



**COUNCIL OF
THE EUROPEAN UNION**

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**PROCIV 189
FIN 428**

NOTE

from : Permanent Representatives Committee (Part 2)

to: Council

No. prev. doc. : 12817/06 PROCIV 184 FIN 410

No. Cion prop. : 8436/05 PROCIV 51 FIN 143 + ADD 1

Subject : Proposal for a Council regulation establishing a Rapid Response and Preparedness Instrument for major emergencies (renamed "Civil protection financial instrument")

I. INTRODUCTION

1. Permanent Representatives Committee examined, at its meeting on 20 September 2006, the above Commission proposal, which has been renamed "Draft Decision establishing a civil protection financial instrument" (with PT supporting the Cion request for a regulation). Having come to a situation where no further progress was possible, mainly because of disagreement on questions concerning the facilitation and the provision of transport and equipment, COREPER agreed to submit those questions for consideration by Council. Following agreement on that issue, COREPER would continue its examination of the draft and finalize the text.

2. The aim of the proposal is to establish, during the period of validity of the Financial Framework 2007-2013, the financial basis for Community action in the field of civil protection. The proposed instrument would finance :
- the response and preparedness actions covered by the Civil Protection Mechanism¹, which is currently being revised under the Commission proposal for a Council Decision establishing a Community civil protection mechanism (Recast).²
 - actions presently covered by the Civil Protection Action Programme 1999-2006³, such as contributing to prevention (study of causes of disasters, forecasting, public information) and preparedness (detection, training, networking, exercises, mobilisation of expertise) inside the EU.
 - new areas such as financing additional equipment and transport in response actions under the civil protection mechanism.

The indicative amounts made available under the Financial Framework 2007-2013 are annually EUR 17 mio for actions inside the EU and EUR 8 mio for actions in third countries.

3. Since the current Civil Protection Action Programme will expire on 31.12.2006, and since the present proposal includes the financing for the Civil Protection Mechanism, a failure to formally adopt the present financial instrument before January 2007 would lead to difficulties in financing after that date civil protection activities currently covered by that programme, as well as the operation of the Mechanism.

¹ Council Decision 2001/792, EC, Euratom, of 23.10.2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, OJ L 297, 15.11.2001, p. 7.

² 5865/06 PROCIV 16 COSDP 43 SAN 18 + ADD 1.

³ Council Decision 1999/847/EC, of 9.12.1999 establishing a Community action programme in the field of civil protection, OJ L 327, 21.12.1999, p. 53, prolonged by Decision 2005/12/EC, OJ L 6, 8.1.2005, p. 7.

4. Modifications to the present Financial Instrument will lead to modifications in the draft Decision on the Recast of the Mechanism⁴. The two instruments were therefore examined in parallel. Following Council agreement on the present financial instrument, the draft on the Recast will be amended accordingly. COREPER intends to submit to Council its report on the Recast once the Opinion of the European Parliament, expected for the end of October 2006, is available.
5. DK/UK entered a parliamentary scrutiny reservation on the present draft decision.
6. The European Parliament issued its opinion on this draft financial instrument on 14 March 2006.⁵
7. This document contains :
 - in Part II: the main question outstanding submitted to Council: transport and equipment,
 - in Annex I: the draft Council Decision,
 - in Annex II: texts proposed by the Commission and supported by the Portuguese delegation in order to give the instrument the legal form of a regulation,
 - in Annex III: draft statements for entry in the minutes of the Council.

⁴ Latest version in 12157/06.

⁵ A6-0027/2006, not yet published in the OJ.

II. MAIN QUESTION OUTSTANDING SUBMITTED TO COUNCIL : TRANSPORT AND EQUIPMENT

8. The main question outstanding is whether, and how, the Community should further facilitate the provision of equipment and of transport of civil protection assistance, judging this under the criteria of need and subsidiarity. ⁶
9. In this respect, the Commission proposed to enhance the effectiveness of the EU civil protection response by enabling the Community to:
- a) **support Member States in obtaining access to equipment and transport resources** by:
- **providing and sharing information on equipment and transport that can be made available by the Member States, with a view to facilitating their pooling (Art. 4/2/b/1),**
 - **assisting the Member States to access equipment and transport resources that may be available from other sources, such as the commercial market. The Commission intends to conclude -against a certain fee- framework contracts with brokerage firms to ensure permanent access to, and guaranteed availability of, specific types of transport or equipment (Art. 4/2/b/2),**
- b) **complement the transport and assistance by the Member States by financing additional resources for transport (Art. 4/2/c) and equipment, such as communications equipment or very specialised devices (Art. 4/2/d).**⁷

⁶ While the provision of equipment and transport remains the responsibility of the Member States, the current Decision on the Mechanism tasks the Monitoring and Information Centre (MIC) to a) receive and spread requests for assistance and to collect validated information on emergencies, b) facilitate the mobilisation of teams, assessment/coordination experts and other intervention support and c) facilitate transport.

In practice, the MIC also facilitates the pooling of transport and equipment made available by the Member States.

⁷ There is already agreement on providing the assessment/coordination experts with the necessary supporting equipment, in particular communication tools (Art. 4/2/a).

The Commission pointed out that this proposal affected neither the existing competencies within EU cooperation nor the responsibility of Member States for ensuring the timely transport of civil protection assistance and for providing the required equipment. Past experience had shown an increasing need for the Community to play a supporting and facilitating role and, where necessary, to complement the resources provided by Member States by temporarily hiring transport resources or vital equipment. These provisions were considered to be a prerequisite for the development of an EU rapid response capability, as requested by the European Council and the European Parliament. Transport was shown to be the main problem undermining the effectiveness and speed of the EU's civil protection response to major emergencies.

10. The following positions were taken by delegations :

- a) DE/EE/NL/SE/UK opposed the actions described in paragraph 9 , notwithstanding the criteria suggested as a compromise in paragraph 10 b) below.

As they were not convinced of the need for the proposed measures, these delegations would be ready to adopt the instrument by the end of 2006 only if the provisions described in paragraph 9 would be taken out of the text and if a structured and comprehensive **analysis of the transport deficits** during past emergencies were carried out first, in order to :

- identify the incidents in which transport had been lacking and
- study what had been the reasons for this,
- what options could have solved the problem, and
- which of these options could have been feasible.

As soon as that analysis was completed, the discussion on the financing of transport and equipment could be reopened on the basis of a new draft decision which could then be adopted by the Council at a later stage.

These delegations also highlighted the **subsidiarity principle** according to which it was for each Member State to develop and finance its own emergency-response capacities, so that there would be no need for Community finance.

Finally, Community finance would be contrary to the **principle "the recipient pays the bill"** according to which the cost of remedying a disaster should be paid by the affected country, unless the offering country waives the bill for humanitarian reasons.

b) All other delegations recognized the need for the proposed actions. They, as well as the Commission, agreed to the Presidency compromise proposal reflected in the annexed draft, according to which the above actions would be subject to **strict criteria aiming at making the provision of transport and equipment a real "safety net"** that would not only be a check on concrete needs, but also avoid disturbance of the market, or detracting Member States from their responsibility to create sufficient capacities :

- use of the transport and equipment solely by the teams of the Member States,
- vital necessity of that transport and equipment for ensuring the effectiveness of the response,
- exhaustion of all other possibilities for finding transport or equipment through pooling or through cooperation with the military forces,
- respect of the rules of the Financial Regulation, in particular regarding the principles of economy, efficiency and effectiveness, ⁸
- the Commission would administer the system and Member States could exercise an "ex post" control, both under implementing rules to be decided through a regulatory committee procedure.

⁸ This includes also the element of cost-effectiveness, which should be a central concern in any decision to finance transport or equipment,

BE/GR/FR/IT/PT/Cion could accept the Presidency proposal as a **compromise** only. They would prefer deleting the criteria altogether, as they could make the system slow and unworkable, so that it did not meet the June 2005 European Council's request for an EU-Rapid Response Capability. They also felt that the questions concerning the implementation of the instrument should be addressed in the committee procedure.

The delegations accepting the Presidency compromise stated that the Council was already now in the position to take an informed decision on the matter and were therefore opposed to an adoption of the instrument without the provisions on transport and equipment described in paragraph 9. They supported the Commission's view that the requested **deficit analysis** had already been undertaken through the systematic lessons learned meetings with all Member States and other partners following each major emergency, the Commission's January 2005 survey of the needs and existing markets in the field of air transport for members of Community intervention teams ⁹, the impact assessment added to the Commission proposal, and informal papers submitted by the Commission in July and September 2006¹⁰. All these studies showed that :

- there existed serious transport problems, as shown in recent disasters,
- the reasons for the shortcomings had been threefold : organisational or coordination problems, lack of capacities and lack of finance.
- the organisational/coordination shortcomings could be addressed through the proposals on sharing or pooling Member States' resources in Art. 4/2/b/1. The lack of capacities could be remedied by the brokering in Art. 4/2/b/2. The lack of finance led to the proposal to provide Community financing for the hiring of transport resources and vital equipment in Art. 4/2/c,
- it should be judged for each particular case which of these options is necessary and feasible.

Moreover, they cautioned against a too strong a focus on the deficits in past emergencies as each emergency was different and gave rise to specific challenges.

⁹ http://ec.europa.eu/environment/civil/prote/air_transport_survey_final.pdf

¹⁰ DK could accept a further deficit analysis, but not as a pre-condition for adopting the Decision.

Finally, these delegations and the Commission saw the proposal as an expression of **EU solidarity**. They argued that the test of subsidiarity was met by the proven need for Community finance. Regarding the principle of "the recipient pays the bill", the criteria described in 10 a) above justified the humanitarian exception to that principle.

11. DK agreed to the compromise proposal of the Presidency, but suggested that, in order to reach agreement among all Member States, **transport could only be financed for interventions in third countries**, where it has been lacking most acutely in the past.

EE/HU/SE/UK indicated flexibility to discuss this option further.

FR/ES/IT/PT/Cion opposed limiting the financing for transport and equipment to the civil protection assistance provided to third countries. This would effectively exclude EU citizens from the benefits of enhanced EU solidarity and cooperation in this field.

12. In Coreper, the following **additional compromise suggestions** were made :
- a reimbursement system within the EU,
 - earlier evaluation of the instrument together with a revision clause,
 - a "ceiling" expressing a certain percentage of the budget that can be used for the different types of finance.
13. Concluding, the Presidency maintained its proposal as a balanced compromise.
14. There are also a certain number of other questions outstanding, which are reflected in footnotes under the title and Articles 4/1/f and 4/2/b indent 1 of the draft Decision in Annex I, in the textual amendments in Annex II and in the footnote under the draft statement no. 2 to the Council minutes in Annex III. Coreper will continue examination of those questions following the Council meeting.

DRAFT ¹¹
COUNCIL [DECISION] ¹²
ESTABLISHING A CIVIL PROTECTION FINANCIAL INSTRUMENT
text with EEA relevance ¹³

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission ¹⁴,

Having regard to the Opinion of the European Parliament ¹⁵,

[Whereas] ¹⁶:

- (1) Under Article 3(1)(u) of the EC Treaty, the activities of the Community are to include measures in the sphere of civil protection.
- (2) To that effect, a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions was established by Council Decision 2001/792/EC, Euratom.

¹¹ **Bolds** and strikeouts mark the modifications in the Commission proposal regarding the recitals (8436/05) and changes with the previous document (12817/06) regarding the Visas, the Articles and the draft statements for the Council Minutes.

¹² Reservation by Cion supported by PT, who request a **regulation** and the textual amendments in Annex II.

¹³ Parliamentary scrutiny reservation by DK/UK.

¹⁴ OJ C [...], [...], p. [...].

¹⁵ Opinion of 14 March 2006, OJ C [...], [...], p. [...].

¹⁶ Coreper will examine the preamble when agreement will have been reached on the articles.

- (2a) **Council Decision 1999/0847/EC of 9 December 1999 establishing a Community action programme in the field of civil protection** ¹⁷, as amended by **Council Decision 2005/12/EC of 20 December 2004** ¹⁸, expires on 31 December 2006.
- (3) It is necessary to establish a **Civil Protection Financial Instrument** under which financial assistance may be given, as a contribution to improving the effectiveness of systems for preparing for and responding to major emergencies, in particular in the context of Decision 2001/792/EC, Euratom, **as well as to enhancing preventive and preparedness measures for all kinds of emergencies.**
- (4) This Instrument will ensure the visible expression of **European** solidarity towards countries affected by major emergencies by facilitating the provision of mutual assistance through mobilisation of Member States' intervention assets.
- (5) Major emergencies may result from **natural and man-made disasters, acts of terrorism and technological, radiological or environmental accidents.**
- (6) This Instrument should also contribute to the Community's rapid response capability to deal with the public health effects arising from major emergencies without, however, affecting the actions and measures provided for in Decision [...] of the European Parliament and of the Council establishing a **second** programme of Community action in the field of health [] (2007-2013) ¹⁹
- (6a) **This Instrument should not affect the consumer safety measures deriving from Decision [...] establishing a programme of Community action in the field of consumer policy (2007-2013)** ²⁰.

¹⁷ OJ L 327, 21.12.1999, p. 53.

¹⁸ OJ L 6, 8.1.2005, p. 7.

¹⁹ OJ L [...], [...], p. [...].

²⁰ OJ L [...], [...], p. [...].

- (7) [] **For reasons of coherence, actions falling under Council Decision [...] establishing the specific Programme “Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks for the Period 2007-2013” or relating to the maintenance of law and order and the safeguarding of internal security should not be covered by the Instrument.**
- (7a) **This decision should not apply to activities covered by the Council Regulation (EC) No 1257/96 on Humanitarian Aid. The mobilisation of equipment and transport for civil protection assistance by Member States in response to disasters shall be governed by this Decision. Where rapid response actions outside the Community form part of the overall Community humanitarian response, it is appropriate that actions under this Decision should be governed by the humanitarian principles established in Articles 1 and 7 (g) and recitals 6, 7, 8 and 12 of Regulation (EC) No 1257/96, i.e. that those actions should be non-discriminatory, independent, impartial and in accordance with the victim's needs and interests,**
- (7b) **Following the expiry, on 31 December 2006, of Decision No. 2850/2000/EC of the European Parliament and of the Council, of 20 December 2000, setting up a Community framework for cooperation in the field of accidental or deliberate marine pollution,²¹ this Decision should cover the response to accidental marine pollution emergencies through the Mechanism, the aspects of preparedness and prevention being covered by other instruments such as Regulation (EC) 1406/2002 establishing the European Maritime Safety Agency (EMSA), as amended by Regulation (EC) No 724/2004 of 31 March 2004.²²**
- (8) In order to ensure the effectiveness of the operation of the Instrument, it is appropriate that actions for which financial assistance is granted have a potential to make a practical and timely contribution to preparedness ~~for~~ and rapid response ~~to~~ **for** major emergencies. []

²¹ OJ L 332, 28.12.2000, p. 1.

²² OJ L 208, 5.8.2002, p. 1.
OJ L 245, 29.9.2003, p. 10.
OJ L 129, 29.4.2004, p. 1.

- (8a) **The Commission should provide appropriate logistical support for the expert teams it deploys.**
- (8b) **It is the responsibility of the Member States to provide equipment and transport for the civil protection assistance they offer in the framework of the mechanism. Member States should also provide adequate logistical support for the intervention teams or modules that they deploy.**
- (8c) **The Commission has however a role in supporting Member States by facilitating the pooling of Member States' transport resources and in assisting Member States to access equipment and transport resources that may be available from other sources, including the commercial market.**
- (8d) **The Commission should also be in a position to supplement, where necessary, the transport and equipment provided by Member States by financing , subject to certain criteria, additional transport and equipment necessary to ensure the timely delivery of the available assistance and the effectiveness of the civil protection response under the Community civil protection mechanism.**
- (9) The award of public procurement contracts and grants under this Decision should be implemented in accordance with Council Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ²³. Due to the specific nature of action in the field of civil protection, it is appropriate to provide that grants may also be awarded to natural persons.
- (10) Participation of third countries should be possible as this **may** increase the efficiency and effectiveness of the operation of the Instrument.

²³ OJ L 248, 16.9.2002, p. 1.

- (11) In order to improve the Commission's ability to follow the implementation of this Decision, it should be possible, at the initiative of the Commission, to finance expenditure related to the monitoring, control, audit and evaluation thereof.
- (12) Appropriate provision should be made in order to ensure adequate monitoring of the implementation of the actions receiving financial assistance under the Instrument.
- (13) Appropriate measures should also be taken to prevent irregularities and fraud and the necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulations (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the Communities financial interests ²⁴, and (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission ²⁵.
- (14) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission²⁶.
- (15) The application of this Decision should be evaluated regularly.
- (15a) The financial reference amount, within the meaning of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ²⁷, is inserted in this Decision for the entire duration of the programme, it being understood that this amount should be financed partly from subheading 3B - "Citizenship" - and partly from subheading 4 - "The EU as a global partner" - of the Financial Framework 2007-2013.**

²⁴ OJ L 312, 23.12.1995, p. 1

²⁵ OJ L 292, 15.11.1996, p. 2.

²⁶ OJ L 184, 17.7.1999, p. 23.

²⁷ 8594/06 + COR 1.

In line with point 38 of that Interinstitutional Agreement, this global amount, as well as the global amounts to come from the above-mentioned subheadings should only be taken as illustrating the will of the legislative authority and will not affect the powers of the budgetary authority as defined by the Treaty.

- (16) [The objectives of the proposed action cannot, in the light of the scale and effects of the actions to be financed under the Instrument, taking into account the benefits resulting from the operation of this Decision in terms of reducing the loss of human life, injuries, environmental, economic and material damage, be sufficiently achieved by the Member States **acting alone** and can therefore be better achieved at Community level.]²⁸ The Community may therefore adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the EC Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to attain these objectives.
- (17) The Treaty establishing the European Community and the Treaty establishing the European Atomic Energy Community do not provide powers for adopting this Decision other than those under Articles 308 and 203, respectively,

HAS ADOPTED THIS DECISION :

Article 1

Subject matter

1. This Decision establishes, for the period from 1 January 2007 to 31 December 2013, a civil protection financial instrument, hereinafter the “instrument”, to support and complement the efforts of the Member States for the protection, primarily of people, but also of the environment and property, including cultural heritage, in the event of natural and man-made disasters, acts of terrorism and technological, radiological or environmental accidents and to facilitate reinforced co-operation between the Member States in the field of civil protection.

²⁸ SE proposed following text : "**Since this area does not fall under the exclusive competence of the Community, the Community shall take action in accordance with the principle of subsidiarity, only if and insofar as** the objectives of the proposed action cannot [] be sufficiently achieved by the Member States [] and can therefore, **by reason of the scale or effects of the proposed action,** be better achieved at Community level.

2. It lays down the rules for the provision of financial assistance for actions in the field of the Community mechanism established by Council Decision 2006/XXX/EC, Euratom, establishing a Community civil protection mechanism (recast) (hereinafter the mechanism), for measures to prevent or reduce the effects of an emergency and for actions designed to enhance the Community's state of preparedness for responses to emergencies, including actions enhancing awareness of EU citizens.
3. It also makes special provisions to fund certain assistance in the event of a major emergency, in order to facilitate a rapid and effective response thereto.
4. This Decision shall take into account the special needs of isolated, outermost and other regions or islands of the Community in the case of an emergency.

Article 2

Scope

1. This Decision shall apply to preventive and preparedness measures for all kinds of emergencies inside the Community and in countries participating on the basis of Article 8 of this Instrument.
2. This Decision shall apply to actions to assist with the response to the immediate consequences of a major emergency regardless of its nature, including the response to accidental marine pollution emergencies through the Mechanism, inside or outside the Community, where a request is made for assistance in accordance with the mechanism.
3. This Decision shall not apply to the following:
 - (a) actions falling under Regulation (EC) No [...] establishing an Instrument for Stability;
 - (b) actions and measures falling under Decision [...] establishing a second programme of Community action in the field of health (2007-2013);²⁹

²⁹ 9905/06 COM(2006) 234 final.

- (c) actions and measures falling under Decision [...] establishing a programme of Community action in the field of consumer policy (2007-2013);³⁰
- (d) actions falling under Decision [...] establishing the specific Programme "Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks for the Period 2007-2013;
- (e) actions falling under Council Regulation (EC) no. 1257/96 on Humanitarian Aid ³¹, without prejudice to Article 4(2)(c) ;
- (f) actions falling under Regulation (EC) 1406/2002 establishing the European Maritime Safety Agency (EMSA), as amended by Regulation (EC) No 724/2004 of 31 March 2004. ³².

Article 3

Definitions

For the purpose of this Decision, the following definitions shall apply :

- (a) "emergency" means any situation which has or may have adverse impact on people, the environment or property;
- (b) "major emergency" means any situation which has or may have adverse impact on people, the environment or property and that may result in a call for assistance under the mechanism;
- (c) "prevention" means any action that supports Member States in preventing risks or reducing harm to people, the environment or property resulting from emergencies;

³⁰ 11601/06 COM(2006) 235 final.

³¹ OJ L 163, 2.7.1996, p. 1.

³² OJ L 208, 5.8.2002, p. 1.
OJ L 245, 29.9.2003, p. 10.
OJ L 129, 29.4.2004, p. 1.

- (d) "preparedness" means a state of readiness and capability of human and material means enabling them to ensure effective rapid response to an emergency, obtained as a result of action taken in advance;
- (e) "response" means any action taken under the mechanism during or after a major emergency to address its immediate consequences;
- (f) "early warning" means the provision of timely and effective information that allows action to be taken to avoid or reduce risks and ensure preparedness for effective response.

Article 4

Eligible actions and criteria

1. The following actions shall be eligible for financial assistance under the Instrument in the field of prevention and preparedness:
 - a) studies, surveys, modelling and scenario building in order :
 - to facilitate the sharing of knowledge, best practices and information and
 - to enhance prevention, preparedness, and effective response;
 - b) training, exercises, workshops, exchange of staff and experts, creation of networks, demonstration projects and technology transfer in order to enhance prevention, preparedness and effective response;
 - c) public information, education and awareness raising and associated dissemination actions, so as to minimise the effects of emergencies on EU citizens and to help those citizens protect themselves more effectively;
 - d) maintaining the functions provided by the Monitoring and Information Centre of the Mechanism (MIC) to facilitate a rapid response in the event of a major emergency;

- e) communication actions and measures to promote the visibility of the response of the Community;
- f) contributing to the [establishment and development]³³ of detection and early warning systems for disasters, including earthquakes and tsunamis, which may affect the territory of the Member States, to enable a rapid response by the Member States and the European Community; Those systems shall take into account and build upon existing information, monitoring or detection sources;
- g) establishment and maintenance of a secure communication system (CECIS) and tools to enable effective cooperation and sharing of information between the MIC and the operational contact points of the Member States and other participants in the context of the Mechanism;
- h) monitoring, assessment and evaluation activities;
- i) establishment of a programme of lessons learnt from interventions and exercises in the context of the Mechanism.

2. The following actions shall be eligible for financial assistance under the Instrument in the field of response under the Mechanism :

- a) dispatching assessment and coordination experts along with their supporting equipment, in particular communication tools, to facilitate the provision of assistance and co-operation with other actors present;

³³ DE/NL requested reading "*enhancement*".
DK/ES/FR/IT/PT/Cion opposed.
See draft statement in Annex III, no. 1.

- b) [supporting Member States in obtaining access to equipment and transport resources by:
- providing and sharing information on equipment and transport resources that can be made available by the Member States³⁴ with a view to facilitating the pooling of such equipment or transport resources,
 - assisting Member States to access equipment and transport resources that may be available from other sources, including the commercial market,
- c) complementing the transport provided by Member States by financing additional transport resources necessary for ensuring a rapid response to major emergencies. Such actions shall be eligible for financial assistance under this instrument only if the following criteria are met:
- i) the additional transport resources are necessary for ensuring the effectiveness of the civil protection response under the Mechanism;
 - ii) all other possibilities for finding transport under the Mechanism, including *litera b)* above, have been exhausted;
 - iii) the assistance to be transported :
 - has been offered to and accepted by a requesting ³⁵ country under the Mechanism;
 - is necessary to meet vital needs arising from the emergency;
 - complements the assistance provided by the Member States;
 - complements, for emergencies in third countries, the overall Community humanitarian response, where present;

³⁴ FR requested inserting : "*including military transport capabilities as appropriate*",
SE disagreed.

³⁵ DK suggested inserting "*third*", so that the financing of transport only apply to transport to third countries.

EE/HU/SE/UK indicated flexibility to discuss this option further.

FR/ES/IT/PT/Cion could not accept.

(See Introductory Part).

iv) the rules of Regulation (EC, Euratom) N° 1605/2002, hereinafter “the Financial Regulation”, have been met, in particular regarding the principles of economy, efficiency and effectiveness laid down in Article 27.

d) complementing the assistance provided by Member States by financing additional equipment resources necessary for ensuring a rapid response to major emergencies. Such actions shall be eligible for financial assistance under this instrument only if the following criteria are met :

i) the equipment :

- is necessary for ensuring the effectiveness of the civil protection response under the Mechanism;
- is necessary to meet vital needs arising from the emergency;
- complements the resources provided by the Member States;
- complements, for emergencies in third countries, the overall Community humanitarian response, where present;

ii) all other possibilities for finding equipment under the Mechanism, including litera b) above, have been exhausted;

iii) the rules of the Financial Regulation have been met, in particular regarding the principles of economy, efficiency and effectiveness laid down in Article 27.

3. The rules for implementing literas 2 b), c) and d) shall be adopted in accordance with the procedure referred to in Article 13(2a) of this Decision.

The Commission shall regularly report on the application of literas 2 b), c) and d) to the Committee set up pursuant to Article 13.

These rules will be revised as necessary in accordance with the procedure referred to in Article 13(2a).] ^{36 37}

Article 5

(Deleted)

Article 6

Beneficiaries

Financial assistance under this Decision may be granted to natural or legal persons, whether governed by private or public law. ³⁸

Article 7

Types of financial intervention and implementing procedures

1. Financial assistance under the Instrument may take the form of grants or public procurement contracts, awarded in accordance with Regulation (EC, Euratom) N° 1605/2002, hereinafter “the Financial Regulation”.
2. In the case of grants, the Commission shall adopt annual work programmes specifying the objectives, the schedule of the call or calls for proposals, the indicative amount involved, the maximum rate of financial intervention and the results expected.

³⁶ Reservation by DE/EE/NL/SE/UK on literas b), c) and d) and paragraph 3. These delegations requested a preliminary deficit analysis, after which examination of these texts could be reopened.

DK supported the deficit analysis, but not as a pre-condition for the adoption of the Decision. (See Introductory Part).

³⁷ BE/FR/GR/IT/PT/Cion would prefer deciding upon the criteria and the procedural conditions contained in this paragraph 2 in the framework of the committee procedure, but can accept the majority text as a compromise. (See Introductory Part).

³⁸ See draft statement in Annex III, no. 2.

3. In the case of public procurement, contracts including framework contracts for the purposes of mobilisation of the necessary means for implementing rapid response actions shall be included in the annual work programmes.
4. The annual work programmes shall be adopted in accordance with the procedure referred to in Article 13(2).
5. The budget under the Instrument shall be implemented by the Commission on a centralised basis and directly by its departments in accordance with Article 53(2) of the Financial Regulation.

Article 8

Participation of Third Countries

Participation in this instrument shall be open to candidate countries.

Other third countries may cooperate in activities under this instrument where agreements between these third countries and the Community so allow.³⁹

Article 9

Complementarity and consistency of Community action

1. Actions receiving financial assistance under the Instrument shall not receive assistance from other Community financial instruments.

The Commission shall ensure that the applicants for financial assistance under the Instrument and beneficiaries of such assistance will provide it with information about financial assistance received from other sources, including Community budgets, and about ongoing applications for receiving such assistance.⁴⁰

³⁹ See draft statement in Annex III, no. 3.

⁴⁰ Cion, supported by PT, maintained its proposal for a text reflecting a regulation (cf. Annex II).

2. Synergies and complementarity shall be sought with other instruments of the European Union or the Community. In the case of a response in third countries, the Commission shall ensure the complementarity and coherence of actions financed under this Decision and actions financed under Regulation (EC) No 1257/96.
3. Where assistance under the Mechanism contributes to a wider Community humanitarian response, actions receiving financial assistance under the Instrument shall be consistent with the humanitarian principles referred to in Regulation 1257/96.

Article 9a

Consistency with international organisations

The Commission shall ensure that actions financed by the Community are coordinated and consistent with those of international organisations and agencies, in particular those which form part of the United Nations system.

Article 10

Technical assistance at the initiative of the Commission

1. At the initiative of the Commission, the Instrument may also cover expenditure related to monitoring, control, audit and evaluation directly necessary for the implementation of this Decision.

Such expenditure may, in particular, cover studies, meetings, information activities, publications, expenditure on informatics networks (and related equipment) for the exchange of information and any other expenditure on technical and administrative assistance to which the Commission may need to have recourse for the purposes of the implementation of this Decision.

The expenditure referred to in the first and second subparagraphs may not exceed 4% of the budget.

2. The budget relating to the actions referred to in paragraph 1 shall be implemented by the Commission on a centralised basis and directly by its departments in accordance with Article 53(2) of the Financial Regulation.

Article 11

Monitoring ⁴¹

1. *(Deleted for being incompatible with the form of a decision.)*
2. The Commission shall ensure that contracts and grants resulting from this [Decision] will provide in particular for supervision and financial control by the Commission (or any representative authorized by it), if necessary, by means of on-the spot checks, including sample checks, and audits by the Court of Auditors.
3. The Commission shall ensure that for a period of five years following the last payment in respect of any action, the beneficiary of financial assistance will keep available for the Commission all the supporting documents regarding expenditure on the action.
4. On the basis of the results of the sample checks referred to in paragraph 1, the Commission shall ensure that, if necessary, the scale or the conditions of allocation of the financial assistance originally approved and also the timetable for payments will be adjusted.
5. The Commission shall ensure that every step necessary to verify that the actions financed are carried out properly and in compliance with the provisions of this Decision and the Financial Regulation will be taken.

⁴¹ Cion, supported by PT, maintained its proposal for a text reflecting a regulation (cf. Annex II).

Article 12

Protection of Community financial interests ⁴²

1. The Commission shall ensure that, when actions financed under the present Decision are implemented, the financial interests of the Community are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and by the recovery of the amounts unduly paid and, if irregularities are detected, by effective, proportional and dissuasive penalties, in accordance with Regulations (EC, Euratom) No 2988/95 and (Euratom, EC) No 2185/96, and with Regulation (EC) No 1073/1999 of the European Parliament and of the Council⁴³.
2. For the Community actions financed under this Instrument, Regulation (EC, Euratom) No 2988/95 and Regulation (Euratom, EC) No 2185/96 shall apply to any infringement of a provision of Community law, including infringements of a contractual obligation stipulated under the Instrument, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, by an unjustified item of expenditure.
3. The Commission shall ensure that the amount of financial assistance granted for an action will be reduced, suspended or recovered if it finds irregularities, including non-compliance with the provisions of this Decision or the individual decision or the contract granting the financial support in question, or if it transpires that, without prior Commission approval having been sought in writing, the action has been subjected to a change which conflicts with the nature or implementing conditions of the project.
4. If the time limits have not been observed or if only part of the allocated financial assistance is justified by the progress made with implementing an action, the Commission shall ensure that the beneficiary will be requested to submit observations within a specified period.

⁴² Cion, supported by PT, maintained its proposal for a text reflecting a regulation (cf. Annex II).

⁴³ OJ L 136, 31.5.1999, p. 1.

If the beneficiary does not give a satisfactory answer, the Commission shall ensure that the remaining financial assistance might be cancelled and that repayment of sums already paid be demanded.

5. The Commission shall ensure that any undue payment be repaid, together with interests on any sums not repaid in good time under the conditions laid down by the Financial Regulation.

Article 13

Committee

1. The Commission shall be assisted by the Committee composed of representatives of the Member States and chaired by the representative of the Commission, set up pursuant to Article 14 of Council Decision 2006/XXX/EC, Euratom, establishing a Community civil protection mechanism (recast), hereinafter “the Committee”.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(2) of Decision 1999/468/EC shall be set at three months.

- 2a. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall establish its rules of procedure.⁴⁴

⁴⁴ See draft statement in Annex III, no. 4.

Article 13a

Budgetary resources

The financial reference amount for the implementation of the instrument for the period 2007 to 2013 shall be EUR 175 million. Annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework. EUR 119 million shall derive from sub-heading 3B - "Citizenship" of the Financial Framework 2007-2013 and EUR 56 million from sub-heading 4 - "the EU as a global partner".

Article 14

Evaluation⁴⁵

1. Actions receiving financial assistance under the Instrument shall be monitored regularly in order to follow their implementation.
2. The Commission shall submit the following to the European Parliament and to the Council:
 - a) no later than 30 June 2010, an interim evaluation report on the results obtained and the qualitative and quantitative aspects of the implementation of this Decision;
 - b) no later than 31 December 2011, a communication on the continuation of this Decision;
 - c) no later than 31 December 2014, an ex-post evaluation report.

⁴⁵ Cion, supported by PT, maintained its proposal for a text reflecting a regulation (cf. Annex II).

Article 15
Application ⁴⁶

This Decision shall take effect on the day of its publication in the Official Journal of the European Union. It shall apply from 1 January 2007 to 31 December 2013.

Done at

For the Council
The President

⁴⁶ Cion, supported by PT, maintained its proposal for a text reflecting a regulation (cf. Annex II).

**TEXTS PROPOSED BY THE COMMISSION AND SUPPORTED BY THE PORTUGUESE
DELEGATION IN ORDER TO GIVE THE INSTRUMENT THE LEGAL FORM OF
A REGULATION**

Article 9/1/2

Complementarity and consistency of Community action

1./2 Applicants for financial assistance under the Instrument and beneficiaries of such assistance shall be required to provide the Commission with information about financial assistance received from other sources, including Community budgets, and about ongoing applications.

Article 11

Monitoring

- 1. Without prejudice to the audits carried out by the Court of Auditors in liaison with the competent national audit bodies or departments pursuant to Article 248 of the EC Treaty or Article 160(c) of the Euratom Treaty, or any inspection carried out pursuant to Article 279(1)(b) of the EC Treaty or Article 183(1)(b) of the Euratom Treaty, officials and other staff of the Commission may carry out on-the-spot checks, including sample checks, on actions financed under this Regulation.*
- 2. Contracts and grants resulting from this Regulation shall provide in particular for supervision and financial control by the Commission (or any representative authorized by it) and audits by the Court of Auditors, including on-the-spot, in accordance with the provisions of the Financial Regulation.*
- 3. For a period of five years following the last payment in respect of any action, the beneficiary of financial assistance shall keep available for the Commission all the supporting documents regarding expenditure on the action.*

4. *On the basis of the results of the sample checks referred to in paragraph 1, the Commission shall, if necessary, adjust the scale or the conditions of allocation of the financial assistance originally approved and also the timetable for payments.*
5. *The Commission shall take every step necessary to verify that the actions financed are carried out properly and in compliance with the provisions of this Regulation and the Financial Regulation.*

Article 12

Protection of Community financial interests

3. *The Commission shall reduce, suspend or recover the amount of financial assistance granted for an action if it finds irregularities, including non-compliance with the provisions of this Regulation or the individual decision or the contract granting the financial support in question, or if it transpires that, without prior Commission approval having been sought in writing, the action has been subjected to a change which conflicts with the nature or implementing conditions of the project.*
4. *If the time limits have not been observed or if only part of the allocated financial assistance is justified by the progress made with implementing an action, the Commission shall request the beneficiary to submit observations within a specified period. If the beneficiary does not give a satisfactory answer, the Commission may cancel the remaining financial assistance and demand repayment of sums already paid.*
5. *Any undue payment shall be repaid to the Commission. Interest shall be added to any sums not repaid in good time under the conditions laid down by the Financial Regulation.*

Article 15

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 1 January 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

DRAFT STATEMENTS FOR ENTRY IN THE MINUTES OF THE COUNCIL

1. Re Article 4, paragraph 1 f)

Repeating its conclusions of 18.7.2005 on European Civil Protection Capabilities⁴⁷ and its Tsunami Action Plan of 31.1.2005⁴⁸, the Council invites the Commission to submit as soon as possible more concrete proposals on enhancing detection and early warning systems in general, and in particular for the Mediterranean Sea and the Atlantic Ocean.

2. Re Article 6

[Recognising that action in the field of civil protection must be swift, effective and capable of responding to rapidly developing situations, the Council and the Commission agree on the need to pursue all possibilities within the framework of the Financial Regulation to minimise delays for payment and ensure a timely financing of civil protection actions.]⁴⁹

3. Re Article 8, subparagraph 2

By "agreements", the Council understands agreements under TEC Art 300.

⁴⁷ 10576/05.

⁴⁸ 5788/05.

⁴⁹ Scrutiny reservation by all delegations.

4. Re Article 13

The Council and the Commission agree that there is a need to review the rules of procedure of the Committee in view of the new activities envisaged in this instrument as well as modifications in the recast of the Civil Protection Mechanism. The question whether this will take the form of an amendment of the existing rules or new rules should be settled within the Committee. ⁵⁰

5. Re Decision

The Council invites the Commission to take into account, when implementing this Decision, the past resolutions and conclusions of the Council in the area of civil protection, in particular:

- the resolution of the Council of 25 June 1987 on the introduction of Community cooperation on civil protection ⁵¹,
- the resolution of the Council of 13 February 1989 on the new developments in Community cooperation on civil protection ⁵²,
- the resolution of the Council of 23 November 1990 on Community cooperation on civil protection ⁵³,
- the resolution of the Council of 23 November 1990 on improving mutual aid between Member States in the event of a natural or man-made disaster ⁵⁴,
- the resolution of the Council of 8 July 1991 on improving mutual aid in the event of a natural or technological disaster ⁵⁵,
- the resolution of the Council of 31 October 1994 on strengthening Community cooperation on civil protection ⁵⁶,

⁵⁰ Coreper stated that the work for new rules of procedure should be started immediately, so that the negotiations for the amendment of the rules or the creation of new rules can start within the Committee in autumn 2006.

⁵¹ OJ C 176, 4.7.1987, p. 1

⁵² OJ C 44, 23.2.1989, p. 3

⁵³ OJ C 315, 14.12.1990, p. 1

⁵⁴ OJ C 315, 14.12.1990, p. 3

⁵⁵ OJ C 198, 27.7.1991, p. 1

⁵⁶ OJ C 313, 10.11.1994, p. 1.

- the Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, of 26 February 2001, on strengthening the capabilities of the European Union in the field of civil protection ⁵⁷,
- the Council Resolution of 28 January 2002 on reinforcing cooperation in the field of civil protection training ⁵⁸,
- the Council Resolution of 19 December 2002 on special civil protection assistance to outermost and isolated regions, to insular regions, to regions which are not easily accessible, and to sparsely populated regions, in the European Union ⁵⁹,
- the Joint Declaration by the Council and the Commission, of 29 September 2003, on the use of the Community Civil Protection Mechanism in Crisis Management referred to in Title V of the Treaty on European Union ⁶⁰,
- the Council conclusions of 27 November 2003 on strengthening Community cooperation in the field of civil protection assistance ⁶¹,
- the Council Resolution of 22 December 2003 on strengthening Community cooperation in the field of civil protection research ⁶²,
- the conclusions of the Council of 4 October 2004 on strengthening the overall Civil Protection Capacity in the European Union ⁶³;
- the EU Solidarity Programme on the consequences of terrorist threats and attacks (revised/widened CBRN-Programme) ⁶⁴,
- the conclusions of the Council of 2 December 2004 on prevention, preparedness and response to terrorist attacks ⁶⁵;

⁵⁷ OJ C 82, 13.3.2001, p. 1.

⁵⁸ OJ C 43, 16.2.2002, p. 1.

⁵⁹ OJ C 24, 31.1.2003, p. 10.

⁶⁰ 10639/03.

⁶¹ OJ C 317, 30.12.2003, p. 1.

⁶² OJ C 8, 13.1.2004, p. 2.

⁶³ 11549/04.

⁶⁴ 15480/04.

⁶⁵ 15232/04.

- the conclusions of the Council of 7 January 2005 on the earthquake and tsunami in the Indian Ocean ⁶⁶;
- the European Union Action Plan of 31 January 2005 on the earthquake and tsunami in the Indian Ocean ⁶⁷;
- the Council conclusions of 18 July 2005 on improving European civil protection capabilities ⁶⁸.

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⁶⁶ 5187/05.

⁶⁷ 5788/05.

⁶⁸ OJ C 304, 1.12.2005, p. 1.