



Council of the
European Union

Brussels, 23 October 2014
(OR. en)

13272/2/14
REV 2

LIMITE

CSDP/PSDC 512
PESC 946
COEST 333
RELEX 755
CONUN 146
CSC 209
EUAM UKRAINE 10

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Agreement between the European Union and Ukraine on the status of the
European Union Advisory Mission for Civilian Security Sector Reform
Ukraine (EUAM Ukraine)

AGREEMENT
BETWEEN THE EUROPEAN UNION
AND UKRAINE
ON THE STATUS OF THE EUROPEAN UNION ADVISORY MISSION
FOR CIVILIAN SECURITY SECTOR REFORM UKRAINE
(EUAM UKRAINE)

THE EUROPEAN UNION, hereinafter referred to as "European Union" or "the EU",

of the one part, and

UKRAINE, hereinafter referred to as "Ukraine" or "the Host State",

of the other part,

Together hereinafter referred to as "the Parties",

TAKING INTO ACCOUNT:

- the letter dated 11 July 2014 from the Minister of Foreign Affairs of Ukraine to the High Representative of the European Union for Foreign Affairs and Security Policy,
- Council Decision 2014/486/CFSP of 22 July 2014 on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine),
- 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 Advisory Mission in Ukraine (EUAM Ukraine) and its personnel.
2. This Agreement shall apply only within the territory of Ukraine.
3. For the purposes of this Agreement:
 - (a) "EUAM Ukraine" or "the Mission" shall mean the EU Advisory Mission for Civilian Security Sector Reform Ukraine established by the Council of the European Union in Decision 2014/486/CFSP, including its components, units, headquarters and personnel deployed in the territory of the Host State and assigned to EUAM Ukraine;
 - (b) "Head of Mission" shall mean the Head of Mission of EUAM Ukraine, appointed by the Council of the European Union;
 - (c) "European Union (EU)" shall mean the permanent bodies of the EU and their staff;

- (d) "EUAM Ukraine personnel" shall mean the Head of Mission, personnel of the Mission seconded by EU Member States, the European External Action Service (EEAS) and EU institutions and non-EU States invited by the EU to participate in EUAM Ukraine, international staff recruited on a contractual basis by EUAM Ukraine deployed for the preparation, support and implementation of the Mission, and personnel on mission for a Sending State, an EU institution or EEAS in the framework of the Mission. It shall not include commercial contractors or personnel employed locally;
- (e) "Headquarters" shall mean the EUAM Ukraine main headquarters in Kyiv;
- (f) "Sending State" shall mean any EU Member State or non-EU State that has seconded personnel to the Mission;
- (g) "Facilities" shall mean all buildings, premises, installations and land required for the conduct of the activities of the Mission, as well as for the accommodation of the Mission's personnel;
- (h) "Personnel employed locally" shall mean personnel who are nationals of, or permanently resident in, Ukraine;
- (i) "Official correspondence" shall mean all correspondence relating to EUAM Ukraine and its functions;
- (j) "EUAM Ukraine means of transport" shall mean all vehicles and other means of transport owned, hired or chartered by EUAM Ukraine;
- (k) "EUAM Ukraine assets" shall mean equipment, including means of transport, and consumer goods necessary for EUAM Ukraine activities.

ARTICLE 2

GENERAL PROVISIONS

1. EUAM Ukraine and EUAM Ukraine personnel shall respect the laws and regulations of the Host State and shall refrain from any action or activity incompatible with the objectives of EUAM Ukraine.
2. EUAM Ukraine shall be autonomous with regard to the execution of its functions under this Agreement. The Host State shall respect the unitary and international nature of EUAM Ukraine.
3. The Head of Mission shall regularly inform the Government of the Host State of the number of EUAM Ukraine personnel stationed within the Host State's territory.

ARTICLE 3

IDENTIFICATION

1. The list of EUAM Ukraine personnel, including their dates of arrival and departure, shall be provided to the Ministry of Foreign Affairs of Ukraine (MFA of Ukraine) for the duration of the Mission and updated when necessary. EUAM Ukraine personnel shall be provided with identification cards issued by the MFA of Ukraine and which confirm the status of EUAM Ukraine personnel.
2. EUAM Ukraine means of transport may bear distinctive EUAM Ukraine identification markings, a specimen of which shall be provided to the relevant authorities of the Host State, and license plates provided for diplomatic missions in Ukraine.

3. EUAM Ukraine shall have the right to display the flag of the EU at its Headquarters and elsewhere, alone or together with the flag of the Host State, as decided by the Head of Mission. National flags or insignia of the constituent national contingents of EUAM Ukraine may be displayed on Mission's facilities, EUAM Ukraine means of transport and uniforms, as decided by the Head of Mission.

ARTICLE 4

BORDER CROSSING AND MOVEMENT WITHIN UKRAINE'S TERRITORY

1. EUAM Ukraine personnel, EUAM Ukraine assets and EUAM Ukraine means of transport shall cross the border of the Host State at official border crossings, sea ports and via the international air corridors.

2. The Host State shall facilitate the entry into and the exit from the territory of the Host State for EUAM Ukraine personnel and EUAM Ukraine assets and EUAM Ukraine means of transport. EUAM personnel shall cross the state border of Ukraine with valid passport. On entry into and departure from the territory of the Host State, EUAM Ukraine personnel holding a Mission's identification card or a provisional proof of participation in the EUAM Ukraine shall be exempt from customs controls, visa and immigration requirements, and other forms of immigration control within the territory of the Host State.

3. EUAM Ukraine personnel shall be exempt from the regulations of the Host State governing the registration and control of aliens, but shall not acquire any right to permanent residence or domicile within the Host State's territory.

4. EUAM Ukraine shall import assets into the customs territory of the Host State or export assets from the customs territory of Ukraine, including transport facilities provided for official use in Ukraine, with exemption from customs inspection. Such goods, including vehicles, shall be declared in accordance with the customs legislation of the Host State applicable to diplomatic missions.

5. EUAM Ukraine personnel may drive vehicles, navigate vessels and operate aircrafts and any other means of transport within the territory of the Host State provided they have valid national or international driving licences, ship masters certificates or pilot licences, as appropriate. The Host State shall accept as valid, without tax or fee, driving licences or permits carried by EUAM Ukraine personnel.

6. EUAM Ukraine and EUAM Ukraine personnel together with their vehicles and any other means of transport, equipment and supplies shall enjoy free and unrestricted movement throughout the territory of the Host State, including its territorial sea and airspace in respect of the legislation of Ukraine.

If necessary, supplementary arrangements may be concluded in accordance with Article 18.

7. For the purpose of travel on official duties, EUAM Ukraine personnel and personnel employed locally shall be entitled to use public roads, bridges, ferries, airports and ports without the payment of duties, fees, tolls, taxes or other charges. EUAM Ukraine 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 nationals.

ARTICLE 5

PRIVILEGES AND IMMUNITIES OF EUAM UKRAINE GRANTED BY THE HOST STATE

1. Facilities shall be inviolable. The Host State's agents shall not enter them without the consent of the Head of Mission.
2. Facilities, their furnishings and other assets therein as well as their means of transport shall be immune from search, requisition, attachment or execution.
3. EUAM Ukraine, its property and EUAM Ukraine assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal processes.
4. EUAM Ukraine's archives and documents shall be inviolable at any time, wherever they may be.
5. Official correspondence shall be inviolable.
6. EUAM Ukraine shall be exempt from all national, regional and communal dues, taxes and charges of a similar nature in respect of purchased and imported goods, services provided and facilities used by EUAM Ukraine for the purposes of EUAM Ukraine. EUAM Ukraine shall not be exempt from dues, taxes or charges that represent payment for services rendered.
7. The Host State shall permit the entry of items required for the purpose of EUAM Ukraine and shall grant those items exemption from all customs duties, fees, tolls, taxes and similar charges other than charges for storage, transport and other services rendered.

ARTICLE 6

PRIVILEGES AND IMMUNITIES OF EUAM UKRAINE PERSONNEL GRANTED BY THE HOST STATE

1. EUAM Ukraine personnel shall not be subject to any form of arrest or detention.
2. Papers, correspondence and assets of EUAM Ukraine personnel shall be inviolable, except in case of measures of execution which are permitted pursuant to paragraph 6.
3. EUAM Ukraine personnel shall enjoy immunity from the criminal jurisdiction of the Host State under all circumstances. Privileges granted to EUAM personnel and immunity from the criminal jurisdiction of Ukraine do not exempt them from the jurisdiction of the Sending State or the EU institutions. The immunity of EUAM Ukraine personnel from the criminal jurisdiction of the Host State may be waived by the Sending State or EU institution concerned, as the case may be. Such a waiver must always be an express waiver.

4. EUAM Ukraine 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 EUAM Ukraine personnel before any Host State court, the Head of Mission and the competent authority of the Sending State or EU institution shall be notified immediately. Prior to the initiation of the proceeding before the court, the Head of Mission and the competent authority of the Sending State or EU institution shall certify to the court whether the act in question was performed by EUAM Ukraine personnel in the exercise of their official functions. If the act was performed in the exercise of official functions, the proceeding shall not be initiated and the provisions of Article 16 shall apply. If the act was not performed in the exercise of official functions, the proceeding may continue. The certification by the Head of Mission and the competent authority of the Sending State or EU institution shall be binding upon the jurisdiction of the Host State which may not contest it. The initiation of proceedings by EUAM Ukraine personnel shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

5. EUAM Ukraine personnel shall not be obliged to give evidence as witnesses.

6. No measures of execution may be taken in respect of EUAM Ukraine personnel, except in the case where a civil proceeding not related to their official functions is instituted against them. Property of EUAM Ukraine personnel, which is certified by the Head of Mission 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, EUAM Ukraine personnel shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.

7. The immunity of EUAM Ukraine personnel from the jurisdiction of the Host State shall not exempt them from the jurisdictions of the respective Sending States.
8. EUAM Ukraine personnel shall, with respect to services rendered for EUAM Ukraine, be exempt from social security provisions which may be in force in the Host State.
9. EUAM Ukraine personnel shall be exempt from any form of taxation in the Host State on the salary and emoluments paid to them by EUAM Ukraine 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 the entry of articles for the personal use of EUAM Ukraine personnel, and shall grant exemption from all customs duties, taxes, and related charges other than charges for storage, transport and similar services, in respect of such articles. The Host State shall also allow the export of such articles. The purchase of goods and services on the domestic market by EUAM Ukraine personnel shall be exempt from VAT and taxes in accordance with the laws of the Host State.
11. The personal baggage of EUAM Ukraine personnel shall be exempt from inspection, unless there are serious grounds for considering that it contains articles that are not for the personal use of EUAM Ukraine personnel, or articles whose import or export is prohibited by the law or subject to quarantine regulations of the Host State. Inspection of such personal baggage shall be conducted only in the presence of EUAM Ukraine personnel concerned or an authorised representative of EUAM Ukraine.

ARTICLE 7

PERSONNEL EMPLOYED LOCALLY

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

ARTICLE 8

CRIMINAL JURISDICTION

The competent authorities of a Sending State, in consultation with the competent authorities of Ukraine, shall have the right to exercise criminal jurisdiction and disciplinary powers conferred on them by the law of the Sending State with regard to EUAM Ukraine personnel on the territory of the Host State.

ARTICLE 9

SECURITY

1. The Host State, by its own means, shall ensure security of EUAM Ukraine personnel.
2. For the purposes of paragraph 1 the Host State shall take all necessary measures for the protection, safety and security of EUAM Ukraine and EUAM Ukraine personnel. Any specific provisions proposed by the Host State shall be agreed with the Head of Mission before their implementation. The Host State shall permit and support activities relating to the medical evacuation of EUAM Ukraine personnel.

If required, supplementary arrangements as referred to in Article 18 shall be concluded.

ARTICLE 10

UNIFORM

1. EUAM Ukraine personnel may wear national uniform or civilian dress with distinctive EUAM Ukraine identification.
2. The wearing of a uniform shall be subject to rules issued by the Head of Mission.

ARTICLE 11

COOPERATION AND ACCESS TO INFORMATION

1. The Host State shall provide full cooperation and support to EUAM Ukraine and EUAM Ukraine personnel. Where applicable, recourse will be made to the procedures foreseen in the Agreement between Ukraine and the European Union on security procedures for the exchange of classified information of 13 June 2005.

If required for the purposes of the first subparagraph, supplementary arrangements as referred to in Article 18 shall be concluded.

2. The Head of Mission and the Host State shall consult regularly and take appropriate measures to ensure close and reciprocal liaison at every appropriate level. The Host State may appoint a liaison officer to EUAM Ukraine.

ARTICLE 12

HOST STATE SUPPORT AND CONTRACTING

1. The Host State shall assist, if requested, EUAM Ukraine in finding suitable facilities.

2. The Host State shall provide free of charge, if required and available, facilities which it owns. EUAM Ukraine shall be authorised to construct, alter or otherwise modify facilities as required for operational requirements. The Host State shall not claim any compensation in respect of constructions, alterations or modifications to those facilities.

Facilities owned by private entities, in so far as such facilities are requested for the conduct of EUAM Ukraine's administrative and operational activities shall be provided on the basis of appropriate contractual arrangements.

3. Within its means and capabilities, the Host State shall assist in the preparation, establishment and execution of and support for EUAM Ukraine, including co-location facilities and equipment for EUAM Ukraine experts.

If necessary, supplementary arrangements may be concluded in accordance with Article 18.

4. The Host State's assistance and support to EUAM Ukraine shall be provided under at least the same conditions as the assistance and support that it gives to its own nationals.

5. EUAM Ukraine shall have the necessary legal capacity under the legislation of the Host State in order to fulfil its mission, and in particular for the purpose of opening bank accounts and to acquire or dispose of assets and to be party to legal proceedings.

6. The law applicable to contracts concluded by EUAM Ukraine in the Host State shall be determined by the relevant provisions in those contracts.

7. The contracts concluded by EUAM Ukraine may stipulate that the dispute settlement procedure referred to in Article 15(3) and (4) shall be applicable to disputes arising from the implementation of the contract.

ARTICLE 13

DECEASED EUAM UKRAINE PERSONNEL

1. The Head of Mission shall have the right to take charge of and make suitable arrangements for the repatriation of any deceased EUAM Ukraine personnel, as well as of their personal property, and take appropriate measures for this purpose in respect of the legislation of Ukraine.
2. No autopsy shall be performed on any deceased members of EUAM Ukraine without the agreement of the State concerned, and the presence of a representative of EUAM Ukraine and/or a representative of the State concerned.
3. The Host State and EUAM Ukraine shall cooperate to the fullest extent possible with a view to the early repatriation of deceased EUAM Ukraine personnel.

ARTICLE 14

COMMUNICATIONS

1. EUAM Ukraine may install and operate radio sending and receiving stations, as well as satellite systems in respect of the legislation of the Host State. It shall cooperate with the Host State's competent authorities with a view to avoiding conflicts in the use of appropriate frequencies.

2. EUAM Ukraine 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 EUAM Ukraine facilities, including the laying of cables and land lines, for the purpose of EUAM Ukraine in respect of the legislation of the Host State.
3. Within its facilities EUAM Ukraine may make necessary arrangements for the conveyance of mail addressed to and from EUAM Ukraine and/or EUAM Ukraine personnel.

ARTICLE 15

CLAIMS FOR DEATH, INJURY, DAMAGE AND LOSS

1. EUAM Ukraine, EUAM Ukraine personnel, the EU and the Sending States shall not be liable for any damage to or loss of civilian or government property which is related to operational necessities or caused by activities in connection with civil disturbances or the protection of EUAM Ukraine.
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 claims for damage to, or loss of EUAM Ukraine property, shall be forwarded to EUAM Ukraine via the competent authorities of the Host State, with regard to claims brought by a legal or natural person from the Host State, and to the competent authorities of the Host State, with regard to claims brought by EUAM Ukraine.

3. Where no amicable settlement can be found, the claim shall be submitted to a claims commission composed of an equal basis of representatives of EUAM Ukraine 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 be settled by diplomatic means between the Host State and EU representatives for claims up to and including EUR 40 000. For claims exceeding that amount, the dispute shall be submitted to an arbitration tribunal, whose decisions shall be binding.
5. The arbitration tribunal referred to in paragraph 4 shall be composed of three arbitrators, one being appointed by the Host State, one being appointed by EUAM Ukraine and the third being appointed jointly by the Host State and EUAM Ukraine. 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 EUAM Ukraine 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 Union.
6. An administrative arrangement shall be concluded between EUAM Ukraine and the administrative authorities of the Host State in order to determine the terms of reference of the claims commission and the arbitration 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 EUAM Ukraine 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. The Government of the Host State shall be responsible for the implementation and for the observance by the appropriate Ukrainian local authorities of the privileges, immunities and rights of EUAM Ukraine and of EUAM Ukraine personnel as provided for in this Agreement.
2. Nothing in this Agreement is intended or may be construed so as to derogate from any rights that may attach to an EU Member State or to any other State contributing to EUAM Ukraine under other agreements.

ARTICLE 18

IMPLEMENTING ARRANGEMENTS

For the purpose of the application of this Agreement, operational, administrative and technical matters may be the subject of separate arrangements to be concluded between the Head of Mission and the Host State's administrative authorities.

ARTICLE 19

ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force on the date of reception, through diplomatic channels, of the last written notification about the fulfilment by the Parties of internal procedures necessary for the entry into force of this Agreement and shall remain in force until the date of departure of the last EUAM Ukraine personnel, as notified by EUAM Ukraine.

2. This Agreement may be amended or terminated by written agreement between the Parties.
3. 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 ... in the English and Ukrainian languages, both texts being equally authentic.

FOR THE EUROPEAN UNION

FOR UKRAINE