



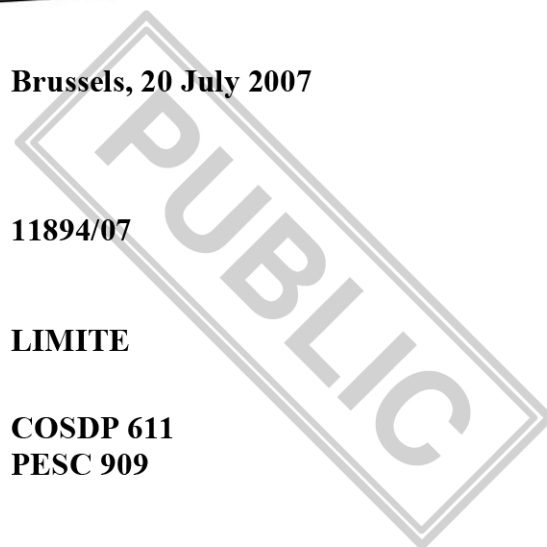
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 July 2007

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LIMITE

**COSDP 611
PESC 909**



NOTE

From : Secretariat
To : Delegations

No. prev. doc. : 8720/05 COSDP 267 PESC 357

Subject : Draft Model Agreement on the status of the European Union-led forces between
the European Union and a Host State

Delegations will find attached a revised draft Model Agreement on the status of the European Union-led forces between the European Union and a Host State.

In comparison to the previous version of the draft Model Agreement as approved by the Council on 23 May 2005 and contained in document 8720/05, Articles 5, 10 and 13 have been amended.

AGREEMENT
BETWEEN THE EUROPEAN UNION
AND
[HOST STATE]
ON
THE STATUS OF THE EUROPEAN UNION-LED FORCES
IN *[HOST STATE]*

THE EUROPEAN UNION (EU),
of the one part, and

[HOST STATE], hereinafter referred to as "the Host State",
of the other part,

Together hereinafter referred to as the "Parties",

TAKING INTO ACCOUNT:

- *[Reference to UNSCR, invitation by the Host State and/or peace agreement, if applicable],*
- *[Reference to the Joint Action whereby the European Union decides to conduct a military operation in the Host State],*
- that this Agreement will not affect the Parties' rights and obligations under international agreements and other instruments establishing international courts and tribunals, including the Statute of the International Criminal Court,

HAVE AGREED AS FOLLOWS:

Article 1

Scope and definitions

1. This Agreement shall apply to the European Union-led Forces and to their personnel.
2. This Agreement shall apply only within the territory of the Host State.
3. For the purpose of this Agreement:
 - (a) "*European Union-led Forces (EUFOR)*" shall mean EU military headquarters and national contingents contributing to the operation, their equipment and their means of transport;
 - (b) "*operation*" shall mean the preparation, establishment, execution and support of the military mission further to the mandate arising out of [*reference to mandate and its date of adoption*] ;
 - (c) "*EU Force Commander*" shall mean the Commander in the theatre of operations;
 - (d) "*EU military headquarters*" shall mean the military headquarters and elements thereof, whatever their location, under the authority of EU military commanders exercising the military command or control of the operation;
 - (e) "*national contingents*" shall mean units and elements belonging to the Member States of the European Union and to other States participating in the operation;
 - (f) "*EUFOR personnel*" shall mean the civilian and military personnel assigned to EUFOR as well as personnel deployed for the preparation of the operation and personnel on mission for a Sending State or an EU institution in the framework of the operation, present, except as otherwise provided in this Agreement, within the territory of the Host State, with the exception of personnel employed locally and personnel employed by international commercial contractors;

- (g) "*personnel employed locally*" shall mean personnel who are nationals of or permanently resident in the Host State;
- (h) "*facilities*" shall mean all premises, accommodation and land required for EUFOR and EUFOR personnel;
- (i) "*Sending State*" shall mean a State providing a national contingent for EUFOR.

Article 2

General provisions

1. EUFOR and EUFOR personnel shall respect the laws and regulations of the Host State and shall refrain from any action or activity incompatible with the objectives of the operation.
2. EUFOR shall regularly inform the government of the Host State of the number of EUFOR personnel stationed within the Host State's territory.

Article 3

Identification

1. EUFOR personnel must carry passports or military identity cards with them at all times.
2. EUFOR vehicles, aircraft, vessels and other means of transport shall carry distinctive EUFOR identification markings and/or registration plates, of which the relevant Host State authorities shall be notified.
3. EUFOR shall have the right to display the flag of the European Union and markings such as military insignia, titles and official symbols, on its facilities, vehicles and other means of transport. The uniforms of EUFOR personnel shall carry a distinctive EUFOR emblem. National flags or insignia of the constituent national contingents of the operation may be displayed on the EUFOR facilities, vehicles and other means of transport and uniforms, as decided by the EU Force Commander.

Article 4¹

Border crossing and movement within the Host State's territory

1. EUFOR personnel shall enter the Host State's territory only on presentation of the documents provided for in Article 3 (1) or, in the case of first entry, of an individual or collective movement order issued by EUFOR. They shall be exempt from passport and visa regulations, immigration inspections and customs control on entering, leaving or within the Host State's territory.
2. EUFOR personnel shall be exempt from the Host State's regulations on the registration and control of aliens, but shall not acquire any right to permanent residence or domicile within the Host State's territory.
3. EUFOR assets and means of transport entering, transiting or exiting the Host State's territory in support of the operation shall be exempt from any requirement to produce inventories or other customs documentation, and from any inspection.
4. EUFOR personnel may drive motor vehicles, navigate vessels and operate aircrafts within the Host State's territory provided they have valid national, international or military driving licences, ship master's certificates or pilot licences, as appropriate.
5. For the purpose of the operation, the Host State shall grant EUFOR and EUFOR personnel freedom of movement and freedom to travel within its territory, including its territorial sea and its air space. Freedom of movement within the territorial sea of the Host State shall include stopping and anchoring under any circumstances.
6. For the purpose of the operation, EUFOR may carry out within the Host State territory, including its territorial sea and its air space, any exercise or practice with weapons as well as the launching, landing or taking on board of any aircraft or military device.

¹ In case of operations in land-locked countries, Article 4 may have to be adapted; in particular paragraph 7 should be deleted.

7. For the purpose of the operation, EUFOR submarines are not required to navigate on surface and to show their flag in the territorial sea of the Host State.
8. For the purpose of the operation, EUFOR may use public roads, bridges, ferries, airports and ports without the payment of duties, fees, tolls, taxes and similar charges. EUFOR shall not be exempt from reasonable charges for services requested and received, under the conditions that apply to those provided to the Host State's armed forces.

Article 5

Privileges and immunities of EUFOR granted by the Host State

1. EUFOR's facilities shall be inviolable. The Host State's agents shall not enter them without the consent of the EU Force Commander.
2. EUFOR's facilities, their furnishings and other assets therein as well as its means of transport shall be immune from search, requisition, attachment or execution.
3. EUFOR, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process.
4. EUFOR's archives and documents shall be inviolable at any time, wherever they may be.
5. The official correspondence of EUFOR shall be inviolable. Official correspondence means all correspondence relating to the operation and its functions.
6. In respect of purchased and imported goods, services provided and facilities used by EUFOR for the purposes of the operation, EUFOR, as well as its providers or contractors, shall be exempt from all national, regional and communal dues, taxes and charges of a similar nature. EUFOR shall not be exempt from dues, taxes or charges that represent payment for services rendered.

6. The Host State shall permit the entry of articles for the operation and grant them exemption from all custom duties, fees, tolls, taxes and similar charges other than charges for storage, cartage and other services rendered.

Article 6

Privileges and immunities of EUFOR personnel granted by the Host State

1. EUFOR personnel shall not be liable to any form of arrest or detention.
2. Papers, correspondence and property of EUFOR personnel, shall enjoy inviolability, except in case of measures of execution which are permitted pursuant to paragraph 6.
3. EUFOR personnel shall enjoy immunity from the criminal jurisdiction of the Host State under all circumstances.

The immunity from criminal jurisdiction of EUFOR personnel may be waived by the Sending State or EU institution concerned, as the case may be. Such waiver must always be express.

4. EUFOR personnel shall enjoy immunity from the civil and administrative jurisdiction of the Host State in respect of words spoken or written and all acts performed by them in the exercise of their official functions. If any civil proceeding is instituted against EUFOR personnel before any Host State court, the EU Force Commander and the competent authority of the Sending State or EU institution shall be notified immediately. Prior to initiation of the proceeding before the court, the EU Force Commander and the competent authority of the Sending State or EU institution shall certify to the court whether the act in question was committed by EUFOR personnel in the exercise of their official functions.

If the act was committed in the exercise of official functions, the proceeding shall not be initiated and the provisions of Article 15 shall apply. If the act was not committed in the exercise of official functions, the proceeding may continue. The certification by the EU Force Commander and the competent authority of the Sending State or EU institution is binding upon the jurisdiction of the Host State which may not contest it.

The initiation of proceedings by EUFOR personnel shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

5. EUFOR personnel are not obliged to give evidence as witnesses.
6. No measures of execution may be taken in respect of EUFOR personnel, except in the case where a civil proceeding not related to their official functions is instituted against them. Property of EUFOR personnel, which is certified by the EU Force Commander to be necessary for the fulfilment of their official functions, shall be free from seizure for the satisfaction of a judgement, decision or order. In civil proceedings EUFOR personnel shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.
7. The immunity of EUFOR personnel from the jurisdiction of the Host State does not exempt them from the jurisdictions of the respective Sending States.
8. EUFOR personnel shall with respect to services rendered for EUFOR be exempt from social security provisions which may be in force in the Host State.
9. EUFOR personnel shall be exempt from any form of taxation in the Host State on the salary and emoluments paid to them by EUFOR or the Sending States, as well as on any income received from outside the Host State.

10. The Host State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on articles for the personal use of EUFOR personnel.

The personal baggage of EUFOR personnel shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles that are not for the personal use of EUFOR personnel, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the Host State. Such inspection shall be conducted only in the presence of the concerned EUFOR personnel or of an authorized representative of EUFOR.

Article 7

Personnel employed locally

Personnel employed locally shall enjoy privileges and immunities only to the extent admitted by the Host State. However, the Host State shall exercise its jurisdiction over that personnel in such a manner as not to interfere unduly with the performance of the functions of the operation.

Article 8

Criminal jurisdiction

The competent authorities of a Sending State shall have the right to exercise on the territory of the Host State all the criminal jurisdiction and disciplinary powers conferred on them by the law of the Sending State with regard to all EUFOR personnel subject to the relevant law of the Sending State.

Article 9

Uniform and arms

1. The wearing of uniform shall be subject to rules adopted by the EU Force Commander.
2. EUFOR military personnel may carry arms and ammunition on condition that they are authorised to do so by their orders.

Article 10

Host State support and contracting

1. The Host State agrees, if requested, to assist EUFOR in finding suitable facilities.
2. The Host State shall provide, free of charge, facilities of which it is the owner, and facilities owned by private legal entities, in so far as such facilities are requested for the conduct of administrative and operational activities of EUFOR.
3. Within its means and capabilities, the Host State shall assist in the preparation, establishment, and execution of and support for the operation. The Host State's assistance and support of the operation shall be provided under the same conditions as the assistance and support given to the Host State's armed forces.
4. The law applicable to contracts concluded by EUFOR in the Host State shall be determined by the contract.
5. The contract may stipulate that the dispute settlement procedure referred to in Article 15 (3 and 4) shall be applicable to disputes arising from the application of the contract.
6. The Host State shall facilitate the implementation of contracts concluded by EUFOR with commercial entities for the purposes of the operation.

Article 11

Change to facilities

1. EUFOR shall be authorised to construct, alter or otherwise modify facilities as requested for its operational requirements.
2. No compensation shall be requested from EUFOR by the Host State for those constructions, alterations or modification.

Article 12

Deceased EUFOR personnel

1. The EU Force Commander shall have the right to take charge of and make suitable arrangements for the repatriation of any deceased EUFOR personnel, as well as that of their personal property.
2. No autopsy shall be performed on any deceased member of EUFOR without the agreement of the State concerned and the presence of a representative of EUFOR and/or the State concerned.
3. The Host State and EUFOR shall cooperate to the fullest extent possible with a view to early repatriation of deceased EUFOR personnel.

Article 13

Security of EUFOR and military police

1. The Host State shall take all appropriate measures to ensure the safety and security of EUFOR and its personnel.
2. EUFOR is authorised to take the measures necessary to protect its facilities, including those used for its training, against any external attack or intrusion.
3. The EU Force Commander may establish a military police unit in order to maintain order in EUFOR facilities.
4. The military police unit may also, in consultation and cooperation with the military police or the police of the Host State, act outside those facilities to ensure the maintenance of good order and discipline among EUFOR personnel.

Article 14

Communications

1. EUFOR may install and operate radio sending and receiving stations, as well as satellite systems. It shall cooperate with the Host State's competent authorities with a view to avoiding conflicts in the use of appropriate frequencies. The Host State shall grant access to the frequency spectrum free of charge.
2. EUFOR shall enjoy the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile and other means, as well as the right to install the equipment necessary for the maintenance of such communications within and between EUFOR facilities, including the laying of cables and land lines for the purpose of the operation.
3. Within its own facilities EUFOR may make the arrangements necessary for the conveyance of mail addressed to and from EUFOR and/or EUFOR personnel.

Article 15

Claims for death, injury, damage and loss

1. EUFOR and EUFOR personnel shall not be liable for any damage to or loss of civilian or government property which are related to operational necessities or caused by activities in connection with civil disturbances or protection of EUFOR.
2. With a view to reaching an amicable settlement, claims for damage to or loss of civilian or government property not covered by paragraph 1, as well as claims for death of or injury to persons and for damage to or loss of EUFOR property, shall be forwarded to EUFOR via the competent authorities of the Host State, as far as claims brought by legal or natural persons from the Host State are concerned, or to the competent authorities of the Host State, as far as claims brought by EUFOR are concerned.

3. Where no amicable settlement can be found, the claim shall be submitted to a claims commission composed on an equal basis of representatives of EUFOR and representatives of the Host State. Settlement of claims shall be reached by common agreement.
4. Where no settlement can be reached within the claims commission, the dispute shall:
 - a) for claims up to and including 40 000 EUR, be settled by diplomatic means between the Host State and EU representatives.
 - b) for claims above the amount referred to in point a), be submitted to an arbitration tribunal, the decisions of which shall be binding.
5. The arbitration tribunal shall be composed of three arbitrators, one arbitrator being appointed by the Host State, one arbitrator being appointed by EUFOR and the third one being appointed jointly by the Host State and EUFOR. Where one of the parties does not appoint an arbitrator within two months or where no agreement can be found between the Host State and EUFOR on the appointment of the third arbitrator, the arbitrator in question shall be appointed by the President of the Court of Justice of the European Communities.
6. An administrative arrangement shall be concluded between EUFOR and the administrative authorities of the Host State in order to determine the terms of reference of the claims commission and the tribunal, the procedure applicable within these bodies and the conditions under which claims are to be lodged.

Article 16

Liaison and disputes

1. All issues arising in connection with the application of this Agreement shall be examined jointly by representatives of EUFOR and the Host State's competent authorities.
2. Failing any prior settlement, disputes concerning the interpretation or application of this Agreement shall be settled exclusively by diplomatic means between the Host State and EU representatives.

Article 17

Other provisions

1. Whenever this Agreement refers to the privileges, immunities and rights of EUFOR and of EUFOR personnel, the Government of the Host State shall be responsible for their implementation and for compliance with them on the part of the appropriate Host State local authorities.
2. Nothing in this Agreement is intended or may be construed to derogate from any rights that may attach to an EU Member State or to any other State contributing to EUFOR under other agreements.

Article 18

Implementing arrangements

For purposes of the application of this Agreement, operational, administrative and technical matters may be the subject of separate arrangements to be concluded between the EU Force Commander and the Host State's administrative authorities.

Article 19

Entry into force and termination

1. This Agreement shall enter into force on the day on which it is signed and shall remain in force until the date of departure of the last EUFOR element and of the last EUFOR personnel, as notified by EUFOR.
2. Notwithstanding paragraph 1, the provisions contained in Articles 4 (8), 5 (1-3), 5 (6), 5 (7), 6 (1), 6 (3), 6 (4), 6 (6), 6 (8-10), 10 (2), 11 and 15 shall be deemed to have applied from the date on which the first EUFOR personnel were deployed if that date was earlier than the date of entry into force of this Agreement.
3. This Agreement may be amended by written agreement between the Parties.

4. Termination of this Agreement shall not affect any rights or obligations arising out of the execution of this Agreement before such termination.

Done at ... on

For the European Union

For the Host State

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