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Council Decision (CFSP) 2020/472 of 31 March 2020 on a European Union military operation in the Mediterranean (EUNAVFOR MED IRINI)

COUNCIL DECISION (CFSP) 2020/472

of 31 March 2020

on a European Union military operation in the Mediterranean (EUNAVFOR MED IRINI)

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 19 January 2020, a Conference was held in Berlin on Libya. Participants committed in particular to unequivocally and fully respecting and implementing the arms embargo established by the United Nations Security Council Resolution (UNSCR) 1970 (2011) and subsequent Resolutions, in particular UNSCRs 2292 (2016) and 2473 (2019).

(2) On 12 February 2020, in UNSCR 2510 (2020), the United Nations (UN) Security Council welcomed the Berlin Conference on Libya and endorsed its conclusions, noting that those conclusions represent an important element of a comprehensive solution to the situation in Libya. It also demanded full compliance by all UN Member States with the arms embargo, and further demanded all States not to intervene in the conflict or take measures that exacerbate the conflict.

(3) On 11 February 2020, in UNSCR 2509 (2020), the UN Security Council extended the measures imposed by UNSCR 2146 (2014) to prevent the illicit export from Libya of petroleum, including crude oil and refined petroleum products, and extended the mandate of the Panel of Experts established by UNSCR 1973 (2011).

(4) On 17 February 2020, the Council reached a political agreement to launch a new operation in the Mediterranean, aimed at implementing the UN arms embargo on Libya by using aerial, satellite and maritime assets. The operation should, as secondary tasks, contribute to the implementation of UN measures to prevent the illicit export of petroleum from Libya, to capacity building and training of the Libyan Coast Guard and Navy, and to the disruption of the business model of human smuggling and trafficking networks. The Area of Operation and the Area of Interest of the operation should be defined in accordance with the agreed mandate in the relevant planning documents.

(5) In addition, the Council could decide in future to extend the scope of the operation in order to allow for the use of aerial surveillance within Libyan airspace, in accordance with any applicable UNSCR or with the consent of the Libyan authorities, if it assesses that the necessary legal requirements and political conditions are met.

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(6) On 18 May 2015, the Council adopted Decision (CFSP) 2015/778[(1)]. EUNAVFOR MED operation SOPHIA has been ongoing since that date, and was extended through Council Decision (CFSP) 2019/1595[(2)].

(7) The Political and Security Committee (PSC) should exercise, under the responsibility of the Council and the High Representative of the Union for Foreign Affairs and Security Policy (HR), political control over the 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).

(8) The authorisation of the operation should be reconfirmed every four months and the PSC, in exercising its political control and strategic direction of the operation, should be authorised to take such a decision prolonging the operation unless the deployment of maritime assets of the operation produces a pull effect on migration on the basis of substantiated evidence gathered according to the criteria set in the Operations Plan.

(9) Pursuant to Article 41(2) TEU and in accordance with Council Decision (CFSP) 2015/528[(3)], the operational expenditure arising from this Decision, which has military or defence implications, is to be borne by the Member States.

(10) In accordance with Article 5 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU), 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:

Article 1

Mission

1 The Union hereby establishes and launches a military crisis management operation to contribute to preventing arms trafficking within its agreed Area of Operation and Area of Interest in accordance with UNSCR 1970 (2011) and subsequent Resolutions on the arms embargo on Libya, including UNSCR 2292 (2016) and UNSCR 2473 (2019). Furthermore, the operation shall contribute to the implementation of UN measures to prevent the illicit export of petroleum from Libya in accordance with UNSCR 2146 (2014) and subsequent Resolutions, in particular UNSCR 2509 (2020) and UNSCR 2510 (2020). In addition, the operation shall assist in the development of the capacities and in the training of the Libyan Coast Guard and Navy in law enforcement tasks at sea. The operation shall also contribute to the disruption of the business model of human smuggling and trafficking networks, in accordance with applicable international law, including the UN Convention on the Law of the Sea, any relevant UNSCR, and international human rights law as applicable.

2 The operation shall be named EUNAVFOR MED IRINI.

3 The Area of Operation, the Area of Interest and the detailed arrangements for gathering information in those areas in order to fulfil all the tasks of the operation shall be defined in the relevant planning documents approved by the Council.

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Article 2

Contributing to implementation of the UN arms embargo on Libya

1 EUNAVFOR MED IRINI shall, as its core task, contribute to the implementation of the UN arms embargo on Libya with aerial, satellite and maritime assets.

2 For that purpose, EUNAVFOR MED IRINI shall gather extensive and comprehensive information on the trafficking of arms and related materiel from all directions and share it with relevant partners and agencies on a case-by-case and need-to-know basis through the mechanisms in the relevant planning documents in order to contribute to a full situational awareness in the Area of Operation and in the Area of Interest. Where such information is classified up to 'SECRET UE/EU SECRET' level, it may be exchanged with relevant partners and agencies in accordance with Council Decision 2013/488/EU[(4)] and based on arrangements concluded at the operational level in accordance with Article 14(9) of this Decision, and in full respect of the principles of reciprocity and inclusiveness. Classified information received shall be handled by EUNAVFOR MED IRINI without any distinction between its staff and solely on the basis of operational requirements.

3 In accordance with the relevant UNSCRs, in particular UNSCR 2292 (2016), and as required, EUNAVFOR MED IRINI shall carry out, in accordance with the arrangements set out in the planning documents, and within the agreed Area of Operation on the high seas off the coast of Libya, inspections of vessels bound to or from Libya where there are reasonable grounds to believe that such vessels are carrying arms or related materiel to or from Libya, directly or indirectly, in violation of the arms embargo on Libya. EUNAVFOR MED IRINI shall take relevant action to seize and dispose of such items, including with a view to diverting such vessels and their crews to a suitable port to facilitate such disposal, with the consent of the port State, in accordance with relevant UNSCRs including UNSCR 2292 (2016).

4 EUNAVFOR MED IRINI shall report to the PSC on all issues and events related to such inspections. The PSC may consider any subsequent measures, as appropriate.

5 In view of the exceptional operational requirements, and upon invitation from a Member State, EUNAVFOR MED IRINI may divert vessels to ports of that Member State and dispose within that Member State of arms and related materiel seized in accordance with paragraph 3, including by storage and destruction. The ports to which vessels may be diverted shall be designated in the Operations Plan.

6 In accordance with relevant UNSCRs, including UNSCR 2292 (2016), EUNAVFOR MED IRINI may, in particular in the course of inspections carried out in accordance with paragraph 3, collect and store evidence related to the carriage of items prohibited under the arms embargo on Libya. EUNAVFOR MED IRINI may collect and store, in accordance with applicable law, personal data concerning persons involved in the carriage of such prohibited items related to characteristics likely to assist in their identification, including fingerprints, as well as the following particulars, with the exclusion of other personal data: surname, maiden name, given names and any alias or assumed name; date and place of birth, nationality, sex, place of residence, profession and whereabouts; driving licenses, identification documents and passport data. EUNAVFOR MED IRINI may transmit such data as well as data related to the vessels and equipment used by such persons, and the relevant information acquired while carrying out this core task, to the relevant law enforcement authorities of Member States and to competent Union bodies in accordance with applicable law.

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Article 3

Contributing to implementation of the UN measures against illicit exports of petroleum from Libya

1 As a secondary task, and within its means and capabilities, EUNAVFOR MED IRINI shall conduct monitoring and surveillance activities and gather information on illicit exports from Libya of petroleum, including crude oil and refined petroleum products, which are contrary to UNSCR 2146 (2014) and subsequent UNSCRs, in particular UNSCR 2509 (2020), thereby contributing to situational awareness in the Area of Operation and in the Area of Interest.

2 The information gathered in this context may be stored and released to the legitimate Libyan authorities and to the relevant law enforcement authorities of Member States and to competent Union bodies.

Article 4

Capacity building and training of Libyan Coast Guard and Navy

1 As a further secondary task, EUNAVFOR MED IRINI shall assist in the development of the capacities and in the training of the Libyan Coast Guard and Navy in law enforcement tasks at sea, in particular to prevent human smuggling and trafficking.

2 The task referred to in paragraph 1 shall be carried out on the high seas in EUNAVFOR MED IRINI's agreed Area of Operation. It may also be carried out in the territory, including the territorial waters, of Libya or of a host third State neighbouring Libya where the PSC so decides following an assessment by the Council on the basis of an invitation by Libya or the host State concerned, and in accordance with international law.

3 In view of the exceptional operational requirements, part of the task referred to in paragraph 1 may be conducted in a Member State, upon invitation by that Member State, including in relevant training centres.

4 For the purpose of the task referred to in paragraph 1, EUNAVFOR MED IRINI shall establish and operate a monitoring mechanism in close coordination with other relevant stakeholders, including where necessary in Libya.

5 Insofar as required by the task referred to in paragraph 1, EUNAVFOR MED IRINI may collect, store and exchange with the relevant authorities of Member States, competent Union bodies, the UN Support Mission in Libya, INTERPOL, the International Criminal Court and the United States of America the information, including personal data, gathered for the purpose of the vetting procedures on possible trainees, provided that they have given their consent in writing. Moreover, EUNAVFOR MED IRINI may collect and store necessary medical information and biometric data on trainees provided that they have given their consent in writing.

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Article 5

Contributing to disruption of the business model of human smuggling and trafficking networks

1 As another secondary task, and in accordance with UNSCR 2240 (2015), EUNAVFOR MED IRINI shall support the detection and monitoring of human smuggling and trafficking networks through information gathering and patrolling carried out by aerial assets above the high seas, in the agreed Area of Operation.

2 In carrying out this task, EUNAVFOR MED IRINI may collect and store, in accordance with applicable law, data on human smuggling and trafficking, including crimes relevant to the security of the operation, which it may transmit to the relevant law enforcement authorities of Member States and to competent Union bodies.

Article 6

Appointment of the EU Operation Commander

Rear Admiral Fabio AGOSTINI is hereby appointed EU Operation Commander of EUNAVFOR MED IRINI.

Article 7

Designation of the EU Operation Headquarters

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

Article 8

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 IRINI.

2 The Council hereby authorises the PSC to take the relevant decisions in accordance with Article 38 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.

3 Notwithstanding the period set out in Article 15(2), the authorisation of the operation shall be reconfirmed every four months. The PSC shall prolong the operation unless the deployment of maritime assets of the operation produces a pull effect on migration on the basis of substantiated evidence gathered according to the criteria set in the Operations Plan.

4 The Operation Commander shall report regularly on the conduct of the operation, including its impact in the Area of Operation. In accordance with Article 38 TEU, the PSC may