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COUNCIL DECISION (CFSP) 2015/778

of 18 May 2015

**on a European Union military operation in the Southern Central Mediterranean
(► **M1** EUNAVFOR MED operation SOPHIA ◀)**

(OJ L 122, 19.5.2015, p. 31)

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► <u>M1</u>	Council Decision (CFSP) 2015/1926 of 26 October 2015	L 281	13	27.10.2015
► <u>M2</u>	Council Decision (CFSP) 2016/993 of 20 June 2016	L 162	18	21.6.2016

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**COUNCIL DECISION (CFSP) 2015/778
of 18 May 2015**

on a European Union military operation in the Southern Central Mediterranean (►M1 EUNAVFOR MED operation SOPHIA ◄)

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 smuggling of people across the Mediterranean.
- (2) On 23 April 2015, the European Council expressed its indignation about the situation in the Mediterranean and underlined that the Union 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, in cooperation with the countries of origin and transit, and that the immediate priority is to prevent more people from dying at sea. The European Council committed to strengthening the Union's presence at sea, to preventing illegal migration flows and to reinforcing internal solidarity and responsibility.
- (3) The European Council of 23 April 2015 also committed to fighting the traffickers in accordance with international law, by undertaking systematic efforts to identify, capture and destroy vessels before they are used by traffickers, and invited the High Representative of the Union for Foreign Affairs and Security Policy (HR) to start preparations for a possible Common Security and Defence Policy (CSDP) operation to this effect.
- (4) On 11 May 2015, the HR informed the UN Security Council about the crisis of migrants in the Mediterranean and the ongoing preparation for a possible Union naval operation, in the framework of the Union's Common Security and Defence Policy. In this regard, she expressed the need for the Union to work with the support of the UN Security Council.
- (5) On 18 May 2015, the Council approved the crisis management concept for a CSDP operation to disrupt the business model of smugglers in the Southern Central Mediterranean.

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- (6) The Union CSDP operation will be conducted in accordance with international law, in particular with the relevant provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the 2000 Protocols against the Smuggling of Migrants by Land, Sea and Air (the Protocol against the Smuggling of Migrants) and to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the 1974 International Convention for the Safety of Life at Sea (SOLAS), the 1979 International Convention on Maritime Search and Rescue (SAR), the 1976 Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention), the 1951 Geneva Convention relating to the Status of Refugees and the principle of non-refoulement and international human rights law.

The UNCLOS, SOLAS and SAR Conventions include the obligation to assist persons in distress at sea and to deliver survivors to a place of safety, and to that end the vessels assigned to ►MI EUNAVFOR MED operation SOPHIA ◀ will be ready and equipped to perform the related duties under the coordination of the competent Rescue Coordination Centre.

- (7) On the high seas, in accordance with relevant domestic and international law, States may interdict vessels suspected of smuggling migrants, where there is flag State authorisation to board and search the vessel or where the vessel is without nationality, and may take appropriate measures against the vessels, persons and cargo.
- (8) Measures may also be taken in the territorial or internal waters, territory or airspace of a State against vessels suspected of involvement in human smuggling or trafficking, with the consent of that State or pursuant to a UN Security Council Resolution, or both.
- (9) A State may take appropriate measures against persons present on its territory whom it suspects of smuggling or trafficking humans with a view to their possible arrest and prosecution, in accordance with international law and its domestic law.
- (10) The Political and Security Committee (PSC) should exercise, under the responsibility of the Council and of the HR, 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).

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- (11) Pursuant to Article 41(2) TEU, and in accordance with Council Decision (CFSP) 2015/528 ⁽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 of 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:

*Article 1***Mission****▼ M2**

1. The Union shall conduct a military crisis management operation contributing to the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean (EUNAVFORMED operation SOPHIA), achieved by undertaking systematic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers and traffickers, in accordance with applicable international law, including UNCLOS and any UN Security Council Resolution. To that end, EUNAVFOR MED operation SOPHIA shall also provide training to the Libyan Coast Guard and Navy. In addition, the operation shall contribute to preventing arms trafficking within its agreed area of operation in accordance with UNSCR 1970 (2011) and subsequent Resolutions on the arms embargo on Libya, including UNSCR 2292 (2016).

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2. The area of operation shall be defined, before the launching of ► **M1** EUNAVFOR MED operation SOPHIA ◀, in the relevant planning documents to be approved by the Council.

*Article 2***Mandate**

1. ► **M1** EUNAVFOR MED operation SOPHIA ◀ shall operate in accordance with the political, strategic and politico-military objectives set out in the Crisis Management Concept approved by the Council on 18 May 2015.

2. ► **M2** As regards its core tasks in relation to human smuggling and trafficking, EUNAVFOR MED operation SOPHIA shall be conducted in sequential phases, and in accordance with the requirements of international law. ◀ ► **M1** EUNAVFOR MED operation SOPHIA ◀ shall:

⁽¹⁾ Council Decision (CFSP) 2015/528 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 (OJ L 84, 28.3.2015, p. 39).

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- (a) in a first phase, support the detection and monitoring of migration networks through information gathering and patrolling on the high seas in accordance with international law;
- (b) in a second phase,
 - (i) conduct boarding, search, seizure and diversion on the high seas of vessels suspected of being used for human smuggling or trafficking, under the conditions provided for by applicable international law, including UNCLOS and the Protocol against the Smuggling of Migrants;
 - (ii) in accordance with any applicable UN Security Council Resolution or consent by the coastal State concerned, conduct boarding, search, seizure and diversion, on the high seas or in the territorial and internal waters of that State, of vessels suspected of being used for human smuggling or trafficking, under the conditions set out in that Resolution or consent;
- (c) in a third phase, in accordance with any applicable UN Security Council Resolution or consent by the coastal State concerned, take all necessary measures against a vessel and related assets, including through disposing of them or rendering them inoperable, which are suspected of being used for human smuggling or trafficking, in the territory of that State, under the conditions set out in that Resolution or consent.

3. The Council shall assess whether the conditions for transition beyond the first phase have been met, taking into account any applicable UN Security Council Resolution and consent by the coastal States concerned.

4. ►**M1** EUNAVFOR MED operation SOPHIA ◀ may collect, in accordance with applicable law, personal data concerning persons taken on board ships participating in ►**M1** EUNAVFOR MED operation SOPHIA ◀ 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. It may transmit such data and data related to the vessels and equipment used by such persons to the relevant law enforcement authorities of Member States and/or to competent Union bodies.

▼M2*Article 2a***Capacity building and training of Libyan Coast Guard and Navy**

1. As a supporting task, EUNAVFOR MED operation SOPHIA 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. When the PSC decides that the necessary preparations have been made, in particular as regards force generation and vetting procedures

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for the trainees, the supporting task referred to in paragraph 1 shall be carried out on the high seas in EUNAVFOR MED operation SOPHIA's agreed area of operation as defined in the relevant planning documents.

3. The supporting task referred to in paragraph 1 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.

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

5. Insofar as required by the supporting task referred to in paragraph 1 EUNAVFOR MED operation SOPHIA may collect, store and share with Member States, UNSMIL, EUROPOL and Frontex the information, including personal data, gathered for the purpose of vetting procedures on possible trainees, provided that they have given their consent in writing. Moreover, EUNAVFOR MED operation SOPHIA may collect and store necessary medical information and biometric data on trainees with their written consent.

Article 2b

Contributing to information sharing and implementation of the UN arms embargo on the high seas off the coast of Libya

1. As part of its supporting task to contribute to the implementation of the UN arms embargo on the high seas off the coast of Libya, EUNAVFOR MED operation SOPHIA shall gather and share information with relevant partners and agencies through the mechanisms in the planning documents in order to contribute to a comprehensive maritime situational awareness in the agreed area of operation as defined in the relevant planning documents. Where such information is classified up to 'RESTREINT UE/EU RESTRICTED' level, it may be shared with relevant partners and agencies in accordance with Decision 2013/488/EU and based on Arrangements concluded between the HR and those partners, in full respect of the principles of reciprocity and inclusiveness. Classified information received shall be handled by EUNAVFOR MED operation SOPHIA without any distinction between its staff and solely on the basis of operational requirements.

2. When the PSC decides that the relevant conditions are met, EUNAVFOR MED operation SOPHIA shall commence, within the agreed area of operation, as defined in the relevant planning documents, 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, and 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 the relevant UN Security Council Resolutions, including UNSCR 2292 (2016).

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3. In accordance with the relevant UN Security Council Resolutions, including UNSCR 2292 (2016), EUNAVFOR MED operation SOPHIA may, in the course of inspections carried out in accordance with paragraph 2, collect evidence directly related to the carriage of items prohibited under the arms embargo on Libya. It may transmit such evidence to the relevant law enforcement authorities of Member States and/or to competent Union bodies.

▼ B*Article 3***Appointment of the EU Operation Commander**

Rear Admiral Enrico Credendino is hereby appointed EU Operation Commander of ► M1 EUNAVFOR MED operation SOPHIA ◀.

*Article 4***Designation of the EU Operation Headquarters**

The Operation Headquarters of ► M1 EUNAVFOR MED operation SOPHIA ◀ shall be located in Rome, Italy.

*Article 5***Planning and launch of the operation**

The Decision to launch ► M1 EUNAVFOR MED operation SOPHIA ◀ shall be adopted by the Council, upon the recommendation of the Operation Commander of ► M1 EUNAVFOR MED operation SOPHIA ◀ 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 ► M1 EUNAVFOR MED operation SOPHIA ◀. 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. Subject to Article 2(3) of this Decision, the PSC shall have the power to decide when to make the transition between the different phases of the operation.

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 ► M1 EUNAVFOR MED operation SOPHIA ◀. The PSC may invite the EU Operation Commander or the EU Force Commander to its meetings, as appropriate.

▼B*Article 7***Military direction**

1. The EUMC shall monitor the proper execution of ►**M1** EUNAVFOR MED operation SOPHIA ◀ 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.

*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, the African Union and the League of Arab States.
3. ►**M1** EUNAVFOR MED operation SOPHIA ◀ shall cooperate with the relevant Member State authorities and shall establish a coordination mechanism, and as appropriate, conclude arrangements with other Union agencies and bodies, in particular FRONTEX, EUROPOL, EUROJUST, European Asylum Support Office and relevant CSDP missions.

*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 ►**M1** EUNAVFOR MED operation SOPHIA ◀.
4. Third States making significant military contributions to ►**M1** EUNAVFOR MED operation SOPHIA ◀ 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.

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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.

*Article 10***Status of Union-led personnel**

The status of Union-led units and personnel shall be defined where necessary 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 (CFSP) 2015/528.

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2. For the period from 18 May 2015 to 27 July 2016, the reference amount for the common costs of EUNAVFOR MED operation SOPHIA shall be EUR 11,82 million. The percentage of the reference amount referred to in Article 25(1) of Decision (CFSP) 2015/528 shall be 70 % in commitments and 40 % for payments.

3. For the period 28 July 2016 to 27 July 2017, the reference amount for the common costs of EUNAVFOR MED operation SOPHIA shall be EUR 6 700 000. The percentage of the reference amount referred to in Article 25(1) of Decision (CFSP) 2015/528 shall be 0 % in commitments and 0 % for payments.

▼ B*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 ► **M1** EUNAVFOR MED operation SOPHIA ◀, EU classified information generated for the purposes of the operation, in accordance with Council Decision 2013/488/EU ⁽¹⁾, 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 ► **M1** EUNAVFOR MED operation SOPHIA ◀, EU classified information up to ‘RESTREINT UE/EU RESTRICTED’ level which are generated for the purposes of ► **M1** EUNAVFOR MED operation SOPHIA ◀, in accordance with Decision 2013/488/EU. Arrangements between the HR and the competent authorities of the United Nations shall be drawn up for this purpose.

⁽¹⁾ 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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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 Procedure ⁽¹⁾.

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3a. In the event of specific operational need, the HR shall be authorised to release to legitimate Libyan authorities any EU classified information up to 'RESTREINT UE/EU RESTRICTED' level generated for the purposes of EUNAVFOR MED operation SOPHIA, in accordance with Decision 2013/488/EU. Arrangements between the HR and the competent authorities of Libya shall be drawn up for this purpose.

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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**

This Decision shall enter into force on the date of its adoption.

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EUNAVFOR MED operation SOPHIA shall end on 27 July 2017.

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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 ► **M1** EUNAVFOR MED operation SOPHIA ◀, and without prejudice to the procedures regarding the audit and presentation of the accounts of ► **M1** EUNAVFOR MED operation SOPHIA ◀ laid down in Decision (CFSP) 2015/528.

⁽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).