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(Information)

COUNCIL

AGREEMENT

between the Member States of the European Union concerning claims introduced by each Member State against any other Member State for damage to any property owned, used or operated by it or injury or death suffered by any military or civilian staff of its services, in the context of an EU crisis management operation

(2004/C 116/01)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION, MEETING WITHIN THE COUNCIL,

Having regard to the Treaty on European Union (TEU), and in particular Title V thereof;

Whereas:

- (1) The European Council has decided, in pursuit of the Common Foreign and Security Policy, to give the EU the capabilities required to take and implement decisions on the full range of conflict prevention and crisis management tasks referred to in Article 17(2) of the TEU.
- (2) The Agreement between the Member States of the European Union concerning the status of
 - military and civilian staff seconded to the institutions of the European Union,
 - headquarters and forces which may be available to the European Union in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises,
 - military and civilian staff of the Member States put at the disposal of the European Union to act in this context,known as the EU SOFA, is in general applicable only to the metropolitan territory of the Member States.
- (3) The provisions of Article 18 of the EU SOFA are not applicable to claims by a Member State against any other Member State for damage to any property owned by it or injury or death suffered by any military or civilian personnel of its armed services, insofar as the act causing the damage, injury or death mentioned below occurs either within the territory of third countries where the EU crisis management operation is conducted or sustained, or on the high seas.
- (4) Specific agreements (SOFA) will have to be concluded with the host third countries concerned in the case of exercises or operations taking place outside the territory of the Member States. These agreements will generally contain provisions related to claims introduced by the third countries concerned or by their nationals,

HAVE AGREED AS FOLLOWS:

Article 1

In this Agreement, the term:

1. 'military personnel' shall mean:
 - (a) military personnel seconded by the Member States to the General Secretariat of the Council in order to form the European Union Military Staff (EUMS);

- (b) military personnel, other than personnel from the EU institutions, who may be drawn upon by the EUMS from the Member States in order to provide temporary augmentation if requested by the European Union Military Committee (EUMC), for activities in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises;
 - (c) military personnel from the Member States who are seconded to the headquarters and forces which may be made available to the EU, or personnel thereof, in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises;
2. 'civilian personnel' shall mean civilian personnel seconded by the Member States to EU institutions for activities in the context of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises, or civilian personnel, with the exception of locally hired personnel, working with headquarters or forces or otherwise made available to the EU by the Member States for the same activities.

Article 2

The provisions of this Agreement shall apply only insofar as the act causing the damage, injury or death below mentioned occurs:

- in the framework of the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises and
- outside any territory to which the EU SOFA applies.

Article 3

Each Member State shall waive all its claims against any other Member State for injury or death suffered by any of its military or civilian personnel while such personnel were engaged in the performance of their official duties, except in cases of gross negligence or wilful misconduct.

Article 4

1. Each Member State shall waive all its claims against any other Member State for damage to any property owned, used or operated by it in connection with the preparation and execution of the tasks referred to in Article 17(2) of the TEU, including exercises, except in cases of gross negligence or wilful misconduct, if such damage:

- was caused by military or civilian personnel from the other Member State in the execution of their duties in connection with the aforementioned tasks, or
- arose from the use of any vehicle, vessel or aircraft owned by the other Member State or used or operated by its personnel and provided either that the vehicle, vessel or aircraft causing the damage was used in connection with the aforementioned tasks, or that the damage was caused to property being so used.

2. Claims for maritime salvage by a Member State against any other Member State shall be waived, provided that the vessel or cargo salvaged was owned by a Member State or used or operated by its personnel in connection with the aforementioned tasks.

Article 5

In cases of claims, other than those waived by virtue of Articles 3 and 4 for:

- damage to any property owned, used or operated by a Member State in connection with the preparation or execution of the tasks referred to in Article 17(2) of the TEU, including exercises,
- injury or death suffered by any personnel from a Member State while such personnel were engaged in the performance of their official duties,

the issue of the liability of any Member State shall be determined and the amount of damages shall be agreed by negotiation between the Member States concerned, unless those Member States agree otherwise.

A Member State shall waive its claim in any case where the damage is less than the amount of EUR 10 000. This amount may be amended by a Decision of the Member States meeting within the Council, acting unanimously.

Article 6

The provisions of Article 4 and 5 do not entitle a Member State to refuse to pay to a party, other than a party to this Agreement, full or partial compensation for damage caused to an asset provided by this party to one or more Member States under a rental, lease, charter or other arrangement.

Article 7

Any dispute between Member States relating to claims which cannot be resolved by negotiations between the Member States concerned shall be submitted to an arbitrator selected by agreement between the Member States concerned from among the nationals of the States concerned who hold, or have held, high judicial office. If the Member States concerned are unable within two months to agree upon an arbitrator, each Member State concerned may request the President of the Court of Justice of the European Communities to select a person with the aforesaid qualifications.

Article 8

1. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the approval of this Agreement. This Agreement shall enter into force on the first day of the second month following the notification by the last Member State of the completion of these constitutional procedures.

2. The Secretary-General of the Council of the European Union shall act as depository of this Agreement. The depository shall publish this Agreement in the Official Journal of the European Union, as well as information about its entry into force following the completion of the constitutional procedures referred to in paragraph 1.

Article 9

This Agreement is drawn up in Danish, German, English, Finnish, French, Dutch, Greek, Italian, Portuguese, Spanish and Swedish, each language being equally authentic.

Hecho en Bruselas, el veintiocho de abril del dos mil cuatro.

Udfærdiget i Bruxelles den otteogtyvende april to tusind og fire.

Geschehen zu Brüssel am achtundzwanzigsten April zweitausendvier.

Έγινε στις Βρυξέλλες, στις είκοσι οκτώ Απριλίου δύο χιλιάδες τέσσερα.

Done at Brussels on the twenty-eight day of April in the year two thousand and four.

Fait à Bruxelles, le vingt-huit avril deux mille quatre.

Fatto a Bruxelles, addì ventotto aprile duemilaquattro.

Gedaan te Brussel, de achtentwintigste april tweeduizendvier.

Feito em Bruxelas, em vinte e oito de Abril de dois mil e quatro.

Tehty Brysselissä kahdentenakymmenentenäkahdeksantena päivänä huhtikuuta vuonna kahsituhattaneljä.

Som skedde i Bryssel den tjuogoåttonde april tjugohundrafyra,

Pour le gouvernement de la République française

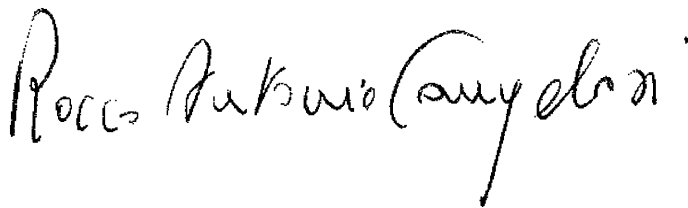


Thar ceann Rialtas na hÉireann

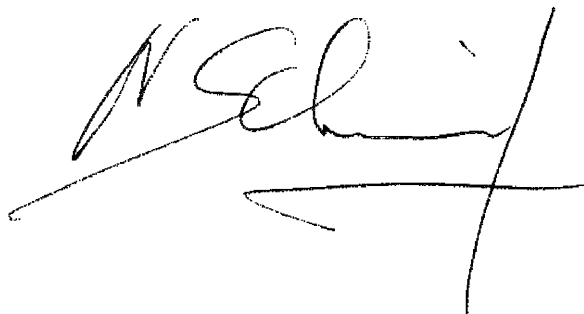
For the Government of Ireland



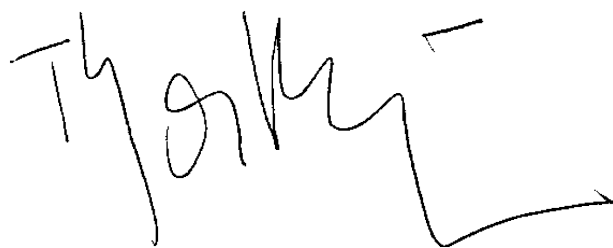
Per il Governo della Repubblica italiana



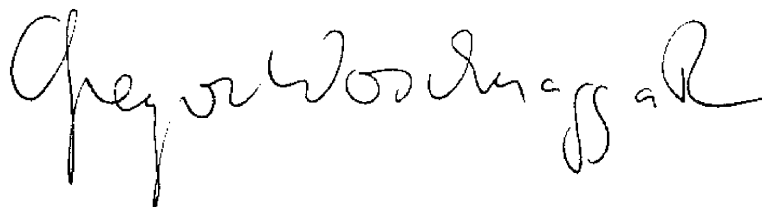
Pour le gouvernement du Grand-Duché de Luxembourg



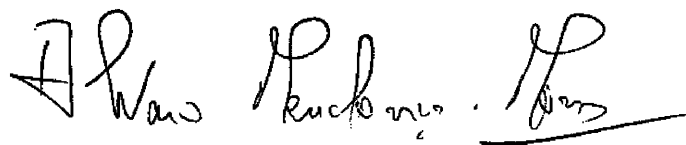
Voor de Regering van het Koninkrijk der Nederlanden



Für die Regierung der Republik Österreich



Pelo Governo da República Portuguesa



Suomen hallituksen puolesta

På finska regeringens vägnar



På svenska regeringens vägnar



For the Government of the United Kingdom of Great Britain



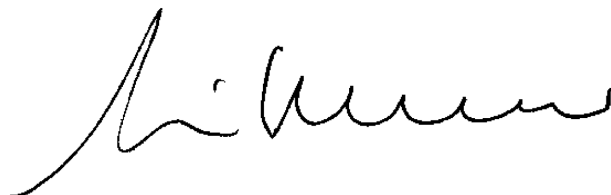
Pour le Gouvernement du Royaume de Belgique
Voor de Regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien



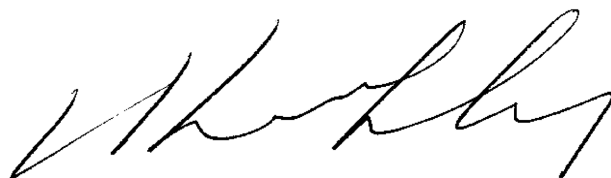
For regeringen for Kongeriget Danmark



Für die Regierung der Bundesrepublik Deutschland



Για την Κυβέρνηση της Ελληνικής Δημοκρατίας



Por el Gobierno del Reino de España



DECLARATION BY MEMBER STATES

In signing this Agreement, all Member States will endeavour, insofar as their internal legal system enables them, to limit as far as possible their claims against any other Member State for injury, death of military or civilian personnel, or damage to any assets owned, used or operated by themselves, except in cases of gross negligence or wilful misconduct.

Members States will also endeavour to fulfil as soon as possible the requirements of their own constitutional procedures in order to allow a prompt entry into force of this Agreement.
