

II

(Preparatory Acts pursuant to Title VI of the Treaty on European Union)

Initiative of the Republic of Austria with a view to adopting a Council Decision on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations

(2006/C 321/15)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30, Article 32 and Article 34(2)(c) thereof,

Having regard to the initiative of the Republic of Austria ⁽¹⁾,

Having regard to the Opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) Article 29 of the Treaty on European Union states that the Union's objective is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters.
- (2) In their Declaration on Solidarity against Terrorism of 25 March 2004, the Heads of State and Government of the Member States of the European Union declared their firm intention that the Member States mobilise all the instruments at their disposal to assist a Member State or an acceding State in its territory at the request of its political authorities in the event of a terrorist attack.
- (3) Following the attacks of 11 September 2001, the special intervention units of all law enforcement authorities of the Member States have already initiated cooperation activities under the aegis of the Police Chiefs Task Force. Since 2001, their network, called 'Atlas', has conducted various seminars, studies, exchanges of materials, and joint exercises.
- (4) No single Member State has all the means, resources and expertise at its disposal to deal effectively with all possible kinds of large scale crisis situations requiring special intervention. It is therefore of crucial importance that each Member State be able to request the assistance of another Member State.
- (5) This Decision sets out some general rules on liability, including rules on criminal liability, in order to provide a legal framework for circumstances in which Member

States concerned agree to request and provide assistance. The availability of this legal framework and of a declaration indicating the competent authorities will allow the Member States to react speedily and gain time in the event a crisis situation arises,

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

This Decision lays down general rules and conditions to allow for special intervention units of one Member State to provide assistance and/or operate on the territory of another Member State (hereinafter referred to as the 'requesting Member State') in cases where they have been invited by the latter Member State and have agreed to do so in order to deal with a crisis situation.

Article 2

Definitions

For the purpose of this Decision:

- 1) 'special intervention unit' shall mean any law enforcement authority of a Member State which is specialised in the control of a crisis situation.
- 2) 'crisis situation' shall mean any man-made situation in a Member State presenting a serious direct physical threat to persons or institutions in that Member State, in particular hostage-taking, hijacking and similar incidents.

Article 3

Assistance to another Member State

1. A Member State may ask to be assisted by a special intervention unit of another Member State with a view to dealing with a crisis situation. A Member State may accept or refuse such a request or may propose a different kind of assistance.

⁽¹⁾ OJ C ...

⁽²⁾ Opinion of ... (not yet published in the Official Journal).

2. Subject to agreement between the Member States concerned, assistance may consist of the provision of equipment or expertise to the requesting Member State, or of carrying out actions on the territory of that Member State.

3. In the case of actions on the territory of the requesting Member State, officers of the assisting special intervention unit shall:

- (a) be authorised to act in a supporting capacity on the territory of the requesting Member State;
- (b) operate under the responsibility and direction of the requesting Member State and in accordance with the law of the requesting Member State;
- (c) operate within the limits of their powers under their national law.

Article 4

General rules on liability

1. Where, in accordance with this Decision, officers of a Member State operate in the territory of another Member State, the latter Member State shall be liable for any damage caused by them during their operations.

2. By way of derogation from paragraph 1, where the damage results from actions that were contrary to directions given by the requesting Member State or were beyond the limits of the of the relevant officers' powers under their national law, the following rules shall apply:

- (a) a Member State in whose territory the damage was caused shall make good such damage under the conditions applicable to damage caused by its own officers;
- (b) a Member State whose officers have caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf;
- (c) without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of point (b), each Member State shall refrain in the circumstances provided for in this paragraph from requesting reimbursement of damages it has sustained from another Member State.

Article 5

Criminal liability

During the operations referred to in Article 3, officers operating in the territory of another Member State shall be regarded as officers of that Member State with respect to offences committed against them or by them.

Article 6

Meetings and joint training

Member States shall ensure that their relevant authorities hold meetings and organise joint training and exercises, whenever

necessary, with a view to exchanging experience, expertise and general, practical and technical information about providing assistance in crisis situations.

Article 7

Costs

Each Member State shall bear its own costs, unless otherwise agreed between the Member States concerned.

Article 8

Relation to other instruments

1. Member States may continue to apply bilateral or multilateral agreements or arrangements in force on ... (*) in so far as such agreements or arrangements allow the objectives of this Decision to be extended or enlarged between Member States.

2. Member States may conclude or bring into force bilateral or multilateral agreements or arrangements after ... (*) in so far as such agreements or arrangements allow the objectives of this Decision to be extended or enlarged between Member States.

3. The agreements and arrangements referred to in paragraphs 1 and 2 may in no case affect relations with Member States which are not parties thereto.

4. Member States shall inform the Council and the Commission of the agreements or arrangements referred to in paragraphs 1 and 2.

Article 9

Final provisions

Each Member State shall, before ... (*), state in a declaration deposited with the General Secretariat of the Council which authorities are covered by the definition of special intervention unit, and which competent authorities may make requests and give authorisations for providing assistance as referred to in Article 3. Any such declaration may be modified at any time.

Article 10

Taking effect

This Decision shall take effect on ... (**).

Done at Brussels, ...

For the Council

The President

...

(*) ...
(**) ...