

STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

Proposal for a Council Decision amending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah)

Submitted by the Foreign and Commonwealth Office on 12 June 2019

SUBJECT MATTER

1. This draft Council Decision extends the mandate of the Common Security and Defence Policy (CSDP) Mission deployed in the Occupied Palestinian Territories: the European Union Border Assistance Mission for the Rafah Crossing Point (EUBAM Rafah). The mandate extension is for a period of 12 months, until 30 June 2020, following the strategic review in April 2019, and to consider extension for another year until 2021 following an interim Strategic Review in 2020.

SCRUTINY HISTORY

2. An Explanatory Memorandum on this mission was last submitted for Parliamentary Scrutiny on 18 June 2018. The House of Commons European Scrutiny Committee cleared the item as “not legally or politically important” on 14 June 2018 (ESC 39898, 32nd Report, Session 2017-19). The House of Lords External Affairs Sub-Committee cleared the item on 29 October 2018.

MINISTERIAL RESPONSIBILITY

3. The Secretary of State for Foreign and Commonwealth Affairs is the Minister with overall responsibility for UK policy on the EU’s Common Foreign and Security Policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

4. The UK’s Foreign Affairs policy is a reserved matter under the UK’s devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

6.
 - i. Legal basis: Articles 28, 42 (4) and 43 (2) of the Treaty on European Union.
 - ii. European Parliament Procedure: Not Applicable

- iii. Voting procedure: Unanimity
- iv. Impact on United Kingdom Law: None
- v. Application to Gibraltar: Yes.
- vi. Fundamental rights analysis: No fundamental rights issues apply.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

- 7. None.

SUBSIDIARITY

- 8. In 2005, the PA and the Government of Israel invited the EU to establish EUBAM Rafah and the Mission was subsequently established by the EU. The extension of the Mission's mandate for the next 12 months accordingly needs to be done at the EU level (by a Council Decision) and cannot be sufficiently achieved at the level of the Member States.

POLICY IMPLICATIONS (including exit implications where appropriate)

- 9. 17. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union (EU). Until exit day, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
- 10. No decisions have been taken yet with regard to UK involvement in the Mission after the UK leaves the European Union. We will keep the Committees informed as and when these decisions are taken.
- 11. EUBAM Rafah aims to monitor and improve the operation of the Rafah Crossing Point (RCP) between Gaza and Egypt. The Mission has been largely suspended since 2007 due to the closure of the RCP following Hamas taking control of the Gaza Strip. Over the past five years, EUBAM Rafah has assisted the Palestinian Authority (PA) to prepare for redeployment to the RCP, in line with the Council's direction that the Mission stand ready to reactivate once political and security considerations allow. The Mission has also helped the PA General Authority for Borders and Crossings (GABC) to strengthen its border management knowledge.
- 12. There is an urgent need to address the dire humanitarian situation in Gaza. We need a durable agreement that addresses the underlying causes of the conflict and transforms the situation in Gaza. We continue to stress to the Israeli authorities the damage that their restrictions are doing to the living standards of ordinary Palestinians in Gaza and that supporting legal trade for Gazans is firmly in Israel's long-term interests. We are also urging Egypt to show maximum flexibility in opening the Rafah crossing.

We support the Egyptian-backed reconciliation process, leading to the PA returning to administer Gaza, which could see the reopening of the Rafah Crossing Point. We also welcome the recent Egyptian and UN brokered Israel-Hamas ceasefire agreement which has restored calm in Gaza. Our continued support for EUBAM Rafah is therefore consistent with our wider policy on the Middle East Peace Process.

13. In April 2019 the EEAS released a Strategic Review that considered the performance of the Mission. Under the current mandate, EUBAM Rafah has improved the PA's knowledge of border control, and strengthened GABC capacities to manage the Rafah Crossing Point (RCP) according to international standards.
14. The PA Preparedness Project implemented by the Mission remains the only international effort to enhance GABC capacities to redeploy to the RCP and manage it according to international standards. The Strategic Review welcomed the Mission's efforts to implement the PA Preparedness Project and should continue to strengthen the GABC capacities including the implementation of the Integrated Border Management Strategy (IBM). It also commended the Mission's efforts to integrate human rights and gender, taking into account the Women, Peace and Security framework, into all areas of the Mission's activities, and underlined the need to continue these efforts.
15. An extension of the mission's mandate would maintain readiness for redeployment and allow further progress of the Preparedness Project. This will strengthen the capacity of the GABC through preparing and implementing the relevant Action Plans and will also ensure sustainability and ownership through improving GABC training capacity. The Strategic Review recommended that the Mission should broaden its focus under the Preparedness Project to include the comprehensive reform of the GABC with a view to increasing the Agency's efficiency and accountability, with local buy-in. This will enhance mainstreaming of human rights and gender issues throughout the organisation.
16. It should be noted that the current political and security situation in Gaza and at the RCP limits prospects for the Mission to be redeployed in the near future. The Mission's personnel and logistics capacities should be maintained at current levels, and any potential increase should only be considered if there is a sustained improvement in the situation on the ground allowing the Mission's redeployment. Nevertheless, the Strategic Review underlined the need for the Mission to maintain its preparedness to return to the RCP once political and security conditions allow. The EU agreed that to increase efficiency, reduce cost and improve coordination with other offices, the possibility to transfer the Missions' headquarters from Tel Aviv to Jericho or Jerusalem should be explored, on the basis of a decision by Member States.
17. We are content for a 12 month extension of the mandate for EUBAM Rafah to 30 June 2020, following the recent strategic review. We also agree with the recommendations that:
 - EUBAM Rafah maintain its readiness to redeploy at the RCP once the political and security conditions allow and continue existing efforts regarding the Palestinian Authority Preparedness Project;

- EUBAM Rafah explore the possibility to provide capacity building and advice aimed at the comprehensive reform of the General Administration for Border and Crossings (GABC) and enhance its cooperation with EBCGA (Frontex) and OLAF on potential provision of specialised trainings for the GABC.
- The Mission continues its efforts to mainstream Human Rights and Gender across its activities, taking into account the Women, Peace and Security framework;
- The possible transfer of EUBAM Rafah's headquarters from Tel-Aviv to Jericho or Jerusalem be explored and, if deemed feasible following a technical assessment, be implemented on the basis of a decision by Member States;
- The EU present to an interim Strategic Review of EUBAM Rafah in April 2020 and;
- The EU explore in the next interim Strategic Review of EUBAM Rafah all feasible possible options, depending on the political and security developments in the Mission's operational environment, to further enhance the added-value of the Mission's operational activities.

CONSULTATION

18. None

IMPACT ASSESSMENT

19. Not applicable.

FINANCIAL IMPLICATIONS

20. EUBAM Rafah's expenditure will be funded from the CFSP budget. The UK contributes a proportion to the pre agreed CFSP budget, not the individual programmes within it. Funds for the proposed budgets will be found within existing resources in the CFSP budget, so this proposal does not present additional costs to the UK. UK officials will monitor closely the activities of EUBAM throughout the course of the mandate, and will continue to press for value for money.

21. The proposed budget for EUBAM Rafah is €2,150,000, a modest increase from the current budget of €2,040,000. A budget breakdown is below.

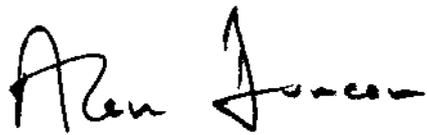
Budget heading	Current budget	Proposed budget
Personnel costs	1 236 420.77	1 266 336.92
Missions	64 134.00	55 550.00
Running expenditure	627 310.08	431 746.99
Capital expenditure	22 000.00	27 738.00
Representation	3 450.00	3 600.00
Projects	0.00	337 615.00
Sub-total	1 980 314.85	2 122 586.91
Warehouse budget		-11 498.00
Contingencies	59 685.15	38 911.09
Total	2 040 000.00	2 150 000.00

TIMETABLE

22. The current mandates and budget commitments expire on 30 June 2019 and therefore the Council Decision will be submitted for adoption to Council before the mandate expires. Early consideration by the Committees is needed therefore.

OTHER OBSERVATIONS

23. None

A handwritten signature in black ink that reads "Alan Duncan". The signature is written in a cursive style with a large initial 'A' and a long, sweeping tail on the 'n'.

Rt Hon Sir Alan Duncan MP
Minister for Europe and the Americas
Foreign and Commonwealth Office