

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

AUSTRALIA,

and

THE EUROPEAN UNION (hereinafter "EU")

hereinafter referred to as the "Parties",

Whereas:

- (1) The EU may decide to take action in the field of crisis management.
- (2) 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 and the EU will continue to engage in political consultations on potential crisis situations in their mutual interest.
- (3) Conditions regarding the participation of Australia in EU crisis management operations should be laid down in an agreement establishing a framework for such possible future participation.

- (4) This Agreement should be without prejudice to the decision-making autonomy of the EU and should not prejudge the case-by-case nature of any decision by Australia to participate in an EU crisis management operation.

- (5) This Agreement should only address future EU crisis management operations and should be without prejudice to any existing agreements or arrangements regulating the participation of Australia in an EU crisis management operation that has already been deployed,

HAVE AGREED AS FOLLOWS:

SECTION I
GENERAL PROVISIONS

ARTICLE 1

Decisions relating to participation

1. Following a decision of the EU to invite Australia to participate in an EU crisis management operation, the EU shall exchange all relevant information and assessments related to that operation with a view to facilitating Australia's consideration of the EU's invitation.

2. The EU shall provide Australia with an early indication of the likely Australian contribution to the common costs or to the costs as set out in the operational budget, in accordance with Articles 8 and 12, with a view to assisting Australia in the formulation of any proposed contribution.

3. Once Australia has decided to propose a contribution, Australia shall determine and provide information on its proposed contribution to the EU, including on the composition of any contingent of Australian personnel. For the purpose of this Agreement, Australian personnel shall include military forces, Australian Government employees and other persons engaged to work on behalf of Australia.

4. The EU shall assess Australia's contribution in consultation with Australia. Australia may choose to revise its proposed contribution at any time during the consultation and assessment process.

5. The EU shall communicate the outcome of its assessment and decision on Australia's proposed contribution to Australia in writing with a view to securing the participation of Australia in accordance with the provisions of this Agreement.

6. Australia may, on its own initiative or at the request of the EU, and following consultations between the Parties, withdraw wholly or in part at any time, from participation in an EU crisis management operation.

ARTICLE 2

Framework

1. When participating in an EU crisis management operation, Australia shall respect the terms of the Council Decision by which the Council of the EU decides that the EU will conduct the crisis management operation, and with any other Decision by which the Council of the EU decides to extend the EU crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.
2. Where the Parties have decided that Australia will participate in an EU crisis management operation, the EU shall discuss with Australia all relevant aspects of the conduct of that operation, including as further set out in Articles 6(6) and 10(6).
3. The participation of Australia in an EU crisis management operation shall be without prejudice to the decision-making autonomy of the EU.
4. The decision to end the crisis management operation shall be taken by the EU, in consultation with Australia, if it is still contributing to the EU crisis management operation at the date of termination of the operation.

ARTICLE 3

Status of Australian personnel

1. The status of Australian personnel contributed to an EU crisis management operation, including any privileges and immunities they enjoy, shall be governed by the agreement or arrangement on the status of forces/mission concluded between the EU and the State(s) in which the operation is conducted, provided that Australia has been afforded an opportunity to examine the agreement or arrangement prior to deciding to participate in the operation.
2. If no such agreement or arrangement has been concluded at the time Australia decides to participate in the EU crisis management operation, the EU shall provide Australia an opportunity to examine the draft agreement or arrangement prior to its conclusion.
3. The status of Australian personnel serving in headquarters or command elements located outside the State(s) where the EU crisis management operation is being conducted shall be governed, as appropriate, by arrangements determined between the headquarters and command elements or the State(s) concerned and Australia.
4. Without prejudice to paragraphs 1 and 2, Australia shall have the right to exercise jurisdiction over Australian personnel contributed to an EU crisis management operation. Where Australian personnel operate on board a vessel or aircraft of an EU Member State, the latter State may exercise jurisdiction over Australian personnel, subject to any existing agreements and in accordance with its internal laws and procedures and international law.

5. Without prejudice to paragraphs 1, 2 and 6, and subject to applicable privileges and immunities, Australia shall 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.

6. The Parties agree to waive any and all claims, other than contractual claims, against each other for damage to, loss, or destruction of assets owned or operated by either Party, or injury or death to personnel of either Party, arising out of the performance of their official duties in connection with activities under this Agreement, except in the case of gross negligence or wilful misconduct.

7. Australia undertakes to make a declaration on a reciprocal basis as regards the waiver of claims against any EU Member State participating in any future EU crisis management operation in which Australia participates, in accordance with the model declaration attached to this Agreement, and to do so when signing this Agreement.

8. The EU undertakes to ensure that each EU Member State, acting collectively, makes a declaration as regards the waiver of claims against Australia participating in any future EU crisis management operation, in accordance with the model declaration attached to this Agreement, and to do so when signing this Agreement.

ARTICLE 4

Classified information

1. The Agreement between Australia and the European Union on the Security of Classified Information, done at Brussels on 13 January 2010, shall apply in the context of EU crisis management operations.
2. Notwithstanding paragraph 1, classified information relevant to a crisis management operation may be exchanged directly between the chain of command of the EU crisis management operation and Australian personnel in the field or at headquarters pursuant to internal orders and arrangements concluded at the operational level.

SECTION II

PROVISIONS ON PARTICIPATION IN CIVILIAN CRISIS MANAGEMENT OPERATIONS

ARTICLE 5

Personnel contributed to an EU civilian crisis management operation

1. Australia:
 - (a) shall seek to ensure, by means of specific instructions, that Australian personnel contributed to an EU civilian crisis management operation undertake their mission in a manner consistent with, and fully supportive of:
 - (i) Council Decisions as referred to in Article 2(1);
 - (ii) the Operation Plan; and
 - (iii) any related implementing measures;

(b) shall inform in due time the EU civilian crisis management operation Head of Mission (hereinafter "Head of Mission") and the High Representative of the Union for Foreign Affairs and Security Policy of any change to its contribution to the EU civilian crisis management operation.

2. Australian personnel contributing to an EU civilian crisis management operation shall undergo a medical examination, vaccination as may be deemed necessary by the competent Australian authority, and be certified medically fit for duty by the competent Australian authority. Australian personnel contributing to an EU civilian crisis management operation shall produce a copy of that certification to the competent EU authority.

ARTICLE 6

Chain of command

1. Australian personnel contributing to an EU civilian crisis management operation shall remain under the overall authority or, in the case of military personnel, full command of Australia.

2. The Head of Mission shall lead the EU civilian crisis management operation and assume its day-to-day management. Without prejudice to paragraph 1, during the period of deployment, the Head of Mission shall exercise supervisory authority and direct the activities of all Australian personnel contributed to the EU civilian crisis management operation.

3. Australia shall seek to ensure, by means of specific instructions, that Australian personnel contributed to the EU civilian crisis management operation carry out their duties and conduct themselves in full conformity with the objectives of the operation and under the supervisory authority and direction of the Head of Mission.

4. Australia shall have the same rights and obligations in terms of the day-to-day management of the EU civilian crisis management operation as EU Member States taking part in the operation.

5. The Head of Mission, in accordance with the relevant Council Decision, shall be responsible for disciplinary control over personnel participating in an EU civilian crisis management operation. Australia shall be responsible for taking any action, including legal or disciplinary, against any of its personnel in accordance with its laws, regulations and policies.

6. A National Contingent Point of Contact (hereinafter "NPC") shall be appointed by Australia to represent its national contingent in the EU civilian crisis management operation. The NPC shall consult with the Head of Mission on all matters affecting the operation and shall be responsible for the day-to-day discipline of Australian personnel.

7. The Head of Mission may, in consultation with Australia, at any time request the withdrawal of Australia's contribution.

ARTICLE 7

Financial aspects

Without prejudice to Article 8, Australia shall assume all the costs associated with its participation in an EU civilian crisis management operation apart from the running costs as set out in the operational budget of the operation.

ARTICLE 8

Contribution to the operational budget

1. Subject to paragraph 3, Australia shall contribute to the financing of the operational budget of an EU civilian crisis management operation in which Australia is participating.

2. Any financial contribution by Australia to the operational budget of the EU civilian crisis management operation shall be the lower amount of the following two alternatives:

- (a) the share of the reference amount determined by the Council of the EU for the operational budget which is in proportion to the ratio of Australia's official Gross National Income (hereinafter "GNI") to the total GNI of all States contributing to the operational budget of the operation; or
- (b) the share of the reference amount for the operational budget which is in proportion to the ratio of the number of Australian personnel contributed to the operation to the total number of personnel of all States participating in the operation.

3. Notwithstanding paragraph 1, the EU shall exempt Australia from financial contributions to the operational budget of an EU civilian crisis management operation where the EU decides that Australia's participation in the operation is providing a significant contribution.

4. Any arrangement on the payment of the contributions by Australia to the operational budget of the EU civilian crisis management operation shall be concluded between the Head of Mission and the competent Australian authority. This arrangement shall include provisions on:

- (a) the amount of the financial contribution concerned;
- (b) the arrangements for payment of the financial contribution; and
- (c) the auditing procedure.

5. Notwithstanding paragraphs 1 and 2, Australia shall not make any contribution towards the financing of per diem allowances paid to personnel of EU Member States.

SECTION III

PROVISIONS ON PARTICIPATION IN MILITARY CRISIS MANAGEMENT OPERATIONS

ARTICLE 9

Participation in an EU military crisis management operation

1. Australia shall seek to ensure, by means of specific instructions, that Australian personnel contributed to an EU military crisis management operation undertake their mission in a manner consistent with, and fully supportive of:
 - (a) Council Decisions as referred to in Article 2(1);
 - (b) the Operation Plan; and
 - (c) any related implementing measures.

2. Australia shall inform in due time the EU Operation Commander of any change to its contribution to the EU military crisis management operation.

ARTICLE 10

Chain of command

1. Australian personnel contributing to an EU military crisis management operation shall remain under the full command or, in the case of civilian personnel, overall authority of Australia.
2. During the period of deployment, the EU Operation Commander, who may delegate his authority, shall exercise operational command of Australian personnel contributed to the EU military crisis management operation.
3. Australia shall seek to ensure, by means of specific instructions, that Australian personnel contributed to the EU military crisis management operation carry out their duties and conduct themselves in full conformity with the objectives of the operation and under the supervisory authority and direction of the EU Operation Commander.
4. Australia shall have the same rights and obligations in terms of the day-to-day management of the EU military crisis management operation as EU Member States taking part in the operation.
5. The EU Operation Commander may, in consultation with Australia, at any time request the withdrawal of Australia's contribution.

6. A Senior Military Representative (hereinafter "SMR") shall be appointed by Australia to represent its national contingent in the EU military crisis management operation. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for the day-to-day discipline of Australian personnel. Australia shall be responsible for taking any action, including legal or disciplinary, against any of its personnel in accordance with its laws, regulations and policies.

ARTICLE 11

Financial aspects

Without prejudice to Article 12 of this Agreement, Australia shall assume all the costs associated with its participation in an EU military crisis management operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 2(1) of this Agreement, as well as in Council Decision 2011/871/CFSP of 19 December 2011 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena)¹, or in any subsequent related Decisions.

¹ OJ EU L 343, 23.12.2011, p. 35.

ARTICLE 12

Contribution to the common costs

1. Subject to paragraph 3, Australia shall contribute to the financing of the common costs of an EU military crisis management operation in which Australia is participating.
2. Any financial contribution by Australia to the common costs of an EU military crisis management operation shall be the lower amount of the following two alternatives:
 - (a) the share of the common costs which is in proportion to the ratio of Australia's GNI to the total GNIs of all States contributing to the common costs of the operation; or
 - (b) the share of the common costs which is in proportion to the ratio of the number of Australian personnel contributed to the operation to the total number of personnel of all States participating in the operation.

In calculating the share referred to in point (b) of the first subparagraph, where Australia contributes personnel only to the Operation or Force Headquarters, the ratio used shall be that of Australian personnel to that of the total number of the respective headquarters personnel. In other cases, the ratio shall be that of all Australian personnel contributed to the EU military crisis management operation to that of the total personnel of the operation.

3. Notwithstanding paragraph 1, the EU shall exempt Australia from financial contributions to the common costs of an EU military crisis management operation when the EU decides that Australia is providing a significant contribution.

4. Any arrangement on the payment of any contributions by Australia to common costs shall be concluded between the administrator provided for in Decision 2011/871/CFSP or in any subsequent related Decisions, and the competent Australian authority. This arrangement shall include provisions on:

- (a) the amount of the financial contribution concerned;
- (b) the arrangements for payment of the financial contribution; and
- (c) the auditing procedure.

SECTION IV

FINAL PROVISIONS

ARTICLE 13

Arrangements to implement the Agreement

Without prejudice to Articles 8(4) and 12(4), any necessary technical, logistic or administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the competent EU authority and the competent Australian authority.

ARTICLE 14

Dispute settlement

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

ARTICLE 15

Entry into force and termination

1. This Agreement shall 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.
2. This Agreement shall be reviewed upon the request of either Party.
3. This Agreement may be amended on the basis of mutual written agreement between the Parties. Any amendment agreed between the Parties shall enter into force in accordance with paragraph 1.
4. This Agreement may be denounced by either Party by written notice of denunciation given to the other Party. Such denunciation shall take effect six months after receipt of notification by the other Party.

5. Denunciation of this Agreement in accordance with paragraph 4 does not affect any right, obligation or legal situation of the Parties created through the execution of the Agreement prior to its denunciation, including in relation to any technical, financial or administrative matters, immunities and claims.

IN WITNESS WHEREOF, the undersigned, respectively duly authorised, have signed this Agreement.

Done at Brussels, on the twenty-second day of April in the year two thousand and fifteen, in two copies, each in the English language.

For Australia

For the European Union

TEXT FOR DECLARATIONS

Text for Australia:

"Australia, having agreed to participate in an EU crisis management operation, will endeavour, insofar as its internal legal system so permits, to waive as far as possible any claims against any EU Member State participating in an EU crisis management operation for injury, death of its personnel, or damage to, or loss of, any assets owned by it and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by EU Member State personnel in the execution of their duties in connection with the EU crisis management operation, except in case of gross negligence or wilful misconduct, or
- arose from the use of any assets owned by EU Member States participating in the EU crisis management operation, provided that the assets were used in connection with the operation and except in the case of gross negligence or wilful misconduct by EU crisis management operation personnel using those assets."

Text for the EU Member States:

"The EU Member States applying an EU Council Decision of an EU crisis management operation in which Australia participates will endeavour insofar as their internal legal systems so permit, to waive as far as possible any claims against Australia for injury, death of their personnel, or damage to, or loss of, any assets owned by them and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by Australian personnel, contributed by Australia to an EU crisis management operation, in the execution of their duties in connection with the EU crisis management operation, except in case of gross negligence or wilful misconduct, or
 - arose from the use of any assets owned by Australia, provided that the assets were used in connection with the operation and except in the case of gross negligence or wilful misconduct by Australian personnel contributed by Australia to an EU crisis management operation, using those assets."
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