

Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations

Introduction

- 3.1 The proposed treaty action is to bring into force the *Agreement between Australia and the European Union establishing a framework for the participation of Australia in European Union crisis management operations*. The Agreement was signed on 22 April 2015 and tabled in Parliament on 16 June 2015.

Background

- 3.2 Australia and the European Union (EU) have made concurrent contributions to peace-keeping and peace-building operations, reflecting the overlapping nature of international peace and security interests. Australia has an interest in being able to make timely contributions to crisis management operations undertaken by international partners.
- 3.3 Examples of Australia-EU cooperation in responding to international crises include participation in the Libya Contact group in 2011,¹ and more

¹ The first meeting of the Libya Contact Group was held on 13 April 2011 with the participation and representation of 21 countries and various organisations. The Contact Group on Libya would support and be a focal point of contact with the Libyan people, coordinate international policy and be a forum for discussion of humanitarian and post-conflict support. Source: UK Government, <https://www.gov.uk/government/news/libya-contact-group-chairs-statement>

recently, the deployment of an Australian Civilian Corps legal expert to the EU's maritime security capacity building mission for the Horn of Africa from September 2014, for an initial 12 months. The deployment reflects Australia's long-standing support for the development of maritime security in the Indian Ocean region, including counter-piracy and maritime governance. The deployment was effected through an exchange of letters between the EU and Australia.²

- 3.4 The Department of Foreign Affairs and Trade (DFAT) explained that EU crisis management operations are independent, and not carried out under United Nations (UN) auspices:

They are very similar in their mode of operation to UN peacekeeping and peace-building operations but they are undertaken in areas where, for whatever reason, the UN has decided not to undertake an operation on its own.

...

The majority of them are in Africa. They tend to be in regions where the EU sees itself as having a particular interest.³

Overview and national interest summary

- 3.5 EU crisis management operations may involve supporting military, police, judicial and customs reforms, peacebuilding, capacity building and post-conflict recovery in countries experiencing crisis situations. EU crisis management operations may facilitate agreements ending hostilities, ensure compliance with those agreements and help ensure the security of civilians, refugees, humanitarian workers and United Nations personnel. As at May 2015 the EU was responsible for 16 such operations including policing in Afghanistan, counter-piracy in Somalia and civilian security sector reform in Ukraine.⁴
- 3.6 The National Interest Analysis (NIA) states that the Agreement will provide a legal framework to facilitate a timely deployment of Australian personnel to EU-organised and led international crisis response operations.

2 National Interest Analysis [2015] ATNIA 8 with attachment on consultation *Agreement between Australia and the European Union establishing a framework for the participation of Australia in European crisis management operations*, done at Brussels on 22 April 2015 [2015] ATNIF 17 (hereafter referred to as NIA), paras 5 and 7.

3 Mr Paul Stephens, First Assistant Secretary, Europe Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 10 August 2015, p. 6.

4 NIA, para 4.

3.7 According to the NIA, the Agreement will remove the need for Australia and the EU to negotiate arrangements each time that Australia seeks to make a contribution to such operations.⁵ As well as making deployment faster, DFAT explained that:

Having the arrangements for Australia's participation in EU operations set out in the agreement gives Australia a clear understanding of all the elements that need to be taken into account before we make a decision to deploy to an EU-led operation. These elements include: the status of Australian personnel, such as chain of command and who they will be accountable to on a day-to-day basis; and financial requirements, including who would bear the costs of particular elements of the deployment.⁶

3.8 The NIA states that the Agreement does not oblige Australia to participate in or to remain in EU crisis management operations. This was affirmed by DFAT staff in public hearings.⁷ Any decision to participate – together with the nature and timing of the contribution and decisions to withdraw, in full or part – may be determined by Australia, on a case-by-case basis, at any time, in consultation with the EU.⁸

Reasons for Australia to take the proposed treaty action

3.9 The NIA advises that the Agreement would allow Australia to make further contributions to peacekeeping and crisis management operations around the world, especially for operations in which Australian participation would otherwise be difficult. This includes scenarios where there are no multinational operations or when the operations are in regions where Australia has minimal presence (e.g. Sub-Saharan Africa).

3.10 The NIA suggests that the Agreement will strengthen the Australia-EU bilateral relationship, and enhance broad-based cooperation on security and development matters.⁹

5 NIA, paras 3 and 6.

6 Mr Stephens, DFAT, *Committee Hansard*, 10 August 2015, p. 5.

7 Mr Stephens, DFAT, *Committee Hansard*, 10 August 2015, p. 6.

8 NIA, para 7.

9 NIA, para 9.

Obligations

- 3.11 Obligations only arise if Australia accepts an EU invitation to contribute to a specific crisis management operation. The obligations relate to:
- preparation of personnel for involvement in an EU crisis management operation **Article 5(2)**;
 - the place of Australian personnel within EU crisis management operations' chain of command **Articles 6 and 10**; and
 - privileges and immunities that will apply to Australian personnel (**Article 3**).¹⁰
- 3.12 In terms of the day-to-day management of the operation, Australia would have the same rights and obligations as any contributing EU Member State (**Article 10(4)**).¹¹
- 3.13 The proposed Agreement also obliges Australia to inform, in due time, relevant EU operation leaders of any change to its contribution to an EU crisis management operation (**Article 9(2)**).¹²
- 3.14 Under the proposed Agreement, where Australia decides to contribute to an EU crisis management operation, Australia is required to provide the EU with information on its proposed contribution, including information on the composition of any contingent of Australian personnel. Such personnel may include military forces, Australian Government employees and other persons engaged to work on behalf of Australia (**Article 1(3)**).¹³
- 3.15 Under **Articles 6(3) and 10(3)** of the proposed Agreement, Australia must seek to ensure that any Australian personnel who contribute to a civilian or military operation carry out their duties and conduct themselves in full conformity with the objectives of the operation, under the supervisory authority and direction of the Head of Mission or Operation Commander. Under **Article 2(1)**, Australia is also required to respect the terms of the Council of the EU Decision to conduct the operation and with any EU Council Decision extending the operation.¹⁴
- 3.16 Under **Article 3(5)** of the proposed Agreement, Australia is also responsible for responding to any claims linked to its participation in an EU crisis management operation, from or concerning any Australian personnel, in accordance with Australian law.¹⁵

10 NIA, para 10.

11 NIA, para. 10.

12 NIA, para. 11.

13 NIA, para. 12.

14 NIA, para. 13.

15 NIA, para. 14.

Supervision and command

- 3.17 **Section II** of the proposed Agreement relates to civilian operations and **Section III** to military operations. While the effect of these sections is very similar, they differ in describing the chain of command. In particular, the leader of the operation is the Head of Mission for a civilian activity, and the Operation Commander for a military activity.¹⁶
- 3.18 Any personnel contributed to a military mission will remain under the full command of Australia, but under the operational command of the EU Operation Commander (**Article 10(1)-(2)**). Personnel contributed to a civilian operation will operate under the overall command of Australia (or in the case of military personnel, will operate under the overall command of Australia), but the Head of Mission exercises ‘supervisory authority’ (**Article 6 (1)-(2)**).¹⁷
- 3.19 Under **Articles 6(6) and 10(6)** of the proposed Agreement, Australia will be responsible for taking any action, including legal or disciplinary action, against any of its personnel in accordance with its laws, regulations and policies.¹⁸
- 3.20 DFAT staff confirmed that:
- under the terms of the proposed treaty, Australian personnel would be under the operational command of the leader of the mission but subject to Australian law ... and not subject to European legal processes or law.¹⁹

Status of personnel

- 3.21 Under **Article 3(1)** of the proposed Agreement, the status of Australian personnel contributed to an EU crisis management operation, including any privileges and immunities, will be governed by any agreement or arrangement on the status of the forces or mission concluded between the EU and the State(s) in which the operation is conducted.
- 3.22 If no such agreement or arrangement is concluded at the time Australia decides to participate in the EU operation, Australia will have the opportunity to examine the proposed draft agreement or arrangement prior to its conclusion (**Article 3(2)**).²⁰
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16 NIA, para. 15.

17 NIA, para. 16.

18 NIA, para. 17.

19 Mr Stephens, DFAT, *Committee Hansard*, 10 August 2015, p. 7.

20 NIA, para 18.

Implementation

- 3.23 The NIA states that no new Australian legislation or policy changes are required. Any arrangements that might be required to implement the Agreement (technical, logistic or administrative) would be negotiated on a case-by-case basis between the relevant EU and Australian authorities (**Article 13**).²¹

Costs

- 3.24 There are no fixed costs associated with the Agreement. DFAT confirmed that the Agreement would not place any requirements on Australia, such as maintaining a level of readiness or instituting an ongoing liaison officer position.²²
- 3.25 Costs will only be incurred if Australia accepts an EU invitation to participate in a crisis management operation. The costs will be borne by the relevant Australian Government agency that contributes personnel to the EU operation, or under other arrangements as appropriate.²³
- 3.26 Australia's contribution would include both the costs associated with deployment of Australian personnel, and a portion of the operation's operational budget. Australia's portion of the operational budget would be calculated as:
- ...the lower of: the proportion of Australia's Gross National Income (GNI) compared to the total GNI of all countries participating; or the proportion of the number of Australian personnel being contributed compared to the total number contributed to the operation.²⁴
- 3.27 There is also scope under the Agreement for the EU to exempt Australia from contributing to the costs of operation, if the EU decides that Australia's participation is providing a significant contribution.²⁵

21 NIA, para 19.

22 Mr Stephens, DFAT, *Committee Hansard*, 10 August 2015, p. 7.

23 NIA, para 24.

24 Department of Foreign Affairs and Trade, *Submission 26*, p.2.

25 Department of Foreign Affairs and Trade, *Submission 26*, p.2.

Conclusion

- 3.28 The Committee supports the *Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations* and recommends that binding treaty action be taken.

Recommendation 2

- 3.29 **The Committee supports the *Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations* and recommends that binding treaty action be taken.**

