

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

Council

COUNCIL DECISION

of 12 February 2007

establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme 'Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks'

(2007/124/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard and to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) Prevention, preparedness and consequence management of terrorism and other security related risks are essential aspects of the protection of people and critical infrastructure within the area of freedom, security and justice.
- (2) The revised European Union Plan of Action on Combating Terrorism as adopted by the European Council of 17-18 June 2004, identified as priority issues, *inter alia*, the prevention and consequence management of terrorist attacks, and the protection of critical infrastructures.
- (3) On 2 December 2004, the Council adopted the revised European Union Solidarity Programme on the Consequences of Terrorist Threats and Attacks, highlighting the

importance of risk and threat assessments, protection of critical infrastructure, mechanisms for the detection and identification of terrorist threats, and the political and operational preparedness and capability for consequence management.

- (4) The Council in December 2005 decided that the European Programme for Critical Infrastructure protection (EPCIP) will be based on an all hazards approach while countering threats from terrorism is regarded as priority. New Counter Terrorism Strategy which contains four strands: Prevent, protect, pursue and respond, was also adopted at December 2005 European Council.
- (5) The Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, established by Council Decision 2001/792/EC, Euratom ⁽²⁾ of 23 October 2001, addresses immediate response to all major emergencies, but has not been designed specifically for prevention, preparedness and consequence management of terrorist attacks.
- (6) The Hague Programme ⁽³⁾, set up by the European Council in November 2004, has called for integrated and coordinated management of crises within the EU with cross-border effects.

⁽¹⁾ Opinion delivered on 14 December 2006 (not yet published in the Official Journal).

⁽²⁾ OJ L 297, 15.11.2001, p. 7.

⁽³⁾ OJ C 53, 3.3.2005, p. 1.

- (7) Within the scope of its competence the Community shall contribute to taking the necessary measures to prevent terrorists from attacking the values of democracy, the rule of law, open society and the freedom of our citizens and societies, and to limit the consequences of any attack wherever possible.
- (8) In the interest of efficacy, cost-efficiency and transparency, the specific efforts on prevention, preparedness and consequence management of terrorism should be streamlined and financed by one single programme.
- (9) With regard to legal certainty and coherence, and to the complementarity with other financial programmes, the terms 'prevention and preparedness', 'consequence management' and 'critical infrastructure' should be defined.
- (10) The primary responsibility for protecting critical infrastructures falls on the Member States, owners, operators and users (users being defined as organisations that exploit and use the infrastructure for business and service provision purposes). Member States authorities will provide leadership and coordination in developing and implementing a nationally consistent approach to the protection of critical infrastructure within their jurisdictions, taking into account existing Community competences. The responsibility for carrying out risk and threat assessments therefore lies primarily with the Member States.
- (11) Commission actions, together with transnational projects where appropriate, are essential to achieve an integrated and coordinated EC approach. In addition, it is useful and appropriate to support projects within Member States to the extent that they can provide useful experience and knowledge for further actions at Community level, in particular risk and threat assessments. In this regard it is appropriate to adopt all hazards approach while considering the terrorist threat as a priority.
- (12) It is also appropriate to provide for third countries and international organisations to participate in transnational projects.
- (13) Complementarity needs to be ensured with other Community and Union programmes such as the European Union Solidarity Fund and the Civil Protection Financial Instrument, the Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, Seventh Framework Programme for Research, Technological Development and Demonstration Activities and the Structural Funds.
- (14) Since the objectives of this Decision cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or impact of the programme, be better achieved at the Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary to achieve those objectives.
- (15) The expenditure of the programme should be compatible with the ceiling under Heading 3 of the financial framework. It is necessary to foresee flexibility in the definition of the programme to allow for eventual adjustments in any envisaged actions, in order to respond to the evolution of needs in the course of the period 2007-2013. The decision should, therefore, be limited to the generic definition of envisaged actions and their respective administrative and financial arrangements.
- (16) Appropriate measures should also be taken to prevent irregularities and fraud and the necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulations (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the Communities' financial interests ⁽¹⁾, (Euratom, EC) No 2185/96 ⁽²⁾ of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽³⁾.
- (17) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽⁴⁾ and Commission Regulation (EC, Euratom) No 2342/2002 ⁽⁵⁾ of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002, which safeguard the Community's financial interests, apply, taking into account the principles of simplicity and consistency in the choice of budgetary instruments, a limitation on the number of cases where the Commission retains direct responsibility for their implementation and management, and the required proportionality between the amount of resources and the administrative burden related to their use.
- (18) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁶⁾, with a distinction being made between those measures which are subject to the management committee procedure and those which are subject to the advisory committee procedure, the advisory committee procedure being in certain cases, with a view to increased efficiency, the more appropriate.

⁽¹⁾ OJ L 312, 23.12.1995, p. 1.

⁽²⁾ OJ L 292, 15.11.1996, p. 2.

⁽³⁾ OJ L 136, 31.5.1999, p. 1.

⁽⁴⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

⁽⁵⁾ OJ L 357, 31.12.2002, p. 1. Regulation as last amended by Commission Regulation (EC, Euratom) No 1248/2006 (OJ L 227, 19.8.2006, p. 3).

⁽⁶⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (19) The Treaty establishing the European Community and the Treaty establishing the European Atomic Energy Community provide for no powers, other than those in Articles 308 and 203, respectively, for adopting this Decision
- (20) The European Economic and Social Committee has delivered an opinion ⁽¹⁾.
- (21) In order to ensure the effective and timely implementation of the programme, this Decision should apply from 1 January 2007,

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

1. This Decision establishes the Specific Programme 'Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks', hereinafter referred to as 'the Programme', in order to contribute to supporting Member States' efforts to prevent, prepare for, and to protect people and critical infrastructure against risks linked with terrorist attacks and other security related risks, as part of the General Programme on Security and Safeguarding Liberties.
2. The Programme shall cover the period from 1 January 2007 to 31 December 2013.
3. This Decision shall not apply to matters that are covered by the Civil Protection Financial Instrument.

Article 2

Definitions

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

- (a) 'prevention and preparedness' refers to measures aimed at preventing and/or reducing risks linked to terrorism and other security related risks;
- (b) 'consequence management' refers to the coordination of measures taken in order to react to and to reduce the impact of the effects of a security related incident, in particular resulting from terrorist attacks in order to ensure a smooth coordination of crisis management and security actions;
- (c) 'critical infrastructure' includes in particular those physical resources, services, information technology facilities, networks and infrastructure assets which, if disrupted or destroyed, would have a serious impact on the critical societal functions, including the supply chain, health, safety,

security, economic or social well-being of people or of the functioning of the Community or its Member States.

Article 3

General objectives

1. The Programme shall contribute to support Member States' efforts to prevent, prepare for, and to protect people and critical infrastructure against terrorist attacks and other security related incidents.
2. The Programme is intended to contribute to ensuring protection in the areas such as the crisis management, environment, public health, transport, research and technological development and economic and social cohesion, in the field of terrorism and other security related risks within the area of freedom, security and justice.

Article 4

Specific objectives

1. Within the general objectives, and unless covered by other financial instruments, the Programme shall stimulate, promote and develop measures on prevention, preparedness and consequence management based, *inter alia*, on comprehensive threat and risk assessments, subject to the supervision by the Member States and with due regard to existing Community competence in that matter, and aiming to preventing or reducing risks linked with terrorism and other security related risks.
2. With regard to prevention and preparedness of risks linked with terrorism and other security related risks the Programme aims at protecting people and critical infrastructure, in particular by:
 - (a) stimulating, promoting, and supporting risk assessments on critical infrastructure, in order to upgrade security;
 - (b) stimulating, promoting, and supporting the development of methodologies for the protection of critical infrastructure, in particular risk assessment methodologies;
 - (c) promoting and supporting shared operational measures to improve security in cross-border supply chains, provided that the rules of competition within the internal market are not distorted;
 - (d) promoting and supporting the development of security standards, and an exchange of know-how and experience on protection of people and critical infrastructure;
 - (e) promoting and supporting Community wide coordination and cooperation on protection of critical infrastructure.

⁽¹⁾ OJ C 65, 17.3.2006, p. 63.

3. With regard to consequence management the Programme aims at:

- (a) stimulating, promoting and supporting exchange of know-how and experience, in order to establish best practices with the view to coordinate the response measures and to achieve cooperation between various actors of crisis management and security actions;
- (b) promoting joint exercises and practical scenarios including security and safety components, in order to enhance coordination and cooperation between relevant actors at the European level.

Article 5

Eligible actions

1. With a view to pursuing the general and specific objectives set out in Articles 3 and 4, the Programme shall provide under the conditions set out in the annual work programme financial support for the following types of action:

- (a) projects initiated and managed by the Commission with a European dimension;
- (b) transnational projects, which shall involve partners in at least two Member States, or at least one Member State and one other country which may either be an acceding or a candidate country;
- (c) national projects within Member States, which:
 - (i) prepare transnational projects and/or Community actions ('starter measures');
 - (ii) complement transnational projects and/or Community actions ('complementary measures');
 - (iii) contribute to developing innovative methods and/or technologies with a potential for transferability to actions at Community level, or develop such methods or technologies with a view to transferring them to other Member States and/or other country which may either be an acceding or a candidate country.
- 2. In particular, financial support may be provided for
 - (a) actions on operational cooperation and coordination (strengthening networking, mutual confidence and understanding, development of contingency plans, exchange and dissemination of information, experience and best practice);
 - (b) analytical, monitoring, evaluation and audit activities;
 - (c) development and transfer of technology and methodology, particularly regarding information sharing and inter-operability;
 - (d) training, exchange of staff and experts; and

- (e) awareness and dissemination activities.

Article 6

Access to the Programme

1. Access to the Programme shall be opened to bodies and organisations with legal personality established in the Member States. Bodies and organisations which are profit oriented shall have access to grants only in conjunction with non-profit oriented or State organisations. Non-governmental organisations may apply for funding of the projects referred to in Article 5(2) provided that they ensure sufficient level of confidentiality.

2. As regards transnational projects, third countries and international organisations may participate as partners but are not permitted to submit projects.

Article 7

Types of intervention

1. Community financial support may take the following legal forms:

- (a) grants;
- (b) public procurement contracts.

2. Community grants shall be awarded further to calls for proposals, save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary leave no other choice for a given action, and shall be provided through operating grants and grants for actions.

The annual work programme shall specify the minimum rate of the annual expenditure to be awarded to grants. This minimum rate shall be at least 65 %.

The maximum rate of co-financing of the costs of the projects shall be specified in the annual work programme.

3. Expenditure is foreseen for accompanying measures, through public procurement contracts, in which case Community funds shall cover the purchase of services and goods. This shall cover, *inter alia*, expenditure on information and communication, preparation, implementation, monitoring, checking and evaluation of projects, policies, programmes and legislation.

Article 8

Implementing measures

1. The Commission shall implement the Community financial support in accordance with Regulation (EC, Euratom) No 1605/2002, hereinafter referred to as 'the Financial Regulation'.

2. To implement the Programme, the Commission shall, within the limits of the general objectives defined in Article 3, adopt an annual work programme, by the end of September specifying its

specific objectives, thematic priorities, a description of accompanying measures envisaged in Article 7(3) and if necessary a list of other actions.

The annual work programme for 2007 shall be adopted three months after taking of effect of this Decision.

3. The annual work programme shall be adopted in accordance with the procedure referred to in Article 9(3).

4. The evaluation and award procedures relating to grants for actions shall take into account, *inter alia*, the following criteria:

- (a) conformity with the annual work programme, the general objectives as specified in Article 3 and measures taken in the different domains as specified in Articles 4 and 5;
- (b) quality of the proposed action regarding its conception, organisation, presentation and expected results;
- (c) amount requested for community financing and its appropriateness as to expected results;
- (d) impact of the expected results on the general objectives defined in Article 3 and on measures taken in the different domains as specified in Articles 4 and 5.

5. Decisions related to actions submitted under Article 5(1)(a) shall be adopted by the Commission in accordance with the management procedure referred to in Article 9(3). Decisions related to actions submitted under Article 5(1)(b) and (c) shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 9(2).

Decisions on applications for grants involving profit-oriented bodies or organisations shall be adopted by the Commission in accordance with the management procedure referred to in Article 9(3).

Article 9

Committee

1. The Commission shall be assisted by a committee (hereinafter referred to as the Committee).
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

4. The Committee shall adopt its rules of procedure.

Article 10

Complementarity

1. Synergies, consistency and complementarity shall be sought with other Union and Community instruments, *inter alia*, with the specific programmes 'Prevention of and Fight against Crime' and 'Criminal Justice', the Seventh Framework Programme for Research, Technological Development and Demonstration Activities, the European Union Solidarity Fund and the Civil Protection Financial Instrument.

2. The Programme may share resources with other Community and Union instruments, in particular the 'Prevention of and Fight against Crime' programme, in order to implement actions meeting the objectives of both the Programme and other Community/Union instruments.

3. Operations financed under this Decision shall not receive financial support for the same purpose from other Union/Community financial instruments. It shall be ensured that the beneficiaries of the Programme shall provide the Commission with information about funding received from general budget of the European Union and from other sources, as well as information about ongoing applications for funding.

Article 11

Budgetary resources

The budgetary resources allocated to the actions provided for in the Programme shall be entered in the annual appropriations of the general budget of the European Union. The available annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework.

Article 12

Monitoring

1. The Commission shall ensure that, for any action financed by the Programme, the beneficiary submits technical and financial reports on the progress of work and that a final report is submitted within three months of the completion of the action. The Commission shall determine the form and structure of the reports.

2. The Commission shall ensure that the contracts and agreements resulting from the implementation of the Programme provide in particular for supervision and financial control by the Commission (or any representative authorised by it), if necessary by means of on-the-spot checks, including sample checks, and audits by the Court of Auditors.

3. The Commission shall ensure that for a period of five years following the last payment in respect of any action, the beneficiary of the Community financial support keeps available for the Commission all the supporting documents regarding expenditure on the action.

4. On the basis of the results of the reports and on-the-spot checks referred to in paragraphs 1 and 2, the Commission shall ensure that, if necessary, the scale or the conditions of allocation

of the financial support originally approved and also the timetable for payments is adjusted.

5. The Commission shall ensure that every other step necessary to verify that the actions financed are carried out properly and in compliance with the provisions of this Decision and the Financial Regulation be taken.

Article 13

Protection of Community financial interests

1. The Commission shall ensure that, when actions financed under this Decision are implemented, the financial interests of the Community are protected by the application of measures to prevent fraud, corruption and any other illegal activities, by effective checks and by the recovery of the amounts unduly paid and, if irregularities are detected, by effective, proportional and dissuasive penalties, in accordance with Regulations (EC, Euratom) No 2988/95, (Euratom, EC) No 2185/96 and (EC) No 1073/1999.

2. For the Community actions financed under this Decision, Regulations (EC, Euratom) No 2988/95 and (Euratom, EC) No 2185/96 shall apply to any infringement of a provision of Community law, including infringements of a contractual obligation stipulated on the basis of the Programme, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it, by an unjustified item of expenditure.

3. The Commission shall ensure that the amount of financial assistance granted for an action is reduced, suspended or recovered, if it finds irregularities, including non-compliance with the provisions of this Decision or the individual decision or the contract or agreement granting the financial support in question, or if it transpires that, without Commission approval having been sought, the action has been subjected to a change which conflicts with the nature or implementing conditions of the project.

4. If the time limits have not been observed or if only part of the allocated financial support is justified by the progress made with implementing an action, the Commission shall ensure that the beneficiary is requested to submit observations within a specified period. If the beneficiary does not give a satisfactory answer, the Commission shall ensure that the remaining financial support might be cancelled and repayment of sums already paid demanded.

5. The Commission shall ensure that any undue payment is repaid to the Commission. Interest shall be added to any sums

not repaid in good time under the conditions laid down by the Financial Regulation.

Article 14

Evaluation

1. The Programme shall be monitored regularly in order to follow the implementation of activities carried out hereunder.

2. The Commission shall ensure regular, independent and external evaluation of the Programme.

3. The Commission shall submit to the European Parliament and the Council:

- (a) an annual presentation on the implementation of the Programme;
- (b) an interim evaluation report on the results obtained and the qualitative and quantitative aspects of the implementation of the Programme no later than 31 March 2010;
- (c) a communication on the continuation of the Programme no later than 31 December 2010;
- (d) an *ex-post* evaluation report no later than 31 March 2015.

Article 15

Publication of projects

Each year the Commission shall publish the list of actions financed under the Programme with a short description of each project.

Article 16

Taking of effect and application

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007.

Done at Brussels, 12 February 2007.

For the Council

The President

F.-W. STEINMEIER