

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2007/369/CFSP

of 30 May 2007

on establishment of the European Union Police Mission in Afghanistan

(EUPOL AFGANISTAN)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union, and in particular Article 14 and the third subparagraph of Article 25 thereof,

Whereas:

- (1) On 16 November 2005, the Council agreed on the Joint Declaration 'Committing to a new EU Afghan Partnership' which stated the commitment of the European Union (EU) and the Government of the Islamic Republic of Afghanistan (the Government of Afghanistan) 'to a secure, stable, free, prosperous and democratic Afghanistan as laid out in the Afghan Constitution adopted on 4 January 2004 (14 Dalwa 1383). Both parties wish to see Afghanistan play a full and active role in the international community and are committed to building a prosperous future free from the threats of terrorism, extremism and organised crime'.
- (2) On 31 January 2006, the Afghanistan Compact (London) was launched. This Agreement affirmed the commitment of the Government of Afghanistan and the international community and established an effective mechanism for coordinating Afghan and international efforts over the next five years to work towards conditions where the Afghan people can live in peace and security under the rule of law, with good governance and human rights protection for all, and can enjoy sustainable economic and social development.
- (3) The Afghanistan Compact supports the Afghan Government's interim National Development Strategy (i-ANDS) which lays out their vision and investment priorities. The i-ANDS reflects a process of national consultation, underpinning the benchmarks in the Afghanistan Compact and the targets set in Afghanistan's Millennium Development Goals.
- (4) On 13 October 2006 the Joint EU Assessment Mission report was presented to the Political and Security Committee (PSC), containing an analysis of the situation of the rule of law in Afghanistan as well as recommendations for a way forward to strengthen the EU's contribution to the sector in Afghanistan and to make a strategic impact. The Joint Assessment Mission report recommended, *inter alia*, that the EU could consider contributing further to support the police sector through a police mission, and that a fact finding mission could be sent to Afghanistan in order to explore further the feasibility of such a mission.
- (5) A fact-finding mission was sent to Afghanistan between 27 November and 14 December 2006. Following on from its conclusions of 11 December 2006, on 12 February 2007, the Council approved the Crisis Management Concept (CMC) for an EU police mission to Afghanistan in the field of policing with linkages to the wider rule of law and agreed that the mission would provide added value. The mission will work towards an Afghan police force in local ownership, that respects human rights and operates within the framework of the rule of law. The mission should build on current efforts, and follow a comprehensive and strategic approach, in line with the CMC. In doing so, the mission should address issues of police reform at central, regional and provincial levels.

- (6) On 23 March 2007, the United Nations Security Council adopted Resolution 1746 (2007) on the extension of UN Assistance Mission in Afghanistan's (UNAMA) mandate, which, *inter alia*, welcomes the decision by the EU to establish a police mission in the field of policing with linkages to the wider rule of law and counter-narcotics, to assist and enhance current efforts in the area of police reform at central and provincial levels, and looks forward to the early launch of the mission.
- (7) On 23 April 2007, the Council approved the Concept of Operations (CONOPS) for an EU police mission to Afghanistan (EUPOL AFGHANISTAN) with linkages to the wider rule of law.
- (8) In a letter of invitation of 16 May 2007 the Government of Afghanistan invited the EU to launch an EU police mission to Afghanistan.
- (9) The EU police mission will be set in the wider context of the international community's effort to support the Government of Afghanistan in taking responsibility for strengthening the rule of law, and in particular, in improving its civil police and law enforcement capacity. Close coordination between the EU police mission and other international actors involved in security assistance, including the International Security Assistance Force (ISAF), as well as those providing support to police and rule of law reform in Afghanistan, will be ensured.
- (10) As stated in the CONOPS, and given the need for a tangible EU commitment to police reform, and the linkage to the objectives of the Afghanistan Compact, the envisaged minimum time frame of the mission shall be three years. Owing to the unpredictability of the situation and to the need to ensure a flexible approach, and in accordance with the assessment criteria set out in the CONOPS and in the OPLAN, the size and scope of the Mission should be subject to a six-monthly review.
- (11) The mandate of the Mission will be implemented in the context of a situation which may deteriorate and could harm the objectives of the Common Foreign and Security Policy (CFSP) as set out in Article 11 of the Treaty,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mission

1. The European Union hereby establishes a European Union Police Mission to Afghanistan ('EUPOL AFGHANISTAN' or the 'Mission') for a period of three years, comprising a planning

phase beginning on 30 May 2007, and an operational phase beginning no later than 15 June 2007.

2. EUPOL AFGHANISTAN shall operate in accordance with the objectives set out in Article 3 and carry out the tasks as set out in Article 4.

Article 2

Planning Phase

1. During the planning phase of the Mission, the Head of Mission shall be assisted by a planning team comprising the necessary staff to respond to Mission preparation needs.

2. The Head of Mission, assisted by the planning team, shall draw up the Operational Plan (OPLAN) and develop all technical instruments necessary to execute EUPOL AFGHANISTAN.

3. A comprehensive risk assessment shall be carried out as a priority in the planning process and shall be updated as necessary, focussing specifically on the security risks associated with Mission activities. The OPLAN shall take into account updated risk assessments and shall include a security plan.

4. During the Planning Phase, the Head of Mission shall work closely with the EU Special Representative (EUSR) for Afghanistan, the Commission and Member States currently involved in police reform in Afghanistan.

5. The Head of Mission shall work closely and coordinate with the Government of Afghanistan and relevant international actors, as appropriate, including NATO/ISAF, Provincial Reconstruction Team (PRT) Lead Nations, the UN (United Nations Assistance Mission Afghanistan (UNAMA)), and third states currently involved in police reform in Afghanistan.

6. The Council shall approve the OPLAN.

Article 3

Objectives

EUPOL AFGHANISTAN shall significantly contribute to the establishment under Afghan ownership of sustainable and effective civilian policing arrangements, which will ensure appropriate interaction with the wider criminal justice system, in keeping with the policy advice and institution building work of the Community, Member States and other international actors. Further the Mission will support the reform process towards a trusted and efficient police service, which works in accordance with international standards, within the framework of the rule of law and respects human rights.

*Article 4***Tasks**

1. In order to fulfil the objectives set out in Article 3, EUPOL AFGHANISTAN shall:

- (a) work on strategy development, while placing an emphasis on work towards a joint overall strategy of the international community in police reform, taking into account the Afghanistan Compact and the i-ANDS;
- (b) support the Government of Afghanistan in coherently implementing their strategy;
- (c) improve cohesion and coordination among international actors; and
- (d) support linkages between the police and the wider rule of law.

These tasks will be further developed in the OPLAN.

2. EUPOL AFGHANISTAN shall be a non-executive Mission. It shall carry out its tasks through, amongst other means, monitoring, mentoring, advising and training.

3. EUPOL AFGHANISTAN shall, as appropriate, coordinate, facilitate and provide advice on projects implemented by Member States and third states under their responsibility, in areas related to the Mission and in support of its objectives.

*Article 5***Structure of the Mission**

1. The Mission will have its Head Quarters (HQ) in Kabul comprising:

- (i) the Head of Mission;
- (ii) Central Staff Advisers, including a Senior Mission Security Officer (SMSO);
- (iii) a Training Section;
- (iv) Advice and Mentoring Sections;
- (v) an Administration Department.

The Mission will include, as appropriate, a support element in Brussels.

2. Mission staff shall be deployed at the central, regional and provincial level in light of the security assessment. Technical arrangements will be sought with ISAF and Regional Command/PRT Lead Nations for information exchange, medical, security and logistical support including accommodation by Regional Commands and PRTs.

3. In addition, a number of Mission staff will be deployed to improve strategic coordination in police reform in Afghanistan, as appropriate, and in particular with the International Police Coordination Board Secretariat in Kabul.

*Article 6***Head of Mission**

1. Brigadier General Friedrich Eichele is hereby appointed Head of Mission of EUPOL AFGHANISTAN.

2. The Head of Mission shall exercise operational control over EUPOL AFGHANISTAN and assume its day-to-day management.

3. National authorities shall transfer operational control to the Head of Mission of EUPOL AFGHANISTAN.

4. The Head of Mission shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary action shall be exercised by the national or EU authority concerned.

5. For the purpose of implementing the Mission's budget, the Head of Mission shall sign a contract with the Commission.

6. The Head of Mission shall work closely with the EUSR.

7. The Head of Mission shall ensure that EUPOL AFGHANISTAN works closely and coordinates with the Government of Afghanistan and relevant international actors, as appropriate, including NATO/ISAF, Provincial Reconstruction Team (PRT) Lead Nations, the UN (United Nations Assistance Mission Afghanistan (UNAMA)), and third states currently involved in police reform in Afghanistan.

8. The Head of Mission shall ensure appropriate visibility of the Mission.

*Article 7***Staff**

1. The numbers and competence of EUPOL AFGHANISTAN staff shall be consistent with the objectives set out in Article 3, the tasks set out in Article 4 and the structure of the Mission set out in Article 5.

2. EUPOL AFGHANISTAN shall consist primarily of staff seconded by Member States or EU institutions.

3. Each Member State or EU institution shall bear the costs related to any of the staff seconded by it, including travel expenses to and from the place of deployment, salaries, medical coverage, and allowances, other than applicable per diems as well as hardship and risk allowances.

4. EUPOL AFGHANISTAN may also recruit international and local staff on a contractual basis as required.

5. All staff shall remain under the authority of the appropriate sending state or EU institution and shall carry out their duties and act in the interest of the Mission. All staff shall respect the security principles and minimum standards established by Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations ⁽¹⁾.

Article 8

Status of EUPOL AFGHANISTAN staff

1. The status of EUPOL AFGHANISTAN staff in Afghanistan, including, where appropriate the privileges, immunities and further guarantees necessary for the completion and smooth functioning of EUPOL AFGHANISTAN shall be laid down in an Agreement to be concluded in accordance with Article 24 of the Treaty. The Secretary-General/High Representative (SG/HR) assisting the Presidency may negotiate such arrangements on its behalf.

2. The State or EU institution having seconded a member of staff shall be responsible for answering any claims linked to the secondment, from or concerning the member of staff. The state or EU institution in question shall be responsible for bringing any action against the person seconded.

3. The conditions of employment and the rights and obligations of international and local civilian staff shall be laid down in contracts between the Head of Mission and the members of staff.

Article 9

Chain of Command

1. EUPOL AFGHANISTAN shall have a unified chain of command, as a crisis management operation.

2. The PSC shall exercise political control and strategic direction.

3. The SG/HR shall give guidance to the Head of Mission through the EUSR.

4. The Head of Mission will lead the Mission and assume its day-to-day management.

5. The Head of Mission will report to the SG/HR through the EUSR.

6. The EUSR will report to the Council through the SG/HR.

Article 10

Political control and strategic direction

1. The PSC shall exercise, under the responsibility of the Council, the political control and strategic direction of the Mission. The Council hereby authorises the PSC to take the relevant decisions in accordance with Article 25 of the Treaty. This authorisation shall include the power to amend the OPLAN and the chain of command. It shall also include powers to take subsequent decisions regarding the appointment of the Head of Mission. The Council, assisted by the SG/HR, shall decide on the objectives and termination of the Mission.

2. The PSC shall report to the Council at regular intervals.

3. The PSC shall receive reports by the Head of Mission at regular intervals. The PSC may invite the Head of Mission to its meetings, as appropriate.

Article 11

Security

1. The Head of Mission is responsible for the security of EUPOL AFGHANISTAN and shall exercise this responsibility in compliance with the EU's policy on the security of EU staff deployed outside the EU in an operational capacity under Title V of the Treaty and its supporting documents.

2. The Head of Mission shall be assisted by a Senior Mission Security Officer (SMSO), who will report to the Head of Mission and also maintain a close functional relationship with the Council Security Office.

3. The Head of Mission will appoint Area Security Officers in the provincial and regional mission locations, who, under the authority of the SMSO will be responsible for the day to day management of all security aspects of the respective Mission elements.

4. Appropriate security training will be provided, in accordance with the OPLAN, for all Mission staff. They shall also receive regular in-theatre refresher training organised by the SMSO.

⁽¹⁾ OJ L 101, 11.4.2001, p. 1. Decision as last amended by Decision 2005/952/EC (OJ L 346, 29.12.2005, p. 18).

*Article 12***Participation of third states**

1. Without prejudice to the EU's decision-making autonomy and its single institutional framework, candidate and other third states may be invited to contribute to EUPOL AFGHANISTAN on the basis that they bear the costs of sending the police experts and/or the civilian staff seconded by them, including salaries, allowances, medical coverage, high risk insurance and travel expenses to and from Afghanistan, and contribute to the running costs of EUPOL AFGHANISTAN as appropriate.

2. The Council hereby authorises the PSC to take the relevant decisions on acceptance of the proposed contributions.

3. Third states making contributions to EUPOL AFGHANISTAN shall have the same rights and obligations in terms of day-to-day management of the operation as Member States taking part in the operation.

4. The PSC shall take appropriate action with regard to participation arrangements and shall, if required, submit a proposal to the Council, including on possible financial participation or contributions in-kind from third states.

5. Detailed arrangements regarding the participation of third states shall be the subject of agreements pursuant to Article 24 of the Treaty and additional technical arrangements as necessary. The SG/HR assisting the Presidency may negotiate such arrangements on its behalf. Where the EU and a third state have concluded an agreement establishing a framework for the participation of this third state in the EU crisis management operations, the provisions of such an agreement shall apply in the context of this operation.

*Article 13***Financial arrangements**

1. The financial reference amount intended to cover the expenditure related to EUPOL AFGHANISTAN until 29 March 2008 shall be EUR 43 600 000.

2. The financial reference amount for the years 2008, 2009 and 2010 for EUPOL AFGHANISTAN shall be decided by the Council.

3. All expenditure shall be managed in accordance with the Community rules and procedures applicable to the general budget of the EU, with the exception that any pre-financing shall not remain the property of the Community.

4. The Head of Mission shall report fully to, and be supervised by, the Commission on the activities undertaken in the framework of his contract.

5. Nationals of third states shall be allowed to tender for contracts. Subject to the Commission's approval, the Head of Mission may conclude technical arrangements with Regional Command/PRT lead nations and international actors deployed in Afghanistan regarding the provision of equipment, services and premises to the Mission, notably where security conditions so require.

6. The financial arrangements shall respect the operational requirements of EUPOL AFGHANISTAN, including compatibility of equipment and interoperability of its teams, and shall take into consideration the deployment of staff in Regional Commands and PRTs.

7. The expenditure shall be eligible as from the date of adoption of this Joint Action.

*Article 14***Coordination with Community actions**

1. The Council and the Commission shall, each in accordance with their respective powers, ensure consistency between the implementation of this Joint Action and the external activities of the Community in accordance with Article 3 of the Treaty. The Council and the Commission shall cooperate to this end.

2. The necessary coordination arrangements shall be put in place in the Mission area, as appropriate, as well as in Brussels.

*Article 15***Release of classified information**

1. The SG/HR shall be authorised to release to NATO/ISAF EU classified information and documents generated for the purposes of the Mission, in accordance with the Council's security regulations. Local technical arrangements shall be drawn up to facilitate this.

2. The SG/HR shall be authorised to release to third states associated with this Joint Action, as appropriate and in accordance with the needs of the Mission, EU classified information and documents up to the level 'CONFIDENTIEL UE' generated for the purposes of the Mission, in accordance with the Council's security regulations.

3. The SG/HR shall be authorised to release to the United Nations/UNAMA, as appropriate and in accordance with the operational needs of the Mission, EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the Mission, in accordance with the Council's security regulations. Local arrangements shall be drawn up for this purpose.

4. In the event of a specific and immediate operational need, the SG/HR shall also be authorised to release to the host State EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the Mission, in accordance with the Council's security regulations. In all other cases, such information and documents shall be released to the host State in accordance with procedures appropriate to the host State's level of cooperation with the EU.

5. The SG/HR shall be authorised to release to third states associated with this Joint Action, EU non-classified documents related to the deliberations of the Council with regard to the Mission covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council Rules of Procedure⁽¹⁾.

Article 16

Entry into force and duration

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

It shall expire on 30 May 2010.

Article 17

Review

1. This Joint Action shall be reviewed every six months in order to adjust the Mission size and scope as necessary.

2. This Joint Action shall be reviewed, no later than three months before its expiry, in order to determine whether the Mission should be continued.

Article 18

Publication

This Joint Action shall be published in the *Official Journal of the European Union*.

Done at Brussels, 30 May 2007.

For the Council

The President

U. VON DER LEYEN

⁽¹⁾ Council Decision 2006/683/EC, Euratom of 15 September 2006 adopting the Council's Rules of Procedure (OJ L 285, 16.10.2006, p. 47). Decision as amended by Decision 2007/4/EC, Euratom (OJ L 1, 4.1.2007, p. 9).