



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 20 February 2009**

**6381/09**

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PESC 200  
COAFR 56  
CONUN 13  
SOMALIA 8**

**"I/A" ITEM NOTE**

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From : Secretariat  
To : Permanent Representatives Committee/Council

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Subject : Council Decision concerning the Exchange of Letters between the European Union and Kenya on the conditions and modalities for the transfer of persons suspected of having committed acts of piracy and detained by the European Union-led Naval Force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya and for their treatment after such transfer.

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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 coast<sup>1</sup> (operation 'Atalanta').
2. Article 12 of the Joint Action provides that persons having committed, or suspected of having committed acts of piracy, who are arrested and detained, with a view to their prosecution, and property used to carry out such acts, may be transferred to a third State which wishes to exercise its jurisdiction over the aforementioned persons and property,

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<sup>1</sup> OJ L 301, 12.11.2008, p. 33.

provided that 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 will be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment.

3. In accordance with Article 24 of the Treaty, the Presidency, assisted by the Secretary-General/High Representative (SG/HR), negotiated an Exchange of Letters between the European Union and the Government of Kenya on the conditions and modalities for the transfer of the aforementioned persons and property, from EUNAVFOR to Kenya and for their treatment after such transfer.
4. On 20 February 2009, the Working Party of Foreign Relations Counsellors approved the text of the draft Council Decision concerning the Exchange of Letters between the European Union and Kenya.
5. Delegations considered that paragraph 4 of the "Provisions on the Condition of Transfer of Suspected Pirates and Armed Robbers and Seized Property from the EU-led Naval Force to the Republic of Kenya", annexed to the Exchange of Letters between the European Union and the Government of Kenya, gives them sufficient legal assurance that no death sentence would be executed against any person transferred from EU NAVFOR forces to the Kenyan authorities under the above-mentioned Exchange of Letters.  
Delegations also noted that any transfer of persons under the terms of the Exchange of Letters between the European Union and the Government of Kenya will take place on the basis that the authorities of Kenya will treat such persons in full compliance with the UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment of 10 December 1984, which has been ratified by Kenya on 21 February 1997. EU Member States will seek to verify, in accordance with paragraph 5 (e) and (f) of the Annex to the Exchange of Letters, that no transferred person will be subjected to any such treatment and will review their policy on transfer of persons in case of serious doubts that the provisions of the Convention are being fully observed by the responsible authorities of Kenya.

6. The Permanent Representatives Committee is invited to recommend that the Council adopt the draft Council Decision concerning the Exchange of Letters between the European Union and Kenya on the conditions and modalities for the transfer of persons suspected of having committed acts of piracy and detained by the European Union-led Naval Force (EUNAVFOR), and seized property in the possession of EUNAVFOR, from EUNAVFOR to Kenya and for their treatment after such transfer, as set out, after finalisation by the legal/linguistic experts, in document 5348/09 COSDP 34 PESC 57 COAFR 14 CONUN 4 SOMALIA 2.

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