

Subject: Foreign Policy, Security and Defence part of the Draft text of the Agreement on the New Partnership with the United Kingdom

Origin: European Commission, Task Force for Relations with the United Kingdom

Remarks: This negotiating document is published following consultations with the Member States and the European Parliament, bearing in mind that the United Kingdom has stated that it does not wish to engage in negotiations on these matters. It was presented to the Council Working Party on the United Kingdom on Friday 13 March 2020.

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PART THREE: SECURITY PARTNERSHIP

TITLE II: FOREIGN POLICY, SECURITY AND DEFENCE

Chapter one: Initial provisions

Article FPSD.1: Objective

The objective of this Title is to provide for cooperation between the Parties in the field of foreign policy, security and defence, in order to, inter alia, promote their shared interests and values, protect their respective citizens from external threats, prevent conflicts, strengthen international peace and security, and address the root causes of global challenges.

Article FPSD.2: Dialogue and consultation

1. The Parties shall establish a close Political Dialogue and structured consultation on foreign policy, security and defence.
2. The Parties shall also conduct regular thematic dialogues on issues of mutual interest in relation to external action.

Article FPSD.3: Cooperation in multilateral, regional and international fora and organisations

1. In support of their commitment to multilateralism, the Parties shall engage in effective consultations in multilateral fora and endeavour to exchange views and enhance cooperation to improve the effectiveness of regional and international fora and organisations, such as the United Nations and its specialized organisations and agencies, the Council of Europe, the North Atlantic Treaty Organization (NATO), the Organisation for Economic Cooperation and Development (OECD), the Organisation for Security and Cooperation in Europe (OSCE), and other fora.
2. The Parties shall also endeavour to consult each other ahead of elections in multilateral organisations to seek effective representation therein.

Chapter two: Sanctions

Article FPSD.4: Cooperation on sanctions

1. The Parties recognise that the effective use of sanctions as part of an integrated, comprehensive policy approach is an important way to maintain and restore international peace and security and uphold respect for international law, human rights, democracy, the rule of law and good governance in accordance with the principles of the UN Charter.
2. The Parties recognise that sanctions are most effective when they are reinforced by broad international support.
3. The Parties recognise that sanctions should be targeted in order to maximize impact on those whose behaviour sanctions are intended to influence and to reduce adverse humanitarian effects or unintended consequences
4. The Parties shall cooperate in the area of sanctions, including in global fora, through dialogue and exchange of information to defend common values and promote shared strategic interests.

5. Where they have shared interests, the Parties shall endeavour to reinforce the coherence and effectiveness of their sanctions policies and decisions, including as regards their implementation, while preserving the autonomy of their respective decision-making processes.

Article FPSD.5: Information exchange

1. The Parties shall endeavour to exchange information on the development, implementation and enforcement of sanctions, including on listing and their justification, at appropriate stages of the policy cycle of their respective decision-making processes.

2. Where the United Kingdom shares the foreign policy objectives of the Union, which underpin an ongoing or a planned EU sanction regime, the Parties shall intensify exchanges at appropriate stages of the policy cycle of the specific sanction regime in order to allow for close alignment and enhance the effectiveness of such sanction regime.

Chapter three: Operations and missions

Article FPSD.6: Cooperation in promoting peace and stability

1. The Parties shall cooperate on issues of common concern in the area of crisis management and peace-building, including by promoting common positions, cooperating with regard to resolutions and decisions in international organisations and fora, supporting national efforts of countries emerging from conflict to achieve sustainable peace and cooperating on crisis management operations and on other relevant programmes and projects.

2. The United Kingdom shall be entitled to participate in EU crisis management operations and missions in accordance with the Protocol on UK participation in EU operations and missions, which provides for interaction, including exchange of information, between the Parties that is proportionate to the level of the United Kingdom's contribution.

Article FPSD.7: Information exchange on crisis management

1. As part of the Political Dialogue, the Parties shall exchange information on crisis management, including ongoing and planned Common Security and Defence Policy (CSDP) missions and operations open to third countries.

2. When the United Kingdom indicates its intention to contribute to an ongoing or planned CSDP mission or operation open to the United Kingdom upon invitation by the Union, the Parties shall intensify exchanges of information at relevant stages of the planning process of this specific CSDP mission or operation proportionately to the level of the United Kingdom's contribution in a manner consistent with EU crisis management procedures and EU decision-making autonomy.

Chapter four: Defence capabilities development

Article FPSD.8: Cooperation

The Parties shall endeavour to facilitate interoperability and joint effectiveness of Armed Forces.

Article FPSD.9: Collaboration with the European Defence Agency

The Union may involve the United Kingdom in the activities of the European Defence Agency in accordance with relevant Union law.

Article FPSD.10: Participation in Permanent Structured Cooperation projects

The Union may invite the United Kingdom to take part in a project under permanent structured cooperation (PESCO) in accordance with the relevant Union law.

Chapter five: Consular cooperation

Article FPSD.11: Cooperation on consular affairs

1. The Parties shall consult on issues of common concern in the area of consular affairs, consular protection and consular crisis management, including at embassy and consulate level in third countries and as part of a regular consular dialogue. They may cooperate with a view to supporting the preparation and coordination of consular crisis response operations.
2. In the event of a crisis, the Parties may cooperate to ensure efficient assistance for each other's citizens. They shall, where possible, inform each other of available evacuation capacities in a timely manner.

Chapter six: Intelligence Exchanges

Article FPSD.12: Cooperation between Union bodies and United Kingdom authorities

The Parties shall establish practical modalities to facilitate timely and effective intelligence exchanges, without prejudice to the autonomous development of intelligence products.

Article FPSD.13: Cooperation with the EU Satellite Centre

The Parties may facilitate the cooperation between the European Union Satellite Centre (EUSC) and the relevant UK authorities in accordance with relevant Union law.

Chapter seven: Space

Article FPSD.14: Cooperation on Space

1. The Parties agree to cooperate on matters related to space.
2. The United Kingdom may participate in the non-security related activities of the Union programmes in the area of Space, in accordance with Part Four of this Agreement [Union Programmes].

Article FPSD.15: Cooperation on Galileo

1. The United Kingdom's access to Public Regulated Service provided by the Global Navigation Satellite System established under Galileo shall be in accordance with the conditions applicable to third country access.
2. Unless and until the United Kingdom grants the Union access to its envisaged Global Navigation Satellite System, access by the United Kingdom to the Public Regulated Service shall be conditional upon the United Kingdom's participation in the non-security related activities of the Union programmes in the area of Space.
3. The use of Public Regulated Service by the United Kingdom shall not contravene the essential security interests of the Union and its Member States.

Chapter eight: Development cooperation

Article FPSD.16: Cooperation, dialogue and consultation

1. The Parties shall endeavour to work together whenever possible to achieve the common goal of eradicating poverty and supporting inclusive economic development around the globe.
2. To this end, the Parties shall continue to support the implementation of the United Nations Sustainable Development Goals and the European Consensus on Development.
3. The Parties shall establish a regular policy dialogue on development cooperation in order to improve policy coordination on issues of common interest and to improve the quality and effectiveness of their development cooperation in line with internationally accepted principles on aid effectiveness.
4. The Parties shall engage in consultations in third countries to facilitate effective development cooperation.

Protocol establishing a framework for the participation of the United Kingdom of Great Britain and Northern Ireland in European Union crisis management operations

THE EUROPEAN UNION (THE "UNION" OR THE "EU")

AND

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, HEREINAFTER REFERRED TO AS 'THE UNITED KINGDOM',

hereinafter jointly referred to as the "Parties",

ACKNOWLEDGING that in the framework of its common security and defence policy, the Union may decide to undertake crisis management operations which may include the tasks set out in Articles 42(1) and 43(1) of the Treaty on European Union, as decided by the Council of the European Union (the "Council");

RECOGNISING the importance of world peace for the development of all States, and

REMAINING COMMITTED to contributing towards maintaining peace and security in their respective neighbourhood and in the broader world, based on the principles of the Charter of the United Nations;

CONSIDERING the commitment between the Parties to strengthen their cooperation in matters concerning security and defence, and recognising that the capabilities and abilities of the security forces of the United Kingdom could be used in EU crisis management operations;

DESIROUS of setting down general conditions regarding the participation of the United Kingdom in EU crisis management operations in a protocol establishing a framework for such possible future participation, rather than defining those conditions on a case-by-case basis for each operation concerned;

CONSIDERING that this Protocol should be without prejudice to the decision-making autonomy of the Union, and should not prejudge the case-by-case nature of the decision by the United Kingdom to participate in an EU crisis management operation;

WHEREAS the Union will decide whether third States will be invited to participate in an EU crisis management operation. The United Kingdom may accept the invitation by the Union and offer its contribution. In such a case, the Union will decide on the acceptance of the proposed contribution;

HAVE AGREED AS FOLLOWS:

SECTION I

GENERAL PROVISIONS

Article 1

Decisions relating to participation

1. Following the decision of the Union to invite the United Kingdom to participate in an EU crisis management operation, the United Kingdom shall, in the implementation of this Protocol, communicate the decision of its competent authority regarding its participation, including its proposed contribution, to the Union.

2. The Union shall provide the United Kingdom with an early indication of the likely contribution to the common costs of the operation as soon as possible with a view to assisting the United Kingdom in the formulation of its offer.
3. The assessment by the Union of the proposed contribution by the United Kingdom shall be conducted in consultation with the latter.
4. The Union shall communicate the outcome of its assessment and decision on the proposed United Kingdom's contribution in writing, with a view to securing the participation of the United Kingdom, in accordance with this Protocol.
5. The contribution proposed by the United Kingdom pursuant to paragraph 1, and its acceptance by the Union pursuant to paragraph 4, shall constitute the basis for the application of this Protocol to each specific EU crisis management operation.
6. The United Kingdom may, on its own initiative or at the request of the Union, and following consultations between the Parties, withdraw wholly or in part, at any time, from participation in an EU crisis management operation.

Article 2

Framework

1. The United Kingdom shall associate itself with the relevant Decision by which the Council decides that the Union will conduct a crisis management operation, and with any other Decision by which the Council decides to extend a crisis management operation, in accordance with this Protocol and any required implementing arrangements.
2. The contribution of the United Kingdom to an EU crisis management operation shall be without prejudice to the decision-making autonomy of the Union.

Article 3

Status of personnel and forces of the United Kingdom

1. The status of personnel seconded to an EU civilian crisis management operation and that of personnel and forces contributed to an EU military crisis management operation by the United Kingdom shall be governed by the relevant status of forces agreement or status of mission agreement, if such agreement is concluded, or by any other arrangement between the Union and the State(s) in which the operation is conducted. The United Kingdom shall be informed thereof.
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 the competent authorities of the United Kingdom
3. Without prejudice to the status of forces agreement or status of mission agreement referred to in paragraph 1, the United Kingdom shall exercise jurisdiction over its personnel participating in the EU crisis management operation. Where the forces of the United Kingdom operate on board a vessel or aircraft of a Member State of the Union, that Member State may exercise jurisdiction subject to any existing or future agreements, and in accordance with its laws and regulations and with international law.

4. The United Kingdom shall be responsible for answering any claims linked to its participation in an EU crisis management operation from, or concerning, any of its personnel and 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 of, or destruction of assets owned or operated by either Party, or injury or death of personnel of either Party, arising out of the performance of their official duties in connection with activities under this Protocol, except in the case of gross negligence or wilful misconduct.

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

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

Article 4

Classified information

1. The United Kingdom shall take appropriate measures to ensure that EU classified information is protected in accordance with the Council security rules for protecting EU classified information, contained in Council Decision 2013/488/EU¹, and in accordance with further guidance issued by competent authorities, including by 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. Where the Parties conclude an agreement on security procedures for the exchange of classified information, that agreement shall apply in the context of an EU crisis management operation.

SECTION II

PROVISIONS ON PARTICIPATION IN EU CIVILIAN CRISIS MANAGEMENT OPERATIONS

Article 5

Personnel seconded to an EU civilian crisis management operation

1. The United Kingdom shall:

(a) ensure that its personnel seconded to an EU civilian crisis management operation undertake their mission in accordance with:

¹ Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJEU L 274, 15.10.2013, p. 1).

- (i) the relevant Council Decision and subsequent amendments thereto as referred to in Article 2(1);
 - (ii) the Operation Plan;
 - (iii) any applicable implementing arrangements;
 - (iv) any applicable policy for EU civilian crisis management operations;
- (b) inform the EU Civilian Operation Commander in due time of any change to its contribution to the EU civilian crisis management operation.
2. Personnel seconded by the United Kingdom to an EU civilian crisis management operation shall undergo a medical examination, be vaccinated and be certified medically fit for duty by the competent authority of the United Kingdom, and shall produce a copy of that certification.
3. Personnel seconded by the United Kingdom shall carry out their duties and conduct themselves solely with the interests of the EU civilian crisis management operation in mind, while adhering to the highest standards of behaviour set out in the policies applicable to EU civilian crisis management operations.

Article 6

Chain of command

1. All personnel participating in an EU civilian crisis management operation shall remain under the full command of their national authorities.
2. National authorities shall transfer operational control to the EU Civilian Operation Commander.
3. The EU Civilian Operation Commander shall assume responsibility and exercise command and control of the EU civilian crisis management operation at strategic level.
4. The EU Head of Mission shall assume responsibility and exercise command and control of the EU civilian crisis management operation at theatre level and assume its day-to-day management.
5. The United Kingdom shall have the same rights and obligations in terms of day-to-day management of the EU civilian crisis management operation as the Member States of the Union taking part in the operation, in accordance with the legal instruments referred to in Article 2(1).
6. The EU Head of Mission shall be responsible for disciplinary control over the personnel of the EU civilian crisis management operation. Where required, disciplinary action shall be taken by the national authority concerned.
7. A National Contingent Point of Contact ("NPC") shall be appointed by the United Kingdom to represent its national contingent in the EU civilian crisis management operation. The NPC shall report to the EU Head of Mission on national matters and shall be responsible for the day-to-day discipline of the contingent of the United Kingdom.
8. The decision to end the EU civilian crisis management operation shall be taken by the Union, following consultation with the United Kingdom, if it is still contributing to that operation at the date of its termination.

Article 7

Financial aspects

1. Without prejudice to Article 8, the United Kingdom shall assume all the costs associated with its participation in an EU civilian crisis management operation apart from the running costs, as set out in the operational budget of the operation.
2. In the event of death, injury, loss or damage to natural or legal persons from the State(s) in which the EU civilian crisis management operation is conducted, issues of possible liability and compensation by the United Kingdom shall be governed by the conditions set out in the applicable status of mission agreement referred to in Article 3(1) or any alternative applicable provisions.

Article 8

Contribution to the operational budget

1. Subject to paragraph 4 of this Article and notwithstanding Article 1(5), the United Kingdom shall contribute to the financing of the operational budget of the EU civilian crisis management operation concerned.
2. The contribution referred to in paragraph 1 shall be calculated on the basis of either of the following formulae, whichever produces the lower amount:
 - (a) the share of the reference amount for the operational budget which is in proportion to the ratio of the United Kingdom 's gross national income (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 the United Kingdom participating in the operation to the total number of personnel of all States participating in the operation.
3. Notwithstanding paragraphs 1 and 2, the United Kingdom shall not make any contribution towards the financing of per diem allowances paid to personnel of the Member States of the Union.
4. Notwithstanding paragraph 1, the Union shall, in principle, exempt the United Kingdom from financial contributions to a particular EU civilian crisis management operation where:
 - (a) the Union considers that the United Kingdom provides a significant contribution which is essential for that operation; or
 - (b) the United Kingdom has a GNI per capita which does not exceed that of any Member State of the Union.
5. Subject to paragraph 1, any arrangement on the payment of the contributions of the United Kingdom to the operational budget of an EU civilian crisis management operation shall be entered into between the competent authorities of the Parties and shall, *inter alia*, include provisions on:
 - (a) the amount of the financial contribution concerned;
 - (b) the arrangements for payment of the financial contribution; and

- (c) the auditing procedure.

SECTION III

PROVISIONS ON PARTICIPATION IN EU MILITARY CRISIS MANAGEMENT OPERATIONS

Article 9

Participation in an EU military crisis management operation

1. The United Kingdom shall:
 - (a) ensure that its forces and personnel participating in an EU military crisis management operation undertake their mission in accordance with:
 - (i) the relevant Council Decision and subsequent amendments thereto as referred to in Article 2(1);
 - (ii) the Operation Plan;
 - (iii) any applicable implementing arrangements; and
 - (iv) any applicable policy for EU military crisis management operations;
 - (b) inform the EU Operation Commander in due time of any change to its participation in the EU military crisis management operation.
2. Personnel seconded the United Kingdom shall carry out their duties and conduct themselves solely with the interests of the EU military crisis management operation in mind, while adhering to the highest standards of behaviour set out in the policies applicable to EU military crisis management operations.

Article 10

Chain of command

1. All forces and personnel participating in an EU military crisis management operation shall remain under the full command of their national authorities.
2. 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.
3. The United Kingdom shall have the same rights and obligations in terms of the day-to-day management of the EU military crisis management operation as the Member States of the Union taking part in the operation, in accordance with the legal instruments referred to in Article 2(1).
4. The EU Operation Commander may, following consultations with the United Kingdom, at any time request the withdrawal of the contribution by the United Kingdom.
5. A Senior Military Representative ("SMR") shall be appointed by the United Kingdom 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 the contingent of the United Kingdom.

Article 11

Financial aspects

1. Without prejudice to Article 12, the United Kingdom shall assume all the costs associated with its participation in the EU military crisis management operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 2(1), as well as in Council Decision 2011/871/CFSP¹.

2. In the event of death, injury, loss or damage to natural or legal persons from the State(s) in which the EU military crisis management operation is conducted, issues of possible liability and compensation by the United Kingdom shall be governed by the conditions set out in the applicable status of forces agreement referred to in Article 3(1) or any applicable alternative provisions.

Article 12

Contribution to the common costs

1. Subject to paragraph 3 of this Article and notwithstanding Article 1(5), the United Kingdom shall contribute to the financing of the common costs of the EU military crisis management operation concerned.

2. The contribution referred to in paragraph 1 shall be calculated on the basis of either of the following formulae, whichever produces the lower amount:

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

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

3. Notwithstanding paragraph 1, the Union shall, in principle, exempt the United Kingdom from financial contributions to a particular EU military crisis management operation where:

- (a) the Union considers that the United Kingdom provides a significant contribution which is essential for this operation; or
- (b) the United Kingdom has a GNI per capita which does not exceed that of any Member State of the Union.

¹ Council Decision (CFSP) 2015/528 of 27 March 2015 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP (OJ EU L 84, 28.03.2015, p. 39).

4. Subject to paragraph 1, any arrangements for the payment of the contributions of the United Kingdom to the common costs shall be entered into between the competent authorities of the Parties and shall, *inter alia*, include provisions on:

- (a) the amount of the financial contribution 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 Protocol

Without prejudice to Articles 8(5) and 12(3), any necessary technical and administrative arrangements in pursuance of the implementation of this Protocol shall be concluded between the competent authorities of the Parties.

Article 14

Competent authorities

For the purposes of this Protocol, the competent authorities of the United Kingdom shall be *[AUTHORITY]*, unless the Union is otherwise notified.

Article 15

Non-compliance

Should either Party fail to comply with its obligations under this Protocol, the other Party shall have the right to terminate this Protocol by providing one month's written notice.

ARTICLE 16

Dispute settlement

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

ARTICLE 17¹

Entry into force, duration and termination

1. This Protocol shall enter into force on the first day of the month following the month during which the Parties have notified each other of the completion of the internal legal procedures necessary for the entry into force of this Protocol.

¹ Article 17 (as well as, possibly, other provisions in this Protocol) may need to be reviewed during the process of drafting the main Agreement.

2. This Protocol shall be reviewed upon the request of either Party.
3. This Protocol may be amended on the basis of a written agreement between the Parties. The amendments shall enter into force in accordance with the procedure laid down in paragraph 1.
4. This Protocol may be terminated by either Party by written notice of termination given to the other Party. Such termination shall take effect six months after receipt of notification by the other Party.

DRAFT

*Declaration by the Member states of the Union
applying a Council decision
on an EU crisis management operation
in which the United Kingdom participates,
regarding the waiver of claims*

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

- was caused by personnel, contributed by the United Kingdom to an EU crisis management operation, in the execution of their duties in connection with that operation, except in the case of gross negligence or wilful misconduct; or
- arose from the use of any assets owned by the United Kingdom, provided that the assets were used in connection with the EU crisis management operation, except in the case of gross negligence or wilful misconduct by personnel contributed by the United Kingdom to that operation, using those assets."

Declaration by the United Kingdom
regarding the waiver of claims against any State
participating in EU crisis management operations

"The United Kingdom, having agreed to participate in an EU crisis management operation, will endeavour, insofar as its internal legal system so permits, to waive as far as possible any claims against any State participating in the EU crisis management operation for injury to, or death of, its personnel or damage to, or loss of, any assets owned by it and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel contributed by any State participating in the EU crisis management operation, in the execution of their duties in connection with that operation, except in the case of gross negligence or wilful misconduct; or
- 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 that operation, except in the case of gross negligence or wilful misconduct by EU crisis management operation personnel using those assets."