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Subject: **Preparation of the Council (Justice And Home Affairs) meeting on 25 and 26
October 2012**

- Proposal for a Decision of the European Parliament and of the Council on a
Union Civil Protection Mechanism

= State of play / Orientation debate

1. INTRODUCTION

1. On 20 December 2011, the Commission submitted a proposal¹ to replace the Council Decision on the Civil Protection Mechanism², which facilitates reinforced cooperation between the Member States and the Union in the field of civil protection, and the Civil Protection Financial Instrument³, which provides funding for the actions under the Mechanism to ensure protection against natural and man-made disasters.

The aim of the proposal, which is based on the new Article 196 TFEU relating to civil protection policy, is to improve the effectiveness of systems preventing, preparing for and responding to natural and man-made disasters of all kinds within and outside the Union, by ensuring better risk assessment and planning, better predictability and quality of assistance, and increased cost-efficiency.

2. The proposal is a contribution to the Union's objectives as defined in the Stockholm Programme⁴ and the EU Internal Security Strategy⁵. Preparation was made for it in a Communication submitted by the Commission on 26 October 2010⁶, entitled "Towards a stronger European disaster response: the role of civil protection and humanitarian assistance"; and it also benefited from Council input in the form of conclusions on a Community framework on disaster prevention within the EU⁷.

¹ 18919/11.

² OJ L 314, 1.12.2007, p.9.

³ OJ L 71, 10.3.2007, p.9.

⁴ C 115/1, 4.5.2010.

⁵ 5842/2/10 REV 2.

⁶ 15614/10.

⁷ 15394/09.

As regards the area of civil protection, the Communication presented a number of suggestions on how to increase the rapidity and effectiveness of deployment, ensure coherence both in political and operational coordination and make EU action more visible. These included the creation of a European Emergency Response Capacity (EERC) in the form of a pool of pre-identified civil protection assets from Member States and other states participating in the Civil Protection

Mechanism that would be voluntarily made available for disaster relief operations both inside and outside the Union. In its Communication, the Commission also announced that it intended to reinforce the current Monitoring and Information Centre and transform it into a genuine 24/7 European Emergency Response Centre.

3. In its conclusions, adopted on 7 December 2010⁸, the Council recognised that lessons learnt from recent disasters suggested that there was room to improve the EU response further. It welcomed the Commission's decision to create an Emergency Response Centre to improve planning and coordination. It considered that an enhanced European disaster response might include improved planning of interventions; more predictable availability of Member States' key assets, *inter alia* by setting up a pool of pre-identified assets made available by Member States on a voluntary basis, and improved, more cost-effective and well-coordinated transport of in-kind assistance to disaster sites.⁹ The Council made it clear that its considerations were subject to the discussions that the competent Council formations and Working Parties would have on the revised legal instruments on the Civil Protection Mechanism and the Civil Protection Financial Instrument.

⁸ 17455/1/10 REV 1.

⁹ see 17455/1/10 REV 1, pages 3 and 4.

II. Main aspects of the Commission proposal

4. The Commission proposal builds on the existing Council Decisions and provides a basis for the continuation of existing cooperation, which has proved its value in the past and consists of a series of actions that are well-accepted by all Member States (e.g. training, exercises, exchanges of experts, development of modules, deployment of expert missions, etc.).

5. The proposal also contains important new elements to strengthen the overall approach to disaster management at EU level. The main innovations are as follows:

- A stronger focus on disaster prevention (which now has a specific chapter in the legislation), with specific obligations relating to risk management planning;
- Provisions to strengthen the predictability, cost-effectiveness, quality and needs-based character of Member States' civil protection assistance through, among other things:
 - more emphasis on the planning of disaster response operations;
 - the creation of a voluntary pool of pre-committed response assets that Member States declare available in principle for EU operations, including the establishment of quality criteria, a certification process and limited co-financing at EU level;
 - streamlining and strengthening European support for the transport of Member States' civil protection assistance during disasters.
- Provisions to strengthen overall European response capacities, *inter alia* by setting up a process for identifying capacity gaps in Europe and by supporting, in specific cases, the development of reserve capacities accessible to all Member States to address such gaps in a cost-effective way.

III. State of play

In the Council, discussions on the Commission proposal¹⁰ started under the Danish Presidency in the Working Party on Civil Protection (PROCIV) and continued under the Cyprus Presidency. After careful consideration of Member States' positions, the Presidency tabled several key compromise proposals.

Member States have unanimously welcomed the merging of the Council Decisions on the Civil Protection Mechanism and the Civil Protection Financial Instrument into one legal text as a major simplification. They have also expressed appreciation for the clear structure of the proposal with specific chapters for prevention, preparedness and response which are mirrored in the financial provisions.

Although a number of technical and drafting issues are still outstanding, the Presidency believes that a broad consensus is developing on Chapter I (Articles 1 to 4 – Objectives, scope and definitions), Articles 7, 9 and 10 (General preparedness actions and planning), Article 13 (Training, exercises, lessons learnt and knowledge dissemination), Chapter IV (Articles 14 to 18 – Response), Articles 24 to 27 ("usual" general part of the financial provisions). Further fine-tuning of the text is nevertheless required to reach common agreement on these parts.

¹⁰ see FN 1.

In terms of the main innovations described above, there is overall support for strengthening planning and disaster prevention, although diverging views remain on the scope and extent of the obligations on Member States to share their risk management plans. There is also agreement on the usefulness of setting up a voluntary pool of Member States' assets, though concerns remain about specific aspects related to the functioning of the pool. Finally, while there is agreement on the need to set up a systematic process to identify capacity gaps at EU level, there is currently no agreement on the possible use of EU-funding to address such gaps. On these issues, the Presidency considers that guidance from the Council is necessary before further progress can be made in the working party.

In addition, there are a number of other outstanding issues on which work can continue at technical level. This includes for instance the use of the Civil Protection Mechanism in support of consular assistance, the cost arrangements for assistance provided via the Mechanism, the streamlining and strengthening of the provisions on transport, etc.

The Presidency intends to speed up work on those issues in order to elaborate a clear mandate by the end of this year, and to create the necessary conditions for a first-reading agreement with the European Parliament in early 2013.

In the European Parliament, work is progressing in the lead Committee (ENVI) and the advisory committees. The ENVI Committee is scheduled to vote the draft report of the rapporteur, Ms Elisabetta Gardini (EPP), on 28-29 November 2012.

IV. Questions for discussion

Against this background, the Presidency considers that an orientation debate will be helpful in steering and accelerating work on the proposal. The Presidency suggests focusing the debate on three issues:

(1) Risk management

In its 2009 Council conclusions on disaster prevention, the Council agreed on the need for Member States to further develop national approaches and procedures to risk management including risk assessments, risk maps and risk management plans. In line with these commitments, the Commission proposal introduces a legal obligation on Member States to make their risk management plans available to the Commission by 2016 in order to share information and best practices among all Member States.

Following discussions in the PROCIV Working Party, two important limitations were introduced in the Presidency's compromise text: Member States should be able to exclude any sensitive information from this process and it should be possible for Member States to share a summary of relevant elements of their risks assessments, on the one hand, and an assessment of their risk management capability on the other, rather than the actual plans (which are voluminous in some cases).

Despite these limitations, some Member States may still be concerned about the implications of the proposed obligation. This may have been caused partly by the very different approaches to risk management planning in Member States and the different interpretations in Member States of the key concepts involved. The Presidency nevertheless believes that there is a broad consensus on the need to go forward in developing a risk-based approach in all Member States and is convinced that common ground can be found on a gradual process, which takes into account the different levels of risk assessment and planning in Member States. The Presidency proposes that this approach should include four successive steps, whereby Member States shall:

- (1) carry out a risk assessment and share the relevant non-sensitive elements of these risk assessments;
- (2) develop and refine their risk management planning;
- (3) provide to the Commission an assessment of their risk management capability (based upon a common structure and methodology); and
- (4) participate, on a voluntary basis, in a peer review process to allow exchanges of good practices between Member States.

This could be accompanied by a regular report from the Commission to the European Parliament and the Council on the progress made in the implementation of these elements.

Do you agree on the need to gradually develop towards a risk-based disaster management approach based on the above elements?

(2) "Opting out" arrangements from the voluntary pool of Member States' response assets

There is a broad consensus on the concept of a voluntary pool of pre-committed Member States' response assets. However, the arrangements for Member States to opt out in specific disasters still need fine-tuning. The Presidency compromise emphasises the voluntary nature of these commitments and the need for close cooperation with Member States in developing the quality requirements and the certification process. The Presidency compromise also spells out that the pre-committed assets remain available for the national purposes of Member States at all times and that the final decision on their deployment shall be taken by the Member State which registered the response capacity concerned. When deployed, the assets can be withdrawn at any time in consultation with the Commission. At this stage of the negotiations, the Presidency is seeking political guidance on the following two interlinked questions.

The first question relates to the level of EU funding needed to make it possible for Member States to commit assets to the pool. There appears to be a rather large majority in favour of providing a limited financial compensation to Member States that commit assets to the pool, covering at least (1) the additional costs that Member States incur to adapt their capacities for use in EU operations as well as (2) the cost of keeping these assets on standby for EU operations. Given the limited budget available for civil protection cooperation, it seems unlikely that EU funding could also cover a part of the cost of creating new response assets that Member States make available to the pool.

The arrangements for financial management should be simple. Moreover, the Commission has proposed that those Member States which have committed assets to the pool (thereby making an extra effort to adhere to higher standards of quality, availability, and interoperability) should benefit from a higher co-funding rate for transport costs (with a maximum of 100% funding) during disasters.

Second, the current Presidency compromise fully recognises that, although the assets pre-committed to the pool are in principle available for EU operations, the ultimate decision on their deployment remains with Member States. In order to ensure a genuine commitment resulting in improved availability of assets, the compromise text also provides that Member States shall inform the Commission of any “significant reasons” that prevent them from making the response capacities available in a specific emergency. Some Member States still wish to keep more flexibility in their commitments. Others feel that this is both reasonable (in view of the EU funding involved) and necessary (in view of the objective to enhance the availability of assistance and improve the planning of operations).

The Presidency welcomes Member States’ views on the appropriate financial incentives to support the voluntary pool.

Secondly, do you agree that the right balance between the possibility of “opting out” in specific well-justified cases and the operational need to enhance the predictability of the assistance would require that the ad-hoc opt-out should be allowed only if the Member State has important reasons for doing so?

(3) Addressing capacity gaps

Where gaps are identified, the Commission has proposed to create in this legislation the framework conditions for the use of EU funding to develop buffer capacities that can be shared among all Member States on a needs-basis. In specific cases, the development of such buffer capacities at EU level can provide benefits in relation to burden sharing and cost-effectiveness, by making the capacities affordable to many Member States or regions and by enhancing their operational efficiency for exceptional situations. This would also make it possible for interested Member States to join forces and work together on multi-national response capacities. This is particularly the case for response assets that are only very rarely needed to deal with very exceptional situations. This part of the proposal has nevertheless triggered concerns from some Member States, who fear that some may start relying systematically on these EU-funded assets (so-called “free-rider effects”) and that the availability of EU funding for these purposes would reduce the incentive for each Member States to provide its civil protection system with sufficient capacities to protect its citizens (i.e. a moral hazard risk).

In its latest compromise proposal, the Presidency has therefore limited the scope for EU-funding in several ways:

- By linking the scope for EU-funded assets to Member States' responsibility to provide their civil protection system with sufficient capacity to deal with disasters that can reasonably be expected and prepared for: EU funding should be restricted to assets that complement – and go beyond – the normal preparedness that is to be expected of any Member State;
- By making decisions on EU-funded assets dependent on Member States' analyses of needs; and acceptance that this is both appropriate and cost-effective;
- By limiting the scope for EU funding to cases where all other options to address the gaps in a cost-effective way have been considered; and
- By limiting the scope for EU-funding to three types of assets where there is a strong economic rationale for burden-sharing: (1) response capacities of a horizontal nature serving all Member States equally (such as assessment, logistics and coordination), (2) specialised high-value response capacities (such as emergency towing vessels or forest fire-fighting planes) and (3) response capacities addressing low probability/high impact disasters (such as an EU-wide alert system for solar storms).

It is pointed out that the details of the underlying analysis will be determined in an implementing decision, fully involving the Member States, including details of assessment criteria, risk thresholds and other important parameters. Furthermore, the total budget amounts for these costs will be included in the annual Commission Civil Protection work programme and will thus be under the control of Member States.

Would you agree that the EU should have a framework established for tackling possible major common capacity gaps in the EU (e.g. for low probability/high impact risks, highly specialised assets or assets performing 'horizontal' tasks) when those capacities are needed, economically justified and no other alternatives are found? Can further guarantees be built into the system to avoid a moral hazard risk or free-riding?