

AGREEMENT

between the European Union and the Government of the Socialist Republic of Viet Nam establishing a framework for the participation of Viet Nam in European Union crisis management operations

THE EUROPEAN UNION (the 'Union' or the 'EU') of the one part, and VIET NAM of the other part, hereinafter jointly referred to as the 'Parties',

Whereas:

- (1) In the framework of its Common Security and Defence Policy, the European 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.
- (2) Viet Nam and the EU recognise the importance of world peace for the development of all States, and remain committed to contributing towards maintaining peace and security in their respective neighbourhood and in the broader world, based on the principles of the United Nations Charter.
- (3) Considering the commitment between the Parties to strengthening their cooperation in matters concerning security and defence, and recognising that the capabilities and abilities of Viet Nam could be used in EU crisis management operations.
- (4) Viet Nam and the EU wish to set down general conditions regarding the participation of Viet Nam in EU crisis management operations in an agreement establishing a framework for such possible future participation, rather than defining those conditions on a case-by-case basis for each operation concerned.
- (5) Such an agreement 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 Viet Nam to participate in an EU crisis management operation.
- (6) The Union will decide whether third States will be invited to participate in an EU crisis management operation. Viet Nam 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 Viet Nam to participate in an EU crisis management operation, Viet Nam shall, in the implementation of this Agreement, communicate the decision of its competent authority regarding its participation, including its proposed contribution, to the European Union.
2. The assessment by the Union of the proposed contribution by Viet Nam shall be conducted in consultation with the latter.
3. The Union shall provide Viet Nam with an early indication of the likely contribution to the common costs of the operation as soon as possible with a view to assisting Viet Nam in the formulation of its offer.

4. The Union shall communicate the outcome of its assessment and decision on the proposed Viet Nam's contribution to Viet Nam in writing, with a view to securing the participation of Viet Nam, in accordance with the provisions of this Agreement.
5. The offer by Viet Nam pursuant to paragraph 1, and its acceptance by the EU pursuant to paragraph 4, shall constitute the basis for the application of this Agreement to each specific crisis management operation.
6. Viet Nam 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. Viet Nam shall associate itself with the relevant Council Decision by which the Council of the European Union decides that the Union will conduct a crisis management operation, and with any other Decision by which the Council of the European Union decides to extend an EU crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.
2. The contribution of Viet Nam 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 Viet Nam

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 Viet Nam shall be governed by the relevant agreement on the status of forces/mission, if such is concluded, or by any other arrangement between the Union and the State(s) in which the operation is conducted. Viet Nam 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 Viet Nam.
3. Without prejudice to the agreement on the status of forces/mission referred to in paragraph 1, Viet Nam shall exercise jurisdiction over its personnel participating in the EU crisis management operation. Where the forces of Viet Nam operate on board of a vessel or aircraft of a Member State of the European Union, that Member State may exercise jurisdiction subject to any existing and/or future agreements, and in accordance with its laws and regulations and with international law.
4. Viet Nam shall be responsible for answering any claims linked to the 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 Agreement, except in the case of gross negligence or wilful misconduct. Any case of gross negligence or wilful misconduct shall be settled by diplomatic means between the Parties.

6. Viet Nam undertakes to make a declaration as regards the waiver of claims against any State participating in an EU crisis management operation in which Viet Nam participates, and to do so when signing this Agreement.
7. The Union undertakes to ensure that the Member States of the European Union make a declaration as regards the waiver of claims for any future participation of Viet Nam in an EU crisis management operation, and to do so when signing this Agreement.

Article 4

Classified information

1. Viet Nam 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/EU ⁽¹⁾, 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 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, such 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. Viet Nam:
 - (a) shall ensure that its personnel seconded to an EU civilian crisis management operation undertake their mission in accordance with:
 - (i) the relevant Council Decision and its subsequent amendments 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) shall inform the Civilian Operation Commander in due time of any change to its contribution to the EU civilian crisis management operation.
2. Personnel seconded by Viet Nam to an EU civilian crisis management operation shall undergo a medical examination, vaccination and be certified medically fit for duty by its competent authority, and shall produce a copy of that certification.
3. Personnel seconded by Viet Nam shall carry out their duties and conduct themselves solely with the interests of the EU civilian crisis management operation in mind and 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 Viet Nam's personnel participating in an EU civilian crisis management operation shall remain under the full command of Viet Nam's authorities.
2. The EU Civilian Operation Commander shall exercise operational control over all personnel participating in an EU civilian crisis management operation. Implementing arrangements to this effect shall be entered into prior to deployment by the EU Civilian Operation Commander and Viet Nam's authorities.

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

3. The Civilian Operation Commander shall assume responsibility and exercise command and control of the EU civilian crisis management operation at strategic level.
4. The 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. Viet Nam shall have the same rights and obligations in terms of day-to-day management of the operation as the Member States of the European Union taking part in the operation, in accordance with the legal instruments referred to in Article 2(1).
6. The Head of Mission shall be responsible for disciplinary control over the personnel of the EU civilian crisis management operation. Viet Nam shall be responsible for taking any action, including legal or disciplinary, against any of its personnel in accordance with its laws, regulations and policies.
7. A National Contingent Point of Contact ('NPC') shall be appointed by Viet Nam to represent its national contingent in the operation. The NPC shall report to the Head of Mission on matters affecting the operation and shall be responsible for the day-to-day discipline of the contingent of Viet Nam.
8. The decision to end the operation shall be taken by the Union, following consultation with Viet Nam 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. Without prejudice to Article 8, Viet Nam 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 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 Viet Nam shall be governed by the conditions set out in the applicable agreement on the status of mission 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, including with regard to the own capabilities of Viet Nam, and following the decision of Viet Nam to participate in an EU civilian crisis management operation in accordance with Article 1(5), Viet Nam is willing to contribute to the financing of the operational budget of the EU civilian crisis management operation concerned.
2. Such contribution 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 for the operational budget which is in proportion to the ratio of Viet Nam'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 Viet Nam participating in the operation to the total number of personnel of all States participating in the operation.
3. Notwithstanding paragraphs 1 and 2, Viet Nam shall not make any contribution towards the financing of per diem allowances paid to personnel of the Member States of the European Union.

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

(a) the Union decides that Viet Nam provides a significant contribution which is essential for this operation;

or

(b) Viet Nam 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 Viet Nam to the operational budget of an EU civilian crisis management operation shall be signed between the competent authorities of the Parties and shall, inter alia, include the following 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. Viet Nam shall ensure that its forces and personnel participating in an EU military crisis management operation undertake their mission in accordance with:

(a) the relevant Council Decision and its subsequent amendments as referred to in Article 2(1);

(b) the Operation Plan;

(c) any applicable implementing arrangements; and

(d) any applicable policy for EU military crisis management operations.

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

3. Personnel seconded by Viet Nam shall carry out their duties and conduct themselves solely with the interests of the EU military crisis management operation in mind and 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 Viet Nam's forces and personnel participating in an EU military crisis management operation shall remain under the full command of Viet Nam's authorities.

2. The EU Operation Commander shall exercise Operational and Tactical command and/or control of all forces and personnel of States participating in an EU military crisis management operation. Implementing arrangements to that effect shall be entered into prior to deployment by the EU Operation Commander and Viet Nam's authorities.

3. Viet Nam shall have the same rights and obligations in terms of the day-to-day management of the operation as the Member States of the European 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 Viet Nam, at any time request the withdrawal of the contribution by Viet Nam.

5. A Senior Military Representative ('SMR') shall be appointed by Viet Nam 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 Viet Nam.

*Article 11***Financial aspects**

1. Without prejudice to Article 12 of this Agreement, Viet Nam 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), as well as in Council Decision (CFSP) 2015/528 ⁽²⁾.
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 Viet Nam shall be governed by the conditions set out in the applicable agreement on the status of forces 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, including with regard to the own capabilities of Viet Nam, and following the decision of Viet Nam to participate in an EU military crisis management operation in accordance with Article 1(5), Viet Nam is willing to contribute to the financing of the common costs of the EU military crisis management operation concerned.
2. Such contribution to the common costs 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 Viet Nam'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 Viet Nam 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 Viet Nam contributes personnel to the Operation or Force Headquarters only, 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 Viet Nam to that of the total personnel of the operation.

3. Notwithstanding paragraph 1 above, the Union shall, in principle, exempt Viet Nam from financial contributions to a particular EU military crisis management operation when:
 - (a) the Union decides that Viet Nam provides a significant contribution which is essential for this operation;or
 - (b) Viet Nam has a GNI per capita which does not exceed that of any Member State of the Union.

4. Subject to paragraph 1, any arrangements for the payment of the contributions of Viet Nam to the common costs shall be concluded between the competent authorities of the Parties and shall include, inter alia, the following provisions on:
 - (a) the amount of the financial contribution concerned;
 - (b) the arrangements for payment of the financial contribution; and
 - (c) the auditing procedure.

⁽²⁾ 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, 28.3.2015, p. 39).

SECTION IV

FINAL PROVISIONS

Article 13

Arrangements to implement the Agreement

Without prejudice to Articles 8(5) and 12(4), any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the competent authorities of the Parties.

Article 14

Competent authorities

For the purposes of this Agreement, the competent authorities of Viet Nam shall be the Ministry of National Defence of Viet Nam, unless the European Union is otherwise notified.

Article 15

Non-compliance

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

Article 16

Dispute settlement

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

Article 17

Entry into force, duration and termination

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 legal procedures necessary for the entry into force of this Agreement.
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. The amendments shall enter into force in accordance with the procedure laid down in paragraph 1.
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.

IN WITNESS WHEREOF, the undersigned, both being duly authorised thereto by the respective Parties, have signed this Agreement.

Done at Brussels on 17 October 2019 in duplicate in the English and Vietnamese languages, both texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the European Union



For the Government of the Socialist
Republic of Viet Nam



**DECLARATION BY THE MEMBER STATES OF THE EU APPLYING AN EU COUNCIL DECISION
ON AN EU CRISIS MANAGEMENT OPERATION, IN WHICH VIET NAM PARTICIPATES
REGARDING THE WAIVER OF CLAIMS REFERRED TO IN ARTICLE 3(5)**

The EU Member States applying an EU Council Decision on an EU crisis management operation in which Viet Nam participates will endeavour, insofar as their internal legal systems so permit, to waive as much as possible any claims against Viet Nam 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 Viet Nam to an EU crisis management operation, 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 Viet Nam, provided that the assets were used in connection with the operation, and except in the case of gross negligence or wilful misconduct of personnel contributed by Viet Nam to the EU crisis management operation, using those assets.’
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DECLARATION BY VIET NAM REGARDING THE WAIVER OF CLAIMS AGAINST ANY STATE PARTICIPATING IN EU CRISIS MANAGEMENT OPERATIONS, REFERRED TO IN ARTICLE 3(5)

‘Viet Nam, having agreed to participate in an EU crisis management operation, will endeavour, insofar as its internal legal system so permits, to waive as much 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 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 States participating in the EU crisis management operation, provided that the assets were used in connection with the operation and except in the case of gross negligence or wilful misconduct of EU crisis management operation personnel using those assets.’
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