast of Somalia.
- (11) The Strategic Review of Atalanta in 2020 also led to the conclusion that secondary executive tasks to counter drugs trafficking and weapons trafficking should be introduced in Atalanta's mandate, in accordance with the applicable legal framework, once defined. The Political and Security Committee agreed on 1 December 2020 that Atalanta will exercise those tasks and that the necessary arrangements will be defined in the planning documents for the operation.
- (12) Joint Action 2008/851/CFSP should be amended accordingly.
- (13) 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. Denmark does not participate in the implementation of this Decision and therefore does not participate in the financing of operation Atalanta,

HAS ADOPTED THIS DECISION:

Article 1

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

- (1) in Article 1, paragraph 3 is replaced by the following:
 - '3 In addition, Atalanta shall contribute, as secondary executive tasks, to the implementation of the United Nations arms embargo on Somalia in accordance with UNSC Resolution 2182 (2014) 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, 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 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 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) the title of Article 2 is replaced by 'Countering piracy and armed robbery off the coast of Somalia and protecting vulnerable shipping';
- (3) the following article is inserted, the text of which is identical to Article 12 of Joint Action 2008/851/CFSP as deleted by this Decision:

'Article 2a

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.

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- 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) the following article is inserted:

'Article 2b

Contributing to the implementation of the United Nations arms embargo on Somalia and to countering narcotic drugs trafficking off the coast of Somalia

- 1 For the purpose of contributing to the implementation of the United Nations arms embargo on Somalia in accordance with the relevant UNSC Resolutions, in particular Resolution 2182 (2014), Atalanta shall carry out, as set out in the planning documents and within the agreed area of operations 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 Somalia or that they are carrying weapons or military equipment to individuals or entities designated by the Committee established pursuant to UNSC Resolutions 751 (1992) and 1907 (2009). Atalanta shall seize such items, record them and dispose of them, and may divert such vessels and their crews to a suitable port to facilitate such disposal, in accordance with relevant UNSC Resolutions, including Resolution 2182 (2014), and with arrangements set out in the Operation Plan.

- 2 For the purpose of contributing to countering narcotic drugs trafficking off the coast of Somalia, Atalanta shall act in accordance with the arrangements and within the agreed Area of Operation on the high seas off the coast of Somalia, as set out in the planning documents:

- a as regards vessels flying a national flag, where there are reasonable grounds to believe that such a vessel is being used for narcotic drugs trafficking, Atalanta, if so authorised explicitly by the flag State, shall board that vessel, search for narcotic drugs and, if evidence of illicit trafficking is found, take appropriate action with respect to that vessel and the cargo on board. Any arrest, detention, transfer to a third State or prosecution of persons involved in narcotic drugs trafficking may be undertaken by willing Member States in their national capacity on the basis of their domestic law;
- b as regards vessels without a national flag, Atalanta shall take action, including boarding and searching, in accordance with the national law applicable to the intervening ship and with international law, only through the use of assets made available by those Member States which have indicated that they are able to take such action. Further action, such as seizing drugs and diverting such a vessel, as well as the arrest, detention, transfer to a third State and prosecution of persons involved in narcotic drugs trafficking, may be undertaken by willing Member States in their national capacity on the basis of their domestic law.

- 3 Once the Operation Plan with the necessary arrangements has been approved, the Political and Security Committee shall activate the secondary executive