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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (CFSP) 2021/905

of 3 December 2020

on the signing and conclusion on behalf of the Union of the Agreement between the European Union and the Federal Republic of Somalia on the status of the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia) in the Federal Republic of Somalia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof, in conjunction with Article 218(5) and (6) of the Treaty on the Functioning of the European Union,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 15 February 2010, the Council adopted Decision 2010/96/CFSP ⁽¹⁾, establishing a European Union military mission to contribute to the training of Somali security forces (EUTM Somalia).
- (2) On 11 January 2013, the Prime Minister of the Transitional Federal Government of the Somali Republic, in a letter to the High Representative of the Union for Foreign Affairs and Security Policy, confirmed that ‘the rights and obligations contained in the agreement on the status of the EU-led mission Atalanta concluded on 31 December 2008 will also be applicable to EUCAP Nestor, its personnel, premises and assets’ and authorised ‘EUTM personnel to use necessary and proportionate force’, including ‘the protection of the mission personnel, its premises and assets as well as the protection of persons in the close vicinity of the personnel of the mission against acts which would endanger the life of these persons or which are likely to cause them serious bodily harm.’.
- (3) On 19 November 2018, the Council adopted Decision (CFSP) 2018/1787 ⁽²⁾, extending EUTM Somalia until 31 December 2020.
- (4) On 11 November 2019, the Council decided that negotiations should be opened with a view to the conclusion of an agreement between the Union and the Federal Republic of Somalia on the status of EUTM Somalia.
- (5) On 16 July 2020, in the context of the holistic and coordinated strategic review of common security and defence policy engagement in Somalia and the Horn of Africa, the Political and Security Committee agreed, in particular, that EUTM Somalia should be extended until 31 December 2022.
- (6) An agreement on the status of EUTM Somalia in the Federal Republic of Somalia has been negotiated between the Union and the Federal Republic of Somalia.

⁽¹⁾ Council Decision 2010/96/CFSP of 15 February 2010 on a European Union military mission to contribute to the training of Somali security forces (OJ L 44, 19.2.2010, p. 16).

⁽²⁾ Council Decision (CFSP) 2018/1787 of 19 November 2018 amending and extending Decision 2010/96/CFSP on a European Union military mission to contribute to the training of Somali security forces (OJ L 293, 20.11.2018, p. 9).

- (7) In accordance with Article 5 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and implementation of decisions and actions of the Union which have defence implications. Denmark does not participate in the implementation of this Decision and therefore does not participate in the financing of this mission.
- (8) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Federal Republic of Somalia on the status of the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia) in the Federal Republic of Somalia is hereby approved on behalf of the Union ⁽³⁾.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the Union.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 3 December 2020.

For the Council
The President
M. ROTH

⁽³⁾ See page 3 of this Official Journal.

**AGREEMENT BETWEEN THE EUROPEAN UNION AND THE FEDERAL REPUBLIC OF SOMALIA
ON THE STATUS OF THE EUROPEAN UNION MILITARY MISSION TO CONTRIBUTE TO THE
TRAINING OF SOMALI SECURITY FORCES (EUTM SOMALIA) IN THE FEDERAL REPUBLIC OF
SOMALIA**

THE EUROPEAN UNION, hereinafter referred to as 'the EU',

of the one part, and

THE FEDERAL REPUBLIC OF SOMALIA, hereinafter referred to as 'the Host State',

of the other part,

hereinafter referred to as 'the Parties',

TAKING INTO ACCOUNT:

- the letter by the Prime minister of the Federal Republic of Somalia of 11 January 2013,
- Council Decision 2010/96/CFSP of 15 February 2010 on a European Union military mission to contribute to the training of Somali security forces ⁽¹⁾,
- the fact that this Agreement does 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 applies to the EU military mission to contribute to the training of Somali security forces (EUTM Somalia) and to their personnel.
2. This Agreement applies only within the territory of the Host State.
3. For the purposes of this Agreement:
 - (a) 'EUTM Somalia' means the EU military headquarters and national contingents contributing to the mission, their equipment and their means of transport;
 - (b) 'mission' means the preparation, establishment, execution and support of EUTM Somalia;
 - (c) 'Mission Force Commander' means the Commander of EUTM Somalia in the theatre of the mission;
 - (d) 'EU military headquarters' means the military headquarters and elements thereof, whatever their location, under the authority of EU military commanders exercising the military command or control of EUTM Somalia;
 - (e) 'national contingents' means units and elements belonging to the Member States of the EU and to other States participating in EUTM Somalia;
 - (f) 'EUTM Somalia personnel' means the civilian and military personnel assigned to EUTM Somalia as well as personnel deployed for the preparation of the mission and personnel travelling for a Sending State or an EU institution in the framework of the mission, present, except as otherwise provided for in this Agreement, within the territory of the Host State, with the exception of personnel employed locally and personnel employed by international commercial contractors;
 - (g) 'personnel employed locally' means personnel who are nationals of or permanently resident in the Host State;
 - (h) 'EUTM Somalia facilities' means all premises, accommodation and land required for EUTM Somalia and EUTM Somalia personnel;
 - (i) 'Sending State' means a State providing a national contingent for EUTM Somalia.

⁽¹⁾ OJ L 44, 19.2.2010, p. 16.

*Article 2***General provisions**

1. EUTM Somalia and EUTM Somalia personnel shall respect the laws and regulations of the Host State and shall refrain from any action or activity incompatible with the objectives of the mission.
2. EUTM Somalia shall regularly inform the government of the Host State of the number of EUTM Somalia personnel stationed within the Host State's territory.

*Article 3***Identification**

1. EUTM Somalia personnel must carry passports or military identity cards with them at all times.
2. EUTM Somalia vehicles, aircraft, vessels and other means of transport shall carry distinctive EUTM Somalia identification markings and/or registration plates, of which the relevant authorities of the Host State shall be notified.
3. EUTM Somalia shall have the right to display the flag of the European Union and markings such as military insignia, titles and official symbols, on its facilities, vehicles and other means of transport. The uniforms of EUTM Somalia personnel shall carry a distinctive EUTM Somalia emblem. National flags or insignia of the constituent national contingents of the mission may be displayed on the EUTM Somalia facilities, vehicles and other means of transport and uniforms, as decided by the Mission Force Commander.

*Article 4***Border crossing and movement within the Host State's territory**

1. EUTM Somalia personnel shall enter the Host State's territory only on presentation of the documents provided for in Article 3(1) or, in the case of first entry, of an individual or collective movement order issued by EUTM Somalia. They shall be exempt from passport and visa regulations, immigration inspections and customs control on entering, leaving or within the Host State's territory.
2. EUTM Somalia personnel shall be exempt from the Host State's regulations on the registration and control of aliens, but shall not acquire any right to permanent residence or domicile within the Host State's territory.
3. EUTM Somalia assets and means of transport entering, transiting or exiting the Host State's territory in support of the mission shall be exempt from any requirement to produce inventories or other customs documentation, and from any inspection.
4. EUTM Somalia personnel may drive motor vehicles and operate aircraft within the Host State's territory provided they have valid national, international or military driving licences or pilot licences, as appropriate.
5. For the purposes of the operation, the Host State shall grant EUTM Somalia and EUTM Somalia personnel freedom of movement and freedom to travel within its territory, including its air space.
6. For the purposes of the operation, EUTM Somalia may carry out within the Host State territory, including its air space, any exercise or practice with weapons.
7. For the purposes of the operation, EUTM Somalia may use public roads, bridges, ferries and airports without the payment of duties, fees, tolls, taxes and similar charges. EUTM Somalia shall not be exempt from reasonable charges for services requested and received, under the conditions that apply to those provided for the Host State's armed forces.

*Article 5***Privileges and immunities of EUTM Somalia granted by the Host State**

1. EUTM Somalia facilities shall be inviolable. The Host State's agents shall not enter them without the consent of the Mission Force Commander.
2. EUTM Somalia facilities, their furnishings and other assets therein as well as its means of transport shall be immune from search, requisition, attachment or execution.
3. EUTM Somalia, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process.
4. EUTM Somalia's archives and documents shall be inviolable at any time, wherever they may be.
5. The official correspondence of EUTM Somalia shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.
6. In respect of purchased and imported goods, services provided and facilities used by EUTM Somalia for the purposes of the operation, EUTM Somalia, as well as those of its providers or contractors who are not nationals of the Host State, shall be exempt from all national, regional and communal dues, taxes and charges of a similar nature. EUTM Somalia shall not be exempt from dues, taxes or charges that represent payment for services rendered.
7. The Host State shall permit the entry of articles, military vehicles, military equipment and products for the mission and grant them exemption from all customs duties, fees, tolls, taxes and similar charges other than charges for storage, cartage and other services rendered.

*Article 6***Privileges and immunities of EUTM Somalia personnel granted by the Host State**

1. EUTM Somalia personnel shall not be liable to any form of arrest or detention.
2. Papers, correspondence and property of EUTM Somalia personnel shall enjoy inviolability, except in the case of measures of execution which are permitted pursuant to paragraph 6.
3. EUTM Somalia personnel shall enjoy immunity from the criminal jurisdiction of the Host State under all circumstances.

The immunity from criminal jurisdiction of EUTM Somalia personnel may be waived by the Sending State or EU institution concerned, as the case may be. Such waiver must always be express.

4. EUTM Somalia 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 EUTM Somalia personnel before any Host State court, the Mission Force Commander 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 Mission Force Commander and the competent authority of the Sending State or EU institution shall certify to the court whether the act in question was committed by EUTM Somalia personnel in the exercise of their official functions.

If the act was committed in the exercise of official functions, the proceeding shall not be initiated and the provisions of Article 15 shall apply. If the act was not committed in the exercise of official functions, the proceeding may continue. The certification by the Mission Force Commander and the competent authority of the Sending State or EU institution is binding upon the jurisdiction of the Host State, which may not contest it.

The initiation of proceedings by EUTM Somalia personnel shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

5. EUTM Somalia personnel are not obliged to give evidence as witnesses.
6. No measures of execution may be taken in respect of EUTM Somalia personnel, except in the case where a civil proceeding not related to their official functions is instituted against them. Property of EUTM Somalia personnel, which is certified by the Mission Force Commander to be necessary for the fulfilment of their official functions, shall be free from seizure for the satisfaction of a judgment, decision or order. In civil proceedings EUTM Somalia personnel shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.
7. The immunity of EUTM Somalia personnel from the jurisdiction of the Host State does not exempt them from the jurisdictions of the respective Sending States.
8. EUTM Somalia personnel shall with respect to services rendered for EUTM Somalia be exempt from social security provisions which may be in force in the Host State.
9. EUTM Somalia personnel shall be exempt from any form of taxation in the Host State on the salary and emoluments paid to them by EUTM Somalia or the Sending States, as well as on any income received from outside the Host State.
10. Members of EUTM Somalia personnel shall be subject to payment of customs duties, taxes, and related charges on articles for their personal use, with the exception of items already in their possession on entry to the Host State's territory and essential supplies. They are not exempt from payment of charges for storage, cartage and similar services for their personal use.

The personal baggage of EUTM Somalia personnel shall be exempt from inspection, unless there is serious reason to believe that it contains articles or effects that are not for the personal use of EUTM Somalia personnel, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the Host State. Such inspection shall be conducted only in the presence of the member of EUTM Somalia personnel concerned or of an authorised representative of EUTM Somalia.

Article 7

Personnel employed locally

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

Article 8

Criminal jurisdiction

The competent authorities of a Sending State shall have the right to exercise on the territory of the Host State the criminal jurisdiction and disciplinary powers conferred on them by the law of the Sending State with regard to all EUTM Somalia personnel subject to the relevant law of the Sending State.

Article 9

Uniform and arms

1. The wearing of uniform shall be subject to rules adopted by the Mission Force Commander.
2. EUTM Somalia personnel shall have the right to carry arms and ammunition, subject to an authorisation by the Mission Force Commander.

3. EUTM Somalia shall be authorised to take the necessary measures within the territory of the Host State in this context, including the use of the necessary and proportionate force, to protect EUTM Somalia personnel, to protect its premises, vehicles and assets against acts which might endanger the life of EUTM Somalia personnel or might cause them bodily harm, and, where necessary, to protect simultaneously other persons facing the same threat in close proximity to the mission against acts which would endanger the life of these persons or which are likely to cause them serious bodily harm.

4. The list of EUTM Somalia personnel designated and authorised by the Mission Force Commander to carry firearms and ammunition, including the transport of those, shall be communicated to the competent Somalian authorities.

Article 10

Host State support and contracting

1. The Host State agrees, if requested, to assist EUTM Somalia in finding suitable facilities.
2. Within its means, the Host State shall provide, free of charge, facilities of which it is the owner, in so far as such facilities are required for the conduct of EUTM Somalia's administrative and operational activities. With regard to installations owned by private legal entities, the Host State shall undertake to support, at EUTM Somalia's expense, efforts to find and make available such installations.
3. Within its means and capabilities, the Host State shall assist in the preparation, establishment, and execution of and support for the operation. The Host State's assistance and support of the mission shall be provided under the same conditions as the assistance and support given to the Host State's armed forces.
4. The law applicable to contracts concluded by EUTM Somalia in the Host State shall be determined by the contract.
5. The contract may stipulate that the dispute settlement procedure referred to in Article 15(3) and (4) shall be applicable to disputes arising from the application of the contract.
6. The Host State shall facilitate the implementation of contracts concluded by EUTM Somalia with commercial entities for the purposes of EUTM Somalia.

Article 11

Change to facilities

1. EUTM Somalia shall be authorised to construct, alter or otherwise modify facilities as requested for its operational requirements.
2. No compensation shall be requested from EUTM Somalia by the Host State for those constructions, alterations or modifications.

Article 12

Deceased EUTM Somalia personnel

1. The Mission Force Commander shall have the right to take charge of and make suitable arrangements for the repatriation of any deceased EUTM Somalia personnel, as well as that of their personal property.
2. No autopsy shall be performed on any deceased member of EUTM Somalia without the agreement of the State concerned and the presence of a representative of EUTM Somalia and/or the State concerned.
3. The Host State and EUTM Somalia shall cooperate to the fullest extent possible with a view to the early repatriation of deceased EUTM Somalia personnel.

*Article 13***Security of EUTM Somalia and military police**

1. The Host State shall take all appropriate measures to ensure the safety and security of EUTM Somalia and EUTM Somalia personnel. Any specific provisions proposed by the Host State shall be agreed with the Mission Force Commander before implementation.
2. EUTM Somalia is authorised to take the measures necessary to protect its facilities, including those used for training, against any external attack or intrusion.
3. The Mission Force Commander may establish a military police unit in order to maintain order in EUTM Somalia facilities.
4. The military police unit may also, in consultation and cooperation with the military police or the police of the Host State, act outside those facilities to ensure the maintenance of good order and discipline among EUTM Somalia personnel.

*Article 14***Communications**

1. EUTM Somalia 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. EUTM Somalia 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 EUTM Somalia facilities, including the laying of cables and land lines for the purposes of the operation.
3. Within its own facilities EUTM Somalia may make the arrangements necessary for the conveyance of mail addressed to and from EUTM Somalia and/or EUTM Somalia personnel.

*Article 15***Claims for death, injury, damage and loss**

1. EUTM Somalia and EUTM Somalia personnel shall not be liable for any damage to or loss of civilian or government property which are related to operational necessities or caused by activities in connection with civil disturbances or protection of EUTM Somalia.
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 for damage to or loss of EUTM Somalia property, shall be forwarded to EUTM Somalia via the competent authorities of the Host State, as far as claims brought by legal or natural persons from the Host State are concerned, or to the competent authorities of the Host State, as far as claims brought by EUTM Somalia are concerned.
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 EUTM Somalia 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:
 - (a) for claims up to and including EUR 40 000, be settled by diplomatic means between the Host State and EU representatives;
 - (b) for claims above the amount referred to in point (a), be submitted to an arbitration tribunal, the decisions of which shall be binding.

5. The arbitration tribunal shall be composed of three arbitrators, one arbitrator being appointed by the Host State, one arbitrator being appointed by EUTM Somalia and the third one being appointed jointly by the Host State and EUTM Somalia. 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 EUTM Somalia 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 EUTM Somalia and the administrative authorities of the Host State in order to determine the terms of reference of the claims commission and the 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 EUTM Somalia 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. Whenever this Agreement refers to the privileges, immunities and rights of EUTM Somalia and of EUTM Somalia personnel, the Government of the Host State shall be responsible for their implementation and for compliance with them on the part of the appropriate Host State local authorities.

2. Nothing in this Agreement is intended or may be construed to derogate from any rights that may attach to an EU Member State or to any other State contributing to EUTM Somalia under other agreements.

Article 18

Implementing arrangements

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

Article 19

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 EUTM Somalia element and of the last member of EUTM Somalia personnel, as notified by EUTM Somalia.

2. Notwithstanding paragraph 1, the provisions laid down in Article 4(7), Article 5(1) to (3), (6) and (7), Article 6(1), (3), (4), (6) and (8) to (10), Article 10(2), Article 11, Article 13(1) and (2) and Article 15 shall be deemed to have applied from the date on which the first EUTM Somalia personnel were deployed if that date was earlier than the date of entry into force of this Agreement.

3. This Agreement may be amended 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 Mogadishu, on 25 May 2021, in duplicate in the English language.

For the European Union

For the Federal Republic of Somalia



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