



EUROPEAN COMMISSION

Brussels, 5. 9. 2012  
C(2012) 5371 final

*Dear Mr. President,*

*The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Union Civil Protection Mechanism {COM(2011) 934 final}. The Commission is also pleased to note that Bundesrat considers it a useful contribution to the deepening of cooperation between Member States in the field of civil protection, within the framework of Article 196 TFEU.*

*The Commission agrees with the Bundesrat that it is important to respect the competences of the Union in these matters as defined in the Treaty. To this end, the Danish Presidency had requested the Council Legal Service to analyse the proposal with a view to determine whether or not it falls within the scope of Article 196. In its opinion of 28 February 2012, the Council Legal Service considered that the proposal fully respects the competences attributed to the Union by Article 196 TFEU.*

*I would like to take this opportunity to clarify some important elements concerning the Commission proposal. It builds on experience, and aims to introduce improvements in terms of cost-effectiveness and quality to the current system. It should be recalled that the current system will remain in force. The basic functioning of the current system does not change; the Member States have and shall continue to have the primary responsibility for all civil protection activities and the full ownership of civil protection assets, whether they are co-funded by the EU or not. The Commission proposal is solely aimed at improving the value that the EU can add to the current system through supporting, coordinating and complementing action. This does not imply any transfer of Member States' powers or any harmonisation of rules and regulations.*

*The voluntary nature of the instrument should also be underlined. Indeed, Member States can, at any time, decide to withdraw from any commitment made. When it comes to prevention and preparedness, cooperation mainly involves exchange of information, training and scenario development which do not in any way impinge on the sovereign right of the Member States to dispose of their assets.*

*However, the Commission does stand ready to clarify the text and to ensure that there is no doubt regarding competence issues, in that it is clearly stated that Member States are in full ownership of civil protection decision making at all times.*

*The Commission is aware and appreciates that, on many occasions, teams from the Bund as well as from the Länder have made crucial contributions to EU civil protection operations.*

*Herrn Horst SEEHOFER  
Präsident des Bundesrates  
Leipziger Straße 3 - 4  
D-10117 BERLIN*

*The German contribution to the European assistance intervention following the floods in Poland in 2010, with a massive deployment of high capacity pumping teams, was one of the most visible demonstrations of European solidarity in recent disasters. During that same year, Hungary and Romania were able to count on the expertise, equipment and relief items generously made available by the Länder as part of EU civil protection operations. For interventions outside the EU, the Monitoring and Information Centre (MIC) has greatly valued the logistical experts and other support made available by your country.*

*This proposal will make it possible to further improve the efficiency, coherence and visibility of such deployments, whenever you decide to make assistance available. It will make it possible for Germany to take advantage of the quality and efficiency gains that will result from better planning and improved coordination of EU civil protection operations, and to benefit from increased support at the EU level. The proposal also implements a number of improvements that Germany has been advocating for many years, in particular in relation to the prevention of disasters and it will make available the tools to develop a genuine European culture of disaster prevention, where responsibility and solidarity go hand in hand.*

*The proposed Decision on a Union Civil Protection Mechanism is currently being discussed by the European Parliament and the Council. The opinion of the Bundesrat will certainly be taken into account in the discussions during the legislative procedure. Please find in the annex some additional clarifications and explanations to the main points raised by the Bundesrat.*

*I look forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

## ANNEX

### REPLY TO THE MAIN POINTS MADE BY THE BUNDESRAT ON THE PROPOSED DECISION ON A UNION CIVIL PROTECTION MECHANISM {COM(2011) 934 final}

*The Commission finds the Bundesrat's suggestion to insert a clause in the legislative text clearly setting out the Member States' supremacy over all civil protection decision making and asset management useful. Article 1(5) already emphasises Member States' responsibility to prepare for disasters of a magnitude and nature that can reasonably be expected and prepared for, and can certainly provide the basis for a wider clause confirming Member States' role in this field.*

*As regards the definitions of "disaster" and "major disaster" in Article 4, it should be noted that these definitions are set out for the purposes of this legislative text only, and should not be expected to be of general character, applicable in other contexts. Previous experience in the EU Civil Protection Mechanism, which has dealt with a very diverse series of disasters over the last 10 years, has demonstrated the importance of flexibility in the relevant definitions in order to allow for a flexible and efficient response to unexpected new challenges.*

*As to the question of the specific objectives mentioned, by way of example, in Article 3(1), it is the Commission's opinion that these do fall within the scope of Article 196 TFEU, as confirmed by the opinion of the Council Legal Service. A general clause as suggested by the Bundesrat could, however, add clarity.*

*The indicators used to measure progress towards the achievement of the goals set out in the proposal stem from an obligation for the Commission to be increasingly cost effective and assess EU legislation in terms of the results it achieves. These indicators will be used to measure progress at EU level in the implementation of the legislation and not to evaluate individual Member States' performance in the field of civil protection. The indicators can certainly be formulated in a way so as to leave no doubt as regards the Member States' supremacy over civil protection matters.*

*As far as Article 6 is concerned, the Commission finds that focusing on contents could do away with many concerns that arise from the fact that Member States have different internal organisation. The Commission will produce an explanatory paper to clarify this provision.*

*On the Emergency Response Centre (ERC), the Commission would like to stress that this is by no means a different organisation from the current MIC. Experience has shown that there is a clear need for reinforcement of the MIC, in accordance with the Council conclusions on strengthening the MIC adopted under German Presidency. It is also proposed to change the name to reflect more accurately the active coordination and support role that the MIC plays during major emergencies, which goes far beyond "monitoring" and "information". As regards competences, these remain with the Member States.*

*The Commission underlines that the logistical support and hubs in Article 7 are intended to be in conformity with the basic principle of Member States' supremacy.*

*As regards Article 11 and the creation of the voluntary pool, the Commission wants to underline that each Member State decides whether to contribute civil protection assets to the pool and also whether to withdraw in a specific situation. Furthermore, since the Member States have full supremacy over these matters, it will be entirely up to them to decide which compelling reasons they see fit to use. The Commission has refrained from attempting to define all possible reasons for which Member States' assets could not be made available for*

*EU civil protection operations, and has instead opted to leave this appreciation entirely to Member States. A national emergency is a typical example of such compelling reasons, since a national emergency always could have priority over a cross border one. The intention behind this formulation is merely to indicate that any decision not to make the registered assets available in a specific emergency should not be taken lightly and will hopefully be preceded by a fair amount of consideration.*

*Regarding Article 12, the Commission would like to underline that the intention is neither to accumulate assets nor powers at EU level. The Commission's proposal merely establishes a structured process to agree overall capacity goals, assess gaps and decide how best to address these gaps. In each of these three steps, Member States are fully involved. The proposal furthermore provides the possibility of making EU-funding available to address specific gaps, on the strict condition that this is the most cost-effective option based on the probability and possible impact of the risk.*

*Article 18(2) has been taken from the existing civil protection legislation and is merely covering the establishment of a framework contract with a commercial transport broker. The aim is to offer Member States access to transport options on the private market, which are often more cost-effective than State-owned solutions.*

*Finally, it is true that the proposal includes a number of so-called "catch-all" provisions intended to enable the Commission to take all steps necessary to meet the objectives of Article 196 TFEU and of the proposed legislation. Similar provisions are included in the existing civil protection legislation and have proven extremely useful to allow the Commission to target its support to Member States in the most effective way possible and to ensure a flexible response to unforeseen challenges, which is imperative in emergency management. Again, such clauses could be further circumscribed by a clause on Member States' role in civil protection.*