

**AGREEMENT****between the European Union and the Somali Republic on the status of the European Union-led naval force in the Somali Republic in the framework of the EU military operation Atalanta**

THE EUROPEAN UNION (EU),

of the one part, and

THE SOMALI REPUBLIC, hereinafter referred to as 'the Host State',

of the other part,

together hereinafter referred to as the 'Parties',

TAKING INTO ACCOUNT:

- United Nations (UN) Security Council Resolutions 1814 (2008), 1816 (2008) and 1838 (2008) and successor Resolutions,
- the letter dated 1 November 2008 from the Prime Minister of the Transitional Federal Government of the Republic of Somalia to the Secretary-General of the Council of the EU/High Representative of the Common Foreign and Security Policy of the EU in response to the EU's cooperation offer and the notification by the Transitional Federal Government of the Republic of Somalia of this offer to the UN Secretary-General dated 14 November 2008,
- 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 coast (operation Atalanta),
- 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:

*Article 1*

**Scope and definitions**

1. This Agreement shall apply to the European Union-led forces and to their personnel.
2. This Agreement shall apply only within the territory of the Host State, including its internal waters, territorial sea and airspace.
3. For the purpose of this Agreement:
  - (a) 'European Union-led naval force (EUNAVFOR)' shall mean EU military headquarters and national contingents contributing to the operation, their vessels, their aircraft, their equipment and assets and their means of transport;
  - (b) 'operation' shall mean the preparation, establishment, execution and support of the military mission further to the mandate arising out of UN Security Council Resolutions 1814 (2008) and 1816 (2008) and any subsequent relevant UN Security Council Resolutions and the 1982 UN Convention on the Law of the Sea;
  - (c) 'EU operation commander' shall mean the commander of the operation;

- (d) 'EU force commander' shall mean the commander in the theatre of operations;
- (e) 'EU military headquarters' shall mean the military headquarters and elements thereof, whatever their location, under the authority of EU military commanders exercising the military command or control of the operation;
- (f) 'national contingents' shall mean units, vessels, aircraft and elements belonging to the Member States of the European Union and to other States participating in the operation, including vessel protection detachments and embarked military forces on board merchant ships;
- (g) 'EUNAVFOR personnel' shall mean the civilian and military personnel assigned to EUNAVFOR as well as personnel deployed for the preparation of the operation and personnel on mission for a Sending State or an EU institution in the framework of the operation, present, except as otherwise provided in this Agreement, within the territory of the Host State, with the exception of personnel employed locally and personnel employed by international commercial contractors;
- (h) 'Sending State' shall mean a State providing a national contingent for EUNAVFOR;
- (i) 'waters' shall mean the internal waters and territorial sea of the Host State and the airspace above these waters.

#### *Article 2*

##### **General provisions**

1. EUNAVFOR and EUNAVFOR personnel shall respect the laws and regulations of the Host State and shall refrain from any action or activity incompatible with the objectives of the operation.
2. EUNAVFOR shall inform the government of the Host State of the vessels and aircraft operating in the Host State's waters and of the vessels making calls to the Host State's ports.

#### *Article 3*

##### **Identification**

1. EUNAVFOR personnel present on the land territory of the Host State must carry passports or military identity cards with them at all times.
2. EUNAVFOR aircraft and vessels shall carry distinctive EUNAVFOR identification, of which the relevant Host State authorities shall be notified.
3. EUNAVFOR shall have the right to display the flag of the European Union and markings such as military insignia, titles and official symbols, on its aircraft and vessels. On the land territory of the Host State, the uniforms of EUNAVFOR personnel shall carry a distinctive EUNAVFOR emblem. National flags or insignia of the constituent national contingents of the operation may be displayed on the EUNAVFOR uniforms, as decided by the EU force commander.

#### *Article 4*

##### **Border crossing and movement within the Host State's territory**

1. EUNAVFOR personnel shall enter the Host State's land territory only on presentation of the documents provided for in Article 3(1). They shall be exempt from passport and visa regulations, immigration inspections and customs control on entering, leaving or within the Host State's territory.

2. EUNAVFOR personnel shall be exempt from the Host State's regulations on the registration and control of aliens, but shall not acquire any right to permanent residence or domicile within the Host State's territory.
3. EUNAVFOR assets and means of transport entering, transiting or exiting the Host State's territory in support of the operation shall be exempt from any requirement to produce inventories or other customs documentation, and from any inspection.
4. EUNAVFOR personnel may drive motor vehicles, navigate vessels and operate aircraft within the Host State's territory provided they have valid national, international or military driving licences, ship master's certificates or pilot licences, as appropriate.
5. For the purpose of the operation, the Host State shall grant EUNAVFOR and EUNAVFOR personnel freedom of movement and freedom to travel within its territory, including its waters and airspace. Freedom of movement within the territorial sea of the Host State shall include stopping and anchoring under any circumstances.
6. For the purpose of the operation, EUNAVFOR may carry out within the Host State's waters and its airspace, any exercise or practice with weapons as well as the launching, landing or taking on board of any aircraft or military device.
7. For the purpose of the operation, EUNAVFOR submarines are not required to navigate on the surface and to show their flag in the territorial sea of the Host State.
8. For the purpose of the operation, EUNAVFOR and the means of transport that it charters may use public roads, bridges, ferries, airports and ports without the payment of duties, fees, tolls, taxes and similar charges. EUNAVFOR shall not be exempt from reasonable charges for services requested and received, under the conditions that apply to those provided to the Host State's armed forces.

#### Article 5

##### **Privileges and immunities of EUNAVFOR granted by the Host State**

1. EUNAVFOR's vessels and aircraft shall be inviolable. The Host State's agents shall not enter them without the consent of the EU force commander.
2. EUNAVFOR's vessels and aircraft as well as its means of transport shall be immune from search, requisition, attachment or execution.
3. EUNAVFOR, its vessels, aircraft, property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process.
4. EUNAVFOR's archives and documents shall be inviolable at any time, wherever they may be.
5. The official correspondence of EUNAVFOR shall be inviolable. Official correspondence means all correspondence relating to the operation and its functions.
6. In respect of purchased and imported goods, services provided and facilities used by EUNAVFOR for the purposes of the operation, EUNAVFOR, as well as its providers or contractors, shall be exempt from all national, regional and communal dues, taxes and charges of a similar nature. EUNAVFOR shall not be exempt from dues, taxes or charges that represent payment for services rendered.
7. The Host State shall permit the entry of articles for the operation and grant them exemption from all custom duties, fees, tolls, taxes and similar charges other than charges for storage, cartage and other services rendered.

*Article 6***Privileges and immunities of EUNAVFOR personnel granted by the Host State**

1. EUNAVFOR personnel shall not be liable to any form of arrest or detention.
2. Papers, correspondence and property of EUNAVFOR personnel, shall enjoy inviolability.
3. EUNAVFOR personnel shall enjoy immunity from the criminal, civil and administrative jurisdiction of the Host State under all circumstances.

The immunity from jurisdiction of EUNAVFOR personnel may be waived by the Sending State or EU institution concerned, as the case may be. Such waiver must always be in writing.

4. The initiation of proceedings by EUNAVFOR personnel shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.
5. EUNAVFOR personnel are not obliged to give evidence as witnesses.
6. No measures of execution may be taken in respect of EUNAVFOR personnel.
7. The immunity of EUNAVFOR personnel from the jurisdiction of the Host State does not exempt them from the jurisdictions of the respective Sending States.
8. EUNAVFOR personnel shall be exempt from any form of taxation in the Host State on the salary and emoluments paid to them by EUNAVFOR or the Sending States, as well as on any income received from outside the Host State.
9. The Host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on articles for the personal use of EUNAVFOR personnel.

The personal baggage of EUNAVFOR personnel shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles that are not for the personal use of EUNAVFOR personnel, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the Host State. Such inspection shall be conducted only in the presence of the concerned EUNAVFOR personnel or of an authorised representative of EUNAVFOR.

*Article 7***Criminal jurisdiction**

The competent authorities of a Sending State shall have the right to exercise on the territory of the Host State all the criminal jurisdiction and disciplinary powers conferred on them by the law of the Sending State with regard to all EUNAVFOR personnel subject to the relevant law of the Sending State.

*Article 8***Uniform and arms**

1. The wearing of uniform shall be subject to rules adopted by the EU force commander.
2. EUNAVFOR military personnel may carry arms and ammunition on condition that they are authorised to do so by their orders.

*Article 9***Host State support and contracting**

1. Within its means and capabilities, the Host State shall assist in the preparation, establishment, and execution of and support for the operation.
2. The law applicable to contracts concluded by EUNAVFOR in the Host State shall be determined by the contract.
3. The Host State shall facilitate the implementation of contracts concluded by EUNAVFOR with commercial entities for the purposes of the operation.

*Article 10***Deceased EUNAVFOR personnel**

The EU force commander shall have the right to take charge of and make suitable arrangements for the repatriation of any deceased EUNAVFOR personnel, as well as that of their personal property.

*Article 11***Security of EUNAVFOR**

EUNAVFOR is authorised, on the land territory of the Host State and its internal waters, to take the measures necessary to protect its vessels, aircraft and assets as well as the vessels that it protects, against any external attack or intrusion.

*Article 12***Communications**

EUNAVFOR shall enjoy the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile and other means. The Host State shall grant access to the frequency spectrum free of charge.

*Article 13***Claims for death, injury, damage and loss**

1. EUNAVFOR and EUNAVFOR personnel shall not be liable for any damage to or loss of civilian or government property which are related to operational necessities or caused by activities in connection with civil disturbances or protection of EUNAVFOR.
2. Claims for damage to or loss of civilian or government property not covered by paragraph 1, as well as claims for death of or injury to persons and for damage to or loss of EUNAVFOR property, shall be settled by diplomatic means.
3. In the event of legal action instituted in connection with a prejudice caused to third parties, the Republic of Somalia shall stand in lieu of EUNAVFOR in the proceedings. In all events, the Republic of Somalia shall pay any compensation due as redress for prejudice caused to third parties other than those referred to in paragraph 1. If such compensation is attributable to EUNAVFOR, the amount of compensation shall be totally or partially refunded by EUNAVFOR.

*Article 14***Liaison and disputes**

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

*Article 15***Other provisions**

1. Whenever this Agreement refers to the privileges, immunities and rights of EUNAVFOR and of EUNAVFOR personnel, the government of the Host State shall be responsible for their implementation and for compliance with them on the part of the appropriate Host State local authorities.
2. Nothing in this Agreement is intended or may be construed to derogate from any rights that may attach to an EU Member State or to any other State contributing to EUNAVFOR under other agreements.

*Article 16***Implementing arrangements**

For purposes of the application of this Agreement, operational, administrative and technical matters may be the subject of separate arrangements to be concluded between the EU operation commander or EU force commander on the one hand and the Host State's administrative authorities on the other hand.

*Article 17***Entry into force and termination**

1. This Agreement shall enter into force on the day on which it is signed and shall remain in force until the date of departure of the last EUNAVFOR element and of the last EUNAVFOR personnel, as notified by EUNAVFOR.
2. Notwithstanding paragraph 1, the provisions contained in Articles 4(8), 5(1-3), 5(6-7), 6(1), 6(3-4), 6(6), 6(8-9) and 13 shall be deemed to have applied from the date on which the first EUNAVFOR personnel were deployed if that date was earlier than the date of entry into force of 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.

Done at Nairobi on *31 december 2008*, in two originals in the English language.

*For the European Union*

*For the Host State*



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