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European Union

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LIMITE

CSDP/PSDC 257
CFSP/PESC 126
MAMA 28
RELEX 354
CONUN 89
CSC 102

PROPOSAL

From: High Representative of the Union for Foreign Affairs and Security Policy,
signed by Mr. Alain LE ROY, Secretary General

date of receipt: 19 May 2015

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

Subject: Proposal of the High Representative of the Union for Foreign Affairs and
Security Policy to the Council for a Council Decision on a European Union
military operation in the Southern Central Mediterranean (EUNAVFOR
Med)

Delegations will find attached document HR(2015) 63.

Encl.: HR(2015) 63

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EUROPEAN EXTERNAL ACTION SERVICE



GREFFE

**Proposal of the High Representative of the Union for Foreign Affairs and Security
Policy to the Council**

of 19/05/2015

**for a Council Decision on a European Union military operation in the Southern
Central Mediterranean (EUNAVFOR Med)**

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COUNCIL DECISION 2015/.../CFSP of dd/mm/2015

for a Council Decision on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED)

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 20 April 2015 the Council confirmed a strong commitment to act in order to prevent human tragedies resulting from the people smuggling across the Mediterranean.

2) On 23 April 2015 the European Council expressed its indignation about the situation in the Mediterranean and underlined that the EU will mobilise all efforts at its disposal to prevent further loss of life at sea and to tackle the root causes of this human emergency. The European Council committed to strengthen the Union's presence at sea, to prevent illegal migration flows and to reinforce internal solidarity and responsibility. It highlighted the commitment to fight the traffickers in accordance with international law, including by undertaking systematic efforts to identify, capture and destroy vessels before they are used by traffickers.

3) The European Council on 23 April 2015 also invited the High Representative of the Union for Foreign Affairs and Security Policy to start preparations for a possible CSDP operation to this effect.

[UNSCR...]

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[invitation – host country]

4) On 18 May 2015 the Council approved the crisis management concept for a CSDP operation to disrupt human smuggling networks in the Southern Central Mediterranean.

5) The EU CSDP operation will be conducted in accordance with international law, in particular with the relevant provisions of the United Nations Convention on the Law of the Sea (UNCLOS), the Protocol against the Smuggling of Migrants by Land, Sea and Air to the United Nations Convention against Transnational Organised Crime, International Convention for the Safety of Life at Sea (SOLAS), International Convention on Maritime Search and Rescue (SAR), Convention on the Protection of the Mediterranean Sea against Pollution (Barcelona Convention). It is recalled that in virtue of international obligations shipmasters are obliged to proceed with all speed to the assistance of persons in distress and search and rescue efforts are coordinated by the competent Maritime Rescue Coordination Centre of the Coastal State.

6) By virtue of relevant provisions of international law it falls upon the shipmasters of ships having participated in a search and rescue operation to deliver the survivors of distress to a place of safety determined by the competent Maritime Rescue Coordination Centre.

7) The principle of non-refoulement under the 1951 Geneva Convention relating to the status of refugees, forbids the return of a refugee "in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. Article 19 of the EU Charter of Fundamental Rights provides that "no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment".

8) The United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air provides that it falls upon the flagstate of the ship having searched and visited the suspected smuggling ship to take appropriate measures against the smuggling ship and assets in accordance with relevant domestic and international law,

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9) In accordance with international law it falls on the States where smugglers have been delivered to take appropriate measures them with a view to their possible arrest and prosecution.

10) The Political and Security Committee (PSC) should exercise, under the responsibility of the Council and of the High Representative, political control over the Union crisis management operation, provide it with strategic direction and take the relevant decisions in accordance with the third paragraph of Article 38 of the Treaty on European Union (TEU).

11) Pursuant to Article 41(2) TEU, and in accordance with Council Decision 2015/528/CFSP of 27 March 2015 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena)¹, the operational expenditure arising from this Decision, which has military or defence implications, is to be borne by the Member States.

12) In accordance with Article 5 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. Consequently, Denmark is not participating in the adoption of this Decision, is neither bound by it nor subject to its application, and does not participate in the financing of this operation,

HAS ADOPTED THIS DECISION:

¹ OJ L 84, 28.3.2015, p. 39

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Article 1

Mission

1. The Union shall conduct a military crisis management operation contributing to the disruption of the business model of human smuggling networks in the Southern Central Mediterranean (EUNAVFOR MED), achieved *inter alia* by undertaking systematic efforts to dispose of vessels and assets before they are used by smugglers.
2. The area of operation shall be set out in the relevant planning documents

Article 2

Mandate

1. EUNAVFOR MED shall operate in accordance with the political, strategic and politico-military tasks set out in the Crisis Management Concept approved by the Council on 18 May 2015.
2. EUNAVFOR MED shall be conducted in sequential phases.
3. In its first phase EUNAVFOR MED shall:
 - a) support the detection and monitoring of migration networks through information gathering and patrolling in accordance with international law;
 - b) conduct boarding search, seize and diversion of smuggling ships under the conditions provided for by international law in particular UNCLOS and smuggling protocol.
4. EUNAVFOR shall undertake measures against smuggling ships and assets, including in Libya, in accordance with international law and operational planning documents.

Article 3

Appointment of the EU Operation Commander

XXX is hereby appointed EU Operation Commander of EUNAVFOR MED.

Article 4

Designation of the EU Operation Headquarters

The Operation Headquarters of EUNAVFOR MED shall be located in Rome, Italy.

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Article 5

Planning and launch of the operation

1. The Decision to launch EUNAVFOR MED shall be adopted by the Council, upon the recommendation of the Operation Commander of EUNAVFOR MED following approval of the Operation Plan and of the Rules of Engagement necessary for the execution of the mandate.

Article 6

Political control and strategic direction

1. Under the responsibility of the Council and of the HR, the PSC shall exercise the political control and strategic direction of EUNAVFOR MED. The Council hereby authorises the PSC to take the relevant decisions in accordance with Article 38 of the TEU. This authorisation shall include the powers to amend the planning documents, including the Operations Plan, the Chain of Command and the Rules of Engagement. It shall also include the powers to take decisions on the appointment of the EU Operation Commander and the EU Force Commander. The powers of decision with respect to the objectives and termination of the EU military operation shall remain vested in the Council.

2. The PSC shall report to the Council at regular intervals.

3. The Chairman of the EU Military Committee (EUMC) shall, at regular intervals, report to the PSC on the conduct of EUNAVFOR MED. The PSC may invite the EU Operation Commander or the EU Force Commander to its meetings, as appropriate.

Article 7

Military direction

1. The EUMC shall monitor the proper execution of EUNAVFOR MED conducted under the responsibility of the EU Operation Commander.

2. The EU Operation Commander shall, at regular intervals, report to the EUMC. The EUMC may invite the EU Operation Commander or the EU Force Commander to its meetings, as appropriate.

3. The Chairman of the EUMC shall act as the primary point of contact with the EU Operation Commander.

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Article 8

Consistency of the Union's response and coordination

1. The HR shall ensure the implementation of this Decision and its consistency with the Union's external action as a whole, including the Union's development programmes and its humanitarian assistance.
2. The HR, assisted by the European External Action Service (EEAS), shall act as the primary point of contact with the United Nations, the authorities of the countries in the region, and other international and bilateral actors, including NATO and the African Union.
3. EUNAVFOR MED shall establish a coordination mechanism with other EU agencies and bodies, in particular FRONTEX, EUROPOL, EUROJUST, European Asylum Support Office, European Gendarmerie Force and relevant CSDP missions (EUCAP Sahel Niger and EUBAM Libya)

Article 9

Participation by third States

1. Without prejudice to the Union's decision-making autonomy or to the single institutional framework, and in accordance with the relevant guidelines of the European Council, third States may be invited to participate in the operation.
2. The Council hereby authorises the PSC to invite third States to offer contributions and to take the relevant decisions on acceptance of the proposed contributions, upon the recommendation of the EU Operations Commander and the EUMC.
3. Detailed arrangements for the participation by third States shall be the subject of agreements concluded pursuant to Article 37 TEU and in accordance with the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union (TFEU). Where the Union and a third State have concluded an agreement establishing a framework for the latter's participation in crisis management missions of the Union, the provisions of such an agreement shall apply in the context of EUNAVFOR MED.
4. Third States making significant military contributions to EUNAVFOR MED shall have the same rights and obligations in terms of day-to-day management of the operation as Member States taking part in the operation.
5. The Council hereby authorises the PSC to take relevant decisions on the setting-up of a Committee of Contributors, should third States provide significant military contributions.

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Article 10

Status of Union-led personnel

The status of Union-led units and personnel shall be defined in accordance with international law.

Article 11

Financial arrangements

1. The common costs of the EU military operation shall be administered in accordance with Decision 2015/528/CFSP¹.
2. The financial reference amount for the common costs of EUNAVFOR MED shall be EUR XXX million. The percentage of the reference amount referred to in Article 25(1) of Decision 2015/528/CFSP shall be xxx%.

Article 12

Release of information

1. The HR shall be authorised to release to the third States associated with this Decision, as appropriate and in accordance with the needs of EUNAVFOR MED, EU classified information generated for the purposes of the operation, in accordance with Council Decision 2013/488/EU², as follows:
 - (a) up to the level provided in the applicable Security of Information Agreements concluded between the Union and the third State concerned; or
 - (b) up to the 'CONFIDENTIEL UE/EU CONFIDENTIAL' level in other cases.
2. The HR shall also be authorised to release to the UN, in accordance with the operational needs of EUNAVFOR MED, EU classified information up to 'RESTREINT UE/ EU RESTRICTED' level which are generated for the purposes of EUNAVFOR MED, in accordance with Decision

¹Council Decision 2015/528/CFSP of 27 March 2015 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP (Athena) (OJ L 84, 28.3.2015, p. 39).

² Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

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2013/488/EU. Arrangements between the HR and the competent authorities of UN shall be drawn up for this purpose.

3. The HR shall be authorised to release to the third States associated with this Decision any EU non-classified documents connected with the deliberations of the Council relating to the Operation and covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure¹.

4. The HR may delegate such authorisations, as well as the ability to conclude the arrangements referred to in this Article to EEAS officials, to the EU Operation Commander or to the EU Force Commander in accordance with section VII of Annex VI to Decision 2013/488/EU.

Article 13

Entry into force and termination

1. This Decision shall enter into force on the date of its adoption.
2. EUNAVFOR MED shall end no later than [xxx] after having reached FOC.
3. This Decision shall be repealed as from the date of closure of the EU Operation Headquarters in accordance with the plans approved for the termination of EUNAVFOR MED, and without prejudice to the procedures regarding the audit and presentation of the accounts of EUNAVFOR MED laid down in Decision 2015/528/CFSP.

Done at Brussels,

For the Council

The President

¹ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).