

TRANSLATION

AGREEMENT

between the European Union and the Republic of Niger on the status of the European Union mission in Niger CSDP (EUCAP Sahel Niger)

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

of the one part, and

THE REPUBLIC OF NIGER, hereinafter referred to as 'Niger'

of the other part,

Together hereinafter referred to as 'the Parties',

TAKING INTO ACCOUNT:

— the invitation letter by Prime Minister Brigi Rafini of 1 June 2012;

— Council Decision 2012/392/CFSP of 16 July 2012 on the European Union CSDP mission in Niger (EUCAP Sahel Niger) ⁽¹⁾;

— that this Agreement will 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 shall apply to the European Union mission and its personnel.

2. This Agreement shall apply only within the territory of Niger.

3. For the purposes of this Agreement:

(a) 'EUCAP' shall mean the EU CSDP mission in Niger to support the capacity building of the Nigerien security actors to fight terrorism and organised crime (EUCAP Sahel Niger), established by the Council of the EU by Decision 2012/392/CFSP, including its components, forces, units, headquarters and personnel deployed in the territory of Niger and assigned to EUCAP;

(b) 'head of mission' shall mean the head of mission of EUCAP;

(c) 'European Union (EU)' shall mean the permanent bodies of the EU and their staff;

(d) 'EUCAP personnel' shall mean the head of mission, personnel seconded by EU Member States and EU institutions and non-EU States invited by the EU to participate in EUCAP, international staff recruited on a contractual basis by EUCAP deployed for the preparation, support and implementation of the mission, and personnel on mission for a Sending State or an EU institution or the European External Action Service (EEAS) in the framework of the mission. It shall not include commercial contractors or staff employed locally;

(e) 'Headquarters' shall mean the EUCAP main headquarters;

(f) 'Sending State' shall mean any EU Member State or non-EU State that has seconded personnel to EUCAP;

(g) 'Facilities' shall mean all buildings, premises and land required for the conduct of the activities of EUCAP, as well as for the accommodation of EUCAP personnel;

⁽¹⁾ OJ L 187, 17.7.2012, p. 48.

- (h) 'Personnel employed locally' shall mean personnel who are nationals of or holders of a permanent resident permit in Niger;
- (i) 'Contractor' shall mean any person supplying to EUCAP goods or services related to the mission's activities.
- (j) 'EUCAP means of transport' shall mean all vehicles and other means of transport owned, hired or chartered by EUCAP;
- (k) 'EUCAP assets' shall mean equipment, including means of transport, and consumer goods necessary for EUCAP Niger.

Article 2

General provisions

1. EUCAP and EUCAP personnel shall respect the laws, including customary laws, and regulations of Niger and shall refrain from any action or activity incompatible with the objectives of the mission.
2. EUCAP shall be autonomous with regard to the execution of its functions under the present Agreement. Niger shall respect the unitary and international nature of EUCAP.
3. The head of mission shall regularly inform the Government of the Republic of Niger of the number of EUCAP personnel stationed within Nigerien territory.

Article 3

Identification

1. EUCAP personnel shall be identified by distinctive EUCAP identification cards, which they shall be obliged to carry with them at all times. These cards shall be issued by the Ministry of Foreign Affairs at EUCAP's request.
2. EUCAP's means of transport shall bear distinctive EUCAP identification markings, an example of which shall be provided to the relevant authorities of Niger, and specific licence plates issued by the relevant authorities of Niger.
3. EUCAP shall have the right to display the flag of the EU at its headquarters and elsewhere, alone or together with the flag of Niger, as decided by the head of mission. National flags or insignia of the constituent national elements of EUCAP may be displayed on EUCAP premises and uniforms, as decided by the head of mission.

Article 4

Border crossing and movement within the territory of the Republic of Niger

1. EUCAP personnel and EUCAP assets shall cross the border of Niger at official border crossings and via the international air corridors.
2. Niger shall facilitate the entry into and exit from its territory for EUCAP and EUCAP personnel. Except for passport control on entry into and departure from the territory of Niger, EUCAP personnel with proof of membership of the mission shall be exempt from immigration regulations within the territory of Niger. Visas shall be issued free of charge to the members of the mission for a period of one year.
3. EUCAP personnel shall be exempt from the regulations of Niger governing the registration and control of aliens, but shall not acquire any right to permanent residence or domicile within the territory of Niger.
4. EUCAP assets which enter, transit or exit the territory of Niger shall be exempt from all authorisations for import, transit or export and from all customs charges and duties other than charges for storage, transport and other services rendered.
5. Aircraft used in support of the mission shall not be subject to local licensing or registration requirements. Relevant international standards and regulations shall continue to apply. If required, supplementary arrangements as referred to in Article 19 shall be concluded. However, vehicles must be covered by third-party liability insurance at least.
6. EUCAP personnel may drive motor vehicles, navigate vessels and operate aircraft within the territory of Niger provided they have valid national or international driving licences, shipmaster certificates or pilot licences, as appropriate. Niger shall accept as valid, without tax or fee, driving licences carried by EUCAP personnel.
7. EUCAP and EUCAP personnel, together with their assets, shall enjoy free and unrestricted movement in the areas in which they carry out their activities, which will be determined by common agreement with the relevant Nigerien authorities. If necessary, supplementary arrangements may be concluded in accordance with Article 19.
8. For the purposes of the mission, when travelling on official duties, EUCAP personnel and local personnel employed by EUCAP, together with EUCAP's means of transport, shall be entitled to use roads, bridges, ferries, airports and ports. EUCAP shall not be exempt from tolls or reasonable charges for services requested and received, under the same conditions laid down for Nigerien personnel.

*Article 5***Privileges and immunities of EUCAP granted by Niger**

1. EUCAP's facilities shall be inviolable. Nigerien agents shall not enter them without the consent of the head of mission.
2. EUCAP's facilities and assets shall be immune from search, requisition, attachment or execution.
3. EUCAP and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process.
4. EUCAP's archives and documents shall be inviolable at any time, wherever they may be.
5. EUCAP's official correspondence shall be inviolable. 'Official correspondence' means all correspondence relating to the mission and its functions.
6. EUCAP shall be exempt from all national, regional and communal dues, taxes and charges of a similar nature in respect of purchased and imported goods, services provided and facilities used by it for the purposes of the mission. EUCAP shall not be exempt from payment for services rendered.

*Article 6***Privileges and immunities of EUCAP personnel granted by Niger**

1. EUCAP personnel shall not be subject to any form of arrest or detention. If a competent Nigerien authority discovers a member of EUCAP's personnel in the act of committing an offence, that authority is authorised to detain the individual with a view either to performing an identity check within a reasonable period or to ensuring the individual's protection until the arrival of the relevant EUCAP authorities.
2. Papers, correspondence and assets of EUCAP personnel shall be inviolable, except in case of measures of execution which are permitted pursuant to paragraph 6.
3. EUCAP personnel shall enjoy immunity from the criminal jurisdiction of Niger, unless this is expressly waived by the competent authority. However, in the event of infringement of criminal law, the competent Nigerien authorities shall compile the necessary evidence which they shall make available to the EUCAP head of mission. The latter shall immediately take the necessary steps to return the member of staff concerned to his or her Sending State to face legal proceedings, provided that the decision to prosecute is a

sovereign matter for the jurisdiction of the Sending State. In such cases, the government of Niger shall be regularly informed of the progress of the legal proceedings instituted.

4. EUCAP personnel shall enjoy immunity from the civil and administrative jurisdiction of Niger 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 EUCAP personnel before any court of Niger, the head of M = mission and the competent authority of the Sending States, the EEAS or the EU institution shall be notified immediately. Prior to initiation of the proceeding before the court, the head of M = mission shall certify in writing whether the act in question was committed by the staff member concerned in the exercise of his or her official functions. If the act was committed in the exercise of official functions, the proceeding shall not be initiated and the provisions of Article 16 shall apply. If the act was not committed in the exercise of official functions, proceedings may continue. The initiation of proceedings by EUCAP personnel shall preclude them from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

5. EUCAP personnel shall not be obliged to give evidence as witnesses.

6. No measures of execution may be taken in respect of EUCAP personnel, except in the case where a civil proceeding not related to their official functions is instituted against them. Property of EUCAP personnel, which is certified by the head of mission to be necessary for the fulfilment of their official functions, shall be free from seizure for the satisfaction of a judgement, decision or order. In civil proceedings, EUCAP personnel shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.

7. The immunity of EUCAP personnel from the jurisdiction of Niger shall not exempt them from the jurisdictions of the respective Sending States.

8. EUCAP personnel shall be exempt from social security provisions which may be in force in Niger.

9. EUCAP personnel shall be exempt from any form of taxation in Niger on the salary and emoluments paid to them by EUCAP or the Sending States, as well as on any income received from outside Niger.

10. EUCAP personnel shall be allowed to import, free of customs duty and tax, within six months of their arrival in Niger, personal effects in accordance with the rules in force in Niger.

11. The personal baggage of EUCAP personnel shall be exempt from inspection, unless there are serious grounds for considering that it contains articles that are not for the personal use of EUCAP personnel or for use by EUCAP, or articles the import or export of which is prohibited by the law or subject to quarantine regulations of Niger. Such inspection shall be conducted only in the presence of the EUCAP personnel concerned or of an authorised representative of EUCAP.

Article 7

Personnel employed locally

Personnel employed locally shall enjoy no privileges or immunities. However, Niger shall exercise its jurisdiction over such personnel in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 8

Discipline

The competent authorities of a Sending State shall have the right to exercise, on Nigerien territory, all disciplinary powers conferred on them by the law of the Sending State with regard to all EUCAP personnel subject to such law.

Article 9

Security

1. Niger shall guarantee the security of EUCAP personnel.
2. To that end, Niger shall take all necessary measures for the protection, safety and security of EUCAP and EUCAP personnel. Any specific provisions proposed by Niger shall be agreed with the head of mission before implementation. Niger shall permit, and support free of any charge, activities relating to the evacuation of EUCAP personnel for medical reasons. If required, supplementary arrangements as referred to in Article 19 shall be concluded.
3. EUCAP personnel designated by the head of mission, the list of whose names shall be notified to the relevant Nigerien authorities, may keep and carry weapons in the exercise of their functions.

Article 10

Uniform

1. EUCAP personnel shall wear national uniform or civilian dress with distinctive EUCAP identification. Civilian support personnel shall wear civilian dress with distinctive EUCAP identification.
2. The wearing of uniform shall be subject to rules issued by the H = head of M = mission.

Article 11

Cooperation and access to information

1. Niger shall provide full cooperation and support to EUCAP and EUCAP personnel. If required, supplementary arrangements as referred to in Article 19 shall be concluded.
2. The head of mission and the representative appointed by the Government of Niger shall consult regularly and take appropriate measures to ensure close and reciprocal liaison at every appropriate level. Niger may appoint a liaison officer to EUCAP.

Article 12

Support provided by Niger

1. Niger agrees, if requested, to assist EUCAP in finding suitable facilities.
2. Niger shall provide free of charge, if required and available, facilities which it owns, in so far as such facilities are requested for the conduct of EUCAP's administrative and operational activities.
3. Within its means and capabilities, Niger shall assist in the preparation, establishment, and execution of, and support for, the mission.
4. EUCAP shall have the necessary legal capacity under the laws and regulations of Niger in order to fulfil its mission, and in particular for the purpose of opening bank accounts and to acquire or dispose of movable property and to be party to legal proceedings.
5. The law applicable to contracts concluded by EUCAP in Niger shall be determined by the respective contracts.

Article 13

Change to state-owned facilities

1. EUCAP shall be authorised to construct, alter or otherwise modify facilities [which are the property of the Nigerien state] as required for its operational requirements in connection with the relevant structures.
2. Niger shall not claim any compensation from EUCAP in respect of those constructions, alterations or modifications.

Article 14

Deceased EUCAP personnel

1. The head of mission shall have the right to take charge of the repatriation of any deceased EUCAP personnel, as well of their personal property, and to make suitable arrangements for this purpose in accordance with the rules in force in Niger.

2. No autopsy shall be performed on any deceased members of EUCAP without the agreement of the State concerned, and the presence of a representative of EUCAP or a representative of the State concerned.

3. Niger and EUCAP shall cooperate to the fullest extent possible with a view to the early repatriation of deceased EUCAP personnel.

Article 15

Communications

1. EUCAP may install and operate radio sending and receiving stations, as well as satellite systems, for the purposes of its mission, in accordance with the rules in force in Niger and in liaison with the relevant departments. It shall cooperate with the competent Nigerien authorities with a view to avoiding conflicts in the use of appropriate frequencies. Niger shall grant access to the frequency spectrum free of charge.

2. EUCAP 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 EUCAP facilities, including the laying of cables and land lines for the purpose of the operation.

3. Within its facilities EUCAP may make the necessary arrangements for the conveyance of mail addressed to and from EUCAP and/or EUCAP personnel.

Article 16

Claims for death, injury, damage and loss

1. EUCAP and EUCAP personnel, the EU and the sending States shall not be liable for any damage to or loss of civilian or government property which is related to operational necessities or caused by activities in connection with civil disturbances or protection of EUCAP.

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 EUCAP property, shall be forwarded to EUCAP via the competent Nigerien authorities, as far as claims brought by Nigerien natural or legal persons are concerned, or to the Nigerien competent authorities, as far as claims brought by EUCAP 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 EUCAP and representatives of Niger. 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 Niger and the EU representative;

(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 being appointed by Niger, one being appointed by EUCAP and the third being appointed jointly by Niger and EUCAP. Where one of the parties does not appoint an arbitrator within two months or where no agreement can be found between Niger and EUCAP 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 EUCAP and the Nigerien administrative authorities 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 17

Dispute settlement

1. All issues arising in connection with the application of this Agreement shall be examined jointly by representatives of EUCAP and the competent authorities of Niger.

2. Failing any prior settlement, disputes concerning the interpretation or application of this Agreement shall be settled exclusively by diplomatic means between Niger and EU representatives.

Article 18

Other provisions

1. Whenever this Agreement refers to the privileges, immunities and rights of EUCAP and of EUCAP personnel, the Government of Niger shall be responsible for their implementation and for compliance with them on the part of the appropriate local authorities.

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

*Article 19***Implementing arrangements**

For the purpose of the application of this Agreement, operational, administrative and technical matters may be the subject of separate arrangements to be concluded between the head of mission and the Nigerien administrative authorities.

*Article 20***Final provisions**

1. This Agreement, to be published by each Party, shall enter into force on the date on which it is signed.

2. Notwithstanding paragraph 1, Article 4(8), Article 5(1), (2), (3) and (6), Article 6(1), (3), (5), (7), (8) and (9) and Articles 12 and 15 shall be deemed to apply from the date

on which the first EUCAP personnel were deployed if that date was earlier than the date of entry into force of this Agreement.

3. Changes and amendments to this Agreement shall be made by the mutual consent of the Parties in writing. Changes and amendments shall be executed as separate protocols, which form an integral part of this Agreement and shall enter into force in accordance with paragraph 1 of this Article.

4. This Agreement shall remain valid unless either Party informs the other Party in writing of its desire to terminate this Agreement. The termination of this Agreement shall enter into force six months after the date of receiving such notification. Termination of this Agreement shall not affect any rights or obligations arising out of the execution of this Agreement before such termination.

Done at Niamey on the thirtieth day of July in the year two thousand and thirteen, in two original copies, in French.

For the European Union

For the Republic of Niger
