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European Union

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**CORLX 116
CSDP/PSDC 105
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MAMA 28
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PROPOSAL

From: High Representative of the Union for Foreign Affairs and Security Policy,
signed by Ms. Helga SCHMID, Secretary General

date of receipt: 27 February 2020

To: Mr Jeppe TRANHOLM-MIKKELSEN, 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 Mediterranean (IRENE)

Delegations will find attached document HR(2020) 19.

Encl.: HR(2020) 19

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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 27/02/2020

**for a Council Decision on a European Union military operation
in the Mediterranean
(IRENE)**

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COUNCIL DECISION (CFSP) 2020/...
of dd/mm/2020

on a European Union military operation in the Mediterranean
(IRENE)

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 notably committed to unequivocally and fully respect and implement the arms embargo established by the United Nations Security Council Resolution 1970 (2011) and subsequent Resolutions, notably Resolutions 2292 (2016) and 2473 (2019).
- (2) On 12 February 2020, in its Resolution 2510 (2020), the United Nations Security Council welcomed the Berlin Conference on Libya and endorsed its conclusions, noting that they represent an important element of a comprehensive solution to the situation in Libya.
- (3) On 11 February 2020, in its Resolution 2509 (2020), the United Nations Security Council extended the measures to prevent the illicit export from Libya of petroleum, including crude oil and refined petroleum products imposed by Resolution 2146 (2014) and extended the mandate of the Panel of Experts established by Resolution 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 with aerial, satellite and maritime assets. The operation should as supporting tasks contribute to capacity building and training of the Libyan Coastguards and Navy, to the disruption of the business model of human smuggling and trafficking networks and to the implementation of UN measures to prevent the illicit export from petroleum from Libya,. The Area of Operation should be defined in accordance with the agreed mandate in the relevant planning documents.

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- (5) The Political and Security Committee (PSC) should exercise, under the responsibility of the Council and of the High Representative, 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).
- (6) Pursuant to Article 41(2) TEU and in accordance with Council Decision (CFSP) 2015/528¹, the operational expenditure arising from this Decision, which has military or defence implications, is to be borne by the Member States.
- (7) 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 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 from petroleum from Libya in accordance with UNSCR 2146 (2014) and subsequent Resolutions, notably UNSCR 2509 (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 UNCLOS and any UN Security Council Resolution.

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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2. The operation shall be named IRENE.
3. The Area of Operation and the Area of Interest shall be defined in the relevant planning documents approved by the Council.

Article 2

Contributing to information sharing and implementation of the UN arms embargo on Libya

1. IRENE shall as its core task contribute to the implementation of the UN arms embargo on the high seas off the coast of Libya.
2. For that purpose, IRENE shall gather and share information with relevant partners and agencies through the mechanisms in the planning documents in order to contribute to a comprehensive 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 Decision 2013/488/EU2 and based on arrangements concluded at the operational level in accordance with Article 12(9) of this Decision, and in full respect of the principles of reciprocity and inclusiveness. Classified information received shall be handled by IRENE without any distinction between its staff and solely on the basis of operational requirements.
3. In line with UNSCR 2292 (2016) and as required, IRENE may carry out, 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. IRENE 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).
4. In view of the exceptional operational requirements, the disposal of arms and related materiel seized in accordance with paragraph 3, including their storage and destruction, may be carried out by IRENE, by invitation, within a Member State.

² OJ L 274, 15.10.2013, p.1.

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5. In accordance with the relevant UN Security Council Resolutions, including UNSCR 2292 (2016), IRENE may, in the course of inspections carried out in accordance with paragraph 3, collect and store evidence directly related to the carriage of items prohibited under the arms embargo on Libya. IRENE 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. IRENE 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.

Article 3

Contributing to information gathering and sharing on illicit exports of petroleum from Libya

1. As a supporting task, in the Area of Operation, and within its means and capabilities, IRENE 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 Resolutions, notably UNSCR 2509 (2020), thereby contributing to situational awareness and to maritime security in the Mediterranean.
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 supporting task, IRENE 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 supporting task referred to in paragraph 1 shall be carried out on the high seas in IRENE'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

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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 supporting task referred to in paragraph 1 may be conducted, by invitation, within a Member State, including in relevant training centres.
4. For the purpose of the supporting task referred to in paragraph 1, IRENE 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 supporting task referred to in paragraph 1, IRENE may collect, store and exchange with the relevant authorities of Member States, competent Union bodies, UNSMIL, 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, IRENE may collect and store necessary medical information and biometric data on trainees provided that they have given their consent in writing.

Article 5

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

1. As a supporting task, IRENE shall support the detection and monitoring of human smuggling and trafficking networks through information gathering and patrolling carried out by aerial assets on the high seas, in the agreed Area of Operation.
2. In carrying out this supporting task, IRENE 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

[X] is hereby appointed EU Operation Commander of IRENE.

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Article 7

Designation of the EU Operation Headquarters

The Operation Headquarters of IRENE 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 IRENE.
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. The Operation Commander shall report regularly on the conduct of the operation, including its impact in the area of operation. In accordance with Article 30 and 38 TEU, the PSC may at any time, upon a proposal from the HR or an initiative from a Member State, give direction to the Operation Commander on the deployment of assets.
4. The PSC shall report to the Council at regular intervals.
5. The Chairman of the EU Military Committee (EUMC) shall, at regular intervals, report to the PSC on the conduct of IRENE. The PSC may invite the EU Operation Commander or the EU Force Commander to its meetings, as appropriate.

Article 9

Military direction

1. The EUMC shall monitor the proper execution of IRENE 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 10

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. IRENE 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, SATCEN and relevant CSDP missions.
4. IRENE may host a Crime Information Cell ('CIC') composed of staff of relevant law enforcement authorities of Member States and of Union agencies listed in paragraph 3 of this Article, in order to facilitate the receipt, collection and transmission of information, including personal data, on the arms embargo on Libya as referred to in Article 2(4), illegal trafficking as referred to in Article 2(5), on human smuggling and trafficking, as well as crimes relevant to the security of the operation.
5. The processing of personal data in this context shall be carried out in accordance with the law of the flag State of the vessel on which the CIC is located and, with respect to Union agencies' staff, in accordance with the legal framework applicable to the respective agencies.
6. IRENE shall be supported by SATCEN and INTCEN in gathering information as necessary to fulfil its tasks.

Article 11

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.

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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 IRENE.
4. Third States making significant military contributions to IRENE 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.

Article 12 *Status of Union-led personnel*

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

Article 13 *Financial arrangements*

1. The common costs of the EU military operation shall be administered in accordance with Decision (CFSP) 2015/528.
2. For the period until 31 March 2021, the reference amount for the common costs of IRENE shall be EUR XX. The percentage of the reference amount referred to in Article 25(1) of Decision (CFSP) 2015/528 shall be X % in commitments and Y % for payments.

Article 14 *Release of Information*

1. The HR shall be authorised to release to designated third States and the International Criminal Court, as appropriate and in accordance with the operational needs of IRENE and in full respect of the principles of reciprocity and inclusiveness, any EU non-classified documents

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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 Procedure³. The PSC, provided that these conditions are met, shall designate on a case-by-case basis the third States concerned.

2. The HR shall be authorised to release to designated third States and the International Criminal Court, as appropriate and in accordance with the operational needs of IRENE, and in full respect of the principles of reciprocity and inclusiveness, EU classified information generated for the purposes of the operation, in accordance with Decision 2013/488/EU, as follows:
3. (a) up to the level provided in the applicable Security of Information Agreements concluded between the Union and the third State concerned; or
4. (b) up to the 'CONFIDENTIEL UE/EU CONFIDENTIAL' level in other cases.
5. The PSC, provided that these conditions are met, shall designate on a case-by-case basis the third States concerned.
6. Classified information received shall be handled by IRENE without any distinction between its staff and solely on the basis of operational requirements.
7. The HR shall also be authorised to release to the UN, in accordance with the operational needs of IRENE, EU classified information up to 'RESTREINT UE/EU RESTRICTED' level which are generated for the purposes of IRENE, in accordance with Decision 2013/488/EU.
8. The HR shall be authorised to release to INTERPOL relevant information, including personal data, in accordance with the operational needs of IRENE.
9. Pending the conclusion of an agreement between the Union and INTERPOL, IRENE may exchange such information with the National Central Bureaux of INTERPOL of the Member States, in accordance with arrangements to be concluded between the EU Operation Commander and the Head of the relevant National Central Bureau.
10. 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 IRENE, in accordance with Decision 2013/488/EU.

³ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).

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11. The HR shall be authorised to conclude the arrangements necessary to implement the provisions on information exchange in this Decision.
12. The HR may delegate the authorisations to release information as well as the ability to conclude the arrangements referred to in this Decision 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.
13. IRENE shall transmit without delay to the United Nations, in accordance with UNSCR 1973 (2011) and subsequent resolutions, notably UNSCR 2509 (2020), the information gathered on suspected incidents of non-compliance with the UN arms embargo on Libya or with the UN measures to prevent illicit exports of petroleum from Libya.

Article 15
Entry into force and termination

1. This Decision shall enter into force on the date of its adoption.
2. IRENE shall end on 31 March 2021.
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 IRENE and without prejudice to the procedures regarding the audit and presentation of the accounts of IRENE laid down in Decision (CFSP) 2015/528.

Done at Brussels,

For the Council
The President
