

## **The Civil Protection Mechanism of the European Union: A Solidarity Tool at Test by the COVID-19 Pandemic – *Hélène De Pooter*\***

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After the first cases of what would later be named "COVID-19" were notified by China on December 31, 2019, the European Union (EU) reported its three first detected cases on January 24, 2020. As of April 18, 785,229 detected cases and 78,576 deaths had been reported by the 27 EU member states, while the total number of detected cases and deaths reported worldwide were 2,197,593 and 153,090 respectively. Besides the United States of America which has so far declared the highest number of deaths (37,054), the three countries having reported most deaths are EU member states: Italy (22,747), Spain (19,478), and France (18,681).<sup>[1]</sup>

The EU has reacted in various ways to tackle the COVID-19 pandemic in both its sanitary and economic dimensions. In particular, the European Commission (which is a supranational organ of the EU, independent from its member states), has proposed an unprecedented set of measures regarding public health, research, economy, the agri-food sector, travel, education, and an exit strategy. This *Insight* intends to shed light on a specific dimension of the EU response: the EU Civil Protection Mechanism. Since 2001, this mechanism has developed as a solidarity tool to foster assistance inside and outside the EU in case of natural or man-made disaster (earthquake, cyclone, forest fire, infectious disease outbreak, etc.). So far, it has responded—sometimes with

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much discretion—to more than 330 requests for assistance inside and outside the EU. Not surprisingly, it has been widely activated in the context of the COVID-19 pandemic to support EU as well as non-EU member states. Yet, the unprecedented scale of this disaster puts the EU Civil Protection Mechanism to test and reveals its limits.

### **Legal Basis and Goals of the EU Civil Protection Mechanism**

The EU Civil Protection Mechanism is currently governed by Decision 1313/2013/EU which was adopted in December 2013 and revised in March 2019.<sup>[2]</sup> The legal basis of this Decision is Article 196 of the Treaty on the Functioning of the European Union (TFEU), which states that the EU shall encourage cooperation between member states in order to improve the effectiveness of systems that prevent or protect from natural or man-made disasters. Decision 1313/2013/EU is further intended to contribute to the implementation of the "solidarity clause" of the TFEU, whereby the EU and its member states shall provide assistance to another member state, at its own request, in the event of a disaster.<sup>[3]</sup>

According to Decision 1313/2013/EU, one of the main purposes of the EU Civil Protection Mechanism is to protect people against all types of disasters, including acute health emergencies, occurring both inside and outside of the Union.<sup>[4]</sup> Concretely, this Mechanism allows a member state or a third country to request assistance through the Emergency Response Coordination Centre (ERCC), which is part of the European Commission's Humanitarian Aid and Civil Protection department (ECHO). When a disaster occurs outside the EU, the United Nations, its agencies, or any relevant international organization may also request assistance.<sup>[5]</sup> The ERCC is operational twenty-four hours a day, seven days a week, to promote rapid and coordinated responses to disasters by mobilizing human and material resources of the states that contribute to the Mechanism. EU member states are not the sole contributors; the Mechanism is open to the participation of certain third countries. Iceland, Montenegro, Northern

Macedonia, Norway, Serbia, and Turkey are thus "participating states."<sup>[6]</sup>

### **Components of the EU Civil Protection Mechanism**

The EU Civil Protection Mechanism has led to the development of the European Emergency Response Capability, renamed "European Civil Protection Pool" in March 2019.<sup>[7]</sup> EU member states and participating states voluntarily contribute to this pool by pre-committing response capacities that include civil protection experts, means of transport and equipment. As of February 2020, twenty-four European countries were contributing to this reserve.<sup>[8]</sup> Since February 2016, the European Civil Protection Pool has been supplemented by the European Medical Corps (EMC). It was set up in response to the shortcomings observed during the Ebola epidemic in West Africa (2014-2016), which led Germany and France to dispatch "White Helmets." By 2016, and since then, eleven EU member states have committed teams and equipment to the EMC.<sup>[9]</sup> The medical teams, means of transport, and equipment provided by states are subject to a certification process from the Commission.<sup>[10]</sup> Once these resources are registered in the European Civil Protection Pool, EU financial assistance covers an important part of the operational costs and costs related to transport.

In March 2019, the EU Civil Protection Mechanism was supplemented by a reserve of additional capacities: the rescEU reserve.<sup>[11]</sup> RescEU is intended to be mobilized only as a last resort, when national means are exhausted and resources registered in the European Civil Protection Pool are not available.<sup>[12]</sup> Until March 2020, the Commission limited the rescEU reserve capacities to forest firefighting airplanes and helicopters.<sup>[13]</sup>

For the period 2014-2020, the financial envelope for the implementation of the EU Civil Protection Mechanism was EUR 574,028,000.<sup>[14]</sup> In March 2019, considering the creation of the additional rescEU reserve, the Commission proposed to increase this amount to EUR 1.4 billion for the period 2021-2027.<sup>[15]</sup>

## **Activation of the EU Civil Protection Mechanism in the Context of Outbreaks prior to the COVID-19 Pandemic**

Since its inception in 2001, the EU Civil Protection Mechanism has responded to more than 330 requests for assistance inside and outside the EU. Regarding infectious diseases more specifically, it was activated to assist the victims of cholera in Haiti in November 2010 and during the Ebola outbreak in West Africa in 2014. This led to the rapid and coordinated deployment of experts and emergency supplies provided by member states. For instance, Belgian experts were deployed to Guinea between December 2014 and March 2015, and Luxembourg adapted aircrafts for medical evacuation of Ebola patients from Sierra Leone.

The European Medical Corps was deployed for the first time only three months after its creation. Medical and public health experts from Germany, Belgium, and Portugal were sent to Angola in May 2016 to help fight a yellow fever epidemic. More recently, it was deployed in December 2019 at the request of the World Health Organization in response to a measles outbreak in Samoa.<sup>[16]</sup>

## **Implementation of the EU Civil Protection Mechanism during the COVID-19 Pandemic**

***Repatriation of EU Citizens*** - The EU Civil Protection Mechanism has been widely solicited by member states to support their reaction to the COVID-19 outbreak. On January 28, 2020, the European Commission announced that the EU Civil Protection Mechanism had been activated at the request of France to repatriate EU citizens present in Wuhan (China).<sup>[17]</sup> France and Germany were thus able to repatriate almost 500 EU citizens with the financial support of the EU by the end of January. On February 21, Italy and the United Kingdom activated the Mechanism to repatriate EU and UK citizens held aboard the cruise ship *Diamond Princess*, moored in Yokohama (Japan). Austria, Denmark, and Germany equally requested assistance through the

Mechanism to organize repatriations. Since the beginning of the outbreak, more than 45,000 EU citizens, UK citizens, and citizens from participating states have been repatriated by means of flights, of which 75 percent have been financed by the EU.

***Assistance to China*** - The EU Civil Protection Mechanism also supported the supply of more than 56 tons of personal protective equipment to China (protective clothing, disinfectants, and medical masks) from Austria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, and Slovenia. The first twelve tons of equipment were transported by the same aircrafts that were mobilized to organize the repatriations of EU citizens at the end of January 2020. On February 14, Italy sent an additional 1.5 tons of protective equipment to the Chinese Red Cross. On February 19, France sent an aircraft with 20 tons of surgical masks, gloves, thermometers, and disinfectant, partly supplied by Estonia and Latvia. Austria did the same on February 23.<sup>[18]</sup>

***Failure to Assist Italy*** - On February 26, Italian authorities made their own request through the EU Civil Protection Mechanism to get additional protective equipment (masks, in particular). Although the Commission relayed this request, the EU member states did not provide any support to Italy. Retrospectively, this sheds a particular light on the assistance provided to China in preceding days and it questions the "spirit of solidarity" proclaimed in the TFEU. On March 14, because of vital needs in the EU, the Commission eventually ruled that exportation of medical equipment outside the EU would be subject to an export authorization by member states.<sup>[19]</sup>

***Specific RescEU Medical Stockpile*** - On March 19, 2020, while nearly 200,000 cases and 8,000 deaths had been reported worldwide, the Commission decided to create a specific rescEU medical stockpile as part of the existing rescEU reserve in order to

support EU member states in their response to the COVID-19 pandemic.<sup>[20]</sup> This specific stockpile was announced as comprising respirators, masks, laboratory equipment, treatment, and vaccines of which 90% would be financed by the Commission.<sup>[21]</sup> It was supposed to be hosted by member states, but its deployment would be managed by the Emergency Response Coordination Centre (ERCC) of the Commission.<sup>[22]</sup>

The decision to create a specific rescEU medical stockpile has come in quite late considering that the creation of the rescEU reserve dates back to March 2019. The Commission was at the time supposed to “define, by means of implementing acts the capacities rescEU shall consist of, taking into account identified and emerging risks, overall capacities and gaps at Union level, *in particular in the areas of emergency medical response.*”<sup>[23]</sup> Yet the Commission adopted an implementing decision on a rescEU medical stockpile only after COVID-19 was characterized as a pandemic by the World Health Organization, on March 11. The global shortage already constituted a significant obstacle to the effective constitution of this stockpile. Despite the March 24 announcement that “the Commission bid to ensure supply of personal protective equipment for the EU proves successful,” member states are still awaiting delivery of the goods at the time of writing.<sup>[24]</sup> Yet this last-minute massive procurement could have been anticipated months ago; not only was the COVID-19 pandemic known by experts as a plausible scenario but, as we have seen, the Commission and EU member states precisely had conceived the proper legal tools to constitute a medical reserve in advance and be better prepared to face such a catastrophe.

***Deployment of the European Medical Corps*** - Lastly, a team of European doctors and nurses from Romania and Norway was eventually dispatched as part of the European Medical Corps to the north of Italy to help local medical staff, on April 7.<sup>[25]</sup> This measure has been long expected by Italy which, as of April 6, had reported the highest number of deaths worldwide (15,889), ahead of Spain (12,418) and the United States of America (9,657). While

it appears very belated, the deployment of the European Medical Corps is an important symbol of European solidarity, which is definitively not an empty shell despite all the shortcomings revealed by the COVID-19 pandemic.

## Conclusion

On April 14, the Council of the European Union (composed of member states' ministers) could not but acknowledge that “[t]he measures provided for under the Union Civil Protection Mechanism are limited in scale and therefore do not allow a sufficient response or make it possible to address effectively the large-scale consequences of the COVID-19 crisis within the Union.”<sup>[26]</sup> Indeed, the remarkable solidarity tools conceived by the EU have unfortunately proven materially insufficient to respond efficiently to the COVID-19 pandemic. The EU should draw the consequences and adapt these tools to face major transnational catastrophe that could similarly arise in the future, whether of biological, chemical, or nuclear origin. Other regional organizations could be inspired by the European experience so that the whole world would be better prepared to face future disasters.

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### Notes

[1] European Centre for Disease Prevention and Control, <https://qap.ecdc.europa.eu/public/extensions/COVID-19/COVID-19.html>.

[2] Decision 1313/2013/EU of the European Parliament and of the Council of Dec. 17, 2013, revised by Decision 2019/420/EU of the European Parliament and of the Council of Mar. 13, 2019.

[3] Treaty on the Functioning of the European Union (TFEU), art. 222 and Council Decision 2014/415/EU of June 24, 2014, on the arrangements for the implementation by the Union of the solidarity clause.

[4] Decision 1313/2013/EU, *supra* note 2, art. 1, ¶ 2.

[5] *Id.* art. 15-16.

- [6] *Id.* art. 28.
- [7] Decision 2019/420/EU, *supra* note 2, art. 1, ¶ 6.
- [8] European Civil Protection Pool, [https://ec.europa.eu/echo/what/civil-protection/european-civil-protection-pool\\_en](https://ec.europa.eu/echo/what/civil-protection/european-civil-protection-pool_en).
- [9] European Medical Corps, [https://ec.europa.eu/echo/what-we-do/civil-protection/european-medical-corps\\_en](https://ec.europa.eu/echo/what-we-do/civil-protection/european-medical-corps_en).
- [10] Decision 1313/2013/EU, *supra* note 2, art. 11, ¶ 4. *See also* the European Commission Guidelines "Certification and Registration of response capacities in the European Civil Protection Pool" (Oct. 2019).
- [11] Decision 2019/420/EU, *supra* note 2, and Commission Implementing Decision (EU) 2019/1310 of Jul. 31, 2019.
- [12] Decision 2019/420/EU, *id.*, preamble, ¶ 13.
- [13] Commission Implementing Decision 2019/570/EU of Apr. 8, 2019.
- [14] Decision 2019/420/EU, *supra* note 2, art. 1, ¶ 11.
- [15] Proposal for a Decision of the European Parliament and of the Council amending Decision 1313/2013/EU, COM(2019) 125 final, Mar. 7, 2019.
- [16] European Medical Corps, *supra* note 9.
- [17] European Commission, Press Release, IP/20/142, Jan. 28, 2020.
- [18] European Commission, Press Release, IP/20/310, Feb. 23, 2020, and European Commission, Questions and Answers, QANDA/20/307, Feb. 24, 2020.
- [19] Commission Implementing Regulation (EU) 2020/402 of Mar. 14, 2020, making the exportation of certain products subject to the production of an export authorization.
- [20] Commission Implementing Decision (EU) 2020/414 of Mar. 19, 2020.
- [21] Decision 2019/420/EU, *supra* note 2.
- [22] European Commission, Press Release, IP/20/476, Mar. 19, 2020.
- [23] Decision 2019/420/EU, *supra* note 2, art. 1, ¶ 7.
- [24] European Commission, Press Release, IP/20/523, Mar. 24, 2020.
- [25] European Commission, Daily News 07/04/2020, MEX/20/617.
- [26] Council Regulation 2020/521/EU of Apr. 14, 2020.