

COUNCIL JOINT ACTION 2008/124/CFSP**of 4 February 2008****on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 and the third paragraph of Article 25 thereof,

Whereas:

- (1) On 10 June 1999, the United Nations Security Council adopted Resolution 1244 (hereinafter Resolution 1244), and within this framework, the United Nations Security Council:

— ‘Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise’ (Paragraph 19),

— ‘Authorises the Secretary-General, with the assistance of relevant international organisations, to establish an international civil presence in Kosovo ...’ and ‘Decides that the main responsibilities of the international civil presence will include ... (f) in a final stage, overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement ... (i) maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo’ (Paragraphs 10 and 11),

— ‘Welcomes the work in hand in the European Union and other international organisations to develop a comprehensive approach to the economic development and stabilisation of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation’ (Paragraph 17).

- (2) The Kosovo organs, institutions and authorities referred to in this Joint Action are the institutions (hereinafter the Kosovo institutions) created on the basis of Resolution 1244. They include, *inter alia*, the Kosovo Police Service, the judiciary and the associated Ministries of the Interior and of Justice.

- (3) There is a need to prevent, on humanitarian grounds, possible outbreaks of violence, acts of persecution and intimidation in Kosovo, taking account, as appropriate, of the responsibility towards populations as referred to in Resolution 1674 by the United Nations Security Council on 28 April 2006.

- (4) On 10 April 2006, the Council adopted Joint Action 2006/304/CFSP on the establishment of an EU Planning Team (EUP T Kosovo) regarding a possible EU crisis management operation in Kosovo in the field of rule of law and possible other areas in Kosovo ⁽¹⁾.

- (5) On 11 December 2006, the Council approved the Crisis Management Concept for a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo.

- (6) Joint Action 2006/304/CFSP lays down that the Head of EUP T Kosovo is, in particular, to act under the direction of the Head of the EU crisis management operation in Kosovo once the latter has been appointed.

- (7) The Brussels European Council of 14 December 2007 underlined the readiness of the EU to play a leading role in strengthening stability in the region in line with its European perspective and in implementing a settlement defining Kosovo’s future status. It stated the EU’s readiness to assist Kosovo in the path towards sustainable stability, including by means of a European Security and Defence Policy (ESDP) mission and a contribution to an international civilian office as part of the international presences. The General Affairs and External Relations Council was invited to determine the modalities for the mission and when to launch it. The Secretary-General/High Representative (SG/HR) was requested to prepare the mission in discussion with the responsible authorities in Kosovo and the United Nations. In this regard, the United Nations Secretary-General has stated that the United Nations, with the support of the relevant international organisations, is committed to assisting Kosovo in the path towards sustainable stability. The United Nations Secretary-General also noted the readiness of the EU to play an enhanced role in Kosovo, as reflected in the conclusions of the Brussels European Council on 14 December.

⁽¹⁾ OJ L 112, 26.4.2006, p. 19.

- (8) In parallel with this Joint Action, the Council is adopting a Joint Action appointing an EU Special Representative for Kosovo.
- (9) In accordance with the guidelines of the Nice European Council of 7-9 December 2000, this Joint Action should determine the role of the SG/HR in accordance with Articles 18 and 26 of the Treaty.
- (10) Article 14(1) of the Treaty calls for the indication of financing for the whole period of implementation of the Joint Action. The indication of amounts to be financed by the general budget of the European Union illustrates the will of the political authority and is subject to the availability of commitment appropriations during the respective budget year.
- (11) Considering the scale and nature of the mission established by this Joint Action, specific provisions are required concerning staff recruitment and procurement.
- (12) The command and control structure of the mission should be without prejudice to the contractual responsibilities of the Head of the mission towards the Commission for implementing the mission's budget.
- (13) The watch-keeping capability established within the Council Secretariat should be activated for this mission.
- (14) The European Union Rule of Law Mission in Kosovo will be conducted in a situation which may deteriorate and could harm the objectives of the Common Foreign and Security Policy as set out in Article 11 of the Treaty,

HAS ADOPTED THIS JOINT ACTION:

Article 1

The mission

1. The EU hereby establishes an European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (hereinafter EULEX KOSOVO).
2. EULEX KOSOVO shall operate in accordance with the Mission Statement set out in Article 2 and shall carry out the tasks as set out in Article 3.

Article 2

Mission Statement

EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices.

EULEX KOSOVO, in full cooperation with the European Commission Assistance Programmes, shall fulfil its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities.

Article 3

Tasks

In order to fulfil the Mission Statement set out in Article 2, EULEX KOSOVO shall:

- (a) monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities;
- (b) ensure the maintenance and promotion of the rule of law, public order and security including, as necessary, in consultation with the relevant international civilian authorities in Kosovo, through reversing or annulling operational decisions taken by the competent Kosovo authorities;
- (c) help to ensure that all Kosovo rule of law services, including a customs service, are free from political interference;
- (d) ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently, and by measures including, as appropriate, the creation of cooperation and coordination structures between police and prosecution authorities;
- (e) contribute to strengthening cooperation and coordination throughout the whole judicial process, particularly in the area of organised crime;
- (f) contribute to the fight against corruption, fraud and financial crime;
- (g) contribute to the implementation of the Kosovo Anti-Corruption Strategy and Anti-Corruption Action Plan;
- (h) assume other responsibilities, independently or in support of the competent Kosovo authorities, to ensure the maintenance and promotion of the rule of law, public order and security, in consultation with the relevant Council agencies; and
- (i) ensure that all its activities respect international standards concerning human rights and gender mainstreaming.

*Article 4***Planning and preparation phase**

1. During the planning and preparation phase of the mission, EUPT Kosovo shall act as the main planning and preparation element for EULEX KOSOVO.

The Head of EUPT Kosovo shall act under the authority of the Head of EULEX KOSOVO (hereinafter the Head of Mission).

2. The risk assessment carried out as part of the planning process shall be updated regularly.

3. EUPT Kosovo shall be responsible for recruiting and deploying staff and procuring equipment, services and premises intended for EULEX KOSOVO, financed from the EUPT Kosovo budget.

4. EUPT Kosovo shall be responsible for drawing up the Operation Plan (OPLAN) and developing technical instruments necessary to execute the mandate of EULEX KOSOVO. The OPLAN shall take into account the risk assessment and shall include a security plan. The Council shall approve the OPLAN.

*Article 5***Launching and transition period**

1. The decision to launch EULEX KOSOVO shall be taken by the Council upon approval of the OPLAN. The operational phase of EULEX KOSOVO shall start upon transfer of authority from the United Nations Mission in Kosovo, UNMIK.

2. During the transition period, the Head of Mission may direct EUPT Kosovo to undertake the necessary activities in order for EULEX KOSOVO to be fully operational on the day of transfer of authority.

*Article 6***Structure of EULEX KOSOVO**

1. EULEX KOSOVO shall be a unified ESDP mission across Kosovo.

2. EULEX KOSOVO shall establish:

(a) its main Headquarters in Pristina;

(b) regional and local offices across Kosovo;

(c) a Brussels support element; and

(d) liaison offices, as required.

3. Subject to detailed arrangements in the OPLAN, EULEX KOSOVO shall be structured as follows:

(a) the Head of Mission and staff as defined in the OPLAN;

(b) a police component, co-located where appropriate with the Kosovo Police Service, including at the border crossing points;

(c) a justice component, co-located where appropriate with the relevant Ministries, the Kosovo judiciary, the Kosovo Property Agency, the Kosovo Correctional Service; and

(d) a customs component, co-located where appropriate with the Kosovo Customs Service.

4. Specialised police may be hosted in camps designed to cater for their operational needs.

*Article 7***Civilian Operation Commander**

1. The Civilian Planning and Conduct Capability (CPCC) Director shall be the Civilian Operation Commander for EULEX KOSOVO.

2. The Civilian Operation Commander, under the political control and strategic direction of the Political and Security Committee (PSC) and the overall authority of the SG/HR, shall exercise command and control of EULEX KOSOVO at the strategic level.

3. The Civilian Operation Commander shall ensure proper and effective implementation of the Council's decisions as well as the PSC's decisions, including by issuing instructions at strategic level as required to the Head of Mission and providing him with advice and technical support.

4. All seconded staff shall remain under the full command of the national authorities of the seconding State or EU institution concerned. National authorities shall transfer Operational Control (OPCON) of their personnel, teams and units to the Civilian Operation Commander.

5. The Civilian Operation Commander shall have overall responsibility for ensuring that the EU's duty of care is properly discharged.

6. The Civilian Operation Commander and the European Union Special Representative (EUSR) shall consult each other as required.

*Article 8***Head of Mission**

1. The Head of Mission shall assume responsibility and exercise command and control of EULEX KOSOVO at theatre level.

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 EULEX KOSOVO. The exercise of such command and control shall be without prejudice to the principle of the independence of the judiciary and the autonomy of prosecution when considering the discharge of judicial duties of EULEX KOSOVO judges and prosecutors.

3. The Head of Mission shall issue instructions to all EULEX KOSOVO staff, including in this case the support element in Brussels, for the effective conduct of EULEX KOSOVO in theatre, assuming its coordination and day-to-day management, and following the instructions at strategic level of the Civilian Operation Commander.

4. Until the expiry of Joint Action 2006/304/CFSP, the Head of Mission shall be supported by EUPT Kosovo established thereby.

5. The Head of Mission shall be responsible for the implementation of the EULEX KOSOVO's budget. For this purpose, the Head of Mission shall sign a contract with the Commission.

6. The Head of Mission shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary action shall be exercised by the national or EU authority concerned.

7. The Head of Mission shall represent EULEX KOSOVO in the operations area and shall ensure appropriate visibility of EULEX KOSOVO.

8. The Head of Mission shall coordinate, as appropriate, with other EU actors on the ground. The Head of Mission shall, without prejudice to the chain of command, receive local political guidance from the EUSR, including with regard to the political aspects of issues related to executive responsibilities.

9. The Head of Mission shall ensure that EULEX KOSOVO works closely and coordinates with the competent Kosovo authorities and with relevant international actors, as appropriate, including NATO/KFOR, UNMIK, OSCE, third States involved in the rule of law in Kosovo and an International Civilian Office.

10. Under the direct responsibility of the Head of Mission, internal legal and financial control functions shall be performed by personnel independent of the staff responsible for the administration of EULEX KOSOVO.

*Article 9***Staff**

1. The numbers and competence of the EULEX KOSOVO staff shall be consistent with its Mission Statement set out in Article 2, the tasks set out in Article 3 and the structure of EULEX KOSOVO set out in Article 6.

2. EULEX KOSOVO shall consist primarily of staff seconded by Member States or EU institutions. Each Member State or EU institution 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 daily allowances and applicable risks and hardship allowances.

3. EULEX KOSOVO may also recruit, as required, international staff and local staff on a contractual basis.

4. Third States may also, as appropriate, second staff to EULEX KOSOVO. Each seconding third State 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. Exceptionally, in duly justified cases, where no qualified applications from Member States are available, nationals from participating third States may be recruited on a contractual basis, as appropriate.

5. All staff shall abide by the mission-specific minimum security operating standards and the mission security plan supporting the EU field security policy. As regards the protection of EU classified information with which they are entrusted in the course of their duties, they shall respect the security principles and minimum standards established by Decision 2001/264/EC ⁽¹⁾.

*Article 10***Status of EULEX KOSOVO and of its staff**

1. The status of EULEX KOSOVO and its staff, including the privileges, immunities and further guarantees necessary for the completion and smooth functioning of EULEX KOSOVO, shall be agreed as appropriate.

2. The State or EU institution having seconded a member of staff shall be responsible for answering any claims linked to the secondment, from or concerning the member of staff. The State or EU institution in question shall be responsible for bringing any action against the seconded person.

⁽¹⁾ OJ L 101, 11.4.2001, p. 1. Decision as last amended by Decision 2007/438/EC (OJ L 164, 26.6.2007, p. 24).

3. The conditions of employment and the rights and obligations of international and local civilian staff shall be laid down in the contracts between the Head of Mission and the members of staff.

Article 11

Chain of command

1. EULEX KOSOVO shall have a unified chain of command, as a crisis management operation.
2. Under the responsibility of the Council, the PSC shall exercise political control and strategic direction of EULEX KOSOVO.
3. As also laid down in Article 7, the Civilian Operation Commander, under the political control and strategic direction of the PSC and the overall authority of the SG/HR, shall be the commander of EULEX KOSOVO at strategic level and, as such, shall issue the Head of Mission with instructions and provide him with advice and technical support.
4. The Civilian Operation Commander shall report to the Council through the SG/HR.
5. The Head of Mission shall exercise command and control of EULEX KOSOVO at theatre level and shall be directly responsible to the Civilian Operation Commander.

Article 12

Political control and strategic direction

1. The PSC shall exercise, under the responsibility of the Council, political control and strategic direction of EULEX KOSOVO.
2. The Council hereby authorises the PSC to take the relevant decisions for this purpose, in accordance with the third paragraph of Article 25 of the Treaty. This authorisation shall include the powers to amend the OPLAN and the chain of command. It shall also include powers to take subsequent decisions regarding the appointment of the Head of Mission. The Council, on the recommendation of the SG/HR, shall decide on the objectives and termination of EULEX KOSOVO.
3. The PSC shall report to the Council at regular intervals.
4. 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 areas of responsibility. Planning for specific areas may be reviewed by the PSC on a regular basis.

Article 13

Participation of third States

1. Without prejudice to the decision-making autonomy of the EU and its single institutional framework, third States may be invited to contribute to EULEX KOSOVO provided that they bear the cost of the staff seconded by them, including salaries, allowances and travel expenses to and from the theatre of operation, and to contribute to the running costs of EULEX KOSOVO, as appropriate.
2. Third States making contributions to EULEX KOSOVO shall have the same rights and obligations in terms of day-to-day management of EULEX KOSOVO as Member States taking part in it.
3. The Council hereby authorises the PSC to take the relevant decisions on acceptance or otherwise of the proposed contributions and to establish a Committee of Contributors.
4. Detailed arrangements regarding the participation of third States shall be laid down in an agreement to be concluded in accordance with Article 24 of the Treaty. The SG/HR, assisting the Presidency, may negotiate such arrangements on its behalf. Where the EU and a third State conclude an agreement establishing a framework for the participation of such third State in the EU crisis management operations, the provisions of such agreement shall apply in the context of EULEX KOSOVO.

Article 14

Security

1. The Civilian Operation Commander shall direct the Head of Mission's planning of security measures and ensure their proper and effective implementation for EULEX KOSOVO in accordance with Articles 7 and 11 and in coordination with the Security Office of the General Secretariat of the Council.
2. The Head of Mission shall be responsible for the security of the operation and for ensuring compliance with minimum security requirements applicable to the operation, in line with the policy of the EU on the security of personnel deployed outside the EU in an operational capacity under Title V of the Treaty and its supporting instruments.
3. The Head of Mission shall be assisted by a Senior Mission Security Officer (SMSO), who will report to the Head of Mission and also maintain a close functional relationship with the Security Office mentioned in paragraph 1.
4. The Head of Mission shall appoint Area Security Officers in the regional and local EULEX KOSOVO locations, who, under the authority of the SMSO shall be responsible for the day-to-day management of all security aspects of the respective EULEX KOSOVO elements.

5. EULEX KOSOVO staff shall undergo mandatory security training before or upon taking up their duties, in accordance with the OPLAN. They also receive regular in-theatre refresher training organised by the SMSO and the Area Security Officers.

6. The Head of Mission shall ensure that the numbers of EULEX KOSOVO staff present and of authorised visitors never exceed EULEX KOSOVO's capabilities to ensure their safety and security or to manage their evacuation in an emergency situation.

7. The Head of Mission shall ensure the protection of EU classified information in accordance with Decision 2001/264/EC.

Article 15

Watch-keeping

The watch-keeping capability shall be activated for EULEX KOSOVO.

Article 16

Financial arrangements

1. The financial reference amount intended to cover the expenditure related to a period of 16 months starting from the approval of the OPLAN shall be EUR 205 000 000.

2. All expenditure shall be managed in accordance with the Community rules and procedures applicable to the general budget of the EU, with the exception that any pre-financing shall not remain the property of the Community.

3. Subject to the Commission's approval, the Head of Mission may conclude technical arrangements with EU Member States, participating third States and other international actors deployed in Kosovo regarding the provision of equipment, services and premises to EULEX KOSOVO. Nationals of the countries of the Western Balkans region or of contributing third States shall be allowed to tender for contracts. The position of contract holder of contracts or under arrangements concluded by EUPT Kosovo for EULEX KOSOVO during the planning and preparation phase shall be transferred to EULEX KOSOVO, as appropriate. Assets owned by EUPT Kosovo shall be transferred to EULEX KOSOVO.

4. The Head of Mission shall report fully to, and be supervised by, the Commission on the activities undertaken in the framework of his contract.

5. The financial arrangements shall respect the operational requirements of EULEX KOSOVO, including compatibility of equipment and interoperability of its teams, and shall take into consideration the deployment of staff in regional offices.

6. Expenditure shall be eligible as from the date of approval of the OPLAN.

Article 17

Coordination with Community actions

1. The Council and the Commission shall, each in accordance with its respective powers, ensure consistency between the implementation of this Joint Action and external activities of the Community in accordance with Article 3 of the Treaty. The Council and the Commission shall cooperate to this end.

2. The necessary coordination arrangements shall be put in place in the EULEX KOSOVO area, as appropriate, as well as in Brussels.

Article 18

Release of classified information

1. The SG/HR shall be authorised to release to the United Nations, NATO/KFOR and to other third parties, associated with this Joint Action, EU classified information and documents generated for the purposes of EULEX KOSOVO up to the level of the relevant classification respectively for each of them, in accordance with Decision 2001/264/EC. Local technical arrangements shall be drawn up to facilitate this.

2. In the event of a specific and immediate operational need, the SG/HR shall also be authorised to release to the competent local authorities EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of EULEX KOSOVO, in accordance with Decision 2001/264/EC. In all other cases, such information and documents shall be released to the competent local authorities in accordance with the procedures appropriate to those authorities' level of cooperation with the EU.

3. The SG/HR shall be authorised to release to the United Nations, NATO/KFOR, to other third parties associated with this Joint Action and to the relevant local authorities, EU non-classified documents related to the deliberations of the Council with regard to EULEX KOSOVO covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ⁽¹⁾.

⁽¹⁾ Decision 2006/683/EC, Euratom of 15 September 2006 adopting the Council's Rules of Procedure (OJ L 285, 16.10.2006, p. 47). Decision as amended by Decision 2007/881/EC (OJ L 346, 29.12.2007, p. 17).

*Article 19***Review**

The Council shall evaluate, not later than six months after the start of the operational phase, whether EULEX KOSOVO should be extended.

*Article 20***Entry into force and duration**

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

It shall expire 28 months from the date of approval of the OPLAN. The budget for the last 12 months before expiry shall be decided upon separately by the Council.

*Article 21***Publication**

1. This Joint Action shall be published in the *Official Journal of the European Union*.

2. The decisions of the PSC pursuant to Article 12(1) regarding the appointment of the Head of Mission shall also be published in the *Official Journal of the European Union*.

Done at Brussels, 4 February 2008.

For the Council

The President

D. RUPEL
