



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 6 July 2011
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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 the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer

COUNCIL DECISION 2011/.../CFSP

of

on the signing and conclusion of the Agreement
between the European Union and the Republic of Mauritius
on the conditions of transfer of suspected pirates and associated seized property
from the European Union-led naval force to the Republic of Mauritius
and on the conditions of suspected pirates after transfer

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy ("HR"),

Whereas:

- (1) On 2 June 2008, the United Nations Security Council (UNSC) adopted Resolution 1816 (2008) calling upon all States to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia. Those provisions were reaffirmed by successor UNSC Resolutions.
- (2) 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").
- (3) Article 12 of Joint Action 2008/851/CFSP provides that persons suspected of intending to commit, committing or having committed of piracy or armed robbery in Somali territorial waters, 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, 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 is subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment.

¹ OJ L 301, 12.11.2008, p. 33.

- (4) Following the adoption of a Decision by the Council on 22 March 2010 authorising the opening of negotiations, the HR in accordance with Article 37 TEU negotiated an Agreement between the European Union and the Republic Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer ("the Agreement").
- (5) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer ("the Agreement") is hereby approved on behalf of the 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 Union.

Article 3

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 11(1) of the Agreement¹.

¹ The date of the 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.

Done at Brussels,

For the Council
The President

AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE REPUBLIC OF MAURITIUS
ON THE CONDITIONS OF TRANSFER OF SUSPECTED PIRATES
AND ASSOCIATED SEIZED PROPERTY
FROM THE EUROPEAN UNION-LED
NAVAL FORCE TO THE REPUBLIC OF MAURITIUS
AND ON THE CONDITIONS OF SUSPECTED PIRATES
AFTER TRANSFER

THE EUROPEAN UNION (EU),

of the one part, and

THE REPUBLIC OF MAURITIUS,

hereinafter referred to as "Mauritius",

of the other part,

together hereinafter referred to as the "Parties",

TAKING INTO ACCOUNT:

- United Nations (UN) Security Council Resolutions (UNSCR) 1814 (2008), 1838 (2008), 1846 (2008), 1851 (2008) and successor UNSCRs,
- the 1982 UN Convention on the Law of the Sea (UNCLOS), in particular Articles 100 to 107 and Article 110 thereof,

- EU Council Joint Action 2008/851/CFSP 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 coast¹ (Operation EUNAVFOR Atalanta), as amended by Council Decision 2009/907/CFSP of 8 December 2009²,
- International Human Rights Law, including the 1966 International Covenant on Civil and Political Rights, and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- 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:

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.

ARTICLE 1

Aim

This Agreement defines the conditions and modalities for

- (a) the transfer of persons suspected of attempting to commit, committing or having committed acts of piracy within the area of operation of EUNAVFOR, on the high seas off the territorial seas of Mauritius, Madagascar, the Comoros Islands, Seychelles and Réunion Island, and detained by EUNAVFOR;
- (b) the transfer of associated property seized by EUNAVFOR from EUNAVFOR to Mauritius, and
- (c) the treatment of transferred persons.

ARTICLE 2

Definitions

For the purposes of this Agreement:

- (a) "*European Union-led naval force (EUNAVFOR)*" shall mean EU military headquarters and national contingents contributing to the EU operation 'Atalanta', their ships, aircrafts and assets;

- (b) "*Operation*" shall mean the preparation, establishment, execution and support of the military mission established by EU Council Joint Action 2008/851/CFSP and/or its successors;
- (c) "*national contingents*" shall mean units and ships belonging to the Member States of the European Union and, as indicated by the EU, to other States participating in the operation;
- (d) "*Sending State*" shall mean a State providing a national contingent for EUNAVFOR;
- (e) "*piracy*" shall mean piracy as defined in Article 101 of UNCLOS;
- (f) "*transferred person*" shall mean any person suspected of attempting to commit, committing or having committed acts of piracy, transferred by EUNAVFOR to Mauritius under this Agreement.

ARTICLE 3

General principles

1. Mauritius may accept, upon request by EUNAVFOR, the transfer of persons detained by EUNAVFOR in connection with piracy and associated property seized by EUNAVFOR and submit such persons and property to its competent authorities for the purpose of investigation and prosecution. Agreement on acceptance of a proposed handover will be made on a case to case basis by Mauritius, taking into account all relevant circumstances including the location of the incident.
2. EUNAVFOR shall only transfer persons to the competent law enforcement authorities of Mauritius.
3. Transfer shall not be carried out before the competent law enforcement authorities of Mauritius decide within 5 working days as of the date of receipt of evidence as forwarded by EUNAVFOR that there are reasonable prospects of securing a conviction of persons detained by EUNAVFOR.
4. The decision as to whether there are reasonable prospects of securing a conviction shall be taken by the competent law enforcement authorities of Mauritius on the basis of evidence forwarded by EUNAVFOR through relevant communication channels.

5. Any transferred person shall be treated humanely and in accordance with international human rights obligations, embodied in the Constitution of Mauritius, including the prohibition of 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.

ARTICLE 4

Treatment, prosecution and trial of transferred persons

1. In accordance with international human rights obligations, embodied in the Constitution of Mauritius, any transferred person shall be treated humanely and shall not be subjected to torture or cruel, inhuman or degrading treatment or punishment, shall receive adequate accommodation, nourishment and access to medical treatment and shall be able to carry out religious observance.
2. 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 justified.
3. Any transferred person shall be entitled to trial within a reasonable time or to release.
4. 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.

5. Any transferred person charged with a criminal offence shall be presumed innocent until proved guilty according to law.
6. In the determination of any criminal charge against him, every transferred person shall be entitled to the following minimum guarantees, in full equality:
- (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choice;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choice; 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;
 - (e) 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;

- (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) not to be compelled to testify against himself or to confess guilt.

7. Any transferred person convicted of a crime shall be permitted to have the right to his conviction and sentence reviewed by, or appealed to, a higher tribunal in accordance with the law of Mauritius.

8. Mauritius may, after consultation with the EU, transfer such persons convicted and serving sentence in Mauritius to another State guaranteeing the respect of the above mentioned human rights standards, with a view to serving the remainder of the sentence in that other State. In case of serious concerns about the human rights situation in that other State, no transfer shall take place before a satisfactory solution will have been found through consultations between the Parties to address the concerns expressed.

ARTICLE 5

Death penalty

No transferred person shall, in accordance with Mauritius Abolition of Death Penalty Act, be charged with an offence that carries the death penalty, be sentenced to death or be the subject of an application of the death penalty.

ARTICLE 6

Records and notifications

1. Any transfer shall be the subject of an appropriate document signed by a representative of EUNAVFOR and a representative of the competent Mauritius law enforcement authorities.
2. EUNAVFOR shall provide detention records to Mauritius 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 Mauritius authorities, the reason for his detention, the time and place of the commencement of his detention, and any decisions taken with regard to his detention.

3. Mauritius shall be responsible for keeping an accurate account of all transferred persons, including but not limited to keeping records of any seized property, the persons' physical condition, the location of their places of detention, any charges against them and any significant decisions taken in the course of their prosecution and trial.
4. These records shall be available to representatives of the EU and EUNAVFOR upon request in writing to the Mauritius Ministry of Foreign Affairs.
5. In addition, Mauritius shall notify the EU and EUNAVFOR of the place of detention of any person transferred under this Agreement, of 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 persons transferred under this Agreement as long as such persons are in custody and shall be entitled to question them.
6. National and international humanitarian agencies shall, at their request, be allowed to visit persons transferred under this Agreement.
7. For the purposes of ensuring that EUNAVFOR is able to provide timely assistance to Mauritius with attendance of witnesses from EUNAVFOR and the provision of relevant evidence, Mauritius 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.

ARTICLE 7

EU and EUNAVFOR assistance

1. EUNAVFOR, within its means and capabilities, shall provide all assistance to Mauritius with a view to the investigation and prosecution of transferred persons.
2. In particular, EUNAVFOR shall:
 - (a) hand over detention records drawn up pursuant to Article 6(2) of this Agreement;
 - (b) process any evidence in accordance with the requirements of the competent authorities of Mauritius as agreed in the implementing arrangements described in Article 10;
 - (c) produce statements or affidavits by witnesses belonging to EUNAVFOR involved in any incident in relation to which persons have been transferred under this Agreement;
 - (d) endeavour to produce statements of witnesses or affidavits by other witnesses who are not in Mauritius;
 - (e) preserve or hand over all relevant seized property, exhibits, photographs and any article of evidential value in the possession of EUNAVFOR;

- (f) secure the attendance of witnesses belonging to EUNAVFOR, where necessary, for the purpose of giving evidence in Court (or by live TV link or any other approved technological means) during the trial;
- (g) facilitate the attendance of other witnesses, where necessary, for the purpose of giving evidence in Court (or by live TV link or any other approved technological means) during the trial;
- (h) facilitate the attendance of such interpreters as may be required by the Mauritius competent authorities for the purpose of assisting in investigations and trials involving transferred persons.

3. As far as such resources are not provided through other financial donors, the Parties shall develop, subject to the applicable procedures, implementing arrangements on financial, technical and other assistance to enable the transfer, detention, investigation, prosecution and trial of transferred persons. These implementing arrangements shall also aim at covering technical and logistical assistance to Mauritius in the fields of revision of legislation, training of investigators and prosecutors, investigative and judicial procedures, and particularly, arrangements for storage and handing-over of evidence and appeal procedures. In addition, these implementing arrangements shall aim at providing for the repatriation of transferred persons in case of acquittal or non-prosecution, their transfer for completion of sentence in another State or their repatriation after serving their prison sentence in Mauritius.

ARTICLE 8

Relationship to other rights of transferred persons

Nothing in this Agreement 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.

ARTICLE 9

Liaison and disputes

1. All issues arising in connection with the application of this Agreement shall be examined jointly by Mauritius and EU competent authorities.
2. Failing any prior settlement, disputes concerning the interpretation or application of this Agreement shall be settled exclusively by diplomatic means between Mauritius and EU representatives.

ARTICLE 10

Implementing arrangements

1. For the purposes of the application of this Agreement, operational, administrative and technical matters may be the subject of implementing arrangements to be concluded between competent Mauritius authorities on the one hand and the competent EU authorities, as well as the competent authorities of the Sending States, on the other hand.

2. Implementing arrangements may cover, *inter alia*:
 - (a) the identification of competent law enforcement authorities of Mauritius to whom EUNAVFOR may transfer persons;

 - (b) the detention facilities where transferred persons will be held;

 - (c) the handling of documents, including those related to the gathering of evidence, which will be handed over to the competent law enforcement authorities of Mauritius upon transfer of a person;

 - (d) points of contact for notifications;

- (e) forms to be used for transfers;
- (f) the provision of technical support, expertise, training and other assistance referred to in Article 7 upon request by Mauritius in order to achieve the objectives of this Agreement.

ARTICLE 11

Entry into force and termination

1. This Agreement shall be applied provisionally as from the date on which it is signed and it shall enter into force when each of the Parties has notified the other that it has completed its internal procedure for the ratification of the Agreement.

2. This Agreement shall remain in force until termination of the Operation as notified by EUNAVFOR. Nevertheless, either Party may, by written notification, denounce this Agreement. The denunciation shall take effect six months after the date of receipt of the notification. In the event that the EU consider that the immediate denunciation of this Agreement is justified on grounds of a modification of Mauritius' substantive criminal legislation as mentioned in this Agreement, the EU shall be entitled to denounce the Agreement with effect from the date of sending of the notification. Any change in Mauritius' substantive criminal legislation shall not adversely affect persons already transferred pursuant to 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, including the rights of any transferred persons as long as they are held in custody or are prosecuted by Mauritius.

5. After the termination of the Operation, all rights of EUNAVFOR under this Agreement may be exercised by any person or entity designated by the EU High Representative for Foreign Affairs and Security Policy. This designated person or entity may *inter alia* be the Head or staff member of the EU delegation to Mauritius or a diplomatic agent or consular official of an EU Member State accredited to Mauritius. After the termination of the Operation, all notifications that were to be made to EUNAVFOR under this Agreement shall be made to the EU High Representative for Foreign Affairs and Security Policy.

Done at ... on..... in two originals, each in the English language.

For the European Union

For Mauritius