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►B ►C1 **COUNCIL JOINT ACTION 2005/889/CFSP**

of 25 November 2005 ◄

on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah)

(OJ L 327, 14.12.2005, p. 28)

Amended by:

		Official Journal		
		No	page	date
►M1	Council Joint Action 2006/773/CFSP of 13 November 2006	L 313	15	14.11.2006
►M2	Council Joint Action 2007/359/CFSP of 23 May 2007	L 133	51	25.5.2007
►M3	Council Joint Action 2007/807/CFSP of 6 December 2007	L 323	53	8.12.2007
►M4	Council Joint Action 2008/379/CFSP of 19 May 2008	L 130	24	20.5.2008
►M5	Council Joint Action 2008/862/CFSP of 10 November 2008	L 306	98	15.11.2008
►M6	Council Joint Action 2009/854/CFSP of 20 November 2009	L 312	73	27.11.2009
►M7	Council Decision 2010/274/CFSP of 12 May 2010	L 119	22	13.5.2010
►M8	Council Decision 2011/312/CFSP of 26 May 2011	L 140	55	27.5.2011
►M9	Council Decision 2011/857/CFSP of 19 December 2011	L 338	52	21.12.2011
►M10	Council Decision 2012/332/CFSP of 25 June 2012	L 165	71	26.6.2012
►M11	Council Decision 2013/355/CFSP of 3 July 2013	L 185	16	4.7.2013
►M12	Council Decision 2014/430/CFSP of 3 July 2014	L 197	75	4.7.2014

Corrected by:

►C1 Corrigendum, OJ L 5, 10.1.2006, p. 20 (2005/889/CFSP)
►C2 Corrigendum, OJ L 17, 24.1.2007, p. 23 (2006/773/CFSP)

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►C1 **COUNCIL JOINT ACTION 2005/889/CFSP**

of 25 November 2005 ◄

on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah)

THE COUNCIL OF THE EUROPEAN UNION,

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

Whereas:

(1) The European Union, as part of the Quartet, is committed to assisting and facilitating the implementation of the Roadmap, which lays out reciprocal steps by the Israeli Government and the Palestinian Authority in the political, security, economic, humanitarian, and institution-building fields, that will result in the emergence of an independent, democratic, and viable Palestinian state living side by side in peace and security with Israel and its other neighbours.

(2) Following Israel's unilateral disengagement from Gaza, the Government of Israel is no longer present at the Rafah Crossing Point and the terminal is closed apart from exceptional cases.

(3) The European Council of 17 and 18 June 2004 reaffirmed the readiness of the EU to support the Palestinian Authority in taking responsibility for law and order, and in particular, in improving its civil police and law enforcement capacity.

(4) The Council of 7 November 2005 reiterated the EU's support for the work of the Quartet Special Envoy for Disengagement, and welcomed his recent report to members of the Quartet. The Council also noted his letter of 2 November 2005 in which he requested on behalf of the parties that the EU consider playing a Third Party monitoring role at the Rafah Crossing Point on the Gaza-Egypt border. The Council noted the EU's willingness in principle to provide assistance with the operation of crossings at Gaza's border on the basis of an agreement between the parties.

(5) The opening of the Rafah Crossing Point has economic, security and humanitarian implications.

(6) The EU has identified as a priority the building up of a Palestinian customs administration in EC-Palestinian cooperation. The Community has provided assistance to the Palestinian border management and has an established tripartite dialogue on customs issues with the Government of Israel and the Palestinian Authority. The Palestinian Authority is engaged in developing detailed plans for border security procedures with the support of the USA and Israel.

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(7) On 24 October 2005 the Palestinian Prime Minister sent a letter to the European Commissioner for External Relations and European Neighbourhood Policy in which he requested the EC's assistance in such areas as capacity building of Palestinian personnel at the Rafah crossing point, the development and installation of needed systems and equipment, and providing advice and support of Palestinian officials on duty at the Rafah Crossing Point.

(8) On 15 November 2005 the Government of Israel and the Palestinian Authority concluded an Agreement on Movement and Access at border crossing points with Gaza, which, *inter alia*, indicated the role of the EU as a third party regarding the operation of the relevant crossing points.

(9) In letters of invitation, on 20 November 2005 and on 23 November 2005 respectively, the Palestinian Authority and the Government of Israel invited the EU to establish a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah).

(10) The European Union mission will be complementary and will bring added value to current international efforts, as well as develop synergies with ongoing European Community and Member States efforts. The mission will seek coherence and coordination with the capacity-building actions of the Community, notably in the domain of customs administration.

(11) The mission will be set in the wider context of the EU and of the international community's effort to support the Palestinian Authority in taking responsibility for law and order, and in particular, in improving its civil police and law enforcement capacity.

(12) Appropriate liaison with the European Union Police Mission for the Palestinian Territories, referred to as the European Union Coordinating Office for Palestinian Police Support (EUPOL COPPS) ([1]), should be ensured.

(13) The mission will implement its mandate in the context of a situation which poses a threat to law and order, the security and safety of individuals, and to the stability of the area and which could harm the objectives of the Common Foreign and Security Policy as set out in Article 11 of the Treaty.

(14) Security is a prime and continuing concern and appropriate arrangements to ensure security should be adopted.

(15) In conformity with the guidelines of the European Council meeting in Nice on 7 to 9 December 2000, this Joint Action should determine the role of the Secretary-General/High Representative, in accordance with Articles 18 and 26 of the Treaty.

(16) Article 14(1) of the Treaty calls for the indication of a financial reference amount for the whole period of implementation of the Joint Action. The indication of amounts to be financed by the Community budget illustrates the will of the political authority and is subject to the availability of commitment appropriations during the respective budget year,

([1]) Council Joint Action 2005/797/CFSP of 14 November 2005 (OJ L 300, 17.11.2005, p. 65).

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HAS ADOPTED THIS JOINT ACTION:

Article 1

Mission

1. A European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah) is hereby established, with an operational phase beginning on 25 November 2005.

2. EU BAM Rafah shall operate in accordance with the mission statement as set out in Article 2.

Article 2

Mission statement

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The aim of EU BAM Rafah is to provide a Third Party presence at the Rafah Crossing Point in order to contribute, in cooperation with the Union's institution-building efforts, to the opening of the Rafah Crossing Point and to build up confidence between the Government of Israel and the Palestinian Authority.

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To this end, EU BAM Rafah shall:

(a) actively monitor, verify and evaluate the Palestinian Authority's performance with regard to the implementation of the Framework, Security and Customs Agreements concluded between the Parties on the operation of the Rafah terminal;

(b) contribute, through mentoring, to building up the Palestinian capacity in all aspects of border management at Rafah;

(c) contribute to the liaison between the Palestinian, Israeli and Egyptian authorities in all aspects regarding the management of the Rafah Crossing Point;

▼M8

(d) assist EUPOL COPPS in its additional tasks in the area of training of PA border and crossing management staff for Gaza crossings.

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EU BAM Rafah shall implement the responsibilities entrusted to it in the Agreements between the Government of Israel and the Palestinian Authority regarding the management of the Rafah Crossing Point. It shall not undertake substitution tasks.

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Article 4

Structure of the mission

EU BAM Rafah shall consist of the following elements:

(a) Head of Mission, assisted by an advisory staff;

(b) Monitoring and Operations Department;

(c) Administration Services Department.

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These elements shall be developed in the Concept of Operations (CONOPS) and Operation Plan (OPLAN). The Council shall approve the CONOPS and the OPLAN.

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Article 4a

Civilian Operation Commander

1. The Civilian Planning and Conduct Capability Director shall be the Civilian Operation Commander for EU BAM Rafah.

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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 High Representative of the Union for Foreign Affairs and Security Policy (HR), shall exercise command and control of EU BAM Rafah at the strategic level.

▼M3

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 the strategic level as required to the Head of Mission.

4. All seconded staff shall remain under the full command of the national authorities of the sending State or EU institution. National authorities shall transfer Operational Control 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 EU Special Representative shall consult each other as required.

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Article 5

Head of Mission

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►M7 1. ◄ The Head of Mission shall assume responsibility and exercise command and control of the mission at theatre level.

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1a. The Head of Mission shall be the representative of the Mission. The Head of Mission may delegate management tasks in staff and financial matters to staff members of the Mission, under his/her overall responsibility.

▼M3

►M7 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 put at the disposal of the mission.

►M7 3. ◄ The Head of Mission shall issue instructions to all mission staff, for the effective conduct of EU BAM Rafah in theatre, assuming its coordination and day-to-day management, following the instructions at the strategic level of the Civilian Operation Commander.

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►M7 5. ◄ The Head of Mission shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary action shall be exercised by the national authorities or EU institution concerned.

►M7 6. ◄ The Head of Mission shall represent EU BAM Rafah in the operations area and shall ensure appropriate visibility of the Mission.

►M7 7. ◄ 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 EU Special Representative.

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Article 6

Planning phase

1. During the planning phase of the mission, a planning team shall be established and shall comprise the Head of Mission, who shall lead the planning team, and the necessary personnel to deal with functions ensuing from established needs of the mission.

2. A comprehensive risk assessment shall be carried out as a priority in the planning process and shall be updated as necessary.

3. The planning team shall draw up an OPLAN and develop all technical instruments necessary to execute the mission. The OPLAN shall take into account the comprehensive risk assessment and shall include a security plan.

Article 7

EU BAM Rafah personnel

1. The numbers and competence of EU BAM Rafah personnel shall be consistent with the mission statement set out in Article 2 and the structure set out in Article 4.

2. EU BAM Rafah personnel shall be seconded by Member States or EU institutions. Each Member State shall bear the costs related to EU BAM Rafah personnel seconded by it, including salaries, medical coverage, travel expenses to and from the mission area, and allowances other than per diems.

3. International and local staff shall be recruited on a contractual basis by EU BAM Rafah as required.

4. Third States may also, as appropriate, second mission personnel. Each seconding third State shall bear the costs related to any of the personnel seconded by it, including salaries, medical coverage, allowances, high-risk insurance and travel expenses to and from the mission area.

▼M12

5. All personnel shall remain under the authority of the appropriate sending State or EU institution and shall carry out their duties and act in the interest of the Mission. All personnel shall respect the security principles and minimum standards established by Council Decision 2013/488/EU ([1]).

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6. EU police officers will wear national uniforms and EU insignia as appropriate and other members of the mission will wear identification as appropriate, subject to the decision by the Head of Mission, taking into account security considerations.

Article 8

Status of EU BAM RAFAH personnel

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1. Where required, the status of EU BAM Rafah personnel, including, where appropriate, the privileges, immunities and further guarantees necessary for the completion and smooth functioning of EU BAM Rafah shall be subject of an agreement to be concluded in accordance with the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union.

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

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3. The conditions of employment and the rights and obligations of international and local staff shall be laid down in the contracts to be concluded between EU BAM Rafah and the staff member concerned.

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Article 9

Chain of Command

1. EU BAM Rafah 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 EU BAM Rafah.

▼M7

3. The Civilian Operation Commander, under the political control and strategic direction of the PSC and the overall authority of the HR, is the commander of EU BAM Rafah at strategic level and, as such, shall issue instructions to the Head of Mission and provide him with advice and technical support.

4. The Civilian Operation Commander shall report to the Council through the HR.

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5. The Head of Mission shall exercise command and control of EU BAM Rafah at theatre level and shall be directly responsible to the Civilian Operation Commander.

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

▼M3

Article 10

Political control and strategic direction

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1. The PSC shall exercise, under the responsibility of the Council and the HR, political control and strategic direction of the mission. The Council hereby authorises the PSC to take the relevant decisions for this purpose in accordance with Article 38 of the Treaty. This authorisation shall include the powers to appoint a Head of Mission, upon a proposal from the HR, and to amend the OPLAN. It shall also include powers to take subsequent decisions regarding the appointment of the Head of Mission. The powers of decision with respect to the objectives and termination of the mission shall remain vested in the Council.

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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 areas of responsibility.

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Article 11

Participation of third States

1. Without prejudice to the decision-making autonomy of the EU and its single institutional framework, acceding States shall be invited and third States may be invited to contribute to EU BAM Rafah, provided that they bear the cost of the staff seconded by them, including salaries, medical coverage, allowances, high-risk insurance and travel expenses to and from the mission area, and contribute to the running costs of EU BAM Rafah, as appropriate.

2. Third States making contributions to EU BAM Rafah shall have the same rights and obligations in terms of day-to-day management of the mission as Member States taking part in the mission.

3. The Council hereby authorises the PSC to take the relevant decisions regarding the participation of third States, including their proposed contributions and to establish a Committee of Contributors.

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4. Detailed arrangements regarding the participation of third States shall be subject of an agreement to be concluded in accordance with the procedures laid down in Article 218 of the Treaty on the Functioning of the European Union. Where the EU and a third State have concluded an agreement establishing a framework for the participation of this third State in the EU crisis management operations, the provisions of such an agreement shall apply in the context of EU BAM Rafah.

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Article 12

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 EU BAM Rafah in accordance with Articles 5 and 9, in coordination with the Security Directorate of the European External Action Service (EEAS).

▼M9

2. The Head of Mission shall be responsible for the security of EU BAM Rafah and for ensuring compliance with minimum security requirements applicable to EU BAM Rafah, in line with the policy of the Union on the security of personnel deployed outside the Union 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 shall report to the Head of Mission and also maintain a close functional relationship with the Security Directorate of the EEAS.

4. EU BAM Rafah 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 SMSO.

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Article 12a

Legal arrangements

EU BAM Rafah shall have the capacity to procure services and supplies, to enter into contracts and administrative arrangements, to employ staff, to hold bank accounts, to acquire and dispose of assets and to discharge its liabilities, and to be a party to legal proceedings, as required in order to implement this Joint Action.

▼M12

Article 13

Financial arrangements

1. The financial reference amount intended to cover the expenditure related to EU BAM Rafah for the period from 25 November 2005 to 31 December 2011 shall be EUR 21 570 000.

The financial reference amount intended to cover the expenditure related to EU BAM Rafah for the period from 1 January 2012 to 30 June 2012 shall be EUR 970 000.

The financial reference amount intended to cover the expenditure related to EU BAM Rafah for the period from 1 July 2012 to 30 June 2013 shall be EUR 980 000.

The financial reference amount intended to cover the expenditure related to EU BAM Rafah for the period from 1 July 2013 to 30 June 2014 shall be EUR 940 000.

The financial reference amount intended to cover the expenditure related to EU BAM Rafah for the period from 1 July 2014 to 30 June 2015 shall be EUR 940 000.

2. All expenditure shall be managed in accordance with the procedures and rules applicable to the general budget of the European Union. Nationals of third States contributing financially to the Mission, host parties and, if required for the operational needs of the Mission, of neighbouring countries shall be allowed to tender for contracts.

3. EU BAM Rafah shall be responsible for the implementation of its budget. For that purpose, EU BAM Rafah shall sign an agreement with the Commission.

▼M12

4. EU BAM Rafah shall be responsible for any claims and obligations arising from the implementation of the mandate starting from 1 July 2014, with the exception of any claims relating to serious misconduct by the Head of Mission, for which he/she shall bear the responsibility.

5. The implementation of the financial arrangements will be without prejudice to the chain of command as provided for in Articles 4, 4a and 5 and the operational requirements of EU BAM Rafah, including compatibility of equipment and interoperability of its teams.

6. Expenditure shall be eligible as of the date of entry into force of this Joint Action.

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Article 14

Community action

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1. The Council and the Commission shall, each in accordance with their respective powers, ensure consistency between the implementation of this Joint Action and Union's external action in accordance with Article 21(3) of the Treaty. The Council and the Commission shall cooperate to this end.

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

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Article 15

Release of classified information

1. The HR is authorised to release to third States associated with this Joint Action, as appropriate and in accordance with the operational needs of the mission, EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the mission, in accordance with the Council's security regulations.

2. In the event of a specific and immediate operational need, the HR is also authorised to release to the local authorities EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the mission, in accordance with the Council's security regulations. In all other cases, such information and documents shall be released to the local authorities in accordance with the procedures appropriate to their level of cooperation with the EU.

3. The HR is authorised to release to third States associated with this Joint Action and to the local authorities EU non-classified documents related to the deliberations of the Council with regard to the mission covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ([1]).

([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).

▼M3

Article 15a

Watch-Keeping

The Watch-Keeping Capability shall be activated for EU BAM Rafah.

▼M5

Article 16

Entry into force

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

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It shall expire on 30 June 2015.

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Article 18

Publication

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

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The Decisions of the PSC pursuant to Article 10(1), regarding the appointment of the Head of Mission, shall also be published in the *Official Journal of the European Union*.

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