

**National Interest Analysis  
[2015] ATNIA 8  
with attachment on consultation**

**AGREEMENT  
BETWEEN AUSTRALIA AND THE EUROPEAN UNION  
ESTABLISHING A FRAMEWORK  
FOR THE PARTICIPATION OF AUSTRALIA  
IN EUROPEAN UNION CRISIS MANAGEMENT OPERATIONS**

**done at Brussels on 22 April 2015**

**[2015] ATNIF 17**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### AGREEMENT BETWEEN AUSTRALIA AND THE EUROPEAN UNION ESTABLISHING A FRAMEWORK FOR THE PARTICIPATION OF AUSTRALIA IN EUROPEAN UNION CRISIS MANAGEMENT OPERATIONS

done at Brussels on 22 April 2015

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#### Nature and timing of proposed treaty action

1. The proposed treaty action will bring into force the *Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations*, done at Brussels on 22 April 2015 ('the proposed Agreement').
2. Pursuant to **Article 15(1)**, the proposed Agreement will enter into force on the first day of the first month after the date on which Australia and the European Union (EU) have notified each other in writing of the completion of the internal procedures necessary for this purpose. The Government will provide its notification to the EU under **Article 15 (1)** as soon as practicable following tabling and consideration by JSCOT. It is anticipated that the EU will provide its notification to Australia in late 2015.

#### Overview and national interest summary

3. The proposed Agreement will provide a legal framework to facilitate the participation of Australian personnel in international crisis management operations organised and led by the EU. It will remove the need to negotiate an ad-hoc agreement with the EU on each occasion Australia chooses whether to accept an EU invitation to participate in a crisis response. The Agreement will enable Australia to deploy quickly to an EU operation in a crisis. The EU has similar agreements with the United States, Canada and New Zealand.
4. EU crisis management operations may be civilian or military in nature and may focus on supporting military, police, judicial and customs reforms, peacebuilding, capacity building and post-conflict recovery in countries experiencing crisis situations. EU crisis management operations may be deployed to facilitate agreements ending hostilities, ensure compliance with those agreements and help ensure the security of civilians, refugees, humanitarian workers and United Nations (UN) personnel. The EU is currently (as at May 2015) responsible for sixteen (16) such operations including in Afghanistan (policing), Somalia (counter-piracy) and Ukraine (civilian security sector reform).
5. One example of cooperation in crisis management between Australia and the EU arises out of the deployment of an Australian Civilian Corps legal expert (under the auspices of the

*Australian Civilian Corps Act 2011* (Cth)) to the EU's maritime security capacity building mission for the Horn of Africa from September 2014 for an initial twelve (12) months. This reflects Australia's long-standing interest in supporting the development of maritime security in countries of the Indian Ocean region, including in counter-piracy and maritime governance. The deployment was effected by an ad-hoc exchange of letters between the EU and Australia.

6. The proposed Agreement will facilitate future Australian crisis management deployments to the EU by removing the need for negotiation of arrangements each time Australia seeks to make a contribution to such EU operations.
7. Australia has an interest in being able to make timely contributions to crisis management operations undertaken by our international partners. Events in recent years demonstrate the value of Australian and EU cooperation in responding to international crises, such as our participation in the Libya Contact Group in 2011. Australia and the EU have made concurrent contributions to peacekeeping and peace-building operations in Afghanistan and South Sudan, reflecting the overlapping nature of our international peace and security interests. The proposed Agreement would add a new dimension to the Australia-EU strategic relationship.
8. The proposed Agreement does not oblige Australia to participate in EU crisis management operations; any decision to participate would be made by Australia, at the invitation of the EU, on a case-by-case basis. Australia and the EU will continue to engage in political consultations on potential crisis situations in their mutual interest. Australia may, in consultation with the EU, decide the nature and timing of its contribution and may withdraw, fully or in part, at any time, on its own initiative or at the request of the EU.

#### **Reasons for Australia to take the proposed treaty action**

9. Australia and the EU share a strong commitment to international peace and security and a desire to facilitate reconstruction and stabilisation through cooperation and burden sharing in crisis management operations. Australia has contributed to peacekeeping and crisis management operations in many parts of the world. The proposed Agreement would widen the opportunity for Australia to make such contributions – especially for operations in which Australian participation would otherwise be difficult, either because of the absence of alternative multinational operations (such as a UN operation), or because the operations are in regions where the Australian footprint is light (such as Sub-Saharan Africa). The proposed Agreement would be an important element in the Australia-EU bilateral relationship, strengthening the already broad-based cooperation on security and development matters.

#### **Obligations**

10. Obligations under the proposed Agreement will only arise if Australia accepts an EU invitation to contribute to a specific crisis management operation. Where Australia accepts such an invitation, the proposed Agreement sets out Australia's obligations as follows:
  - (a) preparation of personnel for involvement in an EU crisis management operation (**Article 5(2)**);
  - (b) the place of Australian personnel within EU crisis management operations' chain of command (**Articles 6 and 10**); and
  - (c) arrangements for privileges and immunities that will apply to Australian personnel (**Article 3**).

In terms of the day-to-day management of the operation, Australia would have the same rights and obligations as any contributing EU Member State (**Article 10(4)**).

11. The proposed Agreement also obliges Australia to inform, in due time, relevant EU operation leaders of any change to its contribution to an EU crisis management operation (**Article 9(2)**).
12. Under the proposed Agreement, where Australia decides to contribute to an EU crisis management operation, Australia is required to provide the EU with information on its proposed contribution, including information on the composition of any contingent of Australian personnel. Such personnel may include military forces, Australian Government employees and other persons engaged to work on behalf of Australia (**Article 1(3)**).
13. Under **Articles 6(3) and 10(3)** of the proposed Agreement, Australia must seek to ensure that any Australian personnel who contribute to a civilian or military operation carry out their duties and conduct themselves in full conformity with the objectives of the operation, under the supervisory authority and direction of the Head of Mission or Operation Commander. Under **Article 2 (1)**, Australia is also required to respect the terms of the Council of the EU Decision to conduct the operation and with any EU Council Decision extending the operation.
14. Under **Article 3(5)** of the proposed Agreement, Australia is also be responsible for responding to any claims linked to its participation in an EU crisis management operation, from or concerning any Australian personnel, in accordance with Australian law.

#### *Supervision and command*

15. **Section II** of the proposed Agreement relates to civilian operations and **Section III** to military operations. While the effect of these Sections is very similar, they differ in describing the chain of command, particularly the leader of the operation, namely, the Head of Mission for a civilian activity and the Operation Commander for a military activity.
16. Any personnel contributed to a *military mission* will remain under the full command of Australia, but under the operational command of the EU Operation Commander (**Article 10 (1)-(2)**). Personnel contributed to a *civilian operation* will operate under the overall authority of Australia (or in the case of military personnel, will operate under the overall command of Australia), but the Head of Mission exercises ‘supervisory authority’ (**Article 6 (1)-(2)**).
17. Under **Articles 6 (6) and 10(6)** of the proposed Agreement, Australia will be responsible for taking any action, including legal or disciplinary action, against any of its personnel in accordance with its laws, regulations and policies .

#### *Status of personnel*

18. Under **Article 3(1)** of the proposed Agreement, the status of Australian personnel contributed to an EU crisis management operation, including any privileges and immunities they enjoy, will be governed by the any agreement or arrangement entered into by the Parties on the status of the forces or mission concluded between the EU and the State(s) in which the operation is conducted. If no such agreement or arrangement is concluded at the time Australia decides to participate in the EU operation, Australia will be afforded the opportunity to examine the proposed draft agreement or arrangement prior to its conclusion (**Article 3(2)**). In this regard, it should be noted that **Article 13** contemplates that the Parties may enter into any necessary technical, logistic or administrative arrangements for the implementation of the Agreement.

#### **Implementation**

19. No new Australian legislation or policy changes are required to implement the obligations under the proposed Agreement in Australian domestic law. Any necessary technical, logistic or

administrative arrangements required to implement an Australian contribution under the proposed Agreement (as contemplated by **Article 13**) would be negotiated and concluded on a case-by-case basis between the EU and Australian competent authorities.

### **Costs**

20. The proposed Agreement requires Australia to assume all costs associated with its participation in an EU crisis management operation, apart from running costs, as set out in the operational budget of the operation (**Articles 7 and 11**).
21. Under **Article 8** (1 - 2) of the proposed Agreement, Australia's contribution to the operational budget for EU *civilian operations* would be the lower of either: the proportion of Australia's Gross National Income ('GNI') compared to the total GNI of all countries participating; or the proportion of the number of Australian personnel being contributed to the operation compared to the total number of personnel contributed to the operation.
22. Conversely, under **Articles 8** (3) and **12**(3) of the proposed Agreement, Australia's contribution to the operational budget for EU *military operations* is calculated on a similar basis to civilian operations, but contains adjustments where Australia contributes personnel only to the Operation or Force Headquarters (**Article 12**(1) and (2)).
23. The proposed Agreement also provides, however, for the EU to exempt Australia from contributions to the operational budget altogether, if the EU decides that Australia's participation is providing a 'significant contribution'.
24. There are no fixed costs associated with the Agreement. Costs will only be incurred if Australia accepts an EU invitation to participate in a crisis management operation. Any such costs will be borne by the relevant Australian Government agency from which the contributed personnel to the EU operation are drawn, or allocated under other arrangements as appropriate (for example, as a charge against the foreign aid budget or the Defence budget).

### **Regulation Impact Statement (RIS)**

25. The Department of Foreign Affairs and Trade has consulted the Office of Best Practice Regulation, which has advised that a Regulation Impact Statement is not required.

### **Future treaty action**

26. The proposed Agreement can be reviewed at the request of either Party (**Article 15**(2)) and may be amended by mutual written agreement between the Parties (**Article 15**(3)). Any future amendments to the proposed Agreement will be subject to Australia's domestic treaty-making process.

### **Withdrawal or denunciation**

27. Under **Article 15**(1), the proposed Agreement will enter into force on the first day of the first month after the Parties have notified each other in writing of the completion of the internal procedures necessary for this purpose.
28. The proposed Agreement does not contain any termination or withdrawal provisions, but under **Article 15**(4), it may be denounced by either Party. Any such denunciation would take effect six (6) months after receipt of a Party's notification of the denunciation. Any future denunciation of

the Agreement will not affect any right, obligation or legal situation of the Parties created by execution of the proposed Agreement (or an implementing arrangement under **Article 13**) prior to such denunciation.

**Contact details**

European Union Section  
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Department of Foreign Affairs and Trade

## ATTACHMENT ON CONSULTATION

*Agreement between Australia and the European Union establishing a framework for the participation of Australia in European Union Crisis Management Operations*

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### CONSULTATION

29. The States and Territories have been notified of, and kept informed of progress regarding, the proposed Agreement through the Standing Committee on Treaties (SCOT) biannual schedule of treaty actions under negotiation, consideration and review. The proposed Agreement was first listed on the schedule in March 2012, for the first SCOT meeting following the announcement of the decision to negotiate the proposed Agreement on 31 October 2011. It was listed for each subsequent SCOT meeting, most recently for the meeting held on 25 November 2014. No comments were received from States or Territories. The proposed Agreement is not likely to have an impact on the States or Territories and does not require State or Territory cooperation for its domestic implementation.
30. The Department of Foreign Affairs and Trade, the Attorney-General's Department, the Department of Defence, the Australian Federal Police and the former Australian Agency for International Development were all actively involved in negotiating the proposed Agreement.