III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL DECISION 2007/91/CFSP

of 12 February 2007

amending Decision 2004/197/CFSP establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 13(3) and 28(3) thereof,

Whereas:

(1) On 23 February 2004 the Council adopted Decision 2004/197/CFSP [1].

(2) Article 42 of Decision 2004/197/CFSP, provides that that Decision, including its Annexes, is to be reviewed after every operation and at least every 18 months.

(3) The Council decides on a case-by-case basis whether an operation has military or defence implications, within the meaning of Article 28(3) of the Treaty,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2004/197/CFSP is hereby amended as follows:

1. The following shall be added to Article 1:

'(c) "operations" shall mean the EU operations having military or defence implications;

(d) "military supporting actions" shall mean the EU operations, or parts thereof, decided by the Council in support of a third State or a third organisation, which have military or defence implications, but which are not under the authority of EU Headquarters.';

2. Article 2(1) shall be replaced by the following:

'1. A mechanism to administer the financing of the common costs of operations is hereby established.';

3. Article 7(1) shall be replaced by the following:

'1. The Secretary-General of the Council, after informing the Special Committee, shall appoint the administrator and at least one deputy administrator for a period of three years.';

4. The second sentence of Article 10(5) shall be deleted;

5. The Title of Chapter 3 shall be replaced by following:

'CHAPTER 3

ADMINISTRATIVE ARRANGEMENTS WITH MEMBER STATES, EU INSTITUTIONS, THIRD STATES AND INTERNATIONAL ORGANISATIONS';

6. The following Articles shall be inserted in Chapter 3:

'Article 10a

Administrative arrangements with Member States or EU institutions

1. Administrative arrangements may be negotiated with Member States or EU institutions in order to facilitate procurement in operations at the most economical conditions. These arrangements shall take the form of an exchange of letters between Athena represented by the operation commander or, where there is no operation commander, the administrator, and the competent administrative authorities of the Member States or EU institutions concerned.

2. The Special Committee shall be consulted before any such arrangement is signed.

[1] OJ L 63, 28.2.2004, p. 68. Decision as last amended by Decision 2005/68/CFSP (OJ L 27, 29.1.2005, p. 59).

Article 10b

Administrative arrangements with a third State or an international organisation

1. An administrative arrangement may be negotiated with a third State or an international organisation in order notably to facilitate procurement in theatre at the most economical conditions taking into account operational constraints. These arrangements shall take the form of an exchange of letters between Athena, represented by the operation commander or, where there is no operation commander, the administrator, and the competent administrative authorities of the third State or the international organisation concerned.

2. Any such arrangement shall be submitted to the Special Committee for approval before it is signed.';

7. The following paragraph shall be inserted in Article 14:

'3a. During the active phase of a military supporting action, as determined by the Council, Athena shall bear as operational common costs the common costs defined by the Council on a case-by-case basis by reference to Annex III.';

8. The first sentence of Article 18(3) shall be replaced by the following:

'3. The commitment and payment appropriations shall be classified in titles and chapters grouping expenditure together by type or purpose, subdivided as necessary into articles.';

9. The second sentence of Article 20(1) shall be replaced by the following:

'The administrator shall inform the Special Committee of his/her intention, insofar as the urgency of the situation permits, at least one week in advance.';

10. Article 22 shall be replaced by the following:

'*Article 22*

Anticipated implementation

Once the annual budget has been approved, appropriations may be used to cover commitments and payments insofar as operationally necessary.';

11. Article 23(1), (2) and (3) shall be replaced by the following:

'1. Payment appropriations to cover the common costs incurred in preparation for, or further to, operations which are not covered by miscellaneous revenue shall be financed by contributions from the participating Member States.

2. Payment appropriations to cover the operational common costs of an operation shall be covered by contributions from the Member States and third States contributing to the operation.

3. The contributions payable by the contributing Member States for an operation shall be equal to the amount of the payment appropriations entered in the budget and intended to cover the operational common costs of that operation, minus the amounts of the contributions payable for the same operation by contributing third States pursuant to Article 11.';

12. Article 24(1) shall be deleted;

13. The following paragraph shall be added to Article 24:

'8. The administrator shall acknowledge receipt of contributions.';

14. Article 25 shall be amended as follows:

(a) the third sentence of paragraph 3 shall be deleted;

(b) the following paragraph shall be added:

'9. Where funds are required for an operation before sufficient contributions to that operation have been received, contributions paid in anticipation by Member States which contribute to financing that operation, after approval by the anticipating Member States, may be used up to 50 % of their amount to cover contributions due to that operation. The contributions paid in anticipation shall be replenished by the anticipating Member States within 90 days following despatch of the call.';

15. The first sentence of Article 31(4), shall be replaced by the following:

'4. During the period prior to the adoption of a budget for an operation, the administrator and the operation commander or his/her representative shall report to the Special Committee every month, each reporting on the matters concerning him/her, as regards the expenses which are eligible as common costs for that operation.';

16. Article 37 shall be amended as follows:

(a) paragraph (3) shall be deleted;

(b) the second sentence of first subparagraph of paragraph 4 shall be replaced by the following:

'Each year, the Special Committee shall appoint as of 1 January of the following year two members for a three-year period, renewable once, from candidates proposed by the Member States. The Special Committee may extend a member's mandate by up to six months.';

(c) point (d) of paragraph 4 shall be replaced by the following:

'(d) they shall check during the financial year as well as ex post, through controls on the spot as well as on supporting documents, that expenditure financed or pre-financed through Athena is implemented in accordance with the legislation applicable and the principles of sound financial management, i.e. in accordance with the principles of economy, effectiveness and efficiency, and that internal controls are adequate.';

(d) the first sentence of second subparagraph of paragraph 4 shall be replaced by the following:

'Each year, the College of Auditors shall elect to change or extend its chairman from amongst its members.';

17. Article 38(1) and (2) shall be replaced by the following:

'1. Each operation commander shall provide Athena's accounting officer by 31 March following the end of the financial year, or within four months following the end of the operation which he commands, whichever is the earlier, with the necessary information to establish the annual accounts for common costs, the annual accounts for expenditure pre-financed and reimbursed pursuant to Article 27 and the annual activity report.

2. The administrator, with the assistance of the accounting officer and each operation commander, shall establish and provide to the Special Committee and the College of auditors, by 30 April following the end of the financial year, the provisional annual accounts and the annual activity report.

2a The Special Committee shall be provided by 31 July following the end of the financial year, by the College of Auditors with an annual audit report and by the administrator, assisted by the accounting officer and each operation commander, with Athena's final annual accounts. The Special Committee shall examine by 30 September following the end of the financial year the annual accounts in the light of the College's audit report, with a view to granting a discharge to the administrator, the accounting officer and each operation commander.';

18. The first sentence of Article 38(8) shall be replaced by the following:

'8. Each Member State participating in an operation shall provide on a voluntary basis information by 31 March each year to the administrator where appropriate through the Operation Commander, on the incremental costs it has incurred for the operation during the previous financial year.';

19. Article 41 shall be deleted;

20. Annex I shall be amended as follows:

(a) the items '1. Auditing costs' and '4. Banking costs' shall be deleted;

(b) the following subparagraph shall be added:

'The general part of the annual budget shall furthermore include appropriations, where necessary, to cover the following common costs in operations to the financing of which the participating Member States contribute:

1. Banking costs

2. Auditing costs

3. Common costs relative to the preparatory phase of an operation as defined at Annex II.';

21. Annex III, Part III-A shall be amended as follows:

(a) point 2 and 3 shall be replaced by the following:

'2. Incremental costs incurred for providing support to the force as a whole:

The costs defined below are those incurred as a consequence of the force deployment to its location:

(a) works for deployment/infrastructure:	expenditure absolutely needed for the force as a whole to fulfil its mission (common used airport, railway, harbours, roads, including points of disembarkation and forward assembly areas; power and water supply, static force protection, storage facilities, parking lots; engineering support);
(b) identification marking:	specific identification marks, "European Union" identity cards, badges, medals, flags in European Union colours or other Force or HQ identification marking (excluding clothes, hats or uniforms);
(c) medical services:	emergency medical evacuations (Medevac).

3. Incremental costs incurred by EU recourse to NATO common assets and capabilities made available for an EU-led operation.

The cost for the European Union of the application for one of its military operations of the arrangements between the EU and NATO relating to release, monitoring and return or recall of NATO common assets and capabilities made available for an EU-led operation. Reimbursements by NATO to the EU.';

(b) the following point shall be added:

'4. Incremental costs incurred by the EU for goods, services or works included in the list of common costs and made available in an EU-led operation by a Member State, an EU institution, a third State or an international organisation pursuant to an arrangement referred to at Articles 10-a and 10-b. Reimbursements by a state, an EU institution or an international organisation based on such an arrangement.';

22. The following items shall be added to Annex III, Part III-B:

'Multinational task force headquarters:	the multinational headquarters of EU task forces deployed in the area of operation
Acquisition of information:	acquisition of information (satellite images; theatre level intelligence, reconnaissance and surveillance (ISR), including Air-to-Ground Surveillance (AGSR); human intelligence)';

23. The following Part shall be inserted in Annex III:

'III-C

Operational common costs borne by Athena when requested by the Operation Commander and approved by the Special Committee

(a) essential additional equipment: the rental or purchase in the course of the operation of unforeseen specific equipment essential for the execution of the operation, insofar as the purchased equipment is not repatriated at the end of the mission;

(b) medical services: Roles 1, 2 and 3 facilities in theatre;

(c) acquisition of information: acquisition of information (satellite images; theatre level intelligence, reconnaissance and surveillance (ISR), including Air-to-Ground Surveillance (AGSR); human intelligence);

(d) other critical theatre-level capabilities: theatre-level capabilities (demining within theatre insofar as necessary to the operation; chemical, biological, radiological and nuclear protection (CBRN); fuel storage and supply facilities; storage and destruction of arms and ammunitions collected within the area of operation), in accordance with the Joint Action.'

Article 2

This Decision shall enter into force on the day of its adoption.

Article 3

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

Done at Brussels, 12 February 2007.

For the Council
The President
F.-W. STEINMEIER