

**AGREEMENT****between the European Union and New Zealand establishing a framework for the participation of New Zealand in European Union crisis management operations**

THE EUROPEAN UNION (EU),

of the one part, and

NEW ZEALAND

of the other part,

hereinafter referred to as the 'Parties',

WHEREAS:

- (1) The European Union may decide to take action in the field of crisis management.
- (2) The European Union will decide whether third States will be invited to participate in an EU crisis management operation. New Zealand may accept the invitation by the European Union and offer its contribution. In such case, the European Union will decide on the acceptance of the proposed contribution of New Zealand.
- (3) Conditions regarding the participation of New Zealand in EU crisis management operations should be laid down in an Agreement establishing a framework for such possible future participation, rather than defining these conditions on a case-by-case basis for each operation concerned.
- (4) Such an Agreement should be without prejudice to the decision-making autonomy of the European Union, and should not prejudice the case-by-case nature of the decisions of New Zealand to participate in an EU crisis management operation.
- (5) Such an Agreement should only address EU crisis management operations and should be without prejudice to any existing agreements regulating the participation of New Zealand in an EU crisis management operation that has been already deployed,

HAVE AGREED AS FOLLOWS:

**SECTION I****GENERAL PROVISIONS***Article 1***Decisions relating to the participation**

1. Following the decision of the European Union to invite New Zealand to participate in an EU crisis management operation, and once New Zealand has decided to participate, New Zealand shall provide information on its proposed contribution to the European Union.

2. The European Union shall provide New Zealand with an early indication of the likely contribution to the common costs of the operation as soon as possible with a view to assisting New Zealand in the formulation of its offer.

3. The assessment by the European Union of New Zealand's proposed contribution shall be conducted in consultation with New Zealand.

4. The European Union shall communicate the outcome of that assessment to New Zealand by letter in a timely fashion with a view to securing the participation of New Zealand in accordance with the provisions of this Agreement.

*Article 2***Framework**

1. New Zealand shall associate itself with the Council Decision by which the Council of the European Union decides that the EU will conduct the crisis management operation, and with any other decision by which the Council of the European Union decides to extend the EU crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.

2. The participation of New Zealand in an EU crisis management operation shall be without prejudice to the decision-making autonomy of the European Union.

3. Paragraph 1 does not affect the right of New Zealand to withdraw from participation in an EU crisis management operation if it does not agree with a Decision referred to in that paragraph.

*Article 3***Status of personnel and forces**

1. The status of personnel seconded to an EU civilian crisis management operation and/or of the forces contributed to an EU military crisis management operation by New Zealand shall be governed by the agreement on the status of forces/mission, if available, concluded between the European Union and the State(s) in which the operation is conducted.

2. The status of personnel contributed to headquarters or command elements located outside the State(s) in which the EU crisis management operation takes place, shall be governed by arrangements between the headquarters and command elements concerned and New Zealand.

3. Without prejudice to the agreement on the status of forces/mission referred to in paragraph 1, and subject to any bilateral or multilateral agreements in force, in cases where the forces of New Zealand operate on board a vessel or aircraft of an EU Member State, the latter State shall exercise jurisdiction in accordance with its internal laws and procedures.

4. New Zealand shall be responsible for answering any claims linked to its participation in an EU crisis management operation, from or concerning any of its personnel. New Zealand shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel in accordance with its laws and regulations.

5. 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/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.

6. New Zealand undertakes to make a declaration as regards the waiver of claims against any State participating in an EU crisis management operation in which New Zealand participates, and to do so when signing this Agreement.

7. The European Union undertakes to ensure that European Union Member States make a declaration as regards the waiver of claims, for any future participation of New Zealand in an EU crisis management operation, and to do so when signing this Agreement.

#### Article 4

##### Classified information

1. New Zealand shall take appropriate measures to ensure that EU classified information is protected in accordance with the European Union Council's security regulations, contained in Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information<sup>(1)</sup>, and in accordance with further guidance issued by competent authorities, including the EU Operation Commander concerning an EU military crisis management operation or by the EU Head of Mission concerning an EU civilian crisis management operation.

2. If the EU receives classified information from New Zealand, that information shall be given protection appropriate to its classification and equivalent to the standards established in the regulations for EU classified information.

3. Where the EU and New Zealand have concluded an agreement on security procedures for the exchange of classified information, the provisions of such an agreement shall apply in the context of an EU crisis management operation.

#### SECTION II

##### PROVISIONS ON PARTICIPATION IN CIVILIAN CRISIS MANAGEMENT OPERATIONS

#### Article 5

##### Personnel seconded to an EU civilian crisis management operation

1. New Zealand shall ensure that its personnel seconded to the EU civilian crisis management operation undertake their mission in accordance with:

- (a) the Council Decision and subsequent amendments as referred to in Article 2(1);
- (b) the Operation Plan;
- (c) implementing measures.

2. New Zealand shall inform in due time the Head of Mission of the EU civilian crisis management operation ('Head of Mission') and the High Representative of the Union for Foreign Affairs and Security Policy ('HR') of any change to its contribution to the EU civilian crisis management operation.

3. Personnel seconded to the EU civilian crisis management operation shall undergo a medical examination, vaccination as may be deemed necessary by the competent New Zealand authorities, and be certified medically fit for duty by a competent authority from New Zealand. Personnel seconded to the EU civilian crisis management operation shall produce a copy of that certification.

#### Article 6

##### Chain of command

1. Personnel seconded by New Zealand shall carry out their duties and conduct themselves solely with the interests of the EU civilian crisis management operation in mind.

2. All personnel shall remain under the full command of their national authorities.

3. National authorities shall transfer operational control to the European Union.

4. The Head of Mission shall assume responsibility and exercise command and control of the EU civilian crisis management operation at theatre level.

5. The Head of Mission shall lead the EU civilian crisis management operation and assume its day-to-day management.

<sup>(1)</sup> OJ L 141, 27.5.2011, p. 17.

6. New Zealand shall have the same rights and obligations in terms of day-to-day management of the operation as European Union Member States taking part in the operation, in accordance with the legal instruments referred to in Article 2(1).

7. The EU civilian crisis management operation Head of Mission shall be responsible for disciplinary control over EU civilian crisis management operation personnel. Where required, disciplinary action shall be taken by the national authority concerned.

8. A National Contingent Point of Contact (NPC) shall be appointed by New Zealand to represent its national contingent in the operation. The NPC shall report to the EU civilian crisis management operation Head of Mission on national matters and shall be responsible for day-to-day discipline of the contingent.

9. The decision to end the operation shall be taken by the European Union, following consultation with New Zealand if it is still contributing to the EU civilian crisis management operation at the date of termination of the operation.

#### Article 7

##### Financial aspects

1. New Zealand shall assume all the costs associated with its participation in the operation apart from the running costs, as set out in the operational budget of the operation. This shall be without prejudice to Article 8.

2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, issues of possible liability and compensation by New Zealand shall be governed by the conditions foreseen in the applicable status of mission agreement referred to in Article 3(1) or any applicable alternative arrangements.

#### Article 8

##### Contribution to operational budget

1. New Zealand shall contribute to the financing of the budget of the EU civilian crisis management operation.

2. The financial contribution of New Zealand to the operational budget shall be calculated on the basis of either of the following formulae, whichever produces the lower amount:

- (a) the share of the reference amount which is in proportion to the ratio of New Zealand's GNI to the total GNIs 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 personnel from New Zealand participating in the operation to the total number of personnel of all States participating in the operation.

3. Notwithstanding paragraphs 1 and 2, New Zealand shall not make any contribution towards the financing of per diem allowances paid to personnel of the European Union Member States.

4. Notwithstanding paragraph 1, the European Union shall, in principle, exempt New Zealand from financial contributions to a particular EU civilian crisis management operation when:

- (a) the European Union decides that New Zealand's participation in the operation provides a significant contribution which is essential for this operation; or
- (b) New Zealand has a GNI per capita which does not exceed that of any Member State of the European Union.

5. An arrangement on the payment of the contributions of New Zealand to the operational budget of the EU civilian crisis management operation shall be signed between the EU civilian crisis management operation Head of Mission and the relevant administrative services of New Zealand. That arrangement shall, inter alia, include the following provisions:

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

#### SECTION III

##### PROVISIONS ON PARTICIPATION IN MILITARY CRISIS MANAGEMENT OPERATIONS

#### Article 9

##### Participation in the EU military crisis management operation

1. New Zealand shall ensure that its forces and personnel participating in the EU military crisis management operation undertake their mission in accordance with:

- (a) the Council Decision and subsequent amendments as referred to in Article 2(1);
- (b) the Operation Plan; and
- (c) implementing measures.

2. New Zealand shall inform the EU Operation Commander in due time of any change to its participation in the operation.

#### Article 10

##### Chain of command

1. All forces and personnel participating in the EU military crisis management operation shall remain under the full command of their national authorities.

2. Personnel seconded by New Zealand shall carry out their duties and conduct themselves solely with the interest of the EU military crisis management operation in mind.

3. National authorities shall transfer the Operational and Tactical command and/or control of their forces and personnel to the EU Operation Commander, who is entitled to delegate his authority.

4. New Zealand shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States.

5. The EU Operation Commander may, following consultations with New Zealand, at any time request the withdrawal of New Zealand's contribution.

6. A Senior Military Representative (SMR) shall be appointed by New Zealand 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 contingent of New Zealand.

#### Article 11

##### Financial aspects

1. Without prejudice to Article 12 of this agreement, New Zealand shall assume all the costs associated with its participation in the 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 2008/975/CFSP <sup>(1)</sup> establishing a mechanism to administer the financing of the common costs of EU operations having military or defence implications.

2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, issues of possible liability and compensation by New Zealand shall be governed by the conditions foreseen in the applicable status of forces agreement referred to in Article 3(1) or any applicable alternative arrangements.

#### Article 12

##### Contribution to the common costs

1. New Zealand shall contribute to the financing of the common costs of the EU military crisis management operation.

2. The financial contribution of New Zealand to the common costs shall be calculated on the basis of either of the following two formulae, whichever produces the lower amount:

- (a) the share of the common costs which is in proportion to the ratio of New Zealand'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 personnel from New Zealand participating in the operation to the total number of personnel of all States participating in the operation.

Where the formula under point (b) of the first subparagraph is used and New Zealand contributes personnel only to the Operation or Force Headquarters, the ratio used shall be that of its personnel to that of the total number of the respective headquarters personnel. In other cases, the ratio shall be that of all personnel contributed by New Zealand to that of the total personnel of the operation.

3. Notwithstanding paragraph 1 above, the European Union shall, in principle, exempt New Zealand from financial

contributions to the common costs of a particular EU military crisis management operation when:

- (a) the European Union decides that New Zealand's participation in the operation provides a significant contribution to assets and/or capabilities which are essential for the operation; or
- (b) New Zealand has a GNI per capita which does not exceed that of any Member State of the European Union.

4. An arrangement shall be concluded between the Administrator provided for in Decision 2008/975/CFSP establishing a mechanism to administer the financing of the common costs of EU operations having military or defence implications, and the competent administrative authorities of New Zealand. That arrangement shall include inter alia provisions on:

- (a) the amount 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 the provisions of Articles 12(4) and 8(5), any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the High Representative of the Union for Foreign Affairs and Security Policy, and the appropriate authorities of New Zealand.

#### Article 14

##### Non-compliance

Should one of the Parties fail to comply with its obligations under this Agreement, the other Party shall have the right to terminate this Agreement by serving notice of one month.

#### Article 15

##### Dispute settlement

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

#### Article 16

##### Entry into force

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other 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 a mutual written agreement between the Parties.

<sup>(1)</sup> OJ L 345, 23.12.2008, p. 96.

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.

Done at Brussels, this eighteenth day of April in the year two thousand and twelve.

For the European Union

*Catherine Ashton*

For New Zealand



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**DECLARATION BY THE EU MEMBER STATES**

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

- was caused by personnel from New Zealand 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 New Zealand, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU crisis management operation personnel from New Zealand using those assets.

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**DECLARATION BY NEW ZEALAND**

New Zealand, when applying an EU Council Decision of an EU crisis management operation, will endeavour, insofar as its internal legal system so permits, to waive as far as possible claims against any EU Member State participating in the EU crisis management operation for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the EU crisis management operation if such injury, death, damage or loss:

- (a) was caused by 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
  - (b) arose from the use of any assets owned by States participating in the EU crisis management operation, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU crisis management operation personnel using those assets.
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