

2019/EUBAM-LIBYA/OPS/12.00.01/057

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN:**

**THE EUROPEAN UNION BORDER ASSISTANCE MISSION IN LIBYA,  
represented by Mr. Vincenzo Tagliaferri, Head of Mission  
“EUBAM”**

**and**

**INTERNATIONAL CENTRE FOR MIGRATION POLICY  
DEVELOPMENT (ICMPD),  
represented by Director General Michael Spindelegger  
“ICMPD”**

**on**

**MUTUAL SUPPORT IN THE CONTEXT OF THE  
IMPLEMENTATION OF THE WHITE PAPER**

This Memorandum of Understanding (hereinafter referred to as MoU) is between the European Union Border Assistance Mission in Libya (EUBAM) and the International Centre for Migration Policy Development (ICMPD) in this MoU jointly referred to as the “Participants” and individually as the “Participant”.

**Whereas** EUBAM was established pursuant to Council Decision 2013/233/CSFP of 22 May 2013 as amended,

**Whereas** EUBAM compiled the Concept Note towards a White Paper the Mission was officially invited by the Libyan authorities to develop this into a comprehensive national Integrated Border Management strategy which will also serve as the basis for future projects to be implemented in the broader context of integrated border management in Libya,

**Whereas** ICMPD is to promote innovative, comprehensive and sustainable migration policies and to function as a service exchange mechanism for governments and organisations under the international Agreement Regarding the Establishment and Functioning of the ICMPD, signed in Vienna on 1 June 1993), as amended and modified,

**Whereas** ICMPD is already implementing projects in Libya, inter alia “Strategic and institutional management of migration in Libya”,

**Whereas** EUBAM is directly benefiting from the capacity building activities of ICMPD in the National Team for Border Security and Management, ICMPD’s efforts are to be considered as complementary to those of EUBAM and of direct value for the Mandate implementation of EUBAM,

**Whereas** ICMPD is currently conducting a comprehensive institutional capacity assessment of the Libyan Authorities engaged in migration and border management, the results of such assessment will complement the mapping efforts of EUBAM,

**Whereas** on 20 October 2015 the European Commission adopted the Commission Decision C(2015) 7293 on the establishment of a European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa,

**Whereas** on 22 January 2018 the Council of the EU adopted Council Conclusions 5413/18 on the Integrated Approach to External Conflicts and Crises which declares that "A more coherent approach increases the effectiveness of the EU's efforts and thereby paves the way for long-term sustainable peace and development",

**Whereas** it is envisaged that EUBAM's current planning mandate referring to capacity building in the area of border management will be reformed and turned into an operational and more project orientated engagement which would require a closer coordination of EU funds under the general coordination of EUBAM,

**Whereas** the Participants agreed to participate in the envisaged project "Strengthened governance, sustainable systems and enhanced integrated border management (IBM) capacity" to be financed by the above referred Trust Fund, whereby EUBAM will have a leading role in the Steering Committee over the White Paper while ICMPD will be one of the main implementing partners having the necessary expertise in the field,

**Whereas** it is recognised that both Participants are assisting the Libyan people in their efforts to restore the Rule of Law in the State of Libya,

**Whereas** both Participants expressed their intention to assist each-other in order to achieve their mutual goals, and to closely cooperate in projects including but not limited to aiming to assist in the drafting of and provide technical expertise in the coordination of the White Paper,

**Now therefore,** the Participants hereto agreed as follows:

## **1. CONTEXT**

The herein MoU is to serve as a solid framework for mutual cooperation and information sharing, within the respective mandates of both Participants, in order to avoid duplication of efforts, enhance efficiency and safeguard EU Budgetary spending.

Participants as well intend to cooperate in project implementation financed by the EU Budget. The detailed rules of the projects shall be governed by the project documents, and the written agreements of the Participants subject to prior explicit written approval from Foreign Policy Instruments (FPI) and the Civilian Planning and Conduct Capability (CPCC). Any such project cooperation agreement shall be annexed to the herein MoU.

## **2. PURPOSE AND SCOPE**

This MoU provides the terms and conditions of mutual strategic cooperation and information sharing as well provides a framework under which EUBAM provides assistance within its means and capabilities to ICMPD with regards to flights, security and accommodation in the context of the White Paper implementation.

### 3. TERMS AND CONDITIONS

#### 3.1 Operational cooperation and information sharing

- 3.1.1** Participants mutually agree and accept that EUBAM is mandated under the EU and UN framework to coordinate any and all activities in the broader context of border management especially but not limited to the White Paper process.
- 3.1.2** ICMPD affirms that all its activities of relevance to the White Paper process shall be undertaken in a manner coordinated with EUBAM ex. ante. This as well includes that within the limitations of professional ethics project proposal and other planning documents are to be shared with EUBAM. As well ICMPD's capacity building activities are to be coordinated with EUBAM. ICMPD commits to consider relevant proposals regarding potential target groups as well the methodology.
- 3.1.3** EUBAM in turn commits to sharing – within the limitations of the relevant information security rules – relevant planning documents with ICMPD in a timely manner.
- 3.1.4** Both Participants commit to close and regular consultation on a needs-driven basis.
- 3.1.5** Detailed rules of project coordination (should there be any) are to be regulated in the project steering committee documents. Should those deviate from the principles outlined in the herein MoU EUBAM is required to seek the prior written approval of CPCC and FPI. In the context of project implementation EUBAM may extend its support to ICMPD including but not limited to co-location.

#### 3.2 Logistics support

- 3.2.1** In recognition of ICMPD's efforts in capacity building of strategic Libyan partners EUBAM grants permission to the ICMPD staff members to use the excess capacity of EUBAM scheduled flights with its contractor and to gain access to accommodation and security services available to EUBAM on a cost reimbursement basis in accordance with the General Terms and Conditions attached as Annex A.
- 3.2.2** "ICMPD staff member" means an international staff member of ICMPD (including visiting staff) who hold a valid identification card issued by the ICMPD and is present in or in transit through Libya and/or Tunisia.
- 3.2.3** EUBAM informs ICMPD that EUBAM operates the flights and provides accommodation and security services under a strict order of operational preference. External users may only be booked subject to the priorities listed in Annex A. EUBAM reserves the right to cancel or modify a booking due to operational reasons. The prices indicated in Annex A are subject to change upon the renewal of the framework contracts EUBAM has with its service providers. Such changes shall be informed to ICMPD upon availability and shall constitute a change to the herein MoU.
- 3.2.4** In this context the ICMPD will reimburse EUBAM for the following costs:
- a) actual prices per seats taken (ticket price),
  - b) security services provided,
  - c) accommodation provided,
  - d) proportionate share of cancellation fees if applicable.

- 3.2.5** In relation to the operational planning EUBAM will undertake to:
- a) provide a tentative flight schedule three (3) months ahead to ICMPD indicating the type of the aircraft and the number of seats available and the respective cost of the seats in accordance with 3.2.1 above
  - b) confirm the flight schedule five (5) days prior to the scheduled flights (initial confirmation)
  - c) provide the seats, security and accommodation to the ICMPD staff members within its means and capabilities in accordance with the General Terms and Conditions attached as Annex A.
  - d) provide the ICMPD with a debit note detailing the number of seats used indicating the charter flights conducted/seats occupied highlighting the unit price, and detailing the security and accommodation services rendered. The cancellation fees if applicable shall be also detailed in the debit note.

- 3.2.6** ICMPD undertakes to:
- a) provide to EUBAM with a seat/security/accommodation request fifteen (15) days prior to the desired date of departure in a given format to be communicated to the designated contact person of ICMPD,
  - b) will provide EUBAM with the passenger details for the flight arrangement at least ten (10) days prior to the desired date of departure,
  - c) guarantee that all passengers are ICMPD staff members as described in Article 3.2.2 above, and the passengers are in possession of valid visas and adequate high-risk insurance coverage,
  - d) accept the general conditions of flights as detailed in Annex A,
  - e) cater for its passengers for any and all administrative process so required by local authorities, including security and accommodation (unless specified otherwise in the booking request EUBAM will provide security services and accommodation to ICMPD staff members),
  - f) enforce that ICMPD staff members sign the general release form attached as Annex B,
  - g) accept that the personal data provided by ICMPD concerning ICMPD staff members will be handled in accordance with applicable EU data protection regulations,
  - h) to pay the debit note issued on a monthly basis by EUBAM within thirty (30) days from receipt.

- 3.2.7** In line with Article 3.2.6.e above ICMPD may decide to use only some and not all as a package the logistical support related to EUBAM framework described in the current MoU, such request should be clearly indicated in the booking request.

#### 4. PAYMENTS

- 4.1** Any expenses or items not specifically mentioned in chapter 3 and in Annex A will be ordered and paid directly by ICMPD.
- 4.2** As a general rule, payments will be made on the basis of monthly debit notes and will be executed within thirty (30) days of the receipt of the debit note to the following bank account and currency:

Account name:  
Bank name:  
Account number:  
Currency:  
SWIFT code:



- 4.3 All bank charges, transfer fees or other amounts that may be levied in connection with the payments will be borne by ICMPD.
- 4.4 Invoicing details and price lists for flight, security and accommodation services are defined in Annex A.
- 4.5 Each debit note will be sent to the ICMPD to the following address:

Bureau de l'ICMPD à Tunis  
Carthage Centre, Bloc A  
Rue du Lac de Constance  
Les Berges du Lac 1  
1053 – Tunis  
Tunisia

## 5. INDEMNIFICATION

- 5.1 ICMPD understands and accepts that ICMPD staff members transported on board of an EUBAM contracted charter flight under this MoU are required to sign a General Release from Liability Form before boarding. ICMPD understands that EUBAM has the right to deny boarding of ICMPD staff members in absence of the General Release Liability Form, or valid travel or other required documentation.
- 5.2 ICMPD will not hold EUBAM or any of its officials, employees, agents, contractors or subcontractors liable for any illness, injury, damage, or other loss, financial or otherwise, arising out of use of the flights/security/accommodation provided by EUBAM under this MoU by ICMPD staff members, except in the case of gross negligence or wilful misconduct on the part of EUBAM staff.

## 6. FORCE MAJEURE

- 6.1 Any failure by the Participants to carry out their respective obligations under this MoU other than the Participants' obligations to make payments of money as required under this MoU will not be deemed a breach, if such failure is caused by force majeure. Neither party will be considered to be in default or in breach of its obligations under this MoU if the performance of such obligations is prevented by any circumstances of force majeure which arise after the date when the contract becomes effective. The term force majeure, as used herein covers any unforeseeable events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome such as, among others, acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, or explosions.
- 6.2 Only such loss, damage or injury that could not have been avoided by the taking of prudent precautions, due care or reasonable alternative measures will be regarded as the consequence of any failure caused by force majeure.
- 6.3 The Participant whose ability to perform its obligations is affected by force majeure will promptly after the concurrence of the same notify the other Participant in writing, stating the force majeure cause and the details thereof. Thereafter, the Participants will make reasonable efforts to remove the cause and resume performance. Continuance of force

majeure for 60 consecutive days will give each Participant the right to terminate this MoU upon 60 days prior written notice.

## 7. AMENDMENTS

- 7.1 Any amendment to this MoU will be done in written form and signed by both participants. The Participants agree that this MoU shall be subject to periodic review once every six (6) months from the date of execution of this arrangement or such other period as may be agreed.
- 7.2 Any permanent increase of the scope of services will be considered a substantial change and will require an amendment approved by both participants.

## 8. SETTLEMENT OF DISPUTES

- 8.1 The Head of Mission (HoM), EUBAM Libya and the Director General of ICMPD will keep the application and implementation of this MoU under close review, and will consult with each other and use best efforts to discuss and resolve amicably any difficulties, problems, claims or disputes that may arise.
- 8.2 In the event that HoM, EUBAM and Director General of ICMPD are unable to resolve any difficulties, problems, problems, claims or disputes to their mutual satisfaction, consultations will be continued between the chain of command of EUBAM and ICMPD with the facilitation of the High Representative for the Common Foreign and Security Policy/Vice President of the European Commission.

## 9. PRIVILEGES AND IMMUNITIES

- 9.1 Nothing in this MoU will be deemed a waiver, expressed or implied, in whole or in part, of the privileges and immunities enjoyed by either of the Participants and their respective personnel.
- 9.2 This MoU will not prejudice any other arrangement between the Participants or between one of the Participants and any other third party.

## 10. NOTICES

- 10.1 Any notice given in connection with this MOU will be in English and will be deemed to be validly given if acknowledged delivered to the official identified immediately below.

For EUBAM

name: Vincenzo Tagliaferri

title: Head of Mission

for ICMPD

name: Michael Spindelegger

title: Director General

- 10.2 The Participants shall inform each other with regard to any changes in appointment of the official in writing.

## 11. DURATION AND TERMINATION

This MoU enters into force on the date of signature of the Participants and will continue to be in force until the expiration of either Participant's mandate unless terminated earlier in accordance with this MoU. The expiration of the mandate refers to the mandate of EUBAM and/or ICMPD not to the mandate of the Head of Mission and or Director General of ICMPD. The MoU may be terminated at any time by either Participant giving not less than sixty (60) days written notice to the other Participant.

This MoU has been duly signed in two original copies in English language in Vienna, Austria.

For EUBAM

Vincenzo Tagliaferri

Head of Mission,  
EUBAM Libya

date: 17.10.2018

for ICMPD

Michael Spindelegger

Director General  
ICMPD

date: 17.10.2018





**Annex B**

**GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF USE OF EUBAM LIBYA AIR TRANSPORT AND SECURITY SERVICES**  
All Non – EUBAM LIBYA staff must complete this form and indicate with signature that each page is read and agreed upon.

1. Passenger details :

<b>Name :</b>	<b>Title/Rank :</b>
<b>Passport/ID No :</b>	<b>Date of Birth :</b>
<b>Nationality :</b>	<b>Employer :</b>
<b>Telephone No :</b>	<b>Email :</b>

2. Passenger's itinerary

<b>Departure date</b>	<b>Route</b>	<b>Detailed destination in Libya</b>	<b>Purpose of Travel</b>

name in print :

I, the undersigned,

hereby recognize that my travel on the aircraft and security services provided (if applicable) by EUBAM LIBYA, in keeping the itinerary above, is solely for my own convenience and benefit or that of my employer and may take place in areas or under conditions of special risk. In consideration of being permitted to travel on such means of transport, I hereby:

- Acknowledge that this flight/travel and security services (if applicable) are provided by independent contractors for the official business and purposes of the EUBAM LIBYA. These services are not commercial services and as such not available for the general public. I understand that EUBAM Libya cannot be held directly liable for any act or omission of the respective contractors.
- The operating conditions and facilities for this flight may not meet ICAO or other international or national standards, which could pose special risk for the flight.
- My travel on this flight is not covered by the Warsaw Convention or related treaties and/or conventions.
- This travel takes place in areas of possibly hazardous conditions, including hostilities.

- Recognize that officials, employees, agents and consultants of the EUBAM LIBYA are not liable for any loss, damage, injury or death that may be sustained by me during such travel (including the provision of security services if applicable).
- Assume all the risks and liabilities during such travel arising out of the conditions under which the travel is operated and recognize that EUBAM LIBYA shall not be responsible for any loss, damage, injury or death that may be sustained by me due such conditions.
- Agree, for myself as well as for my dependents, heirs and estate, to hold harmless EUBAM Libya and all its officials, employees and agents from any claim or action on account of any such loss, damage or injury or of my death.
- Agree, for myself as well as for my dependents, heirs and estate that in the event that EUBAM Libya has insurance to cover loss, damage, personal injury or death, any liability will be limited and will not exceed the amounts of such insurance coverage.
- If security services are provided by EUBAM Libya I will obey and follow all directives given to me by EUBAM LIBYA Security and Close protection staff during the travel.
- I accept the security concept and risk assessments provided by EUBAM Libya.
- I / my organization are aware of and accept the retained risk associated with this travel, have done our due diligence and conducted independent risk assessment for this travel.
- I am medically fit for travel in hazardous conditions\* and understand that in these conditions specialist medical care might not always be available.
- Acknowledge, that this applies to any future flight/travel and security services provided by EUBAM Libya conducted by the same signing by passenger, only in such case no further General Release Form will have to be signed.

By signing this form, I confirm that pursuant to the provisions of **Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000**, as amended, EUBAM Libya as established by Council Decision 2013/233/CFSP of 22 May 2013 as amended, as a data controller, may process my personal data in accordance with the said Regulation. I acknowledge that unless indicated otherwise the data controller is the EUBAM Libya MovCon. I give my consent subject to that the collected may only be used solely for the purposes it has been collected for and will only be accessed on a strictly 'need to know' basis.

Print name of passenger	Signature of passenger	Date
-------------------------	------------------------	------

Print name of approving Officer	Signature of approving Officer	Date
---------------------------------	--------------------------------	------