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of 24 June 2014

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

(2014/415/EU) ◄

(OJ L 192, 1.7.2014, p. 53)

Corrected by:

►**C1** Corrigendum, OJ L 221, 25.7.2014, p. 26 (2014/415/EU)
►**C2** Corrigendum, OJ L 275, 17.9.2014, p. 7 (2014/415/CFSP)

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COUNCIL DECISION

of 24 June 2014

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

(2014/415/EU)

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THE COUNCIL OF THE EUROPEAN UNION,

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

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

Whereas:

(1) This Decision concerns the implementation by the Union of Article 222 of the Treaty on the Functioning of the European Union (TFEU) ('the solidarity clause'). It does not concern the implementation by Member States of the solidarity clause pursuant to Article 222(2) TFEU. According to Declaration (No 37) on Article 222 of the Treaty on the Functioning of the European Union, a Member State can choose the most appropriate means to comply with its own solidarity obligation towards another Member State.

(2) Pursuant to Article 222(1) TFEU, the Union and the Member States are to 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. Coherence and complementarity of Union and Member States' action should be sought, to the benefit of any Member State invoking the solidarity clause and to avoid duplication of efforts. Given that Member States are to coordinate between themselves in the Council in order to comply with their own solidarity obligations pursuant to Article 222(2) TFEU, it is appropriate to have arrangements for coordination in the Council in respect of the implementation by the Union of the solidarity clause.

(3) Arrangements for coordination in the Council should rely on the EU Integrated Political Crisis Response (IPCR) Arrangements, approved by the Council on 25 June 2013, which state that the IPCR is also to support the arrangements for the implementation of the solidarity clause. It is appropriate that the Council adapts the IPCR arrangements, in particular in the case of a review.

(4) The implementation of the solidarity clause by the Union should rely on existing instruments to the extent possible, should increase effectiveness by enhancing coordination and avoiding duplication, should function on the basis of no additional resources, should provide a simple and clear interface at Union level to Member States, and should respect the competences conferred upon each Union institution and service.

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(5) The solidarity clause calls for the Union to mobilise all the instruments at its disposal. Relevant instruments include the European Union Internal Security Strategy, the European Union Civil Protection Mechanism established by Decision No 1313/2013/EU of the European Parliament and the Council [1] ('the Union Mechanism'), Decision No 1082/2013/EU of the European Parliament and of the Council [2] and the structures developed in the framework of the Common Security and Defence Policy (CSDP).

(6) The scope of the arrangements for the implementation by the Union of the solidarity clause should be clearly defined.

(7) As regards the fight against terrorism, the strategic framework for Union action is the European Union Counter-Terrorism Strategy. Various instruments are in place, such as instruments strengthening the protection of critical infrastructures in energy and transport [3]. Actions have also been taken following the Commission's Communication entitled 'The EU Counter-Terrorism Policy: main achievements and future challenges', for instance actions enhancing the cooperation between law enforcement authorities, reinforcing the prevention of radicalisation, in particular through the setting up of the Radicalisation Awareness Network, and limiting the access of terrorists to funds as well as to explosives [4] and chemical, biological, radiological and nuclear materials, as well as actions enhancing the security of explosives.

(8) An invocation mechanism and a phasing-out mechanism for the arrangements under this Decision should be defined at Union level, based on a high-level political request from the Member State concerned and supported by a single entry point at Union level.

(9) Response arrangements at Union level should improve effectiveness through strengthened coordination, building on existing instruments.

(10) The Union Mechanism aims to strengthen cooperation between the Member States and the Union and to facilitate coordination in the field of civil protection. Decision No 1313/2013/EU established the Emergency Response Coordination Centre (the 'ERCC') that is to ensure 24/7 operational capacity and serve the Member States and the Commission in pursuit of the objectives of the Union Mechanism.

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[1] Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

[2] Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (OJ L 293, 5.11.2013, p. 1).

[3] As identified in Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p. 75).

[4] Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (OJ L 39, 9.2.2013, p. 1).

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(11) The European External Action Service (EEAS) has at its disposal structures with intelligence and military expertise, 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. Depending on the crisis, other structures and Union agencies in the field of Common Foreign and Security Policy (CFSP) including the CSDP should provide, as appropriate, contributions in line with relevant provisions of Union law.

(12) Where necessary and practicable in view of 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 Treaties.

(13) This Decision will have no defence implications. In the event that a crisis requires CFSP or CSDP action, a decision should be taken by the Council in accordance with the relevant provisions of the Treaties.

(14) This Decision is without prejudice to Article 42(7) of the Treaty on European Union.

(15) The Commission Communication entitled ‘EU Internal Security Strategy in Action: Five steps towards a more secure Europe’ set the objective of increasing the Union's resilience to crises and disasters through a number of actions, including by making full use of the solidarity clause. As recalled by the Council in its Conclusions of 24 and 25 February 2011, increasing Europe's resilience to crises and disasters is crucial in further strengthening freedom, security and justice in the Union.

(16) The European Council is to regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action. Upon request from the European Council, reports on specified threats should be produced.

(17) In accordance with point (a) of Article 346(1) TFEU, no Member State is to be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.

(18) On 22 November 2012, the European Parliament adopted resolution 2012/2223, entitled ‘EU's mutual defence and solidarity clauses: political and operational dimensions’.

(19) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, and it should be applied in accordance with those rights and principles.

(20) Since the objective of this Decision, namely implementation by the Union of the solidarity clause, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and

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effects of the action, 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 that objective,

HAS ADOPTED THIS DECISION:

Article 1

General objective and subject matter

1. This Decision lays down rules and procedures for the implementation by the Union of Article 222 TFEU ('the solidarity clause').

2. In order to ensure coherence and complementarity of Union and Member State action, coordination at political level of the response to the invocation of the solidarity clause shall be carried out by the Council, using the IPCR arrangements. Support to the operation of the IPCR arrangements shall be provided by the General Secretariat of the Council (GSC), the Commission and the EEAS.

3. Arrangements at Union level shall be based upon existing mechanisms in the Council, the Commission, the EEAS and Union agencies to provide information and support. Where relevant, the High Representative of the Union for Foreign Affairs and Security Policy (HR) and the EEAS shall contribute by taking initiatives and providing relevant information and support within the HR's area of competence.

4. Relevant Union instruments and the IPCR arrangements shall follow their own procedures and may be active before the invocation and after the phasing out of the response under this Decision.

5. The arrangements pursuant to this Decision shall improve efficiency through enhanced coordination between Union and Member State responses.

Article 2

Scope

1. In the event of a terrorist attack or a natural or man-made disaster, irrespective of whether it originates inside or outside the territory of the Member States, this Decision shall apply:

(a) within the territory of Member States to which the Treaties apply, meaning land area, internal waters, territorial sea and airspace;

(b) when affecting infrastructure (such as off-shore oil and gas installations) situated in the territorial sea, the exclusive economic zone or the continental shelf of a Member State.

When having recourse to the arrangements under this Decision, and notably when mobilising the instruments at its disposal, the Union shall be bound by international law and shall not encroach upon the rights of non-Member States.

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2. This Decision has no defence implications.

Article 3

Definitions

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

(a) ‘disaster’ means any situation which has or may have a severe impact on people, the environment or property, including cultural heritage;

(b) ‘terrorist attack’ means a terrorist offence as defined in Council Framework Decision 2002/475/JHA ([1]);

(c) ‘crisis’ means a disaster or terrorist attack of such a wide-ranging impact or political significance that it requires timely policy coordination and response at Union political level;

(d) ‘response’ means any action taken in the event of a disaster or a terrorist attack to address its immediate adverse consequences.

Article 4

Invocation of the solidarity clause

1. In the event of a disaster or terrorist attack, the affected Member State may invoke the solidarity clause if, after having exploited the possibilities offered by existing means and tools at national and Union level, it considers that the crisis clearly overwhelms the response capabilities available to it.

2. The political authorities of the affected Member State shall address their invocation to the Presidency of the Council. The invocation shall also be addressed to the President of the European Commission through the ERCC.

Article 5

Response arrangements at Union level

1. Once the solidarity clause has been invoked, the Council shall ensure the political and strategic direction of the Union response to the invocation of the solidarity clause, taking full account of the Commission's and the HR's competences. To that end, the Presidency of the Council shall activate the IPCR arrangements immediately if not already in use, and thus inform all Member States of the solidarity clause invocation.

2. At the same time, and in accordance with Article 1(3), the Commission and the HR shall:

(a) identify all relevant Union instruments that can best contribute to the response to the crisis, including sector-specific, operational, policy or financial instruments and structures and take all necessary measures provided under those instruments;

([1]) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

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(b) identify military capabilities that can best contribute to the response to the crisis with the support of the EU Military Staff;

(c) identify and propose the use of instruments and resources falling within the remit of Union agencies that can best contribute to the response to the crisis;

(d) advise the Council on whether existing instruments are sufficient means to assist the affected Member State following the invocation of the solidarity clause;

(e) produce regular integrated situational awareness and analysis reports to inform and support the coordination and decision-making at political level in the Council, in accordance with Article 6 of this Decision.

3. Where appropriate, and in accordance with Article 1(3), the Commission and the HR shall submit proposals to the Council, in particular concerning:

(a) decisions on exceptional measures not foreseen by existing instruments;

(b) requests for military capabilities going beyond the existing arrangements on civil protection; or

(c) measures in support of a swift response by Member States.

4. Making use of the IPCR arrangements, the Presidency of the Council shall ensure coherence of the handling in the Council and of the overall response at Union political level, including as concerns the development and update of proposals for action, while respecting the right of initiative of the Commission and HR within their areas of competence. In doing so, the Presidency shall be supported and advised by the GSC, the Commission and the EEAS, and, in the event of terrorist attacks, by the EU Counter Terrorism Coordinator. Depending on the crisis, structures and Union agencies in the field of CFSP/CSDP shall provide, as appropriate, contributions in line with the relevant provisions of Union law.

5. The Presidency of the Council will inform the President of the European Council and the President of the European Parliament of the invocation of the solidarity clause and of any major developments.

6. Upon invocation of the solidarity clause, the ERCC shall act as the central 24/7 contact point at Union level with Member States' competent authorities and other stakeholders, without prejudice to existing responsibilities within the Commission and the HR and to existing information networks. The ERCC will facilitate the production of Integrated Situational Awareness and Analysis (ISAA) reports, in collaboration with the EU Situation Room and other Union crisis centres, in accordance with Article 6 of this Decision.

Article 6

Integrated Situational Awareness and Analysis reports

ISAA reports shall be tailored to the needs of the Union political level as defined by the Presidency of the Council, and shall allow for a strategic overview of the situation within the Council, in accordance

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with the IPCR arrangements. Such reports shall bring together validated contributions voluntarily made available by Member States, the Commission, the EEAS and by the relevant Union agencies, as well as by relevant international organisations. In the event of an invocation regarding a terrorist attack, intelligence assessments and briefings shall be handled separately through existing channels.

Article 7

Phasing out

The phasing out of the response under this Decision shall follow the same procedure as that provided for in Article 4(2). The Member State having invoked the solidarity clause shall indicate as soon as it considers that there is no longer a need for the invocation to remain active.

Article 8

Threat assessment at Union level

1. In order to regularly assess the threats facing the Union, the European Council may request the Commission, the HR and Union agencies, where relevant, to produce reports on specified threats.

2. Unless otherwise stipulated by the European Council, any such reports shall be based solely on available assessments of threats compiled by relevant Union institutions, bodies and agencies under existing arrangements, and on information provided voluntarily by the Member States, while avoiding duplication of efforts. The EU Counter Terrorism Coordinator shall be associated with the preparation of such reports where relevant. In accordance with point (a) of Article 346(1) TFEU, no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.

Article 9

Review

1. The arrangements under this Decision shall be reviewed periodically according to identified needs, and in any event within 12 months following the termination of the invocation to ensure that relevant lessons are identified and addressed. This review shall be carried out in the Council on the basis of a joint report prepared by the Commission and the HR.

2. Where appropriate, this Decision may be revised. In such cases, and in accordance with Article 222(3) TFEU, the Council shall be assisted by the Political and Security Committee and the Standing Committee on Operational Cooperation on Internal Security.

3. Where appropriate, the Council may adapt the IPCR arrangements, in particular to address needs identified by the Council in the context of a review or following a revision of this Decision.

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Article 10

Financial Implications

Any financial resources necessary for the implementation of this Decision shall be mobilised within the agreed annual expenditure limits and in accordance with the scope of existing Union instruments, while respecting the yearly multiannual financial framework ceilings.

Article 11

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*.