

COUNCIL DECISION 2013/233/CFSP**of 22 May 2013****on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28, Article 42(4) and Article 43(2) thereof,

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

Whereas:

- (1) On 23 July 2012, the Council, recognising the serious security challenges in Libya, reiterated the readiness of the Union to provide assistance, including through Common Security and Defence Policy (CSDP), in the areas of security and border management, in close partnership with Libyan authorities.
- (2) On 9 January 2013, the Minister for Foreign Affairs and International Cooperation of Libya addressed a letter to the High Representative of the Union for Foreign Affairs and Security Policy (HR), welcoming the Union's CSDP proposal to support the Libyan authorities in developing the capacity to enhance the security of Libya's borders in the short term, and to assist in developing a broader strategic Integrated Border Management (IBM) concept in the longer term.
- (3) On 31 January 2013, the Council approved the Crisis Management Concept for a possible CSDP civilian mission in Libya.
- (4) The Watch-Keeping Capability should be activated for the Mission established by this Decision.
- (5) The Mission will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty on European Union (TEU),

HAS ADOPTED THIS DECISION:

*Article 1***Mission**

The Union hereby establishes a European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya).

*Article 2***Objectives**

The objectives of EUBAM Libya are to support the Libyan authorities to develop capacity for enhancing the security of Libya's

land, sea and air borders in the short term and to develop a broader IBM strategy in the longer term.

*Article 3***Tasks**

1. In order to achieve the objectives set out in Article 2, the tasks of EUBAM Libya shall be:
 - (a) through training and mentoring, to support Libyan authorities in strengthening the border services in accordance with international standards and best practices;
 - (b) to advise the Libyan authorities on the development of a Libyan national IBM strategy;
 - (c) to support the Libyan authorities in strengthening their institutional operational capabilities.
2. EUBAM Libya shall not carry out any executive function.

*Article 4***Chain of command and structure**

1. EUBAM Libya shall have a unified chain of command as a crisis management operation.
2. EUBAM Libya shall have its Headquarters in Tripoli.
3. EUBAM Libya shall be structured in accordance with its planning documents.
4. EUBAM Libya shall have a project capability to identify, plan and implement projects. Additionally, EUBAM Libya may, as appropriate and if invited to do so, coordinate, facilitate and provide advice on projects implemented by Member States and third States under their responsibility, in areas related to EUBAM Libya and in support of its objectives.

*Article 5***Civilian Operation Commander**

1. The Civilian Planning and Conduct Capability (CPCC) Director shall be the Civilian Operation Commander for EUBAM Libya.
2. The Civilian Operation Commander, under the political control and strategic direction of the Political and Security Committee (PSC) and overall authority of the HR, shall exercise command and control of EUBAM Libya at the strategic level.

3. The Civilian Operation Commander shall ensure, with regard to the conduct of operations, the proper and effective implementation of the Council's decisions as well as the PSC's decisions, including by issuing instructions at the strategic level as required to the Head of Mission and providing the Head of Mission with advice and technical support.
4. The Civilian Operation Commander shall report to the Council through the HR.
5. All seconded staff shall remain under the full command of the national authorities of the seconding State(s) in accordance with national rules, of the Union institution concerned or of the European External Action Service (EEAS). Those authorities shall transfer Operational Control (OPCON) of their personnel, teams and units to the Civilian Operation Commander.
6. The Civilian Operation Commander shall have overall responsibility for ensuring that the Union's duty of care is properly discharged.
7. The Civilian Operation Commander, the European Union Special Representative (EUSR) for the Southern Mediterranean region, the Head of Union Delegation in Libya and the Head of Mission of EUBAM Libya shall consult each other as required.

Article 6

Head of Mission

1. The Head of Mission shall assume responsibility for, and exercise command and control of, EUBAM Libya at theatre level and shall be directly responsible to the Civilian Operation Commander.
2. The Head of Mission shall exercise command and control over personnel, teams and units from contributing States as assigned by the Civilian Operation Commander together with administrative and logistic responsibility including over assets, resources and information placed at the disposal of EUBAM Libya.
3. The Head of Mission shall issue instructions to all EUBAM Libya staff, including the Brussels Support Element and regional liaison officers, where applicable, for the effective conduct of EUBAM Libya in theatre, assuming its coordination and day-to-day management, and following the instructions at the strategic level of the Civilian Operation Commander.
4. The Head of Mission shall be responsible for the implementation of the budget of EUBAM Libya. For this purpose, the Head of Mission shall sign a contract with the Commission.
5. The Head of Mission shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary powers shall be exercised by the national authority in accordance with national rules, by the Union institution concerned or by the EEAS.
6. The Head of Mission shall represent EUBAM Libya in the operations area and shall ensure appropriate visibility of EUBAM Libya.

7. The Head of Mission shall coordinate, as appropriate, with other Union actors on the ground. The Head of Mission shall, without prejudice to the chain of command, receive local political guidance from the EUSR for the Southern Mediterranean region in consultation with the Head of Union Delegation in Libya.

8. In the context of the project capability, the Head of Mission shall be authorised to seek recourse to financial contributions from the Member States or third States to implement projects identified as supplementing in a consistent manner the other actions of EUBAM Libya, if the project is:

- (a) provided for in the Budgetary Impact Statement relating to this Decision; or
- (b) included in the course of EUBAM Libya in the Budgetary Impact Statement at the request of the Head of Mission.

In such a case the Head of Mission shall conclude an arrangement with the States concerned, covering in particular the specific procedures for dealing with any complaint from third parties concerning damage caused as a result of acts or omissions by the Head of Mission in the use of the funds provided by the contributing States.

Under no circumstances shall the Union or the HR be held liable by contributing States as a result of acts or omissions by the Head of Mission in the use of funds provided by contributing States.

Article 7

Staff

1. EUBAM Libya shall consist primarily of staff seconded by Member States, Union institutions or the EEAS.
2. Each Member State, Union institution or the EEAS shall bear the costs related to any of the staff seconded by it, including travel expenses to and from the place of deployment, salaries, medical coverage and allowances other than applicable daily allowances.
3. Each Member State, Union institution and the EEAS shall be responsible for answering any claims linked to the secondment, either from or concerning the member of staff seconded by it, and for bringing any action against that person.
4. EUBAM Libya may also recruit international or local staff on a contractual basis if the functions required cannot be provided by personnel seconded by Member States, Union institutions or the EEAS. Exceptionally, in duly justified cases, where no qualified applicants from Member States are available, nationals from participating third States may be recruited on a contractual basis, as appropriate.
5. The conditions of employment and the rights and obligations of international and local staff shall be laid down in contracts between the Head of Mission and such staff members.

*Article 8***Status of EUBAM Libya and of its staff**

The status of EUBAM Libya and its staff, including, where appropriate, the privileges, immunities and further guarantees necessary for the completion and smooth functioning of EUBAM Libya, shall be the subject of an agreement concluded pursuant to Article 37 TEU and in accordance with the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union.

*Article 9***Political control and strategic direction**

1. The PSC shall exercise, under the responsibility of the Council and of the HR, political control and strategic direction of EUBAM Libya. The Council hereby authorises the PSC to take the relevant decisions for that purpose in accordance with the third paragraph of Article 38 TEU. This authorisation shall include the powers to appoint a Head of Mission, upon a proposal from the HR, and to amend the Concept of Operations Plus (CONOPS Plus) and the Operation Plan (OPLAN). The powers of decision with respect to the objectives and termination of the EUBAM Libya shall remain vested in the Council.

2. The PSC shall report to the Council at regular intervals.

3. The PSC shall receive, on a regular basis and as required, reports by the Civilian Operation Commander and the Head of Mission on issues within their respective areas of responsibility.

*Article 10***Participation of third States**

1. Without prejudice to the decision-making autonomy of the Union and its single institutional framework, third States may be invited to contribute to EUBAM Libya, provided that they bear the cost of the staff seconded by them, including salaries, all risk insurance cover, daily subsistence allowances and travel expenses to and from Libya, and that they contribute to the running costs of EUBAM Libya, as appropriate.

2. Third States contributing to EUBAM Libya shall have the same rights and obligations in terms of the day-to-day management of EUBAM Libya as Member States taking part in EUBAM Libya.

3. The Council hereby authorises the PSC to take the relevant decisions on acceptance of the proposed contributions and to establish a Committee of Contributors.

4. Detailed arrangements regarding the participation of third States shall be covered by agreements concluded in accordance with Article 37 TEU and additional technical arrangements as necessary. Where the Union and a third State conclude or have concluded an agreement establishing a framework for the participation of that third State in crisis management operations of the Union, the provisions of that agreement shall apply in the context of EUBAM Libya.

*Article 11***Security**

1. The Civilian Operation Commander shall, in accordance with Article 5, direct the Head of Mission in planning security measures, and shall ensure their proper and effective implementation by EUBAM Libya.

2. The Head of Mission shall be responsible for the security of EUBAM Libya and for ensuring compliance with minimum security requirements applicable to EUBAM Libya, in line with the policy of the Union on the security of personnel deployed outside the Union in an operational capacity under Title V TEU, and its supporting instruments.

3. The Head of Mission shall be assisted by a Senior Mission Security Officer, who shall report to the Head of Mission and also maintain a close working relationship with the EEAS.

4. The EUBAM Libya staff shall undergo mandatory security training before taking up their duties, in accordance with the OPLAN. They shall also receive regular in-theatre refresher training organised by the Mission Security Officer.

5. The Head of Mission shall ensure the protection of EU classified information in accordance with Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information ⁽¹⁾.

*Article 12***Watch-Keeping Capability**

The Watch-Keeping Capability shall be activated for EUBAM Libya.

*Article 13***Financial arrangements**

1. The financial reference amount intended to cover the expenditure related to EUBAM Libya for the first 12 months following the entry into force of this Decision shall be EUR 30 300 000. The financial reference amount for the subsequent periods shall be decided by the Council.

2. All expenditure shall be managed in accordance with the rules and procedures applicable to the general budget of the Union.

3. Nationals of participating third States and of host and neighbouring countries shall be allowed to tender for contracts. Subject to the Commission's approval, the Head of Mission may conclude technical arrangements with Member States, participating third States and other international actors regarding the provision of equipment, services and premises to EUBAM Libya.

4. The financial arrangements shall respect the operational requirements of EUBAM Libya including the compatibility of equipment and the interoperability of its teams.

5. The Head of Mission shall report fully to, and be supervised by, the Commission regarding the activities undertaken in the framework of the Head of Mission's contract.

⁽¹⁾ OJ L 141, 27.5.2011, p. 17.

6. The expenditure related to EUBAM Libya shall be eligible as of the date of entry into force of this Decision.

Article 14

Consistency of the Union's response and coordination

1. The HR shall ensure the consistency of the implementation of this Decision with the Union's external action as a whole, including the Union's development programmes.
2. Without prejudice to the chain of command, the Head of Mission shall act in close coordination with the Union Delegation in Tripoli to ensure the consistency of Union action in Libya.
3. The Head of Mission shall coordinate closely with Member States' Heads of Mission present in Libya.
4. The Head of Mission shall coordinate with relevant third parties in Libya.

Article 15

Release of information

1. The HR shall be authorised to release to the third States associated with this Decision, as appropriate and in accordance with the needs of EUBAM Libya, EU classified information up to 'CONFIDENTIEL UE/EU CONFIDENTIAL' level generated for the purposes of EUBAM Libya, in accordance with Decision 2011/292/EU.
2. In the event of a specific and immediate operational need, the HR shall also be authorised to release to the host State any EU classified information up to 'RESTREINT UE/EU

RESTRICTED' level generated for the purposes of EUBAM Libya, in accordance with Decision 2011/292/EU. Arrangements between the HR and the competent authorities of the host State shall be drawn up for this purpose.

3. The HR shall be authorised to release to the third States associated with this Decision any EU non-classified documents connected with the deliberations of the Council relating to EUBAM Libya and covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ⁽¹⁾.

4. The HR may delegate the powers referred to in paragraphs 1 to 3, as well as the ability to conclude the arrangements referred to in paragraph 2 to persons placed under the HR's authority, to the Civilian Operation Commander and/or to the Head of Mission.

Article 16

Entry into force and duration

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

It shall apply for a period of 24 months.

Done at Brussels, 22 May 2013.

For the Council
The President
E. GILMORE

⁽¹⁾ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).