



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : COUNCIL DECISION on the signing and provisional application of the Exchange of Letters between the European Union and the Republic of Seychelles on the conditions and modalities for the transfer of suspected pirates and armed robbers from EUNAVFOR to the Republic of Seychelles and for their treatment after such transfer

COUNCIL DECISION 2009/.../CFSP

of

on the signing and provisional application of the Exchange of Letters
between the European Union and the Republic of Seychelles
on the conditions and modalities for the transfer
of suspected pirates and armed robbers
from EUNAVFOR to the Republic of Seychelles
and for their treatment after such transfer

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

- (1) On 2 June 2008, the United Nations Security Council (UNSC) adopted Resolution 1816 (2008) calling upon all States to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia. Those provisions were reaffirmed by UNSC Resolution 1846 (2008), adopted on 2 December 2008.
- (2) On 10 November 2008, the Council adopted Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast¹ (operation "Atalanta").
- (3) Article 12 of Joint Action 2008/851/CFSP provides that persons having committed, or suspected of having committed acts of piracy or armed robbery in Somali territorial waters, who are arrested and detained, with a view to their prosecution, and property used to carry out such acts, may be transferred to a third State which wishes to exercise its jurisdiction over the aforementioned persons and property, provided that the conditions for the transfer have been agreed with that third State in a manner consistent with relevant international law, notably international law on human rights, in order to guarantee in particular that no-one shall be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment.

¹ OJ L 301, 12.11.2008, p. 33.

- (4) In accordance with Article 24 of the Treaty, the Presidency, assisted by the Secretary-General/High Representative (SG/HR), negotiated an Exchange of Letters between the European Union and the Government of Seychelles on the conditions and modalities for the transfer of suspected pirates and armed robbers from EUNAVFOR to the Republic of Seychelles and for their treatment after such transfer.
- (5) The Exchange of Letters should be signed and provisionally applied, subject to its conclusion at a later date,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Exchange of Letters between the European Union and the Republic of Seychelles on the conditions and modalities for the transfer of suspected pirates and armed robbers from EUNAVFOR to the Republic of Seychelles and for their treatment after such transfer, is hereby approved on behalf of the European Union, subject to the conclusion of the said Agreement.

The text of the Exchange of Letters is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the respective letter on behalf of the European Union, subject to its conclusion.

Article 3

The Exchange of Letters shall be applied on a provisional basis from the date of its signature, pending its entry into force.

Article 4

This Decision shall take effect on the date of its adoption.

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

EXCHANGE OF LETTERS
BETWEEN THE EUROPEAN UNION
AND THE REPUBLIC OF SEYCHELLES
ON THE CONDITIONS AND MODALITIES FOR THE TRANSFER OF
SUSPECTED PIRATES AND ARMED ROBBERS FROM EUNAVFOR
TO THE REPUBLIC OF SEYCHELLES AND
FOR THEIR TREATMENT AFTER SUCH TRANSFER

A. Letter from the Republic of Seychelles

Your Excellency,

Reference is made to the working session held in Seychelles on the 18th and 19th August, 2009 to discuss the EU Agreements on Piracy and Armed Robbery which involved the participation of representatives of the EU, the members of the Seychelles High Level Committee and other related institutions and to our subsequent letter of 21st August, 2009.

In the course of the working session, the concerns of the different related institutions on the transfer of suspected pirates and armed robbers were tabled. The “*Guidance for the Transfer of Suspected pirates, armed robbers and seized property to Seychelles*” prepared by the Attorney General of the Republic of Seychelles, which is intended to ensure that any transfer of persons suspected of acts of piracy and armed robbery is done in accordance with the laws of Seychelles was approved in principle. It was also agreed that the Implementing Arrangements (which clarifies Article 10 of the proposed Transfer Agreement) could be agreed upon after the proposed Transfer Agreement has been finalised and that a common Guidance on the handover of suspected pirates, armed robbers and seized property is prepared. Furthermore, that the Republic of Seychelles will be provided with the necessary assistance for the detention, maintenance, investigation, prosecution trial and repatriation of the suspected pirates and armed robbers.

Following the working session and our letter, further discussions have taken place within the High Level Committee on the transfer of suspected pirates and armed robbers to the territory of the Republic of Seychelles.

The Government of the Republic of Seychelles would like to take this opportunity to renew its reassurance to the EU of its commitment to cooperate to its fullest possible extent, having regard to its available resources and infrastructure capacities, in the repression of piracy to accept the transfer of captured suspected pirates and armed robbers.

At the same time, the Government of the Republic of Seychelles would like to express its desire that the EU SOFA be signed as discussions continue on the proposed EU Transfer Agreement.

In view of ongoing negotiations and pending conclusion of a mutually acceptable arrangement between the EU and the Government of the Republic of Seychelles on the transfer of pirates and armed robbers to its territory, the Government of the Republic of Seychelles may authorize the EUNAVFOR to transfer suspected pirates and armed robbers captured in the course of its operations in the exclusive economic zone, territorial sea, archipelagic waters and internal waters of the Republic of Seychelles. This authorization is extended to the protection of Seychelles flagged vessels and Seychellois Citizens on a non-Seychelles flagged vessel beyond the limit aforementioned and in other circumstances on the high seas at the discretion of the Republic of the Seychelles.

Provided always that:

- The EU, aware of the limited capacities of the Republic of Seychelles to accept, try, detain and incarcerate suspected pirates and armed robbers and in consideration of the acceptance by the Republic of Seychelles of the transfer of any suspected pirates and armed robbers to its territory, shall provide the Republic of Seychelles with such full financial, human resource, material, logistical and infrastructural assistance for the detention, incarceration maintenance, investigation, prosecution, trial and repatriation of the suspected or convicted pirates and armed robbers;
- The Attorney General shall have at least ten (10) days from the date of transfer of the suspected pirates or armed robbers to decide on the sufficiency of the available evidence in view of prosecution;
- In the event that the Attorney General decides that there is insufficient evidence to prosecute, the EUNAVFOR shall take the full responsibility, including the financial costs, of transferring the suspected pirates and armed robbers back to their country of origin within 10 days of EUNAVFOR having been notified of such a decision;
- Any transfer of suspected pirates and armed robbers shall as far as possible be in accordance with the “*Guidance for the Transfer of Suspected pirates, armed robbers and seized property to Seychelles*”;
- The Government of the Republic of the Seychelles also confirms that:
 - Any transferred person will be treated humanely and will not be subjected to torture or cruel, inhuman or degrading treatment or punishment, will receive adequate accommodation and nourishment, access to medical treatment and will be able to carry out religious observance.

- Any transferred person will be brought promptly before a judge or other officer authorised by law to exercise judicial power, who will decide without delay on the lawfulness of his detention and will order his release if the detention is not lawful.
- Any transferred person will be entitled to trial within a reasonable time or to release.
- In the determination of any criminal charge against him, any transferred person will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- Any transferred person charged with a criminal offence will be presumed innocent until proved guilty according to law.
- In the determination of any criminal charge against him, every transferred person will be entitled to the following minimum guarantees, in full equality:
 - (1) to be informed promptly and in detail in a language which he understands of the nature of the charge against him;
 - (2) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choice;
 - (3) to defend himself in person or through legal assistance of his own choice; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

- (4) to examine, or have examined, all evidence against him, including affidavits of witnesses who conducted the arrest, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (5) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (6) not to be compelled to testify against himself or to confess guilt.
- Any transferred person convicted of a crime will be permitted to have the right to have its conviction and sentence reviewed by or appealed to a higher tribunal in accordance with the law of the Seychelles.
 - The Seychelles will not transfer any transferred person to any other State without prior written consent from EUNAVFOR.

This arrangement has been discussed and agreed by the Seychelles authorities. The arrangements proposed herewith may come into force when the European Union indicates its agreement in writing. This is without prejudice to the legal or policy positions taken by the delegations of both parties in the ongoing negotiations.

Yours Sincerely,

Mr. J. Morgan

THE MINISTER

Chairman of the High Level Committee of Piracy

B. Letter from the European Union

Your Excellency,

I have the honour to acknowledge receipt of your letter dated 29 September 2009 regarding the conditions and modalities for the transfer of suspected pirates and armed robbers from EUNAVFOR to the Republic of Seychelles and for their treatment after such transfer, which reads as follows:

"Reference is made to the working session held in Seychelles on the 18th and 19th August, 2009 to discuss the EU Agreements on Piracy and Armed Robbery which involved the participation of representatives of the EU, the members of the Seychelles High Level Committee and other related institutions and to our subsequent letter of 21st August, 2009.

In the course of the working session, the concerns of the different related institutions on the transfer of suspected pirates and armed robbers were tabled. The "*Guidance for the Transfer of Suspected pirates, armed robbers and seized property to Seychelles*" prepared by the Attorney General of the Republic of Seychelles, which is intended to ensure that any transfer of persons suspected of acts of piracy and armed robbery is done in accordance with the laws of Seychelles was approved in principle. It was also agreed that the Implementing Arrangements (which clarifies Article 10 of the proposed Transfer Agreement) could be agreed upon after the proposed Transfer Agreement has been finalised and that a common Guidance on the handover of suspected pirates, armed robbers and seized property is prepared. Furthermore, that the Republic of Seychelles will be provided with the necessary assistance for the detention, maintenance, investigation, prosecution trial and repatriation of the suspected pirates and armed robbers.

Following the working session and our letter, further discussions have taken place within the High Level Committee on the transfer of suspected pirates and armed robbers to the territory of the Republic of Seychelles.

The Government of the Republic of Seychelles would like to take this opportunity to renew its reassurance to the EU of its commitment to cooperate to its fullest possible extent, having regard to its available resources and infrastructure capacities, in the repression of piracy to accept the transfer of captured suspected pirates and armed robbers.

At the same time, the Government of the Republic of Seychelles would like to express its desire that the EU SOFA be signed as discussions continue on the proposed EU Transfer Agreement.

In view of ongoing negotiations and pending conclusion of a mutually acceptable arrangement between the EU and the Government of the Republic of Seychelles on the transfer of pirates and armed robbers to its territory, the Government of the Republic of Seychelles may authorize the EUNAVFOR to transfer suspected pirates and armed robbers captured in the course of its operations in the exclusive economic zone, territorial sea, archipelagic waters and internal waters of the Republic of Seychelles. This authorization is extended to the protection of Seychelles flagged vessels and Seychellois Citizens on a non-Seychelles flagged vessel beyond the limit aforementioned and in other circumstances on the high seas at the discretion of the Republic of the Seychelles.

Provided always that:

- The EU, aware of the limited capacities of the Republic of Seychelles to accept, try, detain and incarcerate suspected pirates and armed robbers and in consideration of the acceptance by the Republic of Seychelles of the transfer of any suspected pirates and armed robbers to its territory, shall provide the Republic of Seychelles with such full financial, human resource, material, logistical and infrastructural assistance for the detention, incarceration maintenance, investigation, prosecution, trial and repatriation of the suspected or convicted pirates and armed robbers;
- The Attorney General shall have at least ten (10) days from the date of transfer of the suspected pirates or armed robbers to decide on the sufficiency of the available evidence in view of prosecution;
- In the event that the Attorney General decides that there is insufficient evidence to prosecute, the EUNAVFOR shall take the full responsibility, including the financial costs, of transferring the suspected pirates and armed robbers back to their country of origin within 10 days of EUNAVFOR having been notified of such a decision;
- Any transfer of suspected pirates and armed robbers shall as far as possible be in accordance with the “*Guidance for the Transfer of Suspected pirates, armed robbers and seized property to Seychelles*”;
- The Government of the Republic of the Seychelles also confirms that:
 - Any transferred person will be treated humanely and will not be subjected to torture or cruel, inhuman or degrading treatment or punishment, will receive adequate accommodation and nourishment, access to medical treatment and will be able to carry out religious observance.

- Any transferred person will be brought promptly before a judge or other officer authorised by law to exercise judicial power, who will decide without delay on the lawfulness of his detention and will order his release if the detention is not lawful.
- Any transferred person will be entitled to trial within a reasonable time or to release.
- In the determination of any criminal charge against him, any transferred person will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- Any transferred person charged with a criminal offence will be presumed innocent until proved guilty according to law.
- In the determination of any criminal charge against him, every transferred person will be entitled to the following minimum guarantees, in full equality:
 - (1) to be informed promptly and in detail in a language which he understands of the nature of the charge against him;
 - (2) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choice;
 - (3) to defend himself in person or through legal assistance of his own choice; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

- (4) to examine, or have examined, all evidence against him, including affidavits of witnesses who conducted the arrest, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (5) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (6) not to be compelled to testify against himself or to confess guilt.
- Any transferred person convicted of a crime will be permitted to have the right to have its conviction and sentence reviewed by or appealed to a higher tribunal in accordance with the law of the Seychelles.
 - The Seychelles will not transfer any transferred person to any other State without prior written consent from EUNAVFOR.

This arrangement has been discussed and agreed by the Seychelles authorities. The arrangements proposed herewith may come into force when the European Union indicates its agreement in writing. This is without prejudice to the legal or policy positions taken by the delegations of both parties in the ongoing negotiations."

I have the honour to confirm, on behalf of the European Union, that the content of your letter is acceptable to the European Union. This Instrument will be applied provisionally by the European Union from the date of signature of this letter and will enter into force definitively once the European Union has completed its internal procedures for conclusion.

With regard to the reference in your letter to the consideration by the Seychelles Attorney General of the sufficiency of the available evidence in view of prosecution, the European Union understands that you have agreed that, since EUNAVFOR will communicate in each case all the evidence available to it at the time, such as logbooks, pictures and videos, this will allow the Seychelles Attorney General to take a decision on the sufficiency of such evidence before accepting the transfer of suspected pirates and armed robbers.

I also recall that, as mentioned in your letter, this Instrument will apply on a transitional basis, pending the conclusion of a mutually acceptable transfer agreement between the EU and the Republic of Seychelles on the transfer of pirates and armed robbers to the territory of the Republic of Seychelles.

Please, accept Sir, the assurance of my highest consideration.

For the European Union