



**COUNCIL OF
THE EUROPEAN UNION**

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COVER NOTE

From : Committee for Civilian Aspects of Crisis Management
To : Political and Security Committee

Subject : Model agreement on the status of an EU led Police mission.

Delegations will find attached a model agreement on the status of an EU Mission to be used in the event of EU led Police missions.

The Committee for Civilian Aspects of Crisis Management invites the Political and Security Committee to take note of this document.

The model agreement has been developed as a follow up to the Police Action Plan adopted by the European Council in Göteborg. It is a “living” planning document that will have to be adapted, as necessary, in order to cater for the specific needs of a concrete police mission.

It is assumed that once fully developed it will be possible to adapt the model agreement in order for it to be used also for missions and personnel within the other priority areas of civilian crisis management (rule of law, civilian administration, civil protection) in the context of Title V of the TEU.

The model agreement assumes that there is a contracting State with which the European Union can enter into a contractual relationship.

The sections of the text in italics are explanatory notes and thus will not be included in any concrete agreement.

AGREEMENT BETWEEN THE EUROPEAN UNION

AND

ON THE STATUS OF THE EUROPEAN UNION

POLICE MISSION IN

THE EUROPEAN UNION,

on the one hand, and

THE RECEIVING STATE, hereinafter referred to as the

"Host Party",

on the other hand,

Together hereinafter referred to as the

"Participating Parties",

TAKING INTO ACCOUNT THAT¹

Under the provisions of the proposed SOFA the rights and obligations of the parties under international agreements and other international instruments establishing international tribunals, including the Rome Statute of the International Criminal Court, will remain unaffected.

¹ *the preamble should also refer, in case these have been issued, inter alia to:*

- *any United Nations Resolution allowing the EU to implement the operation;*
- *any relevant Council Decision;*
- *any relevant statement of other international organisations;*
- *formal consent of the Receiving State.*

HAVE AGREED AS FOLLOWS:

ARTICLE I

Scope of application and definitions

1. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Host Party or any privilege, immunity, facility or concession granted to the EU Mission or EU Mission personnel shall apply in the territory of the Host Party only.

2. For the purpose of the present Agreement the following definitions shall apply:
 - (a) "EU Mission" means the Mission established by the Council of the European Union in Joint Action...../...../CFSP of, including all its components, forces, units, headquarters and personnel deployed in the territory of the Host Party and assigned to the EU Mission.
 - (b) "EU Mission personnel" means civilian and military members of the EU mission, including personnel deployed for the preparation, support and implementation of the Mission. "EU Mission personnel" covers in this respect the following categories
 - personnel seconded by EU Member States and non EU States invited by the EU to participate in the EU Mission;
 - international staff recruited on a contractual basis by the Mission;
 - personnel locally hired by the Mission.

(c) "Sending Parties" means EU Member States and Non EU States that have seconded EU Mission personnel

(d) "Host Party" means the State on whose territory the EU Mission is located and carrying out its tasks.

(e) "Premises " means all facilities and land required for the conduct of operational, training and administrative activities of the EU Mission, as well as for the accommodation of EU Mission personnel.

ARTICLE II

Mandate obligations

[PLACEHOLDER]

ARTICLE III

Status

1. The EU Mission and the EU Mission personnel shall respect the laws and regulations of the Host Party, and shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the provisions of the present Agreement.
2. The EU Mission shall be autonomous with regard to the execution of its functions under this Agreement. The Host Party shall respect the unitary and international nature of the EU Mission.
3. The Host Party shall take all necessary measures for the protection, safety and security of the EU Mission and its personnel. Any specific provisions, proposed by the Host Party, shall be agreed with the Head of Mission before implementation.

4. The EU Mission and its personnel shall enjoy, together with its means of transport and equipment, the freedom of movement, necessary for carrying out the mandate of the Mission.
5. The personnel of the EU Mission shall/shall not carry arms.
6. The EU Mission personnel shall wear national uniform or civilian dress, with distinctive Mission identification.
7. The EU Mission shall be permitted to display the flag of the European Union on its main headquarters, and otherwise as decided by the Head of Mission. National flags or insignia of the constituent national elements of the EU Mission may be displayed on Mission buildings and premises, vehicles and uniforms, as decided by the Head of Mission.
8. Vehicles, and other means of transport of the EU Mission shall carry a distinctive Mission identification, which shall be notified to the relevant authorities.
9. The Host Party shall accept as valid, without tax or fee, licences or permits issued to EU Mission personnel.

ARTICLE IV

Privileges and immunities

With regard to the legal and political as well as security situation in the territory of the Host Party, taking into consideration, in particular, the human rights situation and the state of the judicial system in the Host Party, the EU Mission personnel will be granted one of the following status. Based on the analysis of each mission's context, this choice between situations 1, 2 or 3 will reflect an appropriate balance between the requirement to allow EU mission personnel to fulfil their mandate safely and independently, and the necessity to respect the Rule of Law in the territory of the Host Party. Bearing in mind that privileges and immunities are not to benefit individuals but to ensure the efficient performance of the EU Mission, the EU will act responsibly when deciding the appropriate degree of privileges and immunities for each mission.

1. The EU Mission shall be granted the status equivalent to that of a diplomatic mission. The EU Mission, its property, funds and assets shall be immune from any legal process.

2. Situations :

Situation 1:

The EU Mission personnel shall be granted privileges and immunities equivalent to those under section 22 of the 1946 Convention on the Privileges and immunities of the United Nations. In particular, they shall not be subject to any form of personal arrest or detention nor from seizure of their personal baggage, they shall be immune from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity and they shall enjoy inviolability for all papers and documents.²

Situation 2:

The EU Mission personnel shall be granted privileges and immunities equivalent to those under section 22 of the 1946 Convention on the Privileges and immunities of the United Nations. In particular, they shall not be subject to any form of personal arrest or detention nor from seizure of their personal baggage, they shall be immune from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity and they shall enjoy inviolability for all papers and documents³. In addition, they shall have absolute immunity from criminal jurisdiction of the Host Party.

Situation 3:

Personnel seconded to the EU Mission and international staff recruited on a contractual basis by the EU Mission and performing essential functions in the frame of the Mission, shall be granted all

² See Article 8.3.

³ See Article 8.3.

privileges and immunities equivalent to those of diplomatic agents granted under the Vienna Convention on Diplomatic Relations of 18 April 1961.

Personnel locally hired by the EU Mission to perform auxiliary functions shall be granted all privileges and immunities equivalent to those of such staff in embassies under the Vienna Convention on Diplomatic Relations of 18 April 1961.

3. Waiver of immunity :

The SG/HR shall, with the explicit consent of the competent authority of the sending State, waive the immunity enjoyed by the EU Mission personnel where such immunity would impede the course of justice and it can be waived without prejudice to the interests of the European Union.

4. Taxation

Personnel seconded to the EU Mission and international staff recruited on a contractual basis by the EU Mission who are not nationals of or permanently resident in the Host Party shall be exempt from dues and taxes in the Host Party on the emoluments and salaries they receive by reason of their employment.

Where the incidence of any form of taxation depends upon residence, periods during which such personnel seconded to the EU Mission and such international staff recruited on a contractual basis by the EU Mission are present in the Host Party for the discharge of their duties shall not be considered as periods of residence.

Personnel locally hired by the EU Mission who are nationals of or permanently resident in the Host Party shall not be exempted from taxation on the salaries and emoluments they receive in connection with this employment.

ARTICLE V

Identification

1. The Head of Mission shall issue to each member of the EU Mission, before or as soon as possible after arrival in the territory where the operation is taking place, a numbered "EU identity card" which shall show his/her full name, date of birth, title or rank, service (if appropriate) photograph, and, if possible, blood group. Such an identity card shall be the only document required for EU Mission personnel.
2. EU Mission personnel shall be required to present, but not to surrender their "EU identity card" (mentioned above in paragraph 1.) at the request of an authorised Host Party official.

ARTICLE VI

Entry and departure, transport, free and unrestricted passage

1. The EU Mission and EU Mission personnel together with their vehicles, vessels, aircraft, equipment and supplies assigned to them shall enjoy free and unrestricted passage and unimpeded access through the territory of the Host Party, including its airspace and territorial waters. This shall include, but not be limited to, the right to bivouac, manoeuvre, billet and use any areas or premises required for support, training and operations.
2. The Host Party shall facilitate the entry into and the departure from the territory of the EU Mission and EU Mission personnel. For that purpose, EU Mission personnel shall be exempt from visas and immigration regulations or any regulations applicable in the territory of the Host Party and governing the residence of aliens.
3. For the purpose of such entry and departure, EU Mission personnel shall not be required to carry more than :
 - (a) either an individual or collective movement order issued by the Head of Mission ;

(b) or a personal identity card issued in accordance with article V above.

In the case of first entry, the personal identity card issued by the appropriate authorities of the Sending State shall be accepted in lieu of the said EU identity card.

4. The Host Party shall facilitate all movements of EU Mission personnel together with vehicles, vessels, aircraft, equipment, and supplies through ports, airports or roads used.
5. The EU Mission shall be exempted from providing inventories or other customs documentation on its personnel and their vehicles, vessels, aircraft, equipment and supplies when entering, exiting or transiting the territory of the Host Party in support of the EU Mission.
6. Vehicles, vessels and aircraft used in support of the operation shall not be subject to local licensing or registration requirements. Relevant international standards and regulations shall continue to apply.

ARTICLE VII

Premises

1. The Host Party shall make available, free of charge, tax or duty, such premises as are required for the conduct of the operational and administrative activities of the EU Mission.
2. These premises shall be inviolable and subject to the exclusive control and authority of the EU Mission. The Head of Mission may consent to the entry to such premises of any official of the Host Party or of any other person who is not a member of the EU Mission.
3. The Host Party shall assist the EU Mission in obtaining premises and making available water and electricity for these premises at the most favourable rate. In the event of an interruption of service, the Host Party shall give the same priority to the needs of the EU Mission as to essential services.

4. The EU Mission shall have the right, where necessary, to generate, transmit and distribute, within its premises, electricity for its own use.
5. The EU Mission shall have the right, in the conduct of the operation, to make improvements or modifications to certain infrastructure of the territory of the Host Party. Any such improvements or modifications of a non-temporary nature shall become part of that infrastructure and belong to its owner.

ARTICLE VIII

Claims

If situation 3 foreseen within Article IV applies, paragraph 1 should be applied.

1. Any dispute or claim of a civil law character to which the EU Mission or any member thereof is a party and over which the courts of the Host Party do not have jurisdiction because of any provision of the present Agreement, shall be submitted through the authorities of the Host Party to the Head of Mission and shall be dealt with by separate arrangement whereby procedures for settling claims and for addressing claims shall be established.

If situation 1 or 2 foreseen within Article IV applies, paragraph 2 should be applied.

2. If any civil proceedings are instituted against EU Mission personnel before any court of the Host Party, the Head of Mission shall be notified immediately, and he shall certify to the court whether or not the proceeding is related to the official duties of such Mission personnel :

- a) If the Head of Mission certifies that the proceeding is related to official duties, such proceeding shall be discontinued;

b) If the Head of Mission certifies that the proceeding is not related to official duties, the proceeding may continue. If the Head of Mission certifies that a member of the EU Mission is unable because of official duties or authorised absence to protect his interests in the proceeding, the court shall at the defendant's request suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of the EU Mission that is certified by the Head of Mission to be needed by the defendant for the fulfilment of its official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of the EU Mission shall not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

ARTICLE IX

Supplies and services

1. The Host Party shall make available to the EU Mission, to the maximum extent, and whenever possible free of charge, supplies, such as food and fuel, vehicles and other equipment, as well as other goods and services required for its subsistence and operations.
2. Where appropriate, the EU Mission shall formulate, in consultation with the Host Party, measures that respect international standards in waste management and disposal.
3. The EU Mission and the Host Party shall co-operate with respect to local medical services, both civilian and military. With regard to access to medical services, EU Mission personnel shall be granted the same rights/benefits as nationals of the Host Party.

ARTICLE X

Deceased members

1. The Head of Mission shall have the right in consultation with the Sending Party concerned to take preliminary measures with respect to the body of a member of the EU Mission, not national

or permanently resident in the Host Party, who dies in the territory of the Host Party, as well as that person's property located in that territory pending removal to the Sending State.

2. Autopsies shall not be performed on deceased members of the EU Mission, who are not nationals or permanently resident in the Host Party, without the agreement of the Sending State concerned and the presence of a representative of the EU Mission and/or the Sending State concerned.

ARTICLE XI

Currency

1. The Host Party shall make available against reimbursement in mutually accepted currency, local currency required for the use of the EU Mission, including the pay of its personnel, at the most favourable rate of exchange.
2. The EU Mission shall have the right to open, manage and close bank accounts in EURO and in the local currency in the Host Party.

ARTICLE XII

Communications

The Host Party shall recognise that the use of communications channels is necessary for the EU Mission. The EU Mission shall be allowed to operate its own internal mail and telecommunications services, including broadcast services, and shall be free to use crypto equipment. This shall include the right to utilise such means and services as required to ensure a complete communication capability, and the right to use the necessary electromagnetic spectrum for this purpose, free of charge.

ARTICLE XIII

Supplementary arrangements

1. The Head of Mission and the administrative authorities of the Host Party may conclude such supplementary arrangements as may be necessary to implement the present Agreement.
2. In case of inconsistencies between such arrangements and the provisions of this Agreement, this Agreement shall prevail.

ARTICLE XIV

Liaison

The Head of Mission and the Host Party shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

ARTICLE XV

Disputes

All differences between the Participating Parties arising out of the interpretation or application of the present Agreement shall, unless otherwise agreed, be settled through diplomatic channels between the Participating Parties.

FINAL PROVISIONS

ARTICLE XVI

Responsibility of the Host Party

Whenever the present Agreement refers to the privileges, immunities and rights of the EU Mission and of its personnel, the Host Party shall be responsible for the implementation and fulfilment of such privileges, immunities and rights by the appropriate local authorities of the Host Party.

ARTICLE XVII

Entry into force

1. This Agreement shall enter into force/come into effect on the day after the deposit of the last declaration by the Participating States that their requisite internal procedures have been completed. It shall remain in force for the duration of the mandate of the EU Mission.
2. The provisions of this Agreement will be applied from the day of entry of the EU Mission into the territory of the Host Party.
3. The Participating Parties to the present Agreement may propose amendments to any of its provisions. Any such amendment shall enter into force when the requisite internal procedures of the Participating Parties have been completed for this purpose.

Done in (place)....., on (date), in the
language(s) in two copies, each linguistic version being equally authentic.

For the
European Union

For the
Host Party