

Agreement Between the United States of America and Romania on the Deployment of the United States Ballistic Missile Defense System in Romania



Aegis Ashore Site – Deveselu Base, Romania

- United States announces Phased Adaptive Approach
√ September 2009
- Romania agrees to host missile defense site
√ February 2010
- Site selection
√ June-September 2010
- Ballistic Missile Defense Agreement
√ September 2011
- Implementing Arrangements Negotiations
√ 2012-2013
- Romania Industry Days
√ June 2012
- Site construction
 - √ Temporary facility construction April-October 2013
 - Groundbreaking 28 October 2013
 - MDA MILCON construction start October 2013
 - Site construction 2013-2015
 - Aegis Ashore Weapons Systems Installation 2014-2015

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Deveselu Air Base (Photo: State Department)

Preamble

The United States of America and Romania (hereafter referred to as the "Parties");

Having in mind the United States – Romanian Strategic Partnership and the further development thereof, and recognizing that a very important pillar of the United States – Romanian relationship is the solidarity embodied in Article 5 of the North Atlantic Treaty, the United States and Romania recognize the importance of enhancing their individual and collective national security by working within the North Atlantic Treaty Organization (hereafter referred to as "NATO"), the United Nations, and other international organizations, consistent with the United Nations Charter and international law;

Reaffirming their strong will to work together towards contributing to, in accordance with the principle of the indivisibility of the security of NATO and with the principle of NATO solidarity, the NATO missile defense capability, as a key mission of the Alliance, with the aim of providing full coverage and protection for all NATO European populations, territory and forces, as well as to shaping NATO's central role in missile defense in Europe;

Recognizing their shared vision of a broader and deeper Strategic Partnership between the United States and Romania, including the further development of enhanced mechanisms of political and military consultations in order to improve their mutual security, within the framework of Article 3 of the North Atlantic Treaty;

Recognizing the application of the provisions of the North Atlantic Treaty, done at Washington on April 4, 1949; the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, done at London on June 19, 1951 (hereafter referred to as the "NATO SOFA"); the Agreement between the United States of America and Romania regarding the status of United States forces in Romania, done at Washington on October 30, 2001 (hereafter referred to as the "Supplemental SOFA"); the Agreement between the United States of America and Romania regarding the activities of United States forces located on the territory of Romania, done at Bucharest on December 6, 2005 (hereafter referred to as the "Defense Cooperation Agreement"); the Agreement between the Government of the United States of America and the Government of Romania concerning Measures for the Protection of Classified Military Information, done at Washington on June 21, 1995 (hereafter referred to as the "Classified Military Information Agreement"); and the Agreement between the Parties to the North Atlantic Treaty for the Security of Information, done at Brussels on March 6, 1997 (hereafter referred to as the "NATO Security Agreement");

Recognizing that the proliferation of weapons of mass destruction and of the means of their delivery, including ballistic missiles, poses a grave and increasing threat to international peace and security, and to the populations, territory and forces of the Parties, their allies and partners;

Reconfirming the exclusively defensive nature of the United States *European Phased Adaptive Approach for Ballistic Missile Defense* and its consistency with the United Nations Charter;

Recognizing also the need to combine and enhance their efforts for purposes of individual and collective self-defense, to maintain international peace and security, and to further enhance their capabilities for an appropriate response to threats and attacks, including those of a terrorist nature;

Reaffirming that deployment of ballistic missile defense interceptors in the territory of Romania represents an important contribution by Romania to the building and further enhancement of the United States missile defense system as well as to the NATO missile defense capability;

Recognizing that cooperation with NATO allies and partners, in defense against the threat of ballistic missiles is important, and that deployment of United States ballistic missile defense interceptors in the territory of Romania enhances the existing security relationship between the United States and Romania and contributes to international peace and security and to the security of the United States, Romania, and NATO;

Bearing in mind their common defense interests and recognizing that cooperation in the field of ballistic missile defense constitutes one of the elements of broader bilateral security cooperation, which should contribute to the strengthening of the security of the Parties;

Recognizing their strong, successful and longstanding cooperation under the Defense Cooperation Agreement;

Acknowledging the intent of the Parties to assess the effective implementation of the Supplemental SOFA and of the Defense Cooperation Agreement and, if mutually agreed, update those agreements;

Have agreed as follows:

Article I

Purpose and Scope

1. This Agreement establishes the rights and obligations of the Parties with respect to the deployment of a United States Ballistic Missile Defense System in the territory of Romania on the *Deveselu* base.
2. Each and every provision of the Supplemental SOFA and the Defense Cooperation Agreement shall apply to this Agreement, unless this Agreement provides otherwise. For matters not covered by this Agreement or the Supplemental SOFA or the Defense Cooperation Agreement, to the extent such matters are covered by the NATO SOFA, the NATO SOFA shall apply.

Article II

Definitions

For the purposes of this Agreement, the following terms are hereunder defined:

1. "United States Ballistic Missile Defense System in Romania" includes non-nuclear interceptors, as well as those components needed for the operation of such interceptors identified in Article V paragraph 1, and associated mission and mission support equipment and infrastructure for defense against ballistic missile attack.
2. "Base" means the military area in the locality of *Deveselu*, used by United States forces pursuant to the provisions of this Agreement and for the duration thereof, for the purpose of deployment and operation of the United States Ballistic Missile Defense System in Romania, in accordance with Article I paragraph 5 of the Defense Cooperation Agreement and consistent with Article I paragraph 2 of this Agreement.
3. "Facility" means the area located within the Base where the United States Ballistic Missile Defense System in Romania and supporting infrastructure are located and with respect to which the United States controls access, in accordance with Article I paragraph 5 of the Defense Cooperation Agreement and consistent with Article I paragraph 2 of this Agreement.
4. "Restricted Airspace" is a designated area subject to certain restrictions, due to the existence of hazards to aircraft and taking into account the need for operational security in the vicinity of the Romanian Base.

Article III

NATO and the United States Ballistic Missile Defense System

1. The Parties shall support close coordination within NATO, and shall work together in the development of the NATO missile defense capabilities.
2. The United States fully intends for the United States Ballistic Missile Defense System to be interoperable with and a contribution to the evolving NATO missile defense capability.
3. In addition to continued United States and Romanian participation in NATO programs, the Parties intend to further develop bilateral security cooperation, including through fulfillment of the principles and objectives of this Agreement.
4. Within the context of, and consistent with the North Atlantic Treaty and the United States - Romanian Strategic Partnership, the United States is firmly committed to the security of Romania; and within NATO's commitment in this sense, to defend Romania, along with the NATO European populations, territory, and forces, by means of its ballistic missile defense system, against the increasing threat posed by the proliferation of ballistic missiles and against a potential ballistic missile attack.

Article IV

The Base

1. The Base is under Romanian sovereign jurisdiction and the property of Romania. Romania shall retain ownership of, and title to, the Base in accordance with the applicable provisions of the Defense Cooperation Agreement. The United States forces shall be authorized access to and use of the Base with full respect for Romanian law in accordance with applicable provisions of the Defense Cooperation Agreement, and may use the Base to host the Facility.
2. Consistent with Article IV of the Defense Cooperation Agreement, all buildings, including those constructed, used, altered or improved by United States forces, are the property of Romania, while movable objects and fixtures remain the property of United States forces or United States contractors as appropriate.
3. The laws applicable on the territory of Romania apply in the area of the Base, as set forth in this Agreement. It is the duty of the United States force and its civilian component and the members thereof as well as their dependents to respect the laws of Romania, and to abstain from any activity inconsistent with the spirit of the present Agreement.
4. The United States forces shall use the Base without prejudice to the sovereignty and laws of Romania.
5. Operations on the Base shall be conducted with due regard for public health and safety.
6. The United States and Romania shall coordinate and cooperate regarding transportation security for United States ballistic missile defense assets during transportation within the territory of Romania outside the Base. Romania recognizes the right of the United States to protect these assets. The applicable procedure shall be addressed in an implementing arrangement.
7. Romania shall ensure, according to the Romanian legislation in force, that use of the land areas surrounding the Base is consistent with the operation of the Facility and the United States Ballistic Missile Defense System in Romania. The United States shall

furnish relevant information to Romania to regulate the use of land areas surrounding the Base. The specific parameters and limitations on land use shall be established in an implementing arrangement.

8. Romania shall establish Restricted Airspace over and around the Base. Romania shall develop air traffic restrictions. Detailed parameters for the aforesaid zones, as well as the principles of their establishment and operation, and of cooperation between relevant United States and Romanian authorities regarding use of Romanian airspace, shall be set forth in an implementing arrangement. The United States shall furnish relevant information to Romania to regulate the airspace over and around the Base.
9. The number of members of the United States force and civilian component deployed at the Base after construction is completed and operations begin shall not exceed 500. The routine number of members of the United States force deployed to the Base will be approximately 150 persons.
10. The United States may, after obtaining the necessary authorization, as set forth in paragraphs 11 and 12, undertake construction activities on, and make major alterations and improvements to, and maintain, sustain, and operate ballistic missile defense structures and infrastructure on the Base. In the course of such activities, the United States may:
 - a. use, alter, or demolish existing structures and infrastructure on the Facility;
 - b. clear existing vegetation; and
 - c. excavate soil on the Facility with due consideration for the Romanian legislation in the field of protection of archeological sites.
11. Prior to beginning a construction activity related to the Base, the United States shall provide Romania with a construction schedule. The United States will also submit all the relevant construction documentation in advance of seeking the Romanian authorization. Romania shall respond to the United States request for the authorization within thirty days of the formal submission of the relevant documents. In case of construction inside the Base, if Romania does not issue the authorization within thirty days, the United States may proceed with the scheduled construction activities.
12. Romania shall obtain the necessary authorization for the construction in accordance with the Romanian law and the provisions of the Defense Cooperation Agreement and applicable implementing arrangements. In the case of construction inside the Base, this authorization will allow the United States to begin construction after thirty-five percent of the design is submitted to Romania, while in the case of construction outside the Base and related to it, this authorization will allow the United States to begin construction after one hundred percent of the design is submitted to Romania.
13. United States forces shall utilize local physical persons and legal entities as suppliers of articles and services to the extent feasible for the performance of a contract when the bids of such suppliers are competitive and constitute the best value.
14. To the extent permissible, United States forces shall accord to contractors who are citizens of Romania and are registered legal entities in the territory of Romania treatment no less favorable than that accorded to contractors who are not citizens of Romania and legal entities not registered in Romania.
15. The Base, and the Romanian military and civilian personnel staying on the Base, shall be under Romanian command exercised by a representative of the Romanian Armed Forces (hereafter referred to as the "Romanian Commander").
16. The Romanian Commander shall be identified within thirty days of the entry into force of this Agreement. The Romanian Commander or his or her designees shall be the Romanian point of contact regarding activities related to Base operations. The Romanian point of contact shall have an office on the Base.

17. The Romanian Commander shall, *inter alia*:
 - a. advise regarding relations with Romanian governmental and local institutions and facilitate contacts with such institutions;
 - b. participate in coordinating mutual logistics support for the military and civilian personnel deployed on the Base;
 - c. participate in coordinating the provision of security on the grounds of the Base;
 - d. participate in coordinating joint training on the grounds of the Base; and
 - e. advise the United States Senior Representative regarding Romanian law relevant to Base operation.
18. The Romanian Commander shall notify the United States Senior Representative of actions by United States forces, dependents, United States contractors, and United States contractor employees on the Base that appear to be inconsistent with Romanian law. The Romanian Commander and the United States Senior Representative shall cooperate to prevent and address such situations.
19. The Romanian Commander and his or her authorized representatives shall have access to the entire area of the Base, as provided in Article V paragraph 6.
20. The Romanian Commander shall, with the concurrence of the United States Senior Representative, establish the procedures for access to the Base, including appropriate safety and security measures to be applied for entering the Base, and shall issue appropriate passes to the Base.
21. Romania shall be responsible for providing security and protection for the Base outside the perimeter of the Facility.
22. Applying the Defense Cooperation Agreement, the Supplemental SOFA and their relevant implementing arrangements, the Parties, including the United States Senior Representative and the corresponding Romanian Commander shall exchange information concerning the security and protection of the Base, and Romania shall coordinate with the United States on the planning for such security and protection, both prior to and after the United States Ballistic Missile Defense System in Romania achieves operational status.
23. In the event that security and protection are to be provided by contractors, such entities shall comply with all relevant requirements of Romanian law.
24. In the event either the United States Senior Representative or the Romanian Commander becomes aware of a crisis situation on the Base that may affect the safety of the population inhabiting the region, that Senior Representative or Commander shall promptly notify his/her counterpart.
25. The Parties undertake to cooperate, as appropriate, with respect to intelligence sharing on all threats to the Base or related to the operation of the United States Ballistic Missile Defense System in Romania.
26. The Parties shall carry out this cooperation with regard to the Base and the Facility and ensure procedures for timely exchange of intelligence and counter-intelligence through appropriate institutions or organizations, according to mechanisms to be stipulated in an implementing arrangement.
27. The boundaries of the Base and the Facility shall be represented, for illustrative purposes, on the appended map. Technical details of that map may be updated by an implementing arrangement.

Article V

The Facility

1. The Facility includes components of the United States Ballistic Missile Defense System in Romania such as, but not limited to: a launch system, command and control system, radar system, communication system, utilities infrastructure, security infrastructure, fuel storage and distribution infrastructure, associated mission and mission support equipment and infrastructure.
2. The description of the elements, including the interceptors, of the United States Ballistic Missile Defense System in Romania, and the number of members of the force and the civilian component stationed at the Base, as well as any permanent changes, shall be reported in writing to Romania upon initial deployment and every six months thereafter, and shall be the subject of periodic consultations between the United States Senior Representative and the Romanian Commander. The number of members of the force and the civilian component shall not exceed the number set forth in Article IV paragraph 9 without the express prior written consent of the Romanian Ministry of National Defense.
3. The United States shall provide to Romania data concerning United States forces, United States contractors, United States contractor employees and dependents working or living on the Base. Provisions regarding the type, frequency, and procedures for the provision of such data shall be established in an implementing arrangement to this Agreement.
4. The United States shall have exclusive use of, and unrestricted access to, the Facility on the Base.
5. The United States shall control access to the Facility on the Base.
6. The Romanian Commander and his or her authorized representatives shall have prompt access to the Facility, consistent with operational, safety, and security requirements.
7. Representatives of competent agencies of Romania, to include but not limited to, Ministry of National Defense personnel, emergency response personnel, and law enforcement personnel shall be granted prompt access to the Facility, when required for official purposes, consistent with operational, safety, and security requirements.
8. Prior to the United States Ballistic Missile Defense System in Romania becoming fully operational, the United States shall appoint a Senior Representative, who shall be the United States single point of contact regarding day-to-day activities under this Agreement, and who shall have authority over the Facility and United States forces, dependents, United States contractors, United States contractor employees, and other individuals employed by United States forces on the Base.
9. The United States Senior Representative shall have exclusive authority over activities and operations on the Facility.
10. The United States Senior Representative also shall be responsible for matters relating to property, infrastructure, installations, supplies, equipment, and materiel located on the Base, but outside the Facility, that are owned or operated exclusively by the United States.
11. The United States shall be responsible for providing security and protection for the Facility. Applying the Defense Cooperation Agreement, the Supplemental SOFA and their relevant implementing arrangements, the Parties shall exchange information concerning the security and protection of the Facility, and the United States shall coordinate and cooperate with Romania on the planning for such security and protection, both prior to and after the United States Ballistic Missile Defense System in Romania achieves operational status.
12. The United States shall notify in writing, and consult with Romania at least 30 days prior to major modifications to the United States Ballistic Missile Defense System in

Romania and to missile defense components on the Base/Facility. The United States shall duly take into consideration and address the potential concerns of Romania.

Article VI

Command and Control of the Ballistic Missile Defense System

1. Romania has sovereign jurisdiction over the Base. The United States shall have exclusive command and control of the United States Ballistic Missile Defense System in Romania.
2. The Parties confirm that the United States Ballistic Missile Defense System in Romania shall be used exclusively for self-defense purposes, in conformity with international law and the principles and norms regulating the inherent right of individual and collective self-defense.
3. Consultation, command, and control arrangements for the use of missile defense interceptors deployed in the facility, will be vetted through respective Romanian and United States participation in the NATO North Atlantic Council and relevant NATO committees. This will ensure alignment with the policies established by the principal decision-making structure for NATO territorial missile defense.
4. The United States shall consult with Romania regularly and whenever necessary at the request of either Party concerning the United States ballistic missile defense system and its operation as it relates to the North Atlantic area, as that term is used in the North Atlantic Treaty, including on issues related to the consequences of a missile defense operation launched from the territory of Romania.
5. The United States shall provide to Romania a means to receive current information regarding the United States ballistic missile defense operations related to the North Atlantic area and the status of the Facility. The United States shall promptly inform Romania by providing situational awareness including missiles being tracked by the system, the origin and projected impact of such missiles, and missile defense engagements by the missile defense components deployed on Romanian territory, to ensure the appropriate level of cooperation in case of a missile defense operation. Further details on the topics addressed in this paragraph shall be included in an implementing arrangement.
6. The United States shall facilitate the education and instruction of the members of the Romanian Armed Forces in command and control and operations of ballistic missile defense systems, including interceptors, for the purpose of gaining insight into the development of preplanned command and control arrangements for ballistic missile defense operations and the overarching functionalities of ballistic missile defense systems. This will include education and instruction for missile defense operations, such as those that will be developed within NATO and implemented in a NATO context.
7. The United States and Romania shall establish a Romanian liaison officer position within the United States European Command to ensure a continued close strategic partnership in a number of areas, including ballistic missile defense. Specific details shall be discussed within the Joint Committee and shall be addressed in a separate implementing arrangement.

Article VII

Classified Information

All classified information provided or generated pursuant to this Agreement shall be protected in accordance with the Classified Military Information Agreement, except that NATO-classified information shall be handled in accordance with the NATO Security Agreement.

Article VIII

Environment, Health and Safety

1. In accordance with Article XIV of the Defense Cooperation Agreement and the Environmental Matters Implementing Arrangement thereto, the Parties confirm their agreement to implement this Agreement in a manner consistent with the protection of the natural environment and human health.
2. The Parties shall pursue a preventive approach to environmental protection. To this end, all problems that may arise shall be dealt with expeditiously in order to prevent any lasting damage to the environment or endangerment of human health and safety. The United States shall provide Romania information concerning the impact of the electromagnetic spectrum on human safety.
3. Further issues concerning any relevant impact on the environment shall be addressed in the existing implementing arrangement.

Article IX

Coordination with Romanian Local Authorities

The United States Senior Representative and Romanian Commander may consult regarding local matters with the local authorities from the area where the Base is located.

Article X

Claims

1. Claims arising in Romania for damage in the territory of Romania shall be handled in accordance with the Supplemental SOFA and Article VIII of the NATO SOFA.
2. Romania will not take responsibility for any damage, or for any claims related to such damage, caused outside the territory of Romania by elements of the United States Ballistic Missile Defense System in Romania, assuming such damage is not the result of actions or negligence by Romania.
3. In implementing this Article, the Parties shall, at the request of either Party, meet with the aim of reaching a mutually agreeable, fair, and just resolution of claims in a timely manner, given the circumstances and the respective obligations of the Parties.

Article XI

Financial Responsibilities Between the Parties

1. The obligations of the Parties under this Agreement shall be subject to the availability of funds appropriated for such purposes. This paragraph is without prejudice to any obligations of the Parties arising pursuant to the NATO SOFA and the Supplemental SOFA.

2. Each Party shall be responsible for the costs of carrying out its obligations under this Agreement:
 - a. Except as may be otherwise agreed, the United States shall be responsible for the cost of:
 1. transportation, construction, maintenance, sustainment, and operation of ballistic missile defense interceptors and related facilities on the Facility; and
 2. services requested, received, and rendered, and processing fees in direct connection with such interceptors and facilities, such as utilities and telecommunications lines which it will pay at a rate no less favorable than that granted to Romanian Armed Forces located at the Base, except as may be otherwise agreed.
 - b. Except as may be otherwise agreed, Romania shall be responsible for the cost of:
 1. construction, maintenance, sustainment, and operation of facilities under Romanian command, or for the exclusive or primary use by Romanian authorities, at the Base; and
 2. local taxes related to the Base with regard to ownership of land and other immovable property.
 - c. If in connection with the construction and operation of the Base, the Parties agree that it is necessary to construct or modify premises, facilities, roads, utilities, communications, or other infrastructure, related to but located outside the Facility, including outside the Base, for joint use by Romania and the United States, such construction or development, and operations and maintenance costs thereof, shall be shared by the Parties on the basis of proportionate use, consistent with Article II paragraph 5 of the Defense Cooperation Agreement, unless otherwise agreed.
 - d. The United States shall reimburse Romania for the agreed costs of agreed upon specified services provided by Romania to assist the United States

Article XII

Implementation

1. For the implementation of this Agreement, a Joint Sub-Committee shall be established under the Joint Committee established in accordance with Article XI paragraph 2 of the Defense Cooperation Agreement.
2. The elements concerning establishment, composition and functioning of the Joint Sub-Committee shall be specified in an implementing arrangement.
3. In accordance with Article XI paragraph 1 of the Defense Cooperation Agreement, the Parties or their designees may enter into additional implementing arrangements, or amend applicable implementing arrangements, necessary to carry out the provisions of this Agreement.
4. Consistent with Article I paragraph 2 of this Agreement, the existing arrangements concluded for the implementation of the Defense Cooperation Agreement shall be applied also for the purpose of implementing this Agreement, as established by the Parties, by means of an inventory, to be finalized preferably no later than 90 days from the entry into force of this Agreement. The implementing arrangements that need to be amended shall be modified by the consent of the Parties as soon as possible.

Article XIII

Interpretation and Settlement of Disputes

1. In accordance with Article XV of the Defense Cooperation Agreement, any issue or dispute regarding the interpretation or application of this Agreement, including disputes between the United States Senior Representative and the Romanian Commander concerning the day-to-day operation of the Base, shall be resolved only through bilateral consultations.
2. Such disputes shall be resolved at the lowest competent level by means of consultation between the representatives of the Parties.
3. Any dispute may be submitted for further consideration, and, where possible, resolution, to the Joint Committee established in accordance with Article XI paragraph 2 of the Defense Cooperation Agreement or to consultations between the Parties.

Article XIV

Entry into Force, Duration, Termination, and Amendment

1. This Agreement is concluded for an indefinite period and shall enter into force in accordance with the internal laws of each Party and upon the date of the receipt of the later of the written notifications whereby the Parties inform each other, through diplomatic channels, that all their internal procedures necessary to bring this Agreement into force have been fulfilled.
2. This Agreement may be amended through written agreement of the Parties. Any such amendment shall enter into force in accordance with the provisions of paragraph 1 of this Article.
3. This Agreement may be terminated at any time by either Party upon a two-year written notice to the other Party.