(Acts adopted under Title V of the Treaty on European Union)

COUNCIL JOINT ACTION 2004/789/CFSP

of 22 November 2004

on the extension of the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL PROXIMA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 14, Article 25, third paragraph, Article 26 and Article 28(3) thereof,

Whereas:

(1) Pursuant to the Ohrid Framework Agreement, the Union's contribution is based upon a broad approach with activities to address the whole range of rule of law aspects, including institution building programmes and police activities which should be mutually supportive and reinforcing. The activities of the Union, supported, *inter alia*, by the Community's institution building programmes under the CARDS Regulation, will contribute to the overall peace implementation in the Former Yugoslav Republic of Macedonia as well as to the achievement of the Union's overall policy in the region, notably the stabilisation and association process.

(2) The Union appointed a European Union Special Representative (EUSR) to contribute to the consolidation of the peaceful political process and the full implementation of the Ohrid Framework Agreement, to help to ensure the coherence of the EU external action and to ensure coordination of the international community's efforts to help in the implementation and sustainability of the provisions of that Framework Agreement.

(3) The UN Security Council Resolution 1371 (2001) adopted on 26 September 2001 welcomes the Ohrid Framework Agreement and supports its full implementation by the efforts of, *inter alia*, the EU.

(4) In the interest of preserving and building upon the significant results achieved in the Former Yugoslav Republic of Macedonia through a considerable commitment of EU political effort and resources, the EU has enhanced its role in policing to further contribute to a stable secure environment to allow the Former Yugoslav Republic of Macedonia government to implement the Ohrid framework agreement.

(5) The security situation in the Former Yugoslav Republic of Macedonia has continued to improve since the conflict in 2001. In 2004 stability has been further strengthened. Steps in the preparation and implementation of key Ohrid Framework Agreement reforms were taken and efforts to address other reform priorities, including in the field of rule of law, were made. It can, however, not be excluded that the security situation may deteriorate with potentially serious repercussions on international security. A continued commitment of EU political effort and resources will thus help to further embed stability in the country as well as in the region.

(6) On 16 September 2003, the authorities of the Former Yugoslav Republic of Macedonia invited the EU to assume responsibility for an enhanced role in policing and the deployment of an EU Police Mission (EUPOL PROXIMA).

(7) Council Joint Action 2003/681/CFSP [1], of 29 September 2003 established EUPOL PROXIMA for a 12-month period between 15 December 2003 and 14 December 2004.

(8) On 1 October 2004, the Prime Minister of the former Yugoslav Republic of Macedonia (FYROM), Mr Hari Kostov, sent a letter to the Secretary-General/High Representative (SG/HR), inviting the EU to take the necessary steps to extend EUPOL PROXIMA by 12 months after the expiration of the current mandate on 14 December 2004.

[1] OJ L 249, 1.10.2003, p. 66.

(9) On 11 October 2004 the Council, noting the progress made, agreed to extend EUPOL PROXIMA for another 12 months after the expiration of the current mandate on 14 December 2004. The Council also agreed that the objective of the extended mission will be to further support the development of an efficient and professional police service based on European standards of policing. Under the guidance of the EU Special Representative in Skopje and in partnership with the host Government authorities, EU police experts will continue to monitor, mentor, and advise the country's police, focussing on middle and senior management, thus helping to fight organised crime more effectively, to further facilitate public confidence in policing, to consolidate law and order, and to further assist in the creation of a border police service.

(10) The Political and Security Committee (PSC) should exercise political control of and provide strategic direction to EUPOL PROXIMA and take the relevant decisions in accordance with Article 25, third subparagraph of the Treaty on the European Union (TEU). The PSC should be informed on a regular basis on all aspects of the mission, including through briefings by the EUSR and the Head of Mission/Police Commissioner as necessary.

(11) In conformity with the guidelines of the European Council meeting at Nice on 7-9 December 2000, this Joint Action should determine the role of the SG/HR in accordance with Articles 18 and 26 of the TEU in the implementation of measures falling within the political control and strategic direction exercised by the PSC, in accordance with Article 25 of the TEU.

(12) Third States should participate in the operation in accordance with the guidelines laid down by the Nice European Council.

(13) Article 14(1) of the TEU 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 legislative authority and is subject to the availability of commitment appropriations during the respective budget year,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mission

1. The European Union hereby extends the European Union Police Mission (EUPOL PROXIMA) in the Former Yugoslav Republic of Macedonia (FYROM) from 15 December 2004 to 14 December 2005.

2. EUPOL PROXIMA shall operate in accordance with the objectives and other provisions as contained in the mission statement set out in Article 3.

Article 2

Planning for the extension

1. In preparation for the extension of the mission, the current Police Head of Mission shall set down a task force within the mission consisting of the necessary staff to deal with functions ensuing from the needs for the extension of the mission.

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

3. The current Head of Mission shall, on the basis of the Concept of Operations (CONOPS) approved by the Council, and on the basis of the guidance given by the Political and Security Committee (PSC), draw up a revised Operation Plan (OPLAN) and develop all technical instruments necessary to execute the extension of EUPOL PROXIMA. The revised OPLAN shall take into account the comprehensive risk assessment.

4. In preparing for the extension of the mission, including in drafting the revised OPLAN, the current Head of Mission shall consult and co-ordinate with the European Commission Police Reform Project and the OSCE in Skopje.

Article 3

Mission Statement

EUPOL PROXIMA, in line with the objectives of the Ohrid Framework Agreement, in strong partnership with the relevant authorities, and within a broader Rule of Law perspective, shall, in full coordination and complementarity with Community institution building as well as OSCE and bilateral programmes, continue to monitor, mentor, and advise the country's police, focussing on middle and senior management, thus further supporting, as appropriate:

— the consolidation of law and order, including the fight against organised crime notably in Sensitive Areas;

— the practical implementation of the comprehensive reform of the Ministry of Internal Affairs, including the police;

— the operational transition towards, and the creation of a border police, as a part of the wider EU effort to promote integrated border management;

— the local police in building confidence within the population;

— enhanced cooperation with neighbouring States in the field of policing.

Article 4

Structure

EUPOL PROXIMA shall in principle be structured as follows:

(a) headquarters in Skopje, composed of the Head of the Mission/Police Commissioner and staff as defined in the revised OPLAN.

(b) one central co-location unit at the Ministry of Interior level.

(c) some units co-located within the Former Yugoslav Republic of Macedonia at appropriate levels.

Article 5

Head of Mission/Police Commissioner

1. The Head of Mission/Police Commissioner shall exercise Operational Control (OPCON) over EUPOL PROXIMA and assume the day-to-day management of EUPOL PROXIMA operations.

2. The Head of Mission/Police Commissioner shall sign a contract with the Commission.

3. All police officers shall remain under full command of the appropriate national authority. National authorities shall transfer OPCON to the Head of EUPOL PROXIMA.

4. The Head of Mission/Police Commissioner shall be responsible for disciplinary control over the personnel. For seconded personnel, disciplinary action shall be exercised by the national or EU authority concerned.

Article 6

Staff

1. The numbers and competence of EUPOL PROXIMA staff shall be consistent with the mission statement set out in Article 3 and the structure set out in Article 4.

2. Police officers shall be seconded by Member States. Each Member State shall bear the costs related to the police officers seconded by it, including salaries, medical coverage, allowances other than per diems, and travel expenses to and from the Former Yugoslav Republic of Macedonia.

3. International civilian staff and local staff shall be recruited on a contractual basis by EUPOL PROXIMA, as required.

4. Contributing States or Community institutions may also, if required, second international civilian staff. Each contributing State or Community institution shall bear the costs related to any of the staff seconded by it including salaries, medical coverage, allowances other than per diems, and travel expenses to and from the Former Yugoslav Republic of Macedonia.

Article 7

Chain of Command

The structure of EUPOL PROXIMA as part of the broader EU Rule of Law approach in the Former Yugoslav Republic of Macedonia shall have a unified chain of command, as a crisis management operation.

— The European Union Special Representative (EUSR) shall report to the Council through the SG/HR,

— The PSC shall provide the political control and strategic direction,

— The Head of Mission/Police Commissioner shall lead EUPOL PROXIMA and assume its day to-day management,

— The Head of Mission/Police Commissioner shall report to the SG/HR through the EUSR,

— The SG/HR shall give guidance to the Head of Mission/Police Commissioner through the EUSR.

Article 8

Political control and strategic direction

1. The PSC shall exercise under the responsibility of the Council the political control and strategic direction of the mission. The Council hereby authorises the Political and Security Committee to take the relevant decisions in accordance with Article 25 of the TEU. This authorisation shall include the powers to appoint, upon a proposal from the SG/HR, a Head of Mission, to approve and to amend the revised OPLAN and the Chain of Command. The powers of decision with respect to the objectives and termination of the operation shall remain vested in the Council, assisted by the SG/HR.

2. The EUSR shall provide local political guidance to the Police Head of Mission. The EUSR shall ensure coordination with other EU actors as well as relations with host party authorities and media.

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

4. The PSC shall receive reports by the Police Head of Mission regarding the conduct of the mission at regular intervals. The PSC may invite the Police Head of Mission to its meetings as appropriate.

Article 9

Participation of Third States

1. Without prejudice to the decision-making autonomy of the EU and the single institutional framework of the Union, Acceding States shall be invited and other third States may be invited to contribute to EUPOL PROXIMA on the basis that they bear the cost of sending the police officers and/or the international civilian staff seconded by them, including salaries, allowances and travel expenses to and from the Former Yugoslav Republic of Macedonia, and contribute to the running costs of EUPOL PROXIMA, as appropriate.

2. Without prejudice to the decision-making autonomy of the EU and the Single Institutional Framework, third States may be invited to participate in the operation.

3. The Council hereby authorises the PSC to take, upon the recommendation of the Police Head of Mission and the Committee for Civilian Aspects of Crisis Management, the relevant decisions on acceptance of the proposed contributions.

4. Third States making contributions to EUPOL PROXIMA shall have the same rights and obligations in terms of day-to-day management of the operation as EU Member States taking part in the operation.

5. The PSC shall take appropriate action with regard to participation arrangements and shall, if required, submit those to the Council, including on possible financial participation from third States in the common costs.

6. Detailed arrangements regarding the participation of Third States shall be subject of an agreement, in conformity with Article 24 of the TEU. The SG/HR assisting the Presidency may negotiate such arrangements on its behalf.

Article 10

Financial arrangements

1. The financial reference amount intended to cover the expenditure related to the extended mission shall be EUR 15 950 000 for commitment, out of which EUR 5 000 000 out of the 2004 budget and EUR 10 950 000 out of the 2005 budget.

2. As regards expenditure financed out of the Community budget, the following shall apply:

(a) expenditure shall be managed in accordance with the European Community rules and procedures applicable to the budget, with the exception that any pre-financing shall not remain the property of the Community. Nationals of third States shall be allowed to tender for contracts;

(b) the Police Head of Mission shall report fully to, and be supervised by, the Commission on the activities undertaken in the framework of his contract.

3. The financial arrangements shall respect the operational requirements of EUPOL PROXIMA, including compatibility of equipment and interoperability of its teams.

Article 11

Community action

1. The Council notes that the Commission shall continue to direct its action towards achieving the objectives of this Joint Action, where appropriate, by relevant Community measures.

2. The Council also notes that appropriate coordination arrangements shall continue in Skopje as well as in Brussels.

Article 12

Release of classified information

1. The SG/HR is authorised to release to NATO/KFOR and to the third parties associated with this Joint Action, EU classified information and documents up to the level 'CONFIDENTIEL UE' generated for the purposes of the operation, in accordance with the Council's security regulations.

2. The SG/HR is also authorised to release, in accordance with the operational needs of the Mission, to the OSCE EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the operation, in accordance with the Council's security regulations. Local arrangements shall be drawn up for this purpose.

3. In the event of a specific and immediate operational need, the SG/HR is also authorised to release to the host State EU classified information and documents up to the level 'CONFIDENTIEL UE' generated for the purposes of the operation, in accordance with the Council's security regulations. In all other cases, such information and documents shall be released to the host State in accordance with procedures appropriate to the host State's level of cooperation with the EU.

4. The SG/HR is authorised to release to third parties associated with this Joint Action EU non-classified documents related to the deliberations of the Council with regard to the operation, covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council Rules of Procedure.

Article 13

Status of staff of EUPOL PROXIMA

1. The status of EUPOL PROXIMA staff in the Former Yugoslav Republic of Macedonia, including the privileges, immunities and further guarantees necessary for the completion and smooth functioning of EUPOL PROXIMA is set out in the Agreement between the European Union and the former Yugoslav Republic of Macedonia on the status and activities of the European Union Police Mission in the former Yugoslav Republic of Macedonia (EUPOL 'Proxima'), concluded by Decision 2004/75/CFSP [1].

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

Article 14

Entry into force

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

It shall expire on 14 December 2005.

Article 15

Publication

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

Done at Brussels, 22 November 2004.

For the Council
The President
B. R. BOT

[1] OJ L 16, 23.1.2004, p. 65.