

Council Decision 2013/178/CFSP of 25 February 2013 on the signing and conclusion of the Agreement between the European Union and the Republic of Mali on the status in the Republic of Mali of the European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali)

COUNCIL DECISION 2013/178/CFSP

of 25 February 2013

on the signing and conclusion of the Agreement between the European Union and the Republic of Mali on the status in the Republic of Mali of the European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof, in conjunction with Article 218(5) and (6) of the Treaty on the Functioning of the European Union,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) By letter dated 24 December 2012, the President of the Republic of Mali addressed an invitation letter to the High Representative of the Union for Foreign Affairs and Security Policy (HR) welcoming the deployment of an EU military training mission in Mali.
- (2) On 17 January 2013, the Council adopted Decision 2013/34/CFSP on a European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali)⁽¹⁾.
- (3) Article 9 of Decision 2013/34/CFSP provides that the status of EU-led units and personnel of EUTM Mali, including the privileges, immunities and further guarantees necessary for the fulfilment and smooth functioning of their mission, is to be the subject of an agreement concluded pursuant to Article 37 of the Treaty on European Union (TEU) and in accordance with the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union (TFEU).
- (4) Following the adoption of a Decision by the Council on 17 January 2013 authorising the opening of negotiations, the HR in accordance with Article 37 TEU negotiated an Agreement between the European Union and the Republic of Mali on the status in the Republic of Mali of the European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali) ('the Agreement').
- (5) In accordance with Article 5 of the Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark does not participate in the elaboration and implementation of decisions and actions of the Union which have defence implications. Denmark does not participate in the implementation of this Decision and therefore does not participate in the financing of this mission.

Status: Point in time view as at 25/02/2013.

*Changes to legislation: There are currently no known outstanding effects
for the Council Decision 2013/178/CFSP. (See end of Document for details)*

(6) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Mali on the status in the Republic of Mali of the European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali) is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the Union.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 25 February 2013.

For the Council

The President

S. COVENEY

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TRANSLATION

AGREEMENT

between the European Union and the Republic of Mali on the status
in the Republic of Mali of the European Union military mission to
contribute to the training of the Malian Armed Forces (EUTM Mali)

THE EUROPEAN UNION, hereinafter referred to as ‘the EU’,

of the one part, and

THE REPUBLIC OF MALI, hereinafter referred to as ‘the Host State’,

of the other part,

hereinafter referred to as ‘the Parties’,

TAKING INTO ACCOUNT:

- the letter from the President of the Republic of Mali dated 24 December 2012 inviting the EU to deploy a military training mission in the territory of the Republic of Mali;
- Council Decision 2013/34/CFSP of 17 January 2013 on a European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali)⁽²⁾;
- 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 only within the territory of the Host State.
- 2 This Agreement shall apply to the EU military mission to contribute to the training of the Malian Armed Forces (EUTM Mali) and to its personnel.
- 3 For the purposes of this Agreement:
 - a ‘EUTM Mali’ shall mean the military headquarters and national contingents, their facilities, assets and means of transport, contributing to the mission;
 - b ‘mission’ shall mean the preparation, establishment, execution and support of EUTM Mali;
 - c ‘Mission Commander’ shall mean the commander of EUTM Mali in the theatre of the mission;
 - d ‘European Union (EU)’ shall mean the permanent bodies of the EU and their staff;
 - e ‘EU military headquarters’ shall mean the military headquarters and elements thereof, whatever their location, under the authority of EU military commanders exercising the military command or control of EUTM Mali;
 - f ‘national contingents’ shall mean units and elements belonging to the Member States of the EU and to other States participating in EUTM Mali;

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- g 'EUTM Mali personnel' shall mean the civilian and military personnel assigned to EUTM Mali as well as personnel deployed for the preparation of the mission and personnel on mission for a Sending State or an EU institution or body in the context of the mission, present, except as otherwise provided in this Agreement, within the territory of the Host State, with the exception of personnel employed locally and personnel employed by international commercial contractors;
- h 'personnel employed locally' shall mean personnel who are nationals of or permanently resident in the Host State;
- i 'EUTM Mali facilities' shall mean all premises, accommodation and land areas required for EUTM Mali and EUTM Mali personnel;
- j 'Sending State' shall mean a State providing a national contingent for EUTM Mali;
- k 'official correspondence' shall mean all correspondence relating to EUTM Mali and its functions;
- l 'EUTM Mali assets' shall mean equipment and consumer goods necessary for the mission;
- m 'EUTM Mali means of transport' shall mean all vehicles and other means of transport owned, hired or chartered by EUTM Mali that are necessary for the mission.

Article 2

General provisions

- 1 EUTM Mali and EUTM Mali personnel shall respect the laws and regulations of the Host State and shall refrain from any action or activity incompatible with the objectives of the mission.
- 2 EUTM Mali shall regularly inform the Government of the Host State of the number of members of EUTM Mali personnel stationed within the Host State's territory.

Article 3

Identification

- 1 EUTM Mali personnel present in the territory of the Host State shall carry passports or military identity cards with them at all times.
- 2 EUTM Mali vehicles and other means of transport shall carry distinctive EUTM Mali identification markings and/or registration plates, of which the relevant Host State authorities shall be notified.
- 3 EUTM Mali shall have the right to display the flag of the European Union and markings such as military insignia, titles and official symbols on its facilities and means of transport. The uniforms of EUTM Mali personnel shall carry a distinctive EUTM Mali emblem. National flags or insignia of the constituent national contingents of the mission may be displayed on EUTM Mali facilities and means of transport, and uniforms, as decided by the Mission Commander.

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Article 4

Border crossing and movement within the Host State's territory

1 EUTM Mali personnel shall enter the Host State's territory only on presentation of a passport accompanied by an individual or collective movement order issued by EUTM Mali. They shall be exempt from visa regulations, immigration inspections and customs control on entering, leaving or within the Host State's territory.

2 EUTM Mali personnel shall be exempt from the Host State's regulations on the registration and control of aliens, but shall not acquire any right to permanent residence or domicile in the territory of the Host State.

3 EUTM Mali assets and means of transport entering or leaving the territory of the Host State in support of the mission shall be exempt from any requirement to produce any customs documentation and from any inspection.

4 EUTM Mali personnel may drive motor vehicles provided they hold a valid national, international or military driving licence issued by a Sending State.

5 For the purposes of the mission, the Host State shall grant EUTM Mali and EUTM Mali personnel freedom of movement and freedom to travel within its territory, including its air space.

6 The Host State shall permit the entry of EUTM Mali assets and means of transport and grant them exemption from all custom duties, fees, tolls, taxes and similar charges other than charges for storage, cartage and other services rendered.

7 For the purposes of the mission, EUTM Mali may use public roads, bridges, ferries and airports without the payment of duties, fees, tolls, taxes and similar charges. EUTM Mali shall not be exempt from charges for services requested and received, under the conditions that apply to those provided to the Host State's armed forces.

Article 5

Privileges and immunities of EUTM Mali granted by the Host State

1 EUTM Mali's facilities shall be inviolable. The Host State's agents shall not enter them without the consent of the commander of the mission.

2 EUTM Mali, wherever located and by whomsoever its assets, means of transport and facilities are held or occupied, shall enjoy immunity from every form of legal process.

3 EUTM Mali personnel, assets, facilities and means of transport shall be immune from search, requisition, attachment or execution.

4 EUTM Mali's archives and documents shall be inviolable at any time, wherever they may be.

5 EUTM Mali's official correspondence shall be inviolable.

6 EUTM Mali shall be exempt from all national, regional and communal dues, taxes and charges of similar nature in respect of purchased and imported EUTM Mali assets and means of transport, EUTM Mali facilities, and services provided for the purposes of EUTM Mali. The

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application of this exemption may not be made subject to any authorisation or prior notification by EUTM Mali of the competent authorities of the Host State. However, EUTM Mali shall not be exempt from fees or other charges that represent payment for services rendered.

Article 6

Privileges and immunities of EUTM Mali personnel granted by the Host State

- 1 EUTM Mali personnel shall not be liable to any form of arrest or detention.
- 2 The papers, correspondence and property of EUTM Mali personnel shall be inviolable, except in case of measures of execution which are permitted pursuant to paragraph 6.
- 3 EUTM Mali personnel shall enjoy immunity from criminal proceedings in the Host State under all circumstances.

The immunity from criminal proceedings of EUTM Mali personnel may be waived by the Sending State or the EU body concerned, as the case may be. Such waiver shall always be in writing.

- 4 EUTM Mali personnel shall enjoy immunity from the civil and administrative proceedings in the Host State in respect of words spoken or written and all acts performed by them in the exercise of their official functions.

If any civil proceedings are instituted against EUTM Mali personnel before any Host State court, the Mission Commander and the competent authority of the Sending State or the EU body concerned shall be notified immediately. Prior to initiation of proceedings before the competent court, the Mission Commander and the competent authority of the Sending State or the EU institution concerned shall certify to the court whether the act in question was performed by EUTM Mali personnel in the exercise of their official functions.

If the act was performed in the exercise of official functions, proceedings shall not be initiated and the provisions of Article 15 shall apply. If the act was not committed in the exercise of official functions, proceedings may continue. The certification issued by the commander of the mission and the competent authority of the Sending State or the EU body concerned shall be binding upon the court of the Host State, which may not contest it.

However, the competent authorities of the Host State may challenge the merits of that certification within a period of two months from its date of issue. In such a case, each of the Parties shall commit to resolving the dispute exclusively by diplomatic means.

The initiation of civil proceedings by EUTM Mali personnel shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

- 5 EUTM Mali personnel shall not be obliged to give evidence as witnesses.
- 6 No measures of execution may be taken in respect of EUTM Mali personnel, except in cases where civil proceedings not related to their official functions are instituted against them. The property of EUTM Mali personnel, certified by the Mission Commander to be necessary for the fulfilment of their official functions, shall be free from seizure for the satisfaction of a judgment, decision or order. In civil proceedings, EUTM Mali personnel shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.
- 7 The immunity of EUTM Mali personnel from jurisdiction in the Host State does not exempt them from jurisdiction in the respective Sending States.

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8 EUTM Mali personnel shall be exempt from any form of taxation in the Host State on the salary and emoluments paid to them by EUTM Mali or the Sending States, as well as on any income received from outside the Host State.

9 The Host State shall, in accordance with such laws and regulations as it may adopt, authorise entry of articles for the personal use of EUTM Mali personnel and grant exemption on such articles from all customs duties, taxes and related charges other than charges for storage, cartage and similar services.

The personal baggage of EUTM Mali personnel shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles that are not for the personal use of EUTM Mali personnel, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the Host State. Such inspection shall be conducted only in the presence of the EUTM Mali personnel concerned or of an authorised representative of EUTM Mali.

Article 7

Personnel employed locally

Personnel employed locally shall enjoy privileges and immunities only to the extent admitted by the Host State. However, the Host State shall exercise its jurisdiction over such personnel in such a manner as not to interfere unduly with the operation of the mission.

Article 8

Criminal jurisdiction

The competent authorities of a Sending State shall have the right to exercise within the territory of the Host State all the criminal-jurisdiction and disciplinary powers conferred on them by the law of the Sending State with regard to all members of EUTM Mali personnel subject to the relevant law of the Sending State.

Article 9

Uniform and arms

1 The wearing of uniform shall be subject to rules issued by the Mission Commander.

2 EUTM Mali military personnel may carry or transport arms and the corresponding ammunition on condition that they are authorised to do so by their orders.

Article 10

Host State support and contracting

1 The Host State shall agree, if requested, to assist EUTM Mali in finding suitable facilities.

2 The Host State shall provide EUTM Mali, free of charge, with facilities of which it is the owner insofar as such facilities are necessary for the mission.

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3 Within its means and capabilities, the Host State shall assist in the preparation, establishment, and execution of and support for EUTM Mali. The Host State's assistance and support for the mission shall be provided under the same conditions as the assistance and support given to the Host State's armed forces.

4 The law applicable to contracts concluded by EUTM Mali in the Host State shall be determined by the said contracts.

5 The contracts may stipulate that the dispute settlement procedure referred to in Article 15(3) and (4) shall be applicable to disputes arising from the application of such contracts.

6 The Host State shall facilitate the implementation of contracts concluded by EUTM Mali with commercial entities for the purposes of the mission.

Article 11

Change to facilities

1 EUTM Mali shall be authorised to construct or modify facilities as requested for its operational requirements.

2 No compensation shall be requested from EUTM Mali by the Host State for those constructions or modifications.

Article 12

Deceased EUTM Mali personnel

1 The Mission Commander shall have the right to take charge of and make suitable arrangements for the repatriation of any deceased EUTM Mali personnel, as well as of their personal property.

2 No autopsy shall be performed on any deceased EUTM Mali personnel without the agreement of the State concerned and the presence of a representative of EUTM Mali and/or the State concerned.

3 The Host State and EUTM Mali shall cooperate to the fullest extent possible with a view to the early repatriation of deceased EUTM Mali personnel.

Article 13

Security of EUTM Mali and military police

1 The Host State shall take all appropriate measures to ensure the safety and security of EUTM Mali and its personnel outside their facilities.

2 EUTM Mali shall be authorised, on the land territory of the Host State, to take the measures necessary, including the use of necessary and proportionate force, to protect its personnel, facilities, assets and means of transport.

3 This authorisation shall extend to the protection of persons in the immediate environment of EUTM Mali personnel where there are risks that might place the lives of such persons in danger or cause them grievous bodily injury.

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4 The Mission Commander may establish a military police unit in order to maintain order on EUTM Mali facilities.

5 The military police unit may also, in consultation and cooperation with the military police or the police of the Host State, act outside those facilities to ensure the maintenance of good order and discipline among EUTM Mali personnel.

Article 14

Communications

1 EUTM Mali may install and operate radio sending and receiving stations, as well as satellite systems. It shall cooperate with the Host State's competent authorities with a view to avoiding conflicts in the use of appropriate frequencies. The Host State shall grant access, free of charge, to the frequency spectrum in accordance with its legislation in force.

2 EUTM Mali 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 EUTM Mali facilities, including the laying of cables and land lines for the purposes of the mission.

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

Article 15

Claims for death, injury, damage and loss

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

2 With a view to reaching an amicable settlement, claims for damage to or loss of civilian property not covered by paragraph 1, as well as claims for death of or injury to persons and for damage to or loss of EUTM Mali assets, facilities or means of transport, shall be forwarded to EUTM Mali via the competent authorities of the Host State, as far as claims brought by natural or legal persons from the Host State are concerned, or to the competent authorities of the Host State, as far as claims brought by EUTM Mali 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 EUTM Mali and representatives of the Host State. 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 the Host State and EU representatives.
- b for claims above the amount referred to in point (a), be submitted to an arbitration tribunal, the decision of which shall be binding.

5 The arbitration tribunal shall be composed of three arbitrators, one arbitrator being appointed by the Host State, one arbitrator being appointed by EUTM Mali and the third one being appointed jointly by the Host State and EUTM Mali. Where one of the parties does not

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appoint an arbitrator within two months or where no agreement can be found between the Host State and EUTM Mali on the appointment of the third arbitrator, the arbitrator in question shall be appointed by the president of a court of justice designated jointly by the Parties.

6 An administrative arrangement shall be concluded between EUTM Mali and the administrative authorities of the Host State in order to determine the terms of reference of the claims commission and the arbitration tribunal, the procedure applicable within those bodies and the conditions under which claims are to be lodged.

Article 16

Liaison and disputes

1 All issues arising in connection with the application of this Agreement shall be examined jointly by the representatives of EUTM Mali and the Host State's competent authorities.

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

Article 17

Other provisions

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

2 Nothing in this Agreement is intended or may be construed to derogate from any rights that may attach to a Sending State under other agreements.

Article 18

Implementing arrangements

For the purposes of the application of this Agreement, operational, administrative and technical matters may be the subject of separate arrangements to be concluded between the Mission Commander and the Host State's administrative authorities.

Article 19

Entry into force and termination

1 This Agreement shall enter into force on the day on which it is signed and shall remain in force until the date of departure of the last EUTM Mali element and of the last EUTM Mali personnel, as notified by EUTM Mali.

2 Notwithstanding paragraph 1, the provisions of Article 4(7), Article 5(1), (2), (3) and (6), Article 6(1), (3), (4), (6), (8) and (9) and Articles 11 and 15 shall be deemed to be applicable

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

3 This Agreement may be amended by written agreement between the Parties.

4 Termination of this Agreement shall not affect any rights or obligations arising out of the execution of this Agreement before such termination.

Done at Bamako on the fourth day of April in the year two thousand and thirteen, in two originals in the French language.

For the European Union

For the Republic of Mali

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- (1) OJ L 14, 18.1.2013, p. 19.
- (2) OJ L 14, 18.1.2013, p. 19.

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