



THE REGULATORY FRAMEWORK FOR DISASTER RESPONSE ESTABLISHED WITHIN THE EUROPEAN UNION: A FOCUS ON HUMANITARIAN AID AND CIVIL PROTECTION

International Disaster Response Laws, Rules and Principles (IDRL) Programme

Austrian Red Cross and the International Federation IDRL Programme

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EXECUTIVE SUMMARY

The International Disaster Response Laws, Rules and Principles (IDRL) Programme looks at the international, regional and national regulatory frameworks pertaining to international response to non-armed conflict disasters, *ie* response provided by international actors such as, foreign Governments, UN and other international organisations, NGOs and the Red Cross/Red Crescent family. It focuses in particular on four areas: access, facilitation, coordination and regulation of international aid, as explained in the study's introduction.

The present study makes an IDRL analysis of the regional regulatory framework for disaster response that has been developed within two fields of activity of the European Union: humanitarian aid and civil protection.

Whereas separate regulatory frameworks have been set up within both fields of activity, a common tripartite agreement was nevertheless adopted in 2004 with UNOCHA.² Two important principles drawing the overall framework of disaster response are clearly spelled out in it. The first one pertains to the primary responsibility of the affected State to provide protection and assistance to its citizens in times of disasters, with the need for the international community to be prepared and able to assist, when relief needs are beyond the response capacity of the domestic authorities. The second one proclaims the right of victims of natural disasters to international humanitarian assistance where their own authorities prove unable to provide effective relief.

Within the area of *humanitarian aid to third countries*, the EU does not directly deliver it but actually funds humanitarian aid programmes, projects and operations implemented by its

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² Cf. the Exchange of Letters concerning their cooperation in the framework of disaster response in case of simultaneous interventions in a country affected by a disaster. This exchange was formally approved by Commission Decision 2005/160/EC of 27 October 2004. See introduction of the paper.



partners. Today, the EU is the largest provider of international aid, accounting for 55% of the total aid, 30% of which comes from ECHO (now the Directorate General for Humanitarian Aid), the body set up to manage Community humanitarian aid, and 25% directly from the EU Member States. Being a major donor, the European Commission has been in a position to regulate the delivery of Community funded aid by its implementing partners, through the development of what can be considered a "*code of good donorship*" and the adoption of selection criteria for NGO partnerships.

The main legal instruments for humanitarian aid constitute the Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid and the Framework Partnerships Agreements (FPAs) developed with international organisations and NGOs. Through FPAs, which are based in the Council Regulation, ECHO engages in long-term quality co-operation with its aid implementing partners. FPAs express ECHO's commitment to transparency and accountability for the use of Community funds, not only for its own management, but also for the results of the operations funded.

The Council Regulation concerning humanitarian aid spells out the fundamental principles with which all humanitarian aid operations must comply. These are further refined in the FPAs. The principles enshrined are: 1) the principle of non-discrimination; 2) the principles of impartiality, independence, neutrality and humanity; the need for humanitarian aid: 3) to be of quality, 4) to involve participation of beneficiaries in the formulation, implementation and evaluation of humanitarian aid operations, 5) to respect the culture, structure and customs of communities, 6) to observe the fundamental rights of beneficiaries, 7) to be based on local capacities, and finally 8) to establish a linkage between relief, rehabilitation and development. Compliance with these principles is monitored. In addition to the above-mentioned fundamental principles, the FPA with NGOs emphasises that transparency and accountability towards the beneficiaries is essential in order to engage in quality partnerships with ECHO. To this end, NGO partners must support and adhere to voluntary codes of good practices or charters, provide fair working conditions to humanitarian workers (including volunteers), be committed to *promoting the understanding of humanitarian values*, and picture victims as dignified human beings in information, visibility and advertising activities.

The humanitarian aid framework also spells out clear commitments and obligations in the field of coordination at a threefold level. First, the Council Regulation asks the Commission to take any measures necessary to promote close coordination between its own activities and those of the Member States, both at the decision-making level and on the ground. Secondly, the Commission must endeavour to cooperate and coordinate its action with that of the receiving third country.³ Third, the Commission has the obligation to ensure that its financed operations are coordinated and consistent with those of international organisations and operations, in particular with those which form part of the UN. The willingness of potential partner NGOs to take part in the coordination system set up for a humanitarian operation is furthermore a criterion for assessing the suitability of eligible NGOs to become a partner.

Within the context of *civil protection*, the most important legal instrument is the Council Decision 2001/792/EC to facilitate reinforced cooperation between Member States in the event of a major emergency.

³ Preamble of 1996 Council Regulation, cf. 3.1.1.3 of the paper.



In contrast with humanitarian aid, civil protection activities take place both *within and outside the EU territory* and are delivered by the Member States' intervention teams. As such, they are not supported by a Community financial instrument. Within this context, the Community has established a civil protection mechanism which facilitates exchange of information, communication and coordination between the States participating in the mechanism. The adopted facilitating instrument is the MIC or the Monitoring and Information Centre.

The regulatory framework for civil protection activities sets out the respective obligations of the affected Member State, the States participating in the mechanism and the Commission. Of particular IDRL relevance are the detailed provisions concerning requests for civil protection assistance from the mechanism. First, within the Community, an affected Member State can request assistance either directly from other Member States or indirectly from them through the MIC. As such, the Community's civil protection mechanism can only be activated through a formal request to the MIC. Requests should be as specific as possible and, for instance, provide information on the location of the disaster, the specific needs of the affected state and the support requested.

The civil protection framework is also important because it enshrines specific rules on coordination. Together with the direction of civil protection contributions received through the mechanism, coordination is entrusted to the affected Member State when a disaster occurs within the EU territory, and to the Member State entrusted with the presidency of the Council when the mechanism responds to a disaster outside the EU. Civil protection assistance operations outside the EU may either be conducted as an autonomous assistance intervention or as a contribution to an intervention led by an international organisation. In the latter case, close coordination is ensured with UN OCHA.⁴

Finally, from an IDRL perspective, the regulatory framework on the Community's civil protection activities contains interesting provisions on facilitation of the intervention by the mechanism within the EU, costs of assistance provided by states participating in the mechanism, and compensation for damage.

At present, proposals are being submitted to strengthen the civil protection mechanism and to supplement it with a financial instrument,⁵ as well as to integrate humanitarian aid and civil protection in an ulterior stage.⁶ Whereas these proposals will certainly spark off a lot of political debate and media attention, it is so far too early to draw any conclusions for the future of disaster response framework established by the EU. As a matter of fact, the way towards potential adoption for the proposed recast, and positive receipt of the Barnier report, is paved with lengthy negotiations between the Member States in the Council. It is therefore equally premature for the Commission to adopt a position today on the potential changes tomorrow.

⁴ Cf. the tripartite agreement between the Commission, covering both humanitarian aid and civil protection and UNOCHA providing for standard operating procedures for ensuring coordination of their activities when intervening simultaneously outside the EU territory.

⁵ Cf. the recast proposal of Council Decision 2001/792/EC establishing a community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (4.1. of the paper).

⁶ Cf. the Barnier study with its recommendations (4.1. *in fine* of the paper).



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