

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 5 March 2007

establishing a Civil Protection Financial Instrument

(Text with EEA relevance)

(2007/162/EC, Euratom)

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,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

(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 (the Mechanism) was established by Decision 2001/792/EC, Euratom ⁽²⁾.

(3) Council Decision 1999/847/EC of 9 December 1999 establishing a Community action programme in the field of civil protection ⁽³⁾ expired on 31 December 2006.

(4) It is necessary to establish a civil protection financial instrument (the Instrument) under which financial assistance may be given, both as a contribution to improving the effectiveness of response to major emergencies, in particular in the context of Decision 2001/792/EC, Euratom, and to enhancing preventive and preparedness measures for all kinds of emergencies such as natural and man-made disasters, acts of terrorism including chemical, biological, radiological and nuclear terrorism, and technological, radiological or environmental accidents, including the continuation of measures that were previously taken under Decision 1999/847/EC.

(5) In order to ensure continuity with Decision 1999/847/EC, this Decision should apply from 1 January 2007.

(6) The Instrument will ensure the visible expression of European solidarity towards countries affected by major emergencies by facilitating the provision of assistance through mobilisation of Member States' intervention assets.

(7) The isolated and outermost regions and some other regions or islands of the Community often have special characteristics and needs owing to their geography, terrain, and social and economic circumstances. These have adverse effects, hamper the deployment of assistance and intervention resources making it difficult to deliver aid and means of assistance, and create particular needs for assistance in the event of serious risk of a major emergency.

⁽¹⁾ OJ C 291 E, 30.11.2006, p. 104.

⁽²⁾ OJ L 297, 15.11.2001, p. 7.

⁽³⁾ OJ L 327, 21.12.1999, p. 53. Decision as amended by Decision 2005/12/EC (OJ L 6, 8.1.2005, p. 7).

- (8) This Decision should not affect actions falling under Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability ⁽⁴⁾, the public health measures adopted under Community legislation concerning Community action programmes in the field of health, nor the consumer safety measures adopted under Decision No 1926/2006/EC of the European Parliament and of the Council of 18 December 2006 establishing a programme of Community action in the field of consumer policy (2007-2013) ⁽⁵⁾.
- (9) For reasons of coherence, actions falling under Council Decision 2007/124/EC, Euratom of 12 February 2007 establishing for the period 2007 to 2013, as part of the General Programme on Security and Safeguarding Liberties, the specific Programme 'Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks' ⁽⁶⁾ or relating to the maintenance of law and order and the safeguarding of internal security should not be covered by this Decision.
- (10) This Decision should not apply to activities covered by Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid ⁽⁷⁾.
- (11) 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 ⁽⁸⁾ this Decision should cover the response to accidental marine pollution emergencies through the Mechanism. The preparedness and prevention aspects should be covered by other instruments such as Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing the European Maritime Safety Agency ⁽⁹⁾.
- (12) To ensure the effective operation of the Instrument, it is appropriate that actions for which financial assistance is granted have the potential to make a practical and timely contribution to prevention of and preparedness for emergencies and to response to major emergencies.
- (13) The Mechanism should be supported by an effective and integrated detection and early warning system that can alert Member States and the Community to disasters or threats of disasters that may affect the territory of the Member States. While decisions on the creation of such systems should be made under other specific instruments, the Instrument should, as the Mechanism is a user, contribute to the creation of such systems by indicating what is needed and by ensuring those systems are both interlinked and connected to the Mechanism. Once these systems are in place, the Mechanism should make full use of them and contribute to their development through all means that are otherwise available under this Decision.
- (14) The Commission should provide appropriate logistical support for the assessment and/or coordination experts it deploys.
- (15) 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.
- (16) The Commission has, however, a role in supporting Member States by facilitating the pooling of Member States' transport and equipment resources. The Commission could also assist the Member States to identify, and facilitate their access to, transport resources that may be available from other sources, including the commercial market. The Commission could assist the Member States to identify the equipment that may be available from other sources.
- (17) The Commission should also be in a position to complement, where necessary, the transport provided by Member States by financing additional transport necessary to ensure the timely delivery and effectiveness of the civil protection response under the Mechanism. Such financing should be subject to certain criteria and to reimbursement of part of the funding received.

⁽⁴⁾ OJ L 327, 24.11.2006, p. 1.

⁽⁵⁾ OJ L 404, 30.12.2006, p. 39.

⁽⁶⁾ OJ L 58, 24.2.2007, p. 1.

⁽⁷⁾ OJ L 163, 2.7.1996, p. 1. Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 30.10.2003, p. 1).

⁽⁸⁾ OJ L 332, 28.12.2000, p. 1. Decision as amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

⁽⁹⁾ OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 1891/2006 (OJ L 394, 30.12.2006, p. 1).

- (18) The award of public procurement contracts and grants under the Instrument should be implemented in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁰⁾ (the Financial Regulation). Due to the specific nature of action in the field of civil protection, it is appropriate to provide that financial assistance may also be awarded to natural persons. It is also important that the rules of that Regulation have been met, in particular regarding the principles of economy, efficiency and effectiveness laid down therein.
- (19) Participation of third countries in the Instrument should be possible.
- (20) Where the Mechanism is responding to a request for assistance outside the Community as a part of the overall Community humanitarian response, it is of particular importance that there be complementarity and coherence between actions under this Decision and actions financed under Regulation (EC) No 1257/96 and that actions under this Decision be governed by the humanitarian principles established in that Regulation, namely that those actions should, as is the general rule in civil protection, be non discriminatory, independent, impartial and in accordance with the victim's needs and interests.
- (21) Coordination and consistency with the actions of international organisations and agencies should be ensured for interventions in third countries.
- (22) To improve the Commission's ability to follow the implementation of this Decision, it should be possible, on the initiative of the Commission, to finance expenditure related to the monitoring, control, audit and evaluation thereof.
- (23) Appropriate provision should be made to ensure adequate monitoring of the implementation of the actions receiving financial assistance under the Instrument.
- (24) 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 Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the Communities financial interests ⁽¹¹⁾, Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽¹²⁾ and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽¹³⁾.
- (25) 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 Commission ⁽¹⁴⁾, with a distinction being made between those measures which are subject to the management procedure and those which are subject to the regulatory procedure, the latter, in certain cases, given the importance of the measures to be taken, being the most appropriate.
- (26) A financial reference amount, within the meaning of point 38 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽¹⁵⁾, is included in this Decision for the entire duration of the Instrument, without thereby affecting the powers of the budgetary authority as they are defined by the EC Treaty. It is 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.
- (27) The implementation of this Decision should be evaluated regularly.

⁽¹⁰⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

⁽¹¹⁾ OJ L 312, 23.12.1995, p. 1.

⁽¹²⁾ OJ L 292, 15.11.1996, p. 2.

⁽¹³⁾ OJ L 136, 31.5.1999, p. 1.

⁽¹⁴⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽¹⁵⁾ OJ C 139, 14.6.2006, p. 1.

(28) Since the objectives of this Decision cannot be sufficiently achieved by the Member States acting alone and can therefore, by reason of the scale and effects of the actions to be financed under the Instrument, taking into account the benefits in terms of reducing the loss of human life, injuries, environmental, economic and material damage, be better achieved at Community level, the Community may 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 achieve those objectives.

(29) The EC Treaty and the Euratom Treaty provide for no powers, other than those under Articles 308 and 203, respectively, for the adoption of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

1. This Decision establishes a Civil Protection Financial Instrument (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 cooperation between the Member States in the field of civil protection.

The Instrument shall cover the period from 1 January 2007 to 31 December 2013.

2. This Decision lays down the rules for the provision of financial assistance for:

(a) actions in the field of the Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (the Mechanism);

(b) measures to prevent or reduce the effects of an emergency; and

(c) actions designed to enhance the Community's state of preparedness for responses to emergencies, including actions enhancing EU citizens' awareness.

3. This Decision makes special provisions to fund certain transport resources in the event of a major emergency, 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 7.

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 1717/2006;

(b) actions and measures falling under Community legislation concerning Community action programmes in the field of health;

(c) actions and measures falling under Decision No 1926/2006/EC;

(d) actions falling under Decision 2007/124/EC, Euratom;

(e) actions falling under Regulation (EC) No 1257/96, without prejudice to Article 4(2)(c) of this Decision;

(f) actions falling under Regulation (EC) No 1406/2002.

Article 3

Definitions

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

(a) 'emergency' means any situation which has or may have an adverse impact on people, the environment or property;

- (b) 'major emergency' means any situation which has or may have an adverse impact on people, the environment or property and that may result in a call for assistance under the Mechanism;
- (c) 'response' means any action taken under the Mechanism during or after a major emergency to address its immediate consequences;
- (d) 'preparedness' means a state of readiness and capability of human and material means enabling them to ensure an effective rapid response to an emergency, obtained as a result of action taken in advance;
- (e) 'prevention' means any action that supports Member States in preventing risks or reducing harm to people, the environment or property resulting from emergencies;
- (f) 'early warning' means the timely and effective provision of information that allows action to be taken to avoid or reduce risks and ensure preparedness for an effective response.
- (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 Community's response;
- (f) contributing to the development of detection and early warning systems for disasters which may affect the territory of the Member States, to enable a rapid response by the Member States and the Community, as well as to the establishment of such systems through studies and assessments on the need for and feasibility of those systems and through actions to promote their interlinkage and their linkage to the MIC and the CECIS system referred to in point (g). Those systems shall take into account and build upon existing information, monitoring or detection sources;
- (g) establishment and maintenance of a secure common emergency communication and information system (CECIS) and tools to enable communication and sharing of information between the MIC and the contact points of the Member States and of other participants in the context of the Mechanism;

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 to:
 - (i) facilitate the sharing of knowledge, best practices and information; and
 - (ii) enhance prevention, preparedness, and effective response;
- (b) training, exercises, workshops, exchange of staff and experts, creation of networks, demonstration projects and technology transfer 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 EU citizens to protect themselves more effectively;

- (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 cooperation with other actors present;
- (b) supporting Member States in obtaining access to equipment and transport resources by:
 - (i) providing and sharing information on equipment and transport resources that can be made available by the Member States, with a view to facilitating the pooling of such equipment or transport resources;

- (ii) assisting Member States to identify, and facilitating their access to, transport resources that may be available from other sources, including the commercial market;
 - (iii) assisting Member States to identify equipment 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 falling in the scope of Article 1. Such actions shall be eligible for financial assistance under the 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 point (b), have been exhausted;
 - (iii) the assistance to be transported:
 - has been offered to and accepted by a requesting 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.
3. (a) The Member States requesting financial support for the transportation of their assistance shall reimburse at least 50 % of the Community funds received, not later than 180 days after the intervention;
- (b) Any financing provided under the Instrument shall not affect the responsibility of the Member States to protect people, property and the environment on their territory against disasters and shall not release Member States

from their duty to endow their civil protection systems with sufficient capabilities to enable them to cope adequately with disasters of a magnitude and nature that can reasonably be expected and prepared for.

4. The rules for implementing paragraph 2 points (b) and (c) and paragraph 3 shall be adopted in accordance with the procedure referred to in Article 13(3).

The Commission shall regularly report on the application of paragraph 2 points (b) and (c) and paragraph 3 to the Committee referred to in Article 13.

These rules shall be revised as necessary in accordance with the procedure referred to in Article 13(3).

Article 5

Beneficiaries

Financial assistance under the Instrument may be granted to natural or legal persons, whether governed by private or public law.

Article 6

Types of financial intervention and implementing procedures

1. The Commission shall implement the Community financial assistance in accordance with the Financial Regulation.

2. Financial assistance under the Instrument may take the form of grants or public procurement contracts, awarded in accordance with the Financial Regulation.

3. 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.

4. 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.

5. The annual work programmes shall be adopted in accordance with the procedure referred to in Article 13(2).

6. 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 7

Participation of third countries

Participation in the Instrument shall be open to candidate countries.

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

Article 8

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 provide it with information about financial assistance received from other sources, including the general budget of the European Union, and about ongoing applications for receiving such assistance.

2. Synergies and complementarity shall be sought with other instruments of the 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 the Instrument 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 (EC) No 1257/96.

Article 9

Consistency with actions of international organisations and agencies

The Commission shall ensure that, for interventions in third countries, 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 and administrative assistance

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 to implement this Decision.

The expenditure referred to in the first and second subparagraphs shall 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

1. The Commission shall ensure that contracts and grants resulting from the implementation of the Instrument provide, in particular, for supervision and financial control by the Commission (or any representative authorised by it), if necessary by means of on-the-spot checks, including sample checks, and audits by the Court of Auditors.

2. 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 keeps available for the Commission all the supporting documents regarding expenditure on the action.

3. On the basis of the results of the on-the-spot 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 are adjusted.

4. The Commission shall ensure that every step necessary is taken to verify that the actions financed are carried out properly and in compliance with the provisions of this Decision and the Financial Regulation.

Article 12

Protection of Community financial interests

1. The Commission shall ensure that, when actions financed under the Instrument are carried out, the financial interests of the Community are protected by the application of measures to prevent 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, (Euratom, EC) No 2185/96 and (EC) No 1073/1999.

2. For Community actions financed under the Instrument, Regulations (EC, Euratom) No 2988/95 and (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 European Union or budgets managed by it by an unjustified item of expenditure.

3. The Commission shall ensure that the amount of financial assistance granted for an action is 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 is requested to submit observations within a specified period.

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

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

Article 13

Committee procedure

1. The Commission shall be assisted by a committee (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(3) of Decision 1999/468/EC shall be set at three months.

3. 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.

4. The Committee shall establish its rules of procedure.

Article 14

Budgetary resources

1. The financial reference amount for the implementation of the Instrument for the period 2007 to 2013 shall be EUR 189 800 000 at current prices.

Annual appropriations shall be authorised by the budgetary authority within the limits of the financial framework.

EUR 133 800 000 at current prices shall derive from subheading 3B 'Citizenship' of the financial framework and EUR 56 000 000 at current prices from subheading 4 'The EU as a global partner'.

2. No more than 50 % of the financial reference amount shall be allocated to actions falling under Article 4(2)(b) and (c).

Article 15

Evaluation

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 31 December 2008, a first evaluation report on the qualitative and quantitative aspects of the implementation of Article 4(2) points (b) and (c) and (3). This report shall take into account the results of an analysis conducted jointly by the Commission and the Member States, by 31 December 2007, on the transport and equipment needs experienced in major civil protection interventions and the measures taken under this Decision to address these needs;

If it appears necessary in the light of the conclusions of this report:

- (i) the Commission may present a proposal, as appropriate, to review the relevant provisions;
- (ii) the Council may invite the Commission to present a proposal with a view to the adoption of any appropriate amendment of those provisions before 30 June 2009;

(b) 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;

(c) no later than 31 December 2011, a communication on the continuation of this Decision;

(d) no later than 31 December 2014, an *ex post* evaluation report.

Article 16

Application

This Decision shall apply from 1 January 2007 to 31 December 2013.

Article 17

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 5 March 2007.

For the Council
The President
F.-W. STEINMEIER