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PROPOSAL

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| Subject: | Joint proposal for a Council Decision on the arrangements for the implementation by the Union of the Solidarity Clause |

Delegations will find attached a proposal from the Commission and the High Representative of the EU for Foreign Affairs and Security Policy, submitted under a covering letter from Mr Jordi AYET PUIGARNAU to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: JOIN(2012) 39 final



HIGH REPRESENTATIVE OF THE
EUROPEAN UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 21.12.2012
JOIN(2012) 39 final

2012/0370 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the arrangements for the implementation by the Union of the Solidarity clause

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Article 222 of the Treaty on the Functioning of the European Union (TFEU) contains a new provision for a ‘Solidarity Clause’. Under this provision the Union and its Member States must act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. According to 222(3), first sentence, the Commission and the High Representative must put forward a joint proposal upon which basis the Council must decide how the Union is to implement the Solidarity Clause. The European Parliament must be informed.

Due to the wide scope of the Treaty article, the arrangements for implementing the Solidarity Clause cover a wide number of policy areas and instruments. These include the EU Internal Security Strategy¹, the Union Civil Protection Mechanism and the Civil Protection Financial Instrument², the EU Solidarity Fund³; the health security initiative for serious cross-border threats to health⁴, crisis response and analysis structures in the EEAS; and the Crisis Coordination Arrangements in the Council. The arrangements are also coherent with the establishment of a European Area of Justice in the Union.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED

Member States have provided valuable written contributions to the preparation of the proposal on the basis of a list of questions that had been jointly prepared by the Commission and the EEAS. Member States representatives have also held discussions in various Council bodies. These include the Political and Security Committee, the Standing Committee on Operational Cooperation on Internal Security, the Coordinating Committee in the area of police and judicial co-operation in criminal matters and the Military Committee.

The European Parliament has also provided a very useful contribution in the form of its resolution ‘on the EU's mutual defense and solidarity clauses: political and operational dimensions’⁵.

3. LEGAL ELEMENTS OF THE PROPOSAL

The aim of the proposal is to comply with paragraph 3 of Article 222 which requires that the Commission and the High Representative submit to the Council a proposal on the Union's arrangements for implementing the Clause. The proposal defines the geographic scope, the activation mechanism, and the response arrangements at Union level.

¹ Communication from the Commission to the European Parliament and the Council of 22 November 2010 – The EU Internal Security Strategy in Action: Five steps towards a more secure Europe (COM(2010) 673 final)

² Council Decision establishing a Community Civil Protection Mechanism (recast), 2007/779/EC, Euratom; Council Decision establishing a Civil Protection Financial Instrument, 2007/162/EC, Euratom
³ COUNCIL REGULATION (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund

⁴ Proposal for a decision of the European Parliament and of the Council on serious cross-border threats to health, COM(2011) 866 final

⁵ 2012/2223 of 22.11.2012

The proposal takes into consideration and is consistent with the arrangements for coordination in the Council (on the basis of the Crisis Coordination Arrangements), in accordance with Article 222.(2).

Having regard to paragraph 4 of Article 222, the proposal sets out arrangements for: (i) an integrated threat and risk assessment at Union level to be used as a basis for a regular assessment by the European Council and (ii) preparedness measures by the Union and Member States, on the basis of the guidance of the European Council.

The Clause applies to disasters and terrorist attacks within the EU territory, whether on land, sea or in the air. It applies irrespective of whether the crisis originates inside or outside the EU. The Clause also applies to ships (when in international waters) and airplanes (when in international airspace) or critical infrastructure (such as off-shore oil and gas installations) under the jurisdiction of a Member State.

The Clause relates to all crisis response structures at EU level. Given the EU internal dimension of the Clause, most of the relevant structures are in the Commission (DG ECHO, HOME, SANCO, TAXUD etc.), or in EU decentralised agencies (FRONTEX, ECDC, EUROPOL, EMSA, EFSA, EMA etc.). The European External Action Service has at its disposal structures with situation awareness, intelligence or military expertise⁶ as well as the network of Delegations that may contribute to the response to threats or disasters in the territory of Member States or to crises with an external dimension. Coordination and information exchange between the Commission and EEAS and relevant agencies will take place in the framework of meetings convened by the Commission to prepare the proposed crisis response measures.

Implementation arrangements for the Solidarity Clause do not replace any existing instruments or policies and the specific procedures for their activation. They provide an umbrella framework for situations of extraordinary threat or damage that overwhelm the response capacities of the affected Member State(s). To improve efficiency and avoid duplication of structures and functions, a network approach will be used. The most relevant EU response centre for each crisis will constitute the hub and the interface with Member States (the ‘centre of gravity’), supported by the full spectrum of specialised services.

The proposal foresees that the EU should act only in exceptional circumstances and at the request of the political authorities of a Member State which sees its own capacities overwhelmed as the result of an actual or imminent terrorist attack or of a natural or man-made disaster.

The Member State affected may invoke the Solidarity Clause and must address its request to the Commission and notify simultaneously the Presidency of the Council.

The competent authorities of the Member State affected must immediately take contact with the Commission's Emergency Response Centre (ERC) which will act as the initial single 24/7 point of contact at service level for the Union.

Once the Solidarity Clause has been invoked, the Commission and the High Representative acting in accordance with the arrangements set out in this Decision, must:

⁶ Such as the EU Intelligence Analysis Centre, the EU Military Staff and the Situation Room

- First, identify and mobilise all Union instruments that can help respond to the given crisis. These include all sector-specific, operational or policy instruments that fall within their own remit. In addition, the Commission and the High Representative must identify and propose the use of instruments and resources falling within the remit of Union Agencies.
- Then, working in close contact with the affected Member State, assess whether existing instruments are sufficient or whether additional support is required, complemented, where appropriate, with financial assistance from the EU Solidarity Fund.
- Where appropriate, submit proposals to the Council as concerns operational decisions to reinforce existing mechanisms, decisions on exceptional measures by Member States not foreseen by existing instruments; policy coordination and information exchange; operational or support measures for fast reaction of Member States.

If military support is needed, other than what is already foreseen by the Civil Protection Mechanism, a separate proposal will be submitted by the High Representative in accordance with the relevant Treaty provisions.

The Commission and the European External Action Service will produce joint integrated situation assessment reports. These reports will be compiled by the ERC or the designated operational centre, in cooperation with the EU Situation Room, drawing on contributions from the different situation awareness and crisis management centres in Member States, the Commission, the EEAS, the EU Agencies and relevant international organisations. These reports will be shared with Member States to inform and support the coordination and decision-making at political level in the Council.

The ERC will initially act as the single operational hub at Union level. The Commission, in consultation with the High Representative, may subsequently designate another centre better placed to assume that function taking into account the nature of the crisis. The designated operational hub will act as the primary point of contact for Member States. It will take the lead in coordinating the operational response and in producing joint situation assessment reports.

Once the Clause has been invoked, the Presidency may decide to activate the Crisis Coordination Arrangements and identify the most appropriate way for rapid consultation and decision-making in the Council, in compliance with the obligation of Member States to assist, in accordance with Article 222(2). Support to the operation of the Crisis Coordination Arrangements shall be provided by the General Secretariat of the Council, the Commission and EEAS.

Starting in 2015, the Commission and the High Representative will regularly produce a joint integrated threat and risk assessment report at Union level. This report will build on assessments of threats, hazards and risks currently compiled in various sectors (such as terrorism, organised crime, civil protection, health, climate change and environment). It will be based in particular on monitoring, interpretation and sharing of information provided by the Member States (through existing sectoral networks or from crisis centres), EU Agencies and relevant international organisations. The integrated threat and risk assessment reports will be the basis for a regular assessment by the European Council.

Legal basis

The legal basis of this proposal is Article 222 of the Treaty on the Functioning of the European Union.

Subsidiarity principle

The proposal provides that the EU should act only in exceptional circumstances and at the request of the political authorities of a Member State which sees its own capacities overwhelmed.

Proportionality principle

The proposal does not go beyond what is necessary to achieve the objectives of the Clause. To this end, it foresees due use of all ordinary existing EU assistance instruments.

Joint Proposal for a

COUNCIL DECISION

on the arrangements for the implementation by the Union of the Solidarity clause

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 222(3), first sentence, thereof,

Having regard to the joint proposal from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) This Decision concerns the implementation by the Union of the Solidarity Clause. However, coherence and complementarity of Union action should be sought with other assistance to be provided by Member States pursuant to Article 222(2) of the Treaty and Declaration 37 annexed to the Treaty, which lays down that a Member State can choose the most appropriate means to comply with its own solidarity obligation towards another Member State.
- (2) Implementation of the Solidarity Clause by the Union shall: rely on existing instruments to the extent possible; increase effectiveness by enhancing coordination and avoiding duplication; function on the basis of no additional resources; provide a simple and clear interface at Union level to Member States; and respect institutional competences of each institution and service.
- (3) This Decision relates to a number of policy instruments and in particular: the European Union Internal Security Strategy; the European Union Civil Protection Mechanism; the European Union Solidarity Fund, the Decision on serious cross border threats to health and the structures developed in the framework of the Common Security and Defence Policy.
- (4) Arrangements for coordination of Member States in the Council should rely on the EU Crisis Coordination Arrangements (hereinafter referred to as "CCA"), as revised following a Council mandate and its subsequent conclusions⁷ that: "coherence should be ensured with the implementation of the Solidarity Clause"; "arrangements will draw on the well-known regular Council procedures instead of having recourse to pre-defined ad-hoc groups"; "recognise the importance of an integrated EU situational awareness capability".
- (5) The geographic scope of the implementing arrangements needs to be clearly defined.

⁷ JHA Council conclusions of 01.06.2006, doc. 9409/06, COREPER conclusions of 10.12.2010; COREPER conclusions of 23.11.2011 and of 30.05.2012

- (6) As regards the fight against terrorism⁸, various instruments are in place strengthening the protection of critical infrastructures in energy and transport⁹; enhancing the cooperation between law enforcement authorities, reinforcing the prevention of radicalisation and limiting the access of terrorists to funds as well as to explosives and chemical, biological, radiological and nuclear materials¹⁰.
- (7) An activation mechanism for the implementing arrangements needs to be defined at Union level, based on a high-level political request from concerned Member State(s) and supported by a single entry point at Union level.
- (8) Response Arrangements at the Union level should improve effectiveness through strengthened coordination building on existing instruments.
- (9) The Civil Protection Mechanism¹¹ facilitates reinforced cooperation between the Member States and the Union in the field of civil protection. The Commission's proposal for a Union Civil Protection Mechanism¹² foresees the establishment of the Emergency Response Centre (hereinafter called "ERC") that will ensure 24/7 operational capacity and serve Member States and the Commission.
- (10) The European External Action Service has at its disposal structures with intelligence or military expertise (such as the the EU Intelligence Analysis Centre, the EU Military Staff and the EU Situation Room), as well as the network of Delegations that may also contribute in the response to threats or disasters in the territory of Member States or to crises having an external dimension.
- (11) The Strategic Analysis and Response Centre established in 2011 in the Directorate General for Home Affairs of the Commission provides for assessment and management of risks and crises affecting the Union's internal security, including those related to terrorism.
- (12) Where necessary and practicable in view of the urgency, the response arrangements at Union level should be complemented by the adoption of legal acts or the amendment of existing acts in accordance with the relevant provisions of the Treaty.
- (13) This decision has no defence implications. In case a crisis requires Common Foreign and Security Policy (CFSP) action, beyond the use of military resources covered by existing arrangements on civil protection, a decision should be taken by the Council in accordance with relevant Treaty provisions.

⁸ Terrorism as defined in the Council Framework Decisions on Combating Terrorism of 2002 and 2008 (OJ L 164 of 22.6.2002, p 3; OJ L 330 of 9.12.2008, p. 21).

⁹ As identified in Council Directive 2008/114/EC of 8.12.2008 on European Critical Infrastructures (OJ L 345, 23.12.2008).

¹⁰ Commission Communication "The EU Counter-Terrorism Policy: main achievements and future challenges" (COM(2010)386 final of 20.7.2010). Subsequently further actions have been taken such as proposing a Regulation on the use and marketing of explosives precursors (COM(2010) 473 final), setting up the Radicalisation Awareness Network (RAN) and enhancing efforts in the field of CBRN, explosives security and detection.

¹¹ Council Decision 2007/779/EC, Euratom establishing a Community Civil Protection Mechanism (recast) and Council Decision establishing a Civil Protection Financial Instrument (2007/162/EC, Euratom).

¹² COM(2011)934 final

- (14) The Commission's communication on the EU Internal Security Strategy in Action: Five steps towards a more secure Europe¹³ set the objective to increase Europe's resilience to crises and disasters through a number of actions including making full use of the Solidarity Clause and developing an all-hazard approach to threat and risk assessment. In line with it, a cross-sectoral overview of natural and man made disaster risks should also be prepared and regularly updated.
- (15) An integrated threat and risk assessment process should be set up at the Union level which should allow the European Council to assess the threats facing the Union in order to enable the Union and its Member States to take effective action.
- (16) On 22 November 2012, the European Parliament has adopted a resolution 2012/2223, entitled "EU's mutual defence and solidarity clauses: political and operational dimensions".
- (17) The arrangements provided herein are without prejudice to further development of dedicated arrangements for handling of crisis situations occurring outside the territory of Member States.
- (18) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union and has to be applied in accordance with these rights and principles.
- (19) Since the objectives of this Decision, namely implementation by the Union of the Solidarity Clause, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.

HAS ADOPTED THIS DECISION:

Article 1

General objective and subject matter

1. This Decision lays down rules and procedures for implementing the provisions of Article 222(3), first sentence of the Treaty on the Functioning of the European Union (hereinafter "the Solidarity Clause").
2. Arrangements at Union level shall build upon and complement mechanisms in the Commission and Union Agencies to provide information and support. For crises that have an external dimension or that require intelligence, military resources or CFSP action, the High Representative and the EEAS shall contribute by taking adequate initiatives and providing relevant information and support within the High Representative's area of competence.

¹³ COM(2010)673 final.

3. These arrangements shall improve efficiency through enhanced coordination between Union and Member States response.
4. Coordination at political level in the Council shall be based on the Crisis Coordination Arrangements and shall also ensure coherence and complementarity with Union action.

Article 2

Scope

This Decision shall apply in case of terrorist attacks or natural or man-made disasters, irrespective of whether they originate inside or outside the territory of the Member States:

- (a) Within the territory of Member States to which the Treaty applies, including land area, territorial sea and airspace.
- (b) When affecting ships (when in international waters) or airplanes (when in international airspace) or critical infrastructure (such as off-shore oil and gas installations) when under the jurisdiction of a Member State.

Article 3

Definitions

For the purposes of this Decision, the following definitions will apply:

- (a) Crisis: a serious, unexpected and often dangerous situation, requiring timely action; a situation that may affect or threaten lives, environment, critical infrastructure or core societal functions, may be caused by a natural or man-made disaster or terrorist attacks;
- (b) Disaster: any situation, which has or may have an adverse impact on people, the environment or property;
- (c) Terrorist attack: a terrorist offence as defined in the Council Framework Decision of 13 June 2002 on Combating Terrorism, 2002/475/JHA, as amended by Council framework decision of 28 November 2008, 2008/919/JHA.
- (d) Preparedness: a state of readiness and capability of human and material means enabling them to ensure an effective rapid response to an emergency, obtained as a result of action taken in advance;
- (e) Response: any action taken during or after a disaster or an actual or imminent terrorist attack to address its immediate adverse consequences.

Article 4

Activation

1. A Member State being the object of an actual or imminent terrorist attack or the victim of a natural or man-made disaster may invoke the Solidarity Clause if, after having exploited the possibilities offered by existing means and tools, at national or Union level, it considers that the situation overwhelms its response capacity.
2. The Member State affected shall address its request to the President of the European Commission, through the Emergency Response Centre, and notify simultaneously the Presidency of the Council.
3. The Emergency Response Centre shall act as the initial single 24/7 point of contact for the competent authorities of the Member State affected.

Article 5

Response arrangements at Union level

1. Once the Solidarity Clause has been invoked, the Commission, and the High Representative in accordance with article 1.2, shall:
 - (a) identify and use all relevant Union instruments that can best contribute to a response to the crisis, including sector-specific, operational, policy or financial decisions (e.g. the Civil Protection Mechanism, the Strategic Analysis and Response Centre, the Health Emergencies Operations Facility, the intelligence resources of INTCEN) that fall in the remit of the Commission and of the High Representative, as well as military resources mobilised through EUMS; in addition, identify and propose the use of instruments and resources falling within the remit of Union Agencies;
 - (b) assess whether existing instruments are sufficient;
 - (c) produce regular integrated situation assessment and analysis reports to inform and support the coordination and decision-making at political level in the Council;
 - (d) where appropriate, submit proposals to Council, in particular as concerns: operational decisions on reinforcement of existing mechanisms, decisions on exceptional measures from Member States not foreseen by existing instruments; policy coordination and information exchange with the aim to create necessary regulatory conditions; operational or support measures for fast reaction of Member States.

The Commission shall convene meetings to prepare the proposed crisis response measures. The Commission shall invite the EEAS and the relevant EU Agencies.

2. The Emergency Response Centre (ERC) shall initially act as the single operational hub with Member States at Union level. The Commission, in consultation with the High Representative, may subsequently designate another centre better placed to assume that function taking into account the nature of the crisis. The designated operational hub shall act as the primary entry point for Member States. It shall lead operational response coordination and produce situation assessment reports.

Article 6

Arrangements for coordination in the Council

Upon activation of the Clause, the Presidency of the Council may take the decision to activate the Crisis Coordination Arrangements and identify the most appropriate way to prepare rapid consultations and decisions in the Council, in respect of the obligation to assist. Support to the operation of the Crisis Coordination Arrangements shall be provided by the General Secretariat of the Council, the Commission and EEAS.

Article 7

Situation assessment reports

Situation assessment reports will be compiled by the ERC or the designated operational centre, in collaboration with the EU Situation Room. The preparation of such reports will draw on contributions from the different situation awareness and crisis management centres, in Member States, in the Commission, the EEAS and the relevant EU agencies, as well as in relevant International Organisations.

Article 8

Integrated threat and risk assessment at Union level

1. The Commission and the High Representative will regularly produce, starting in 2015, a joint integrated threat and risk assessment report at Union level.
2. This report shall build on assessments of threats, hazards and risks currently compiled in various sectors (e.g. terrorism, organised crime, civil protection, health, environment, climate change, etc.) based notably on monitoring, interpretation and sharing of information provided by the Member States (through existing sectorial networks or from crisis centres) and Union Agencies as well as relevant international organisations.
3. The integrated threat and risk assessment reports will be the basis for a regular assessment by the European Council.

Article 9

Preparedness

The Member States, the Commission and the High Representative may assess the means available throughout the Union and the Member States to meet the major threats, identifying possible gaps and the most efficient and cost effective ways to address those gaps and build the means of effective solidarity.

Article 10

Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President