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From : Secretariat

To : Coreper/Council

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Subject : Draft Model Agreement on the Status of the European Union Civilian Crisis Management Mission in a Host State (SOMA)

1. On 18 September 2007, the Council endorsed a revision of the Model Agreement on the Status of the European Union Civilian Crisis Management Mission in a Host State (SOMA) (doc. 12140/07).¹
2. Based on recent experience gained from negotiating the Model SOMA in the context of EUMM Georgia and taking into account the comments made by the lawyer-linguists with a view to improving the text, the Presidency suggested that some changes be made to the Model Agreement.
3. On 20 November 2008, the Foreign Relations Counsellors Working Party agreed a new version of the Model Agreement.

¹ On 18 September 2007, the Council also endorsed the revised Model Agreement on the Status of the EU-led forces between the EU and a Host State (doc. 11894/07 + Cor. 1)

4. Consequently, Coreper is invited to recommend that the Council endorse the draft Model Agreement on the Status of the European Union Civilian Crisis Management Mission in a Host State (SOMA) as set out in the Annex to this note.

AGREEMENT
BETWEEN THE EUROPEAN UNION
AND
[HOST STATE]
ON
THE STATUS OF THE EUROPEAN UNION [*CIVILIAN CRISIS
MANAGEMENT MISSION*]
IN *[HOST STATE]*

THE EUROPEAN UNION, hereinafter referred to as "the 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 civilian crisis management mission 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 mission in [Host State] and its personnel.
2. This Agreement shall apply only within the territory of the Host State.
3. For the purposes of this Agreement:
 - (a) ["*EU Mission*"] shall mean the EU [such as *Police/Rule of Law/Civilian Administration/Civil Protection/Monitoring*] mission in [Host State] established by the Council of the European Union in Joint Action [XXX/XXX/CFSP], including its components, forces, units, headquarters and personnel deployed in the territory of the Host State and assigned to [*EU Mission*];
 - (b) ["*Head of Mission*"/"*Police Commissioner*"] shall mean the [*Head of Mission/Police Commissioner*] of [*EU Mission*], appointed by the Council of the European Union;

- (c) "[EU Mission] personnel" shall mean the [*Head of Mission/Police Commissioner*], personnel seconded by EU Member States and EU institutions and non-EU States invited by the EU to participate in [EU Mission], international staff recruited on a contractual basis by [EU Mission] deployed for the preparation, support and implementation of the mission, and personnel on mission for a Sending State or an EU institution in the framework of the mission. It shall not include commercial contractors or personnel employed locally;
- (d) "Headquarters" shall mean the [EU Mission] main headquarters in [*location*];
- (e) "Sending State" shall mean any EU Member State or non-EU State that has seconded personnel to [EU Mission];
- (f) "Facilities" shall mean all buildings, premises, installations and land required for the conduct of the activities of [EU Mission], as well as for the accommodation of [EU Mission] personnel;
- (g) "Personnel employed locally" shall mean personnel who are nationals of, or permanently resident in, the Host State;
- (h) "Official correspondence" shall mean all correspondence relating to [EU Mission] and its functions.

Article 2
General provisions

1. [EU Mission] and [EU Mission] personnel shall respect the laws and regulations of the Host State and shall refrain from any action or activity incompatible with the objectives of [EU Mission].
2. [EU Mission] 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 [EU Mission].
3. The [Head of Mission/Police Commissioner] shall regularly inform the Government of the Host State of the number of [EU Mission] personnel stationed within the Host State's territory.

Article 3
Identification

1. [EU Mission] personnel shall be provided with, and identified by, an [EU Mission] identification card, which they shall be obliged to carry with them at all times. The relevant authorities of the Host State shall be provided with a specimen of an [EU Mission] identification card.
2. Vehicles and any other means of transport of [EU Mission] shall bear distinctive [EU Mission] identification markings and/or registration plates, a specimen of which shall be provided to the relevant authorities of the Host State.

3. [EU Mission] 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/Police Commissioner]. National flags or insignia of the constituent national contingents of [EU Mission] may be displayed on [EU Mission] Facilities, vehicles and any other means of transport and uniforms, as decided by the ["Head of Mission"/"Police Commissioner"].

Article 4

Border crossing and movement within the Host State's territory

1. [EU Mission] personnel, assets, vehicles and any other means of transport shall cross the border of the Host Party 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 [EU Mission] personnel and [EU Mission] assets, vehicles and any other means of transport. Except for passport control on entry into and departure from the territory of the Host State, [EU Mission] personnel holding a [EU Mission] identification card [or a provisional proof of participation in the [EU Mission]] shall be exempt from passport regulations, regulations on customs controls and procedures, visa and immigration regulations, and any form of immigration inspection within the territory of the Host State.

3. [EU Mission] 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. [EU Mission] assets, vehicles and any other means of transport entering, transiting or exiting the Host State's territory in support of the [EU Mission] shall be exempt from any requirement to produce inventories or other customs documentation and from any inspection.
5. Vehicles and any other means of transport used in support of [EU Mission] shall not be subject to local licensing or registration requirements. Relevant international standards and regulations shall continue to apply.

If required, supplementary arrangements as referred to in Article 19 shall be concluded.

6. [EU Mission] 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 [EU Mission] personnel.
7. [EU Mission] and [EU Mission] 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.

If necessary, supplementary arrangements may be concluded in accordance with Article 19.

8. For the purpose of travel on official duties, EU Mission 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. [EU Mission] 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 [EU Mission]

granted by the Host State

1. [EU Mission]'s Facilities shall be inviolable. The Host State's agents shall not enter them without the consent of the [Head of Mission/Police Commissioner].
2. [EU Mission]'s Facilities, their furnishings and other assets therein as well as their means of transport shall be immune from search, requisition, attachment or execution.³ [EU Mission], its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process.
4. [EU Mission]'s archives and documents shall be inviolable at any time, wherever they may be.
5. [EU Mission]'s official correspondence shall be inviolable.

6. [EU Mission], as well as its providers or contractors, 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 [EU Mission] for the purposes of [EU Mission]. [EU Mission] 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 [EU Mission] 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 [EU Mission] personnel granted by the Host State

1. [EU Mission] personnel shall not be subject to any form of arrest or detention.
2. Papers, correspondence and assets of [EU Mission] personnel shall be inviolable, except in case of measures of execution which are permitted pursuant to paragraph 7.
3. The Host State shall provide, in accordance with its applicable laws and regulations, [EU Mission] personnel with a diplomatic identity card.
4. [EU Mission] personnel shall enjoy immunity from the criminal jurisdiction of the Host State under all circumstances. The immunity from criminal jurisdiction of [EU Mission] personnel may be waived by the Sending State or EU institution concerned, as the case may be. Such waiver must always be an express waiver.

5. [EU Mission] 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 [EU Mission] personnel before any Host State court, the [*Head of Mission/Police Commissioner*] 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 [*Head of Mission/Police Commissioner*] and the competent authority of the Sending State or EU institution shall certify to the court whether the act in question was performed by [EU Mission] 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/Police Commissioner*] 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 [EU Mission] personnel shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

6. [EU Mission] personnel shall not be obliged to give evidence as witnesses.
7. No measures of execution may be taken in respect of [EU Mission] personnel, except in the case where a civil proceeding not related to their official functions is instituted against them. Property of [EU Mission] personnel, which is certified by the [*"Head of Mission"/"Police Commissioner"*] 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, [EU Mission] personnel shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.
8. The immunity of [EU Mission] personnel from the jurisdiction of the Host State shall not exempt them from the jurisdictions of the respective Sending States.
9. [EU Mission] personnel shall, with respect to services rendered for [EU Mission], be exempt from social security provisions which may be in force in the Host State.
10. [EU Mission] personnel shall be exempt from any form of taxation in the Host State on the salary and emoluments paid to them by [EU Mission] or the Sending States, as well as on any income received from outside the Host State.

11. 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 [EU Mission] 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 [EU Mission] personnel shall be exempt from VAT and taxes in accordance with the laws of the Host State.
12. The personal baggage of [EU Mission] 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 [EU Mission] 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 the [EU Mission] personnel concerned or of an authorised representative of [EU Mission].

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 [EU Mission].

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 [*EU Mission*] personnel.

Article 9
Security

1. The Host State, by its own means, shall assume full responsibility for the security of [*EU Mission*] personnel.
2. For the purposes of paragraph 1 the Host State shall take all necessary measures for the protection, safety and security of [*EU Mission*] and [*EU Mission*] personnel. Any specific provisions proposed by the Host State shall be agreed with the ["*Head of Mission*"/"*Police Commissioner*"] before their implementation. The Host State shall permit, and support free of any charge, activities relating to the medical evacuation of [*EU Mission*] personnel.

If required, supplementary arrangements as referred to in Article 19 shall be concluded.

3. ["*EU Mission*"] personnel shall have the right to carry sidearms and ammunition for self-defence, subject to a decision by the ["*Head of Mission*"/"*Police Commissioner*"].

Article 10

Uniform

1. [EU Mission] personnel shall wear national uniform or civilian dress with distinctive [EU Mission] identification.
2. The wearing of uniform shall be subject to rules issued by the [Head of Mission/Police Commissioner].

Article 11

Cooperation and Access to Information

1. The Host State shall provide full cooperation and support to [EU Mission] and [EU Mission] personnel.
2. If requested and necessary for the accomplishment of [EU Mission], the Host State shall provide [EU Mission] personnel with effective access to:
 - (a) Facilities, locations and official vehicles within the control of the Host State, which are relevant for the fulfilment of [EU Mission]'s mandate;

- (b) documents, materials and information within the control of the Host State, in so far as necessary for the fulfilment of [EU Mission]'s mandate.

If required for the purposes of the first subparagraph, supplementary arrangements as referred to in Article 19 shall be concluded.

3. The [Head of Mission/Police Commissioner] 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 [EU Mission].

Article 12

Host State support and contracting

1. The Host State shall assist, if requested, [EU Mission] in finding suitable Facilities.
2. The Host State shall provide free of charge, if required and available, Facilities which it owns, as well as Facilities owned by private entities, in so far as such Facilities are requested for the conduct of [EU Mission]'s administrative and operational activities.
3. Within its means and capabilities, the Host State shall assist in the preparation, establishment and execution of and support for [EU Mission], including co-location Facilities and equipment for [EU Mission] experts.

4. The Host State's assistance and support to [*EU Mission*] shall be provided under at least the same conditions as the assistance and support that it gives to its own nationals.
5. [*EU Mission*] shall have the necessary legal capacity under the laws and regulations of *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 [*EU Mission*] in the Host State shall be determined by the relevant provisions in those contracts.
7. The contracts concluded by [EU Mission] may stipulate that the dispute settlement procedure referred to in Article 16(3) and (4) shall be applicable to disputes arising from the implementation of the contract.
8. The Host State shall facilitate the implementation of contracts concluded by [*EU Mission*] with commercial entities for the purpose of the mission.

Article 13
Change to Facilities

1. [EU Mission] shall be authorised to construct, alter or otherwise modify Facilities as required for its operational requirements.
2. The Host State shall not claim any compensation from [EU Mission] in respect of constructions, alterations or modifications to Facilities.

Article 14
Deceased [EU Mission] personnel

1. The ["Head of Mission"/"Police Commissioner"] shall have the right to take charge of and make suitable arrangements for the repatriation of any deceased [EU Mission] personnel, as well as of their personal property.
2. No autopsy shall be performed on any deceased members of [EU Mission] without the agreement of the State concerned, and the presence of a representative of [EU Mission] and/or a representative of the State concerned.
3. The Host State and [EU Mission] shall cooperate to the fullest extent possible with a view to the early repatriation of deceased [EU Mission] personnel.

Article 15
Communications

1. [EU Mission] 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. [EU Mission] 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 [EU Mission] Facilities, including the laying of cables and land lines, for the purpose of [EU Mission].
3. Within its Facilities [EU Mission] may make the necessary arrangements for the conveyance of mail addressed to and from [EU Mission] and/or [EU Mission] personnel.

Article 16

Claims for death, injury, damage and loss

1. *[EU Mission]* and *[EU Mission]* personnel 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 *[EU Mission]*.
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 *[EU Mission]* property, shall be forwarded to *[EU Mission]* 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 *[EU Mission]*.
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 *[EU Mission]* 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 [EU Mission] and the third being appointed jointly by the Host State and [EU Mission]. 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 [EU Mission] 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 [EU Mission] 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 17

Liaison and disputes

1. All issues arising in connection with the application of this Agreement shall be examined jointly by representatives of [EU Mission] 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 18
Other provisions

1. The Government of the Host State shall be responsible for the implementation and for the observance by the appropriate local authorities of the Host State of the privileges, immunities and rights of [EU Mission] and of [EU Mission] 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 [EU Mission] under other agreements.

Article 19
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/Police Commissioner*] and the Host State's administrative authorities.

Article 20

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 [EU Mission] personnel, as notified by [EU Mission].
2. Notwithstanding paragraph 1, the provisions contained in Article 4(8), Article 5(1) to (3), (6) and (7), Article 6(1), (3), (4), (6) and (8) to (10) and Articles 13 and Article 16 shall be deemed to have applied from the date on which the first [EU Mission] personnel were deployed if that date was earlier than the date of entry into force of this Agreement.
3. This Agreement may be amended or terminated 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
