



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Decision of the European Parliament and of the Council amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism {COM(2017) 772 final}.

The proposal introduces targeted amendments allowing the Union to support, coordinate and supplement Member States activities in the field of civil protection. Building on the principles of solidarity and shared responsibility, the overall objective of the proposal is to ensure that the Union can provide better crisis and emergency support to its citizens in Europe and beyond, in full compliance with Article 196 of the Treaty on the Functioning of the European Union. During his visit to Vienna on 18 January 2018, Commissioner Christos Stylianides already had the opportunity to outline and discuss the proposal with members of the Bundesrat.

Whilst the proposal raises undeniably important technical and operational aspects, the discussion on the further development of the European Union Civil Protection Mechanism needs to take into account the overall political importance of this proposal. It aims essentially at building on the successful work of this system of European solidarity and at carefully further developing it. During one of its future visits to Brussels, a delegation of the Bundesrat is welcome to visit the Emergency Response Coordination Centre to get an insight of the multi-faceted coordination activities undertaken by the Commission in the field of civil protection.

Nonetheless, the Commission has taken due note of the subsidiarity-related concerns expressed by the Bundesrat. However, it does not consider that the proposal goes beyond EU competences in the field of civil protection, nor that it encroaches on the principle of subsidiarity. The Commission's stance is explained in more detail in the attached Annex.

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The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Christos Stylianides
Member of the Commission*

Annex

The Commission has carefully considered each of the issues raised by the Bundesrat in its Opinion and is pleased to offer the following clarifications.

1. The proposed amendments of the current Union Civil Protection Mechanism generally aim at strengthening and carefully improving the functioning of existing structures without transferring any additional competences or powers to the Commission.

The modifications are in accordance with Article 196 of the Treaty on the Functioning of the European Union since the primary responsibility in the field of civil protection stays with the Member States. Only in case of a request for assistance from a Member State, European response capacities may be mobilised (first those committed to the “Pool” and “rescEU” only is activated when these are not sufficient).

Moreover, sending help always requires the acceptance of the requesting State. This clearly shows that crisis management stays with the Member States affected. The proposal is limited to supporting and complementing the activities of Member States, as laid down in Article 196 (1)(a) of the Treaty on the Functioning of the European Union.

In essence, the well-established system does not change, with solidarity at its core. The Commission does not believe that this would be a centralisation of the civil protection system. On the contrary, it is important to ensure that emergency teams continue to be integrated in the coordination mechanisms at local level and operate under the command of their respective authorities.

2. The submission of the full risk assessment would allow the Commission to better support disaster risk management actions under the Union Civil Protection Mechanism and enable Member States to foster a better understanding of risks across Europe and exchange expertise on methodologies.

Full risk assessments would have a dual purpose: for the Commission they would be a source of information to support disaster risk management actions under the Union Civil Protection Mechanism; for Member States they would foster a better understanding of risks across Europe and the exchange of expertise on methodologies and approaches for conducting national risk assessments. Any sensitive information would still be excluded, in line with the provisions in Article 6 of the proposal.

The requirement for Member States to share information is the least restrictive option and is fully proportional, leaving therefore States full discretion when it comes to the content of the material to be shared. In this context, it should also be noted that no harmonisation of laws is proposed, in full compliance with Article 196(2) of the Treaty on the Functioning of the European Union.

3. Capacity gaps to be addressed by the European Civil Protection Pool will continue to be identified on the basis of information provided by Member States.

The proposal does not alter the procedure for identifying and addressing capacity gaps

in the Member States. Capacity gaps will continue to be monitored by the Commission in cooperation with Member States based on the capacities registered in the Common Emergency Communication and Information System and on relevant information provided by the Member States. The procedure for establishing “capacity goals” will also continue to be performed jointly by the Commission and Member States, particularly via their representatives in the Civil Protection Committee. The suitability of capacity goals will be assessed at least every second year and, if necessary, they shall be revised based on the risks identified in national risk assessments or other appropriate national or international sources of information.

4. Member States may use the response capacities committed to the "Pool" for national purposes at any time and may refuse their deployment. Article 11(6) of Decision No 1313/2013/EU¹ has not been amended and states that the response capacities that Member States commit to the "Pool" “shall remain available for national purposes at all times”. Therefore, Member States will not be deprived of the equipment and personnel that form the capacities committed to the “Pool”. Although there is a presumption that such capacities should also be made available when needed for European Union operations, the new proposal still foresees that Member States may refuse their deployment or withdraw them (if already deployed) when they are needed to deal with ‘exceptional situations affecting the discharge of national tasks’². It should be noted that Member States will always retain command and control when their capacities are deployed via the "Pool"³.

5. The commitment of capacities to the “Pool” remains voluntary. Arrangements at national and Union level could be envisaged to ensure greater consistency between the Austrian volunteer system and the Union Civil Protection Mechanism, and to avoid any disadvantage for Austria.

Civil protection is organised differently throughout the Member States and volunteer organisations indeed form the backbone of a well-functioning civil protection system. The Commission is aware that in Austria a great number of civil protection activities are carried out by volunteers at regional and municipal level, and that response capacities may be under the command and control of regional authorities. This should, however, not deter Austria from committing capacities to the “Pool”. In addition to the higher European Union co-financing, specific arrangements could be foreseen at national and Union level to ensure greater consistency between the two systems and consequently allow for the commitment of Austrian capacities to the "Pool". However, the proposal does not oblige Austria to commit capacities to the "Pool". Such commitment of capacities remains voluntary.

6. Regarding the development of “rescEU” emergency response capacities, the European Union does not intend to substitute itself to national civil protection

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. 924–947.

² See paragraphs 7 and 8 of the newly proposed Article 11.

³ See Article 11(8) of the proposal.

authorities.

First, “rescEU” capacities should be considered as a tactical reserve that is only accessible when all other available capacities (i.e. national ones, including those in the “Pool”) are insufficient to allow for an effective response to disasters. The ‘last resort’ nature of such capacities is highlighted via explicit cross-references in the newly proposed Article 12 to Articles 15 and 16 of Decision No 1313/2013/EU. The latter have not been amended and provide that ‘Member States shall be responsible for directing assistance interventions’ and that, in operations outside the EU, ‘the Commission shall support consistency in the delivery of assistance’. Moreover, the articles outline the actions that the Commission is required to take upon receiving a request for assistance. It is clear that the Commission shall first and foremost invite Member States to voluntarily offer assistance before requesting the deployment of ‘specific capacities’ (i.e. those in the “Pool”). It is only as a last resort that the Commission can ‘take additional action’, such as calling upon “rescEU” capacities, ‘to facilitate the coordination of the response’.

The Opinion of the Bundesrat further states that “rescEU” capacities shall only be made available for response operations under the Union Mechanism following a request for assistance through the Emergency Response Coordination Centre. This is expressly stated in the proposed Article 12(7) and is intended to ensure that the Union’s role is to support and complement Member State action in full compliance with Articles 2(5) and 196 of the Treaty on the Functioning of the European Union and the principle of subsidiarity.

Finally, although the European Union would finance “rescEU” capacities and decide on their deployment, the requesting Member State shall facilitate the operational coordination of “rescEU” capacities with national capacities.

7. The possibility to enter into leasing or rental arrangements with the private sector shall support civil protection activities in the Union, but not commercialise the Union Civil Protection Mechanism.

Article 21(3) of the proposal is all-encompassing and gives the Commission the possibility to procure equipment by means of acquisition, leasing or rental, including from the private sector. The intention is to give the Commission the possibility to cater for all situations, including unforeseen ones. In this context, the possibility to involve the private sector is particularly important when capacities are either owned or developed by them.

8. In addition, and specifically in relation to the principle of subsidiarity, it should be noted that the proposal does not amend Article 1(3) of Decision No 1313/2013/EU, which states that Member States retain ‘primary responsibility to protect people, the environment, and property, including cultural heritage, on their territory against disasters and to provide their disaster-management systems with sufficient capabilities to enable them to cope adequately and in a consistent manner with disasters of a nature and magnitude that can reasonably be expected and prepared for’.