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COUNCIL DECISION 2012/389/CFSP

of 16 July 2012

on the European Union Mission on Regional Maritime Capacity Building in the Horn of Africa (EUCAP NESTOR)

(OJ L 187, 17.7.2012, p. 40)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Decision 2013/367/CFSP of 9 July 2013	L 189	12	10.7.2013
►**M2**	Council Decision 2013/660/CFSP of 15 November 2013	L 306	17	16.11.2013
►**M3**	Council Decision 2014/485/CFSP of 22 July 2014	L 217	39	23.7.2014
►**M4**	Council Decision 2014/726/CFSP of 20 October 2014	L 301	29	21.10.2014

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COUNCIL DECISION 2012/389/CFSP

of 16 July 2012

on the European Union Mission on Regional Maritime Capacity Building in the Horn of Africa (EUCAP NESTOR)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28, Article 42(4) and Article 43(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 14 November 2011, the Council adopted a Strategic Framework for the Horn of Africa to guide the EU's engagement in the region.

(2) On 8 December 2011, the Council adopted Decision 2011/819/CFSP ([1]) appointing a European Union Special Representative for the Horn of Africa.

(3) On 16 December 2011, the Council agreed on the Crisis Management Concept for the Regional Maritime Capacity Building Mission.

(4) On 23 March 2012, the Council adopted Decision 2012/173/CFSP ([2]) activating the EU Operations Centre for the Common Security and Defence Policy missions and operation in the Horn of Africa.

(5) The Governments of Djibouti, Kenya and the Seychelles, and the Transitional Federal Government of Somalia have welcomed the deployment of the Mission in their countries.

(6) On 18 June 2007, the Council approved the Guidelines for Command and Control Structure for the EU Civilian Operations in Crisis Management.

(7) The Watch-Keeping Capability should be activated for the Mission established by this Decision.

(8) The Mission will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty on European Union (TEU),

HAS ADOPTED THIS DECISION:

Article 1

Mission

The Union hereby establishes a Regional Maritime Capacity Building Mission in the Horn of Africa (EUCAP NESTOR).

([1]) OJ L 327, 9.12.2011, p. 62.
([2]) OJ L 89, 27.3.2012, p. 66.

▼M3

Article 2

Mission Statement

EUCAP NESTOR is to assist countries in the Horn of Africa and the Western Indian Ocean in strengthening their maritime security capacity in order to enable them to fight piracy more effectively. EUCAP NESTOR will have primary focus on Somalia, and a secondary focus on Djibouti, the Seychelles and Tanzania.

Article 3

Objectives and tasks

1. In order to achieve the Mission Statement set out in Article 2, EUCAP NESTOR shall:

(a) enhance the capacity of the States mentioned in Article 2 to exert effective maritime governance over their coastline, internal waters, territorial seas and exclusive economic zones;

(b) support these States in taking ownership of the fight against piracy in accordance with the rule of law and human rights standards;

(c) strengthen regional cooperation and coordination of maritime security;

(d) make a targeted and specific contribution to ongoing international efforts.

2. To achieve the objectives, EUCAP NESTOR shall operate in accordance with the lines of operation and tasks set out in the operational planning documents approved by the Council.

3. EUCAP NESTOR shall not carry out any executive function.

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Article 4

Chain of command and structure

1. EUCAP NESTOR shall have a unified chain of command as a crisis management operation.

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2. EUCAP NESTOR shall be structured in accordance with its planning documents.

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Article 5

Civilian Operation Commander

1. The Civilian Planning and Conduct Capability (CPCC) Director shall be the Civilian Operation Commander for EUCAP NESTOR.

2. The Civilian Operation Commander, under the political control and strategic direction of the Political and Security Committee (PSC) and overall authority of the High Representative of the Union for Foreign Affairs and Security Policy (HR), shall exercise command and control of EUCAP NESTOR at the strategic level.

3. The Civilian Operation Commander shall ensure, with regard to the conduct of operations, proper and effective implementation of the Council's decisions as well as the PSC's decisions, including by issuing instructions at the strategic level as required to the Head of Mission and providing him with advice and technical support.

4. The EU Operations Centre activated by Decision 2012/173/CFSP shall provide direct support to the Civilian Operation Commander for the operational planning and conduct of EUCAP NESTOR.

5. The Civilian Operation Commander shall report to the Council through the HR.

6. All seconded staff shall remain under the full command of the national authorities of the seconding State in accordance with national rules, of the Union institution concerned or of the European External Action Service (EEAS). National authorities shall transfer Operational Control (OPCON) of their personnel, teams and units to the Civilian Operation Commander.

7. The Civilian Operation Commander shall have overall responsibility for ensuring that the Union's duty of care is properly discharged.

8. The Civilian Operation Commander, the European Union Special Representative for the Horn of Africa (EUSR) and the Heads of Union delegations in the region shall consult each other as required.

Article 6

Head of Mission

1. The Head of Mission shall assume responsibility for, and exercise command and control of, EUCAP NESTOR at theatre level and shall be directly responsible to the Civilian Operation Commander.

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1a. The Head of Mission shall be the representative of EUCAP NESTOR in its action area. The Head of Mission may delegate management tasks in staff and financial matters to staff members of EUCAP NESTOR for whom the Head of Mission has overall responsibility.

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2. The Head of Mission shall exercise command and control over personnel, teams and units from contributing States as assigned by the Civilian Operation Commander together with administrative and logistic responsibility including over assets, resources and information placed at the disposal of EUCAP NESTOR.

3. The Head of Mission shall issue instructions to all EUCAP NESTOR staff for the effective conduct of EUCAP NESTOR in theatre, assuming its coordination and day-to-day management, and following the instructions at the strategic level of the Civilian Operation Commander.

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5. The Head of Mission shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary action shall be exercised by the national authority in accordance with national rules, by the Union institution concerned or by EEAS.

6. The Head of Mission shall represent EUCAP NESTOR in the operations area and shall ensure appropriate visibility of EUCAP NESTOR.

7. The Head of Mission shall coordinate, as appropriate, with other Union actors on the ground. The Head of Mission shall, without prejudice to the chain of command, receive local political guidance from the EUSR, in close coordination with the relevant Heads of Union delegations in the region.

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Article 7

Staff

1. EUCAP NESTOR shall consist primarily of staff seconded by Member States, Union institutions or EEAS. Each Member State or Union institution, or EEAS shall bear the costs related to any of the staff seconded by it, including travel expenses to and from the place of deployment, salaries, medical coverage and allowances other than applicable daily allowances.

2. The State or Union institution, or EEAS having seconded a member of staff shall be responsible for answering any claims linked to the secondment, either from or concerning the member of staff, and for bringing any action against the seconded person.

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3. International and local staff may also be recruited by EUCAP NESTOR on a contractual basis if the functions required are not provided by personnel seconded by Member States. Exceptionally, in duly justified cases, where no qualified applications from Member States are available, nationals from participating third States may be recruited on a contractual basis, as appropriate.

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4. The conditions of employment and the rights and obligations of international and local staff shall be laid down in the contracts to be concluded between EUCAP NESTOR and the staff member concerned.

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Article 8

Status of EUCAP NESTOR and of its staff

The status of EUCAP NESTOR and its staff, including, where appropriate, the privileges, immunities and further guarantees necessary for the completion and smooth functioning of EUCAP NESTOR, shall be the subject of an agreement 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.

Article 9

Political control and strategic direction

1. The PSC shall exercise, under the responsibility of the Council and of the HR, political control and strategic direction of EUCAP NESTOR. The Council hereby authorises the PSC to take the relevant decisions for this purpose in accordance with the third paragraph of Article 38 TEU. This authorisation shall include the powers to appoint a Head of Mission, upon a proposal from the HR, and to amend the Concept of Operations (CONOPS) and the Operation Plan (OPLAN). The powers of decision with respect to the objectives and termination of EUCAP NESTOR shall remain vested in the Council.

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

3. The PSC shall receive, on a regular basis and as required, reports by the Civilian Operation Commander and the Head of Mission on issues within their areas of responsibility.

Article 10

Participation of third States

1. Without prejudice to the decision-making autonomy of the Union and its single institutional framework, third States may be invited to contribute to EUCAP NESTOR, provided that they bear the cost of the staff seconded by them, including salaries, all risk insurance cover, daily subsistence allowances and travel expenses to and from the place of deployment, and that they contribute to the running costs of EUCAP NESTOR, as appropriate.

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2. Third States contributing to EUCAP NESTOR shall have the same rights and obligations in terms of the day-to-day management of EUCAP NESTOR as Member States.

3. The Council hereby authorises the PSC to take the relevant decisions on acceptance of the proposed contributions and to establish a Committee of Contributors.

4. Detailed arrangements regarding the participation of third States shall be covered by agreements concluded in accordance with Article 37 TEU and additional technical arrangements as necessary. Where the Union and a third State conclude an agreement establishing a framework for the participation of that third State in Union crisis-management operations, the provisions of that agreement shall apply in the context of EUCAP NESTOR.

Article 11

Security

1. The Civilian Operation Commander shall direct the Head of Mission's planning of security measures and ensure their proper and effective implementation by EUCAP NESTOR in accordance with Article 5.

2. The Head of Mission shall be responsible for the security of EUCAP NESTOR and for ensuring compliance with minimum security requirements applicable to EUCAP NESTOR, in line with the policy of the Union on the security of personnel deployed outside the Union in an operational capacity under Title V TEU, and its supporting instruments.

3. The Head of Mission shall be assisted by a Senior Mission Security Officer (SMSO), who shall report to the Head of Mission and also maintain a close functional relationship with the EEAS.

4. EUCAP NESTOR staff shall undergo mandatory security training before taking up their duties, in accordance with the OPLAN. They shall also receive regular in-theatre refresher training organised by the SMSO.

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5. The Head of Mission shall ensure the protection of EU classified information in accordance with Council Decision 2013/488/EU ([1]).

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Article 12

Watch-Keeping Capability

The Watch-Keeping Capability shall be activated for EUCAP NESTOR.

([1]) Council Decision 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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Article 12a

Legal arrangements

EUCAP NESTOR shall have the capacity to procure services and supplies, enter into contracts and administrative arrangements, employ staff, hold bank accounts, acquire and dispose of assets, discharge its liabilities and to be a party to legal proceedings, as required in order to implement this Decision.

Article 13

Financial arrangements

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1. The financial reference amount intended to cover the expenditure related to EUCAP NESTOR for the period from 16 July 2012 to 15 November 2013 shall be EUR 22 880 000.

The financial reference amount intended to cover the expenditure related to EUCAP NESTOR for the period from 16 November 2013 to 15 October 2014 shall be EUR 11 950 000.

The financial reference amount intended to cover the expenditure related to EUCAP NESTOR for the period from 16 October 2014 to 15 October 2015 shall be EUR 17 900 000.

▼M3

2. All expenditure shall be managed in accordance with the rules and procedures applicable to the general budget of the Union. Nationals of third States and host country nationals shall be allowed to tender for contracts. Subject to the Commission's approval, the EUCAP NESTOR may conclude technical arrangements with Member States, the host State, participating third States and other international actors regarding the provision of equipment, services and premises to EUCAP NESTOR.

3. EUCAP NESTOR shall be responsible for the implementation of its budget. For this purpose, EUCAP NESTOR shall sign an agreement with the Commission.

4. Without prejudice to the existing provisions on the status of EUCAP NESTOR and its personnel, EUCAP NESTOR shall be responsible for any claims and obligations arising from the implementation of the mandate starting from 16 July 2014, with the exception of any claims relating to serious misconduct by the Head of Mission, for which the Head of Mission shall bear responsibility.

5. The implementation of the financial arrangements shall be without prejudice to the chain of command as provided for in Articles 4, 5 and 6 and the operational requirements of EUCAP NESTOR, including compatibility of equipment and interoperability of its teams.

6. Expenditure shall be eligible as of 16 July 2012.

Article 13a

Project Cell

1. EUCAP NESTOR shall have a Project Cell for identifying and implementing projects. EUCAP NESTOR shall, as appropriate, facilitate and provide advice on projects implemented by Member States and third States under their responsibility in areas related to EUCAP NESTOR and in support of its objectives.

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2. EUCAP NESTOR shall be authorised to seek recourse to financial contributions from the Member States or from third States to implement projects identified as supplementing EUCAP NESTOR's other actions in a consistent manner, if the project is:

(a) provided for in the financial statement relating to this Decision; or

(b) integrated during the mandate by means of an amendment to the financial statement requested by the Head of Mission.

EUCAP NESTOR shall conclude an arrangement with those States, covering in particular the specific procedures for dealing with any complaint from third parties concerning damage caused as a result of acts or omissions by EUCAP NESTOR in the use of the funds provided by those States. Under no circumstances may the contributing States hold the Union or the HR liable for acts or omissions by EUCAP NESTOR in the use of the funds provided by those States.

3. The PSC shall agree on the acceptance of a financial contribution from third States to the Project Cell.

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Article 14

Consistency of the Union's response and coordination

1. The HR shall ensure the consistency of the implementation of this Decision with the Union's external action as a whole, including the Union's development programmes.

2. Without prejudice to the chain of command, the Head of Mission shall act in close coordination with the Union delegations in the region to ensure the consistency of Union action in the Horn of Africa region.

3. The Head of Mission shall coordinate closely with Union and Member States' Heads of Mission in the region.

4. The Head of Mission shall cooperate with the other international actors in the region, in particular the United Nations (UN) Political Office for Somalia, the UN Office on Drugs and Crime, the UN Development Programme and the International Maritime Organisation.

5. The Head of Mission shall coordinate closely with EUNAVFOR Atalanta, the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia), the Maritime Security Project and the Critical Maritime Routes Programme.

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Article 15

Release of information and documents

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 EUCAP NESTOR, EU classified information up to 'CONFIDENTIEL UE/EU CONFIDENTIAL' level generated for the purposes of EUCAP NESTOR, in accordance with ►M3 Decision 2013/488/EU ◄.

2. The HR shall also be authorised to release to the UN and the African Union (AU) in accordance with the operational needs of EUCAP NESTOR, EU classified information up to 'RESTREINT UE/EU RESTRICTED' level generated for the purposes of EUCAP NESTOR, in accordance with ►M3 Decision 2013/488/EU ◄. Arrangements between the HR and the competent authorities of UN and AU shall be drawn up for this purpose.

3. In the event of a specific and immediate operational need, the HR shall also be authorised to release to the host State any EU classified information up to 'RESTREINT UE/EU RESTRICTED' level generated for the purposes of EUCAP NESTOR, in accordance with ►M3 Decision 2013/488/EU ◄. Arrangements between the HR and the competent authorities of the host State shall be drawn up for this purpose.

4. 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 EUCAP NESTOR and covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ([1]).

5. The HR may delegate the powers referred to in paragraphs 1 to 4, as well as the ability to conclude the arrangements referred to in paragraphs 2 and 3 to persons placed under his/her authority, to the Civilian Operations Commander and/or to the Head of Mission.

Article 16

Entry into force and duration

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

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It shall apply until 12 December 2016.

([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).