

**N° 7454<sup>A</sup>****CHAMBRE DES DEPUTES**

Session ordinaire 2019-2020

**PROJET DE LOI**

**portant approbation du Mémorandum d'entente (MOU) entre le Gouvernement du Grand-Duché de Luxembourg et le Quartier général du Commandant suprême allié Transformation ainsi que le Grand Quartier général des Puissances alliées en Europe concernant les prestations de soutien fourni par le pays hôte pour l'exécution des opérations, des exercices et des activités militaires de même nature de l'OTAN, fait à Luxembourg, le 18 décembre 2017 et à Mons, le 8 février 2018**

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**ADDENDUM**

(18.11.2019)

**MEMORANDUM OF UNDERSTANDING (MOU)**

**between the government of the Grand Duchy of Luxembourg and Headquarters, Supreme Allied Commander Transformation as well as Supreme Headquarters Allied Powers Europe regarding the provision of host-nation support for the execution of NATO operations/exercises/similar military activity**

**Introduction**

The Government of the Grand Duchy of Luxembourg, represented by the Minister of Defence (MoD), as well as the Headquarters, Supreme Allied Commander Transformation (HQ SACT) and the Supreme Headquarters Allied Powers Europe (SHAPE), hereinafter referred to as the Participants:

*Having regard* to the provisions of the North Atlantic Treaty, dated 4 April 1949, and in particular Article 3 thereof;

*Having regard* to the provisions of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces (NATO SOFA), dated 19th June 1951, the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty (Paris Protocol), dated 28 August 1952, the Agreement among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace regarding the Status of their Forces (PfP SOFA), dated 19 June 1995, the Additional Protocol to the Agreement among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace regarding the Status of their Forces (Additional Protocol to the PfP SOFA), dated 19 June 1995, and including the Further Additional Protocol to the Agreement among the States Parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace regarding the Status of their Forces (Further Additional Protocol to the PfP SOFA), dated 19 December 1997;

*Having regard* to the concept of deploying NATO forces and coalition forces under NATO command and control to or through the territory of the Grand Duchy of Luxembourg during periods of peace, crisis, emergency, and conflict in support of NATO military activities;

*Having regard* to the concept of exercises and operations anticipated to take place with NATO, Partnership for Peace (PfP) and other NATO-led forces;

*And in consideration* of the needs of the Grand Duchy of Luxembourg hereinafter called the Host Nation, and the needs of the Allied Command Operations (ACO), and the Allied Command Transformation (ACT) hereinafter referred as the Strategic Commands (SCs);

The participants HAVE REACHED the following understanding:

*Section one*

**1. Definitions**

For the purposes of this MOU and its follow-on documents the following definitions apply:

- 1.1 Forces. All components of a NATO-led force, to include all personnel, animals, material, and provisions, together with any civilian components of such forces as defined in the NATO SOFA, Paris Protocol and PfP or other nations participating under the NATO lead. The term also includes all ships, aircraft, vehicles, stores, equipment, and ammunition, as well as all air, land and sealift movement resources, together with their support services including contractors deploying or supporting the force.
- 1.2 NATO Military Activities. Military actions including exercises, training, operational experimentation and similar activities, or the carrying out of a strategic, tactical, service, training, or administrative military mission performed by forces; the process of carrying on combat, including attack, movement, supply and manoeuvres needed to gain the objectives of any battle or campaign.
- 1.3 NATO Commander. A military commander in the NATO chain of command.
- 1.4 NATO Organisations. Headquarters and organised units of forces under NATO command and control.
- 1.5 International Military Headquarters. International Military Headquarters in the NATO integrated command structure or that have been granted that status by the NAC/DPC. This includes activities that may be temporary detachments or units of the Headquarters.
- 1.6 National Headquarters. Headquarters of national forces under NATO command and control.
- 1.7 Multinational Headquarters. Headquarters with personnel from more than one nation formed by agreement of participating nations and under NATO command and control.
- 1.8 Sending Nations (SNs). Those nations and HQ or its elements deploying to the territory HN in support of NATO military activities.
- 1.9 Host Nation (HN). The Grand Duchy of Luxembourg
- 1.10 Strategic Commanders or Commands (SCs). The Supreme Allied Commander Europe (SACEUR), the commander of Allied Command Operations (ACO), and the Supreme Allied Commander Transformation (SACT), the commander of Allied Command Transformation (ACT).
- 1.11 Host-Nation Support (HNS). The civil and military assistance rendered in peace, emergencies, crisis and conflict by a Host Nation to allied forces and organisations, which are located on, operating in or transiting through the Host Nation's territory, territorial waters or airspace.
- 1.12 Force Protection (FP). All measures taken and means used to minimise the vulnerability of personnel, facilities, equipment and activities to any threat and in all situations, to preserve freedom of action and the operational effectiveness of the force.
- 1.13 Expenses. Those expenditures associated with the establishment, support and sustainment of national, multinational or International Headquarters, forces or NATO organisations. For the purposes of this MOU and its follow-on documents:
  - a. NATO Common Costs. Those expenses agreed in advance to be the collective responsibility of the Alliance.
  - b. Shared Costs. Those expenses agreed in advance to be the shared responsibility of more than one nation. Shared Cost arrangements are usually based on a formula detailed in the relevant Technical Arrangement and/or Joint Implementation Arrangements.

- c. Direct National Costs. Those expenses considered the responsibility of a single SN.
- 1.14 NATO Common Funding. Funds provided by NATO nations and made available upon approval through NATO budgets for Common Costs incurred during the conduct of the NATO military activity specified therein.
- 1.15 Note of Accession (NOA). A document indicating the intent of a SN to participate in arrangements for HNS under the provisions of this MOU for a specified NATO-led military activity.
- 1.16 Statement of Intent (SOI). A document indicating a SN's intent to participate in arrangements for HNS under the provisions of this MOU, but subject to certain specific reservations. The HN will confirm whether or not the reservations are acceptable for the provision of HNS.
- 1.17 Technical Arrangement (TA). A follow-on bilateral arrangement for a specified NATO military activity. It details the responsibilities and procedures for the provision of HNS by the HN to the NATO Commander and SN(s).
- 1.18 Joint Implementation Arrangement (JIA). A follow-on bilateral arrangement that establishes the commitment between the signatories concerning the provision and receipt of HNS. It includes detailed information on the required and offered support site-specific procedures for implementation and reimbursement or payment terms.
- 1.19 Joint Host Nation Support Steering Committee (JHNSSC). A committee established on an ad-hoc basis and co-chaired by the HN and NATO Commander. The committee, comprised of authorised representatives from all SNs, the HN and NATO Commander(s), will meet to coordinate the necessary amplifying arrangements regarding HNS, such as the TA and JIA(s), as appropriate.
- 1.20 Operational Sites. Sites situated in the territory of the HN for the purpose of operational and/or logistics support to the force for NATO-led military activities. These sites are detachments of a Strategic Command under the command and control of the NATO Commander.
- 1.21 Unless a meaning is specified within this MOU, the NATO Glossary of Terms and Definitions (AAP-6) will apply.

*Section two*

**2. Purpose**

2.1 The purpose of this MOU is to establish policy and procedures for the establishment of operational sites and the provision of HNS to NATO forces in, or supported from the HN, during NATO military activities.

2.2 This MOU and its follow-on documents are intended to serve as the basis for planning by the appropriate HN authority and by NATO Commanders anticipating HNS arrangements for a variety of NATO military activities. These missions include those for which deploying forces have been identified and those for which forces are yet to be identified.

*Section three*

**3. Scope and general arrangements**

3.1 The provisions of the, NATO or PFP SOFA, Paris Protocol and the Further Additional Protocol and any other relevant agreements as may be in force between the Supreme Headquarters and HN, will apply to all NATO-led military activities.

3.2 The HN recognises operational sites set up under implementation of this MOU to be detachments of the establishing Supreme Headquarters and the activities of such detachments to be undertakings of the Supreme Headquarters. The sites to be established will be identified in follow-on documents. Command and control arrangements will be assigned in applicable operational plans.

3.3 This MOU is intended to be in accord with NATO doctrine and policy and provides an umbrella arrangement and structure for HNS. Other relevant doctrines and policies to which the Participants mutually agree, may apply to NATO-led Operations.

3.4 The HN will provide support within its fullest capacity, subject to availability and within the practical limitations of the circumstances that then exist, to the forces deployed on NATO-led military activities. The details of this support will be addressed in follow-on documents.

3.5 The provisions of this MOU apply in peace, emergencies, crisis and conflict or periods of international tension as may be jointly determined by the appropriate HN and NATO authorities.

3.6 While SNs are encouraged to participate in NATO military activities and to accept the provisions of this MOU as the umbrella document under which HNS is provided by the HN, separate bilateral agreements with individual nations may be taken into account by the HN on a case-by-case basis.

3.7 The HN and SCs may designate representatives to negotiate follow-on documents that support and amplify this MOU.

3.8 NATO military activities supported by this MOU may require multinational support air operations by fixed wing aircraft and helicopters, and in the case of ports, by merchant and military support vessels. The HN acknowledges that movement of such aircraft, helicopters, ships and their crews in and through HN territorial areas, will take place under a general clearance for the duration of the NATO military activity. The HN will administer/control all aspects of such a clearance.

#### *Section four*

#### **4. Reference documents**

Reference documents that may be applicable to this MOU are contained at Annex A.

#### *Section five*

#### **5. Responsibilities**

Within the provisions of this MOU:

##### **5.1 Host Nation**

- a. During development of follow-on documents and as changes occur, and following completion of these documents, the HN will provide timely notice to the appropriate NATO Commander concerning the availability or any deficiencies of HNS capabilities. The HN takes note that NATO planners rely on the developed follow-on documents to this MOU and require timely notice of planned changes to the national establishment and capabilities.
- b. In order to provide support, the HN will make the necessary arrangements with sources of support, to include civil and commercial sources. Commercially procured support will be obtained via a competitive bidding process from the lowest compliant bidder.
- c. The HN will keep the administrative and financial records necessary to establish reimbursement to the HN for resources provided to the forces. Records documenting transactions funded through NATO budgets will be made available to NATO as required for audit purposes.
- d. The standard of goods and services supplied by the HN will be in accordance with the details set out in the follow-on documents.
- e. The HN will retain control over its own HNS resources, unless control of such resources is released.
- f. The HN will provide, in advance of any NATO military activity, a price list for any relevant or identified HN support.
- g. The HN will invite SNs to accept the provisions of this MOU by either a Note of Accession or Statement of Intent.
- h. The HN (in coordination with the NATO Commander) will provide to the force, medical and dental support by HN military personnel/facilities under the same conditions as provided to the HN military.

- i. The HN will provide the procedures for the medical links between HN and SN, including medical POCs.
- j. During development of follow-on documents, the HN will provide the NATO Commander with copies in English of any health, safety, environmental and agricultural regulations, which may apply to a NATO military activity, as well as any regulations in respect to the storage, movement, or disposal of hazardous materials.
- k. The HN accepts that copies of SNs cargo manifests for equipment and supplies both for military and personal use in accordance with the NATO SOFA, will be sufficient documentation for Customs purposes.

#### 5.2 NATO Commander

- a. The NATO Commander will ensure, to the maximum extent possible, that follow-on documents specify the type, quantity, and quality of support required. It is noted that the mission and force structure cannot be specified before designation in an Operation Plan (OPLAN) an Operation Order (OPORD), or an Exercise Operational Order (EXOPORD). The NATO Commander will provide supplementary information necessary for HN planning as soon as practicable.
- b. The NATO Commander will give timely notice of any change in circumstances to the HN and will propose modification of follow-on documents, as appropriate.
- c. The NATO Commander will determine whether Common Funding is available and which requirements are eligible for Common Funding.
- d. The NATO Commander will define and prioritise required HNS and approve the pricing for Common Costs.
- e. The NATO Commander will ensure financial reimbursement to the HN for agreed HNS if paid for through Common Funding. In all other cases, the NATO Commander will aid so far as possible in the resolution of financial obligations between the HN and the SNs.
- f. If SN requirements conflict with the NATO Commander's resource distribution priorities, the appropriate NATO Commander will resolve the conflict with the SNs involved.
- g. The NATO Commander will identify personnel and other requirements for the operation of sites to be established in the HN.
- h. The NATO Commander will facilitate standardisation of support requirements and costs during negotiations and/or at the JHNSSC.

#### 5.3 Sending Nations

- a. SNs may elect to participate in the structure and procedures for HNS by accepting the provisions of this MOU through a NOA or by issuing a SOI for a specified NATO military activity.
- b. SNs will identify HNS requirements to the HN and responsible NATO Commander.
- c. For Direct National Cost requirements, the SN will normally participate in negotiations for HNS during the JHNSSC or directly with the HN if a JHNSSC is not established. SNs will provide direct payment or reimbursement for HNS to the HN only for services provided from military sources unless other payment procedures are used as agreed. Under contractual arrangements made by the HN and the SNs, the support provided from commercial or civilian resources will be paid for directly by the SNs.
- d. SNs will provide authorised personnel to participate in HNS discussions during the JHNSSC, if established.
- e. SNs will report changes in HNS requirements to the HN and appropriate NATO Commander as they occur and shall submit revised HNS requirements and/or status reports.
- f. SNs are responsible for the cost of any civilian medical or dental services rendered by the HN.
- g. SNs must follow HN health, safety, environmental and agricultural regulations and procedures that have been identified for operational sites as well as any HN regulations for the storage, movement, or disposal of hazardous materials.

*Section six***6. Financial provisions**

6.1 By mutual agreement and/or international convention, activities of International Military Headquarters, operational sites, NATO-owned and/or chartered vessels, aircraft, vehicles and Petroleum, oil and lubricants (POL) provided to Forces will be free from all taxes, duties, state tolls, fees, and all similar charges.

6.2 The Paris Protocol, Further Additional Protocol and customary international law which implements immunities and privileges regarding International Military Headquarters will be applied to any headquarters element, detachment that may deploy to HN following the implementation of a NATO military activity.

6.3 Equipment, supplies, products, materials and services temporarily imported and exported from HN territory in connection with a NATO military activity, are exempt from all duties, taxes and fees. Other customs procedures will be determined in accordance with the NATO or PfP SOFA, Paris Protocol and Further Additional Protocol, as applicable.

6.4 Where complete exemption from taxes, duties, fees, and similar charges is not possible for purchases performed from the HN domestic economy, charges will not be levied at a higher rate than applied to the HN Armed Forces<sup>1</sup>. All expenses should be processed with the least amount of accompanying administrative requirements.

6.5 Financial transactions, to include the transfer of funds and creation of accounts, at any private or governmental bank institution are to be conducted without acquiring charges or fees of any kind.

6.6 Final financial arrangements, particularly those related to NATO Common Funding, will likely only be determined just prior to the implementation of a NATO military activity. All financial arrangements negotiated beforehand must, however, be specific as to NATO's maximum financial liabilities. Expenses not specifically agreed to as being a NATO funded expense, prior to the expense being incurred, will not receive NATO Common Funding.

6.7 Follow-on documents will provide the initial basis for cost estimates and will serve as the basis for the categorization of expenses as either NATO Common Costs (if applicable), Shared Costs, or Direct National Costs.

6.8 Where the NATO Commander determines that certain costs are both eligible and affordable for NATO Common Funding (from approved budget allocations) the appropriate SC will authorize Common Funding for those expenses and will either pay directly or reimburse the HN.

6.9 Where certain expenses are determined to be attributable to more than one nation, such expenses may be identified as Shared Costs and may, by the mutual agreement of the nations involved, be shared in accordance with a cost-share formula approved in the TA or other follow-on documents.

6.10 Charges for civil and military materiel and services provided by the HN will not be levied at a higher rate than the HN Armed Forces is charged and will not include administrative or overhead surcharges, but may reflect adjustments due to delivery schedules, points of delivery, or similar considerations. Reimbursement will not be paid for support provided by military personnel.

6.11 The NATO Commander and SNs may contract directly with commercial suppliers for supplies, services or other support.

6.12 NATO-owned vehicles and SN military vehicles are self-insured and as such may operate without commercial insurance.

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<sup>1</sup> Within NATO and PfP countries, forces are exempt from taxes on fuels.

6.13 The HN will not incur any financial liability on behalf of the NATO Commander or the SNs, unless specifically requested to do so in advance by an authorised representative, and unless responsibility for payment of the expenses is agreed. Furthermore, no funds will be committed until the Supreme Headquarters or the SNs, as appropriate, approve the relevant follow-on documents and direct their implementation.

6.14 Funding has not been allocated in association with this MOU, and this document does not represent a specific funding obligation on the part of the NATO Commander or SNs. Detailed financial arrangements and reimbursement procedures will be specified in the follow-on documents.

6.15 Establishment of operational sites to support NATO military activities does not contemplate construction or rehabilitation of infrastructure.

#### *Section seven*

### **7. Legal considerations**

7.1 The Supreme Headquarters will perform, or may delegate, legal actions essential for the performance of missions, including, but not limited to, the exercise of capacity to enter into contracts, engage in legal or administrative proceedings, and acquire and dispose of property.

7.2 The status of the forces deployed to the territory of the HN will be determined in accordance with the NATO or PfP SOFA, Paris Protocol and/or Further Additional Protocol.

7.3 Non-contractual claims arising out of, or in connection with, the execution of this MOU, will be dealt with in accordance with the provisions of the NATO or PfP SOFA.

7.4 Contract claims will be processed and adjudicated by the HN, through the process governing public contracts and in accordance with HN law, with reimbursement from the NATO Commander or SN, as applicable.

#### *Section eight*

### **8. Force protection**

8.1 Comprehensive and effective FP will be planned for NATO static headquarters and all similar military activities, and will be detailed in OPLANS, EXPIS or supplementary agreements, as appropriate. FP will be implemented in accordance with NATO policy and procedures and in a manner consistent with the NATO or PfP SOFA. Under no circumstances will the FP required or provided be contrary to the NATO or PfP SOFA or HN laws.

8.2 As appropriate, the HN will inform the SN and NATO Commander of its proposed FP measures, limitations and restrictions.

8.3 As appropriate, each SN is responsible for identifying and providing its FP requirements and limitations to the HN and NATO Commander.

8.4 In addition to those FP responsibilities detailed in NATO FP policy and procedures, the NATO Commander is responsible for coordinating all required and provided HN and SN FP as appropriate to the protection of the Force.

#### *Section nine*

### **9. Security and disclosure of information**

9.1 Between Alliance Nations, classified information stored, handled, generated, transmitted or exchanged as a result of the execution of this MOU will be treated in accordance with C-M (2002) 49

„Security within the North Atlantic Treaty Organization“, dated 17 June 2002, in the respective authorised edition, including all supplements and amendments thereto and existing security agreements and arrangements.

9.2 Information provided by any Participant or SN to any other in confidence, and such information produced by any Participant or SN requiring confidentiality, will either retain its original classification, or be assigned a classification that will ensure a degree of protection against disclosure, equivalent to that required by the other Participant or SN.

9.3 Each Participant and SN will take all lawful steps available to it to keep free from disclosure all information exchanged in confidence, unless the other Participants and/or SNs consent to such disclosure.

9.4 To assist in providing the desired protection, each Participant or SN will mark such information furnished to the other in confidence with a legend indicating its origin, the security classification, the conditions of release, that the information relates to a specific NATO military activity, and that it is furnished in confidence.

9.5 Visits by personnel will be arranged in accordance with the procedures specified in C-M (2002)49, as amended.

9.6 All classified information subject to the provisions of this section will continue to be protected in the event of withdrawal by any participant or upon termination of the MOU.

#### *Section ten*

### **10. Commencement, duration and termination**

10.1 This MOU will become effective on the date of notification in writing by the Grand Duchy of Luxembourg of the completion of its national procedures for the entry into force and remain in effect unless terminated by any Participant giving six months prior notice in writing to all other Participants.

10.2 All provisions of Sections 6, 7, and 9 will remain in effect in the event of withdrawal of any Participant or upon termination of this MOU until all obligations are fulfilled. SNs will fulfil all obligations in the event of any termination or withdrawal.

#### *Section eleven*

### **11. Modification and interpretation**

11.1 This MOU may be amended or modified in writing by the mutual consent of all Participants. Amendments or modifications will become effective on the date of notification in writing by the Grand Duchy of Luxembourg of the completion of its national procedures for their entry into force.

11.2 Apparent conflicts in interpretation and application of this MOU will be resolved by consultation among Participants at the lowest possible level and will not be referred to any national or international tribunal or third party for settlement.

11.3 This MOU is signed in three originals each of them containing the text in the English and French language, both versions being equally authentic. In case of any discrepancy regarding their interpretation, the English version text will prevail.

The foregoing represents the understandings reached between the Government of the Grand Duchy of Luxembourg and the Headquarters, Supreme Allied Commander Transformation as well as the Supreme Headquarters Allied Powers Europe, upon the matters referred to herein.

SIGNED:

*For the Government  
of the Grand Duchy  
of Luxembourg*

Etienne SCHNEIDER  
*Minister of Defence*

Dated: 18.12.2017  
Luxemburg City, Luxemburg

*For the Supreme Headquarters  
Allied Powers Europe and for the  
Headquarters, Supreme Allied  
Commander Transformation:*

Markus KNEIP  
*General, DEU A  
Chief of Staff*

Dated: 8.2.2018  
Mons, Belgium

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## ANNEX A

### Reference documents

- a. The North Atlantic Treaty, dated 4 April 1949.
- b. Agreement among the Parties to the North Atlantic Treaty and Regarding the Status of their Forces, (NATO SOFA), dated 19 June 1951.
- c. The Protocol on the Status of International Military Headquarters set up Pursuant to the North Atlantic Treaty, (Paris Protocol), dated 28 August 1952.
- d. Agreement among the States parties to the North Atlantic Treaty and other States Participating in the Partnership for Peace regarding the Status of their Forces (PfP SOFA), dated 19 June 1995.
- e. Additional Protocol to the Agreement among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace regarding the Status of their Forces (Additional Protocol to the PfP SOFA), dated 19 June 1995.
- f. Further Additional Protocol to the Agreement among the States Parties to the North Atlantic Treaty and the other States Participating in the Partnership for Peace regarding the Status of their Forces (Further Additional Protocol), dated 19 December 1997.
- g. MC 319/2 – NATO Principles and Policies for Logistics.
- h. MC 334/2 – NATO Principles and Policies for Host Nation Support (HNS).
- i. Applicable NATO STANAGs and Policy Directives for Logistics Support, Force Protection and Financial Reimbursement.
- j. C-M(2002)49 – Security within NATO, dated 17 June 2002
- k. BI-SC Directive 15-3 Preparation of International Agreements.
- l. AJP-4.5 (B) – Allied Joint Doctrine for Host-Nation Support and Procedures.
- m. CM(2002)50 – Protection Measures for NATO Civil and Military Bodies, Deployed NATO Forces and Installations (Assets) Against Terrorist Threats.
- n. BI-SC Force Protection Directive 80-25, 01 January 2003
- o. BI-SC Functional Planning Guide for Force Protection
- p. AAP-6 – NATO Glossary of Terms and definition

