

III

(Preparatory acts)

COURT OF AUDITORS

OPINION No 9/2020*(pursuant to Article 322(1)(a) TFEU)***accompanying the Commission's proposal for a Decision of the European Parliament and of the Council amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism (COM(2020) 220 final)***(2020/C 385/01)***CONTENTS**

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322(1)(a) thereof;

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union ⁽¹⁾;

Having regard to Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism as amended ⁽²⁾;

Having regard to the Commission's proposal for a Decision of the European Parliament and of the Council amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism ⁽³⁾;

Having regard to the Council's request of 18 June 2020 for an opinion on the abovementioned proposal;

HAS ADOPTED THE FOLLOWING OPINION:

Introduction

1. The COVID-19 pandemic is not the first time that Europe has faced a worldwide health crisis. But the consequences of COVID-19 have been unprecedented. The pandemic has revealed the need for the EU to be better prepared for future large-scale crises. Member States were caught unawares by the scale and speed of the unfolding crisis, and the capacities of their healthcare systems were put under severe strain. Medical supplies became scarce, and there were issues with storage capacity ⁽⁴⁾.

2. The Member States still bear the primary responsibility for preventing, preparing for and responding to disasters and crises on their territory. But the Commission has a supporting competence in the area of civil protection. This means that some action in this area is taken at EU level, and that the EU itself will play a role in responding to future health threats.

3. On 26 March 2020, the European Council met to discuss the EU's response to the pandemic. It issued a joint statement ⁽⁵⁾, stating that it wished for lessons to be learned from the COVID-19 crisis. They also stated that the time was ripe for 'a more ambitious and wide-ranging crisis management system' to be put in place in the EU, and invited the Commission to make proposals in that respect. The Commission issued such a proposal on 2 June 2020 amending Decision No 1313/2013/EU of the European Parliament and of the Council on a Union Civil Protection Mechanism ⁽⁶⁾ (UCPM ('the Proposal')).

4. On 18 June 2020, the Council of the European Union asked the ECA to provide an Opinion on the Proposal, as soon as possible. This Opinion fulfils that request and complements other Opinions we have issued on exceptional

⁽¹⁾ OJ L 193, 30.7.2018, p. 1.

⁽²⁾ OJ L 347, 20.12.2013, p. 924, amended by Regulation (EU) 2018/1475 of the European Parliament and of the Council of 2 October 2018 (OJ L 250, 4.10.2018, p. 1) and by Decision (EU) 2019/420 of the European Parliament and of the Council of 13 March 2019 (OJ L 771, 20.3.2019, p. 1).

⁽³⁾ (COM (2020) 220 final), (2020/0097 (COD)), 2.6.2020.

⁽⁴⁾ For detailed information, see Explanatory memorandum to the proposal (COM (2020) 220 final), Section 3, 4th bullet point: 'Regulatory fitness and simplification', p. 4.

⁽⁵⁾ Joint Statement of the Members of the European Council, 26 March 2020.

⁽⁶⁾ OJ L 347, 20.12.2013, p. 924.

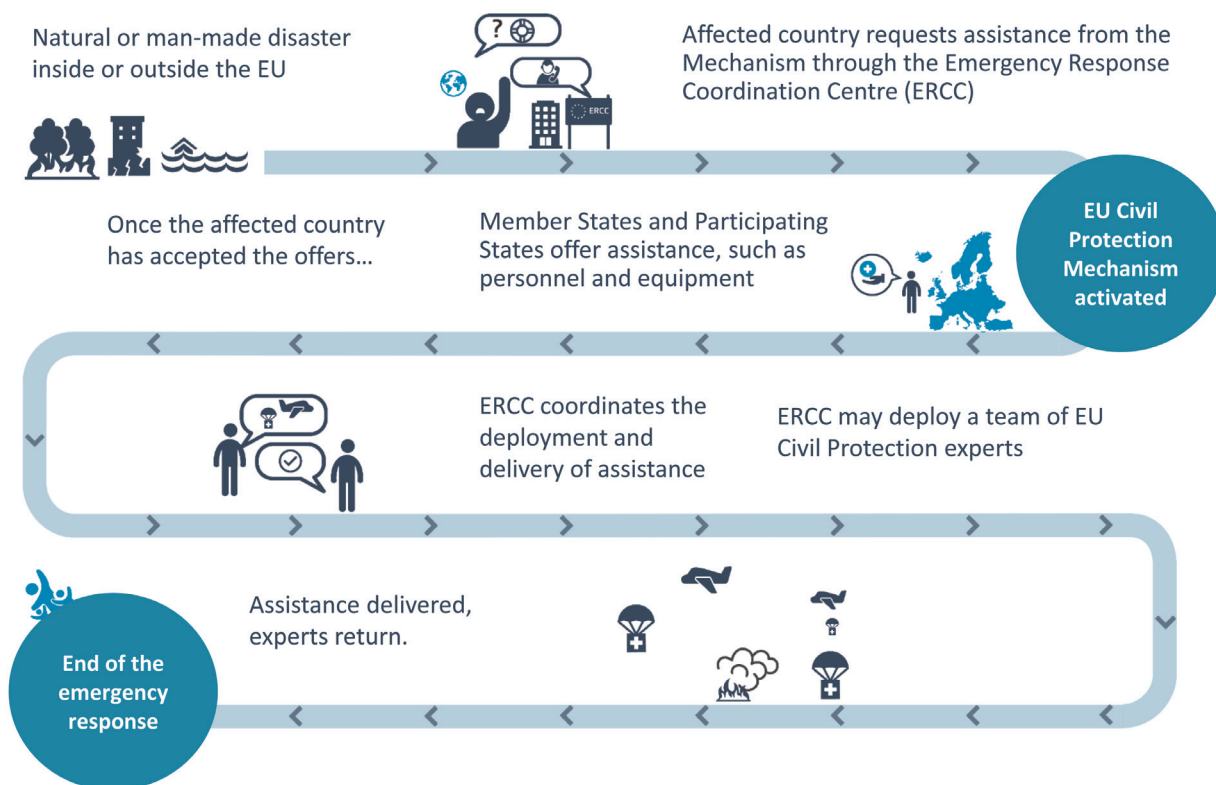
flexibility in the use of the European Structural and Investments Funds ⁽⁷⁾, on REACT-EU and the Common Provisions Regulation (CPR) ⁽⁸⁾, on the Just Transition Fund ⁽⁹⁾ and on the Recovery and Resilience Facility ⁽¹⁰⁾.

The Union Civil Protection Mechanism

5. Decision No 1313/2013/EU established the Union Civil Protection Mechanism (UCPM). It was intended that the UCPM would contribute to the implementation of Article 196 (on civil protection) and Article 222 (on solidarity between EU Member States) of the Treaty on the Functioning of the European Union. The UCPM was set up to improve cooperation between the European Union (EU) and the participating states ⁽¹¹⁾ with a view to preventing, preparing for and responding to natural and man-made disasters more effectively. Any country in the world can call for assistance within the UCPM framework. **Box 1** illustrates how the UCPM works.

Box 1

How does the EU Civil Protection Mechanism work?



Source: https://ec.europa.eu/echo/what/civil-protection/mechanism_en

6. The legal framework underlying the UCPM has been amended twice. One amendment was made by Regulation (EU) 2018/1475 ⁽¹²⁾. The second amendment was made by Decision (EU) 2019/420 ⁽¹³⁾, which established the

⁽⁷⁾ Opinion No 3/2020, adopted on 14.4.2020, published on 15.4.2020.

⁽⁸⁾ Opinion No 4/2020, adopted on 13.7.2020, published on 14.7.2020.

⁽⁹⁾ Opinion No 5/2020, adopted on 20.7.2020, published on 22.7.2020.

⁽¹⁰⁾ Opinion No 6/2020, adopted on 7.9.2020, published on 9.9.2020.

⁽¹¹⁾ Iceland, North Macedonia, Montenegro, Norway, Serbia and Turkey are also taking part in the Union Civil Protection Mechanism.

⁽¹²⁾ Regulation (EU) 2018/1475 of the European Parliament and of the Council of 2 October 2018 laying down the legal framework of the European Solidarity Corps and amending Regulation (EU) No 1288/2013, Regulation (EU) No 1293/2013 and Decision No 1313/2013/EU (OJ L 250, 4.10.2018, p. 1).

⁽¹³⁾ Decision (EU) 2019/420 of the European Parliament and of the Council of 13 March 2019 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism (OJ L 77I, 20.3.2019, p. 1).

‘rescEU’ mechanism in the light of cross-border forest fires and flooding on EU Member States’ territory. The latest revision⁽¹⁴⁾ also introduced provisions⁽¹⁵⁾ aimed at mitigating low-probability risks with high impact levels. Substantive action was due to be taken in this respect by December 2020. However, since the COVID-19 pandemic began before these provisions took effect, it has not been possible to assess their full potential.

Our opinion on the proposed changes

7. The overall objective of the Proposal⁽¹⁶⁾ is to ensure that the Union can provide better crisis and emergency support to its citizens in Europe and beyond. Our opinion contains remarks on the financial aspects and performance potential of the UCPM.

Remarks on financial aspects

8. In line with the principles of subsidiarity and proportionality⁽¹⁷⁾, the Commission should act ‘only where necessary at EU level and in a way that does not go beyond what is needed to resolve the problem’⁽¹⁸⁾. From this, it follows that the UCPM may be used to coordinate assistance only when a crisis threatens to overwhelm a country’s capacity to respond to it and in response to a request for assistance.

9. In other words, the role played by the UCPM will be to complement Member States’ own capacities, not to replace them. In order to respect the above-mentioned principles, there needs to be a thorough assessment of which response capacities are not adequately covered by Member States in order to identify the areas in which the UCPM might be called upon to provide support.

Adequacy of the overall budget increase insufficiently supported

10. The Proposal increases the budgetary resources of the UCPM for the 2021-2027 period to EUR 3,5 billion, in current prices. This is a 150 % increase on its original resources level of EUR 1,4 billion, in current prices. Some of this amount (EUR 1,3 billion) will come directly from the 2021-2027 Multi-Annual Financial Framework (MFF) (new paragraph 1(a) in Article 19). A further EUR 2,2 billion will be made available under the new European Recovery Instrument (ERI) (new Article 19(a)). These resources from the European Union Recovery Instrument will constitute external assigned revenue in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁽¹⁹⁾.

11. This very same 150 % increase in the UCPM’s budgetary resources for the 2021-2027 period was confirmed at the special meeting of the European Council held in July 2020: the Council’s decision raised the UCPM’s global budget allocation to EUR 3 billion, from an initial EUR 1,2 billion, in 2018 prices. In real terms, the amounts used in the Proposal and in the Council decision are the same, expressed in the former in current prices and in the latter in 2018 prices. Finally, EUR 1,1 billion was made available from the 2021-2027 MFF. A further EUR 1,9 billion was made available under the Next Generation EU (NGEU)⁽²⁰⁾ instrument. The Council also created a new budget posting for the UCPM. It is now under Heading 2 ‘Cohesion, Resilience and Values’, instead of Heading 5, which has been renamed ‘Security and Defence’ (see **Box 2**).

⁽¹⁴⁾ OJ L 771, 20.3.2019, p. 1.

⁽¹⁵⁾ Articles 6 (‘Risk management’), 21 (‘Eligible prevention and preparedness actions’), 23 (‘Eligible actions linked to equipment and operations’), 32 (‘Implementing acts’).

⁽¹⁶⁾ Building on Commission proposal (COM(2019) 125) of 7.3.2019, limited to the budgetary provisions of Decision No 1313/2013/EU in line with the Commission’s proposal for the 2021-2027 multiannual financial framework (COM(2018) 321) of 2.5.2018.

⁽¹⁷⁾ Article 5(1) of the Treaty on European Union (OJ C 202, 7.6.2016, p. 1).

⁽¹⁸⁾ Better Regulation Guidelines (SWD(2017) 350), 7.7.2017, p. 4, Chapter I.2, https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en



⁽¹⁹⁾ OJ L 193, 30.7.2018, p. 1.

⁽²⁰⁾ A European Recovery Instrument, now called Next Generation EU by the Council, has been proposed by the Commission on 28 May 2020 (COM(2020) 441) to support the EU’s recovery from the COVID-19 pandemic.

Box 2

MFF and NGEU – From the Commission’s initial proposal in May 2018 to the European Council agreement in July 2020

Commission proposals					Council concl.
MFF	ERI (NGEU)	UCPM	MFF & NGEU		
2018	2020				
May	May	June	July		
current prices	2018 prices	2018 prices	current prices	2018 prices	
(in billion euro)					
Heading 2					
‘Cohesion and Values’	442,4	392,0			
‘Cohesion, Resilience and Values’				377,8	
UCPM				1,1	
Heading 5					
‘Resilience, Security and Defence’	27,5	24,3			
‘Security and Defence’				13,2	
UCPM	1,4	1,2	1,3		
ERI -> NGEU			750,0	750,0	
Civil Protection/rescEU			2,0	1,9	
Total UCPM/Civil Protection	1,4	1,2	3,5	3,0	

Legend :  changes made by the Council in the budgetary postings
 changes between before/after COVID-19 (current prices/2018 prices)

Source: ECA. Information based on publicly available documentation

12. We assessed whether the Proposal contains a clear intervention logic, showing how EU funding will address identified needs and demonstrating the added value of EU support. The Commission noted that ‘preliminary lessons learnt from the COVID-19 outbreak, identified in close cooperation with relevant stakeholders, both at national and Union level, have fed into the proposal, thus contributing to a thorough evaluation of the impact of the proposed policies’ ⁽²¹⁾. In our view, this is an overstatement, because the Proposal was not subject to the usual impact assessment or stakeholder consultation procedures due to the urgency in responding to the COVID-19 outbreak.

13. Under the Proposal, the UCPM will take on further responsibilities ⁽²²⁾. But the Proposal does not contain any information on the estimated costs associated with those responsibilities. In our view, that information is necessary to justify the significant budgetary increase which is being proposed.

14. Considering the above, we cannot determine whether or not the proposed budget is appropriate for achieving the intended objectives.

⁽²¹⁾ Explanatory memorandum to the Proposal, Section 3, 3rd bullet point: ‘Impact assessment’, p. 4.

⁽²²⁾ For example, work to support cross-sectoral and trans-boundary approaches, the creation of strategic EU level reserves of medical equipment, the development of medical evacuation capacities, and the formation of emergency medical teams.

The introduction of direct procurement has the potential to speed up the EU crisis response

15. Under the UCPM as it is currently set up, the Commission may support the Member States through direct grants or through the joint procurement of rescEU capacities on behalf of Member States⁽²³⁾. Under the Joint Procurement Agreement⁽²⁴⁾, the European Commission coordinates the procurement exercise. It surveys Member States' needs, drafts technical specifications, organises the procurement procedure, assesses the tenders and awards the contracts. Member States can then place individual orders and purchase medical equipment under those contracts.

16. In crisis situations, existing legislation⁽²⁵⁾ allows exceptions in the constraints which must normally be respected in public procurement procedures. In particular, negotiated procedures without prior publication can be used 'in so far as it is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits [...] cannot be complied with'⁽²⁶⁾. Similarly, the detailed rules on procurement laid down in Annex I to the Financial Regulation state that contracting authorities 'may use the negotiated procedure without prior publication of a contract notice, regardless of the estimated value of the contract [...] in so far as it is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events it is impossible to comply with the time limits [...] and where the justification of such extreme urgency is not attributable to the contracting authority'⁽²⁷⁾. On 1 April 2020, the Commission issued guidance⁽²⁸⁾ stating that, 'for a situation such as the current COVID-19 crisis which presents an extreme and unforeseeable urgency, the EU directives do not contain procedural constraints'.

17. According to the Commission, direct procurement capacities by the Commission would have allowed for a faster reaction at EU level, as it took four weeks for overloaded Member States to launch their first procurement⁽²⁹⁾. So far, four COVID-19-related joint procurement procedures have been launched, with a combined maximum value of EUR 3,5 billion⁽³⁰⁾. However, the legislation in force governing joint procurement procedures has certain inherent limitations. One such limitation is that the Commission is responsible for signing the framework contract, but only the Member States can buy the equipment directly, according to a pre-established quota. This means that the Commission cannot build up a stockpile on its own, which limits the contribution it can make to the EU's overall level of preparedness.

18. Under the Proposal, the Commission will be given the authority to undertake procurement directly in emergencies similar to the COVID-19 crisis. In our view, such a move could allow the Commission to react more quickly in similar situations in future, and could reduce the operational burden on Member States. However, for direct procurement, if the UCPM is to fulfil its complementary role (see paragraph 9), it is essential that what is procured by the EU is fully complementary to what is procured in the Member States affected by the crisis. Certain important tools for ensuring this complementarity already exist; namely, Articles 5 and 6 of the UCPM Decision, which mandate regular risk assessments

⁽²³⁾ Article 12(3) of Decision No 1313/2013/EU on a UCPM as amended.

⁽²⁴⁾ Article 5 'Joint procurement of medical countermeasures' of Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (OJ L 293, 5.11.2013, p. 1), sets out the conditions for engaging into joint procurement procedures preceded by a Joint Procurement Agreement.

⁽²⁵⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65) (the 'Public Procurement Directive'); and Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1) (the 'Financial Regulation').

⁽²⁶⁾ Article 32(2)(c) of Directive 2014/24/EU.

⁽²⁷⁾ Point 11.1(c) of Annex I to the Financial Regulation.

⁽²⁸⁾ Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis (OJ C 108 I, 1.4.2020, p. 1).

⁽²⁹⁾ 'Even though the Commission immediately reacted to the outbreak by creating a Union medical stockpile, the first procurement was only launched some four weeks after the first confirmed cases of COVID-19 in Europe as Member States were busy dealing with the emergency and were not in a position to ensure a quick procurement and storage of rescEU capacities in Member State's facilities.' Explanatory memorandum to the Proposal, Section 3, 4th bullet point: 'Regulatory fitness and simplification', p. 5.

⁽³⁰⁾ European Commission, EU medical and health support: https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/eu-medical-and-health-support_en

as preventive measures; the requirement for Member States to provide information on their available operational capacities through the Emergency Response Coordination Centre; and the capacity assessments mandated by Article 34(2) of the UCPM Decision ⁽³¹⁾.

Indirect management can bring flexibility to the sound financial management of UCPM operations, but also risks

19. The Commission proposes to include indirect management ⁽³²⁾ as a method of budget implementation alongside the direct management mode it has used up to now. In practice, this means that the Commission will delegate the implementation of operations under the UCPM to bodies referred to in Article 62(1)(c) of the Financial Regulation. The indirect management mode is already used by the Commission in emergencies and humanitarian relief situations, both inside and outside the EU. In our view, this will increase flexibility in crises.

20. Under indirect management, the implementing partners follow their own administrative procedures when implementing actions. Consequently, the effectiveness of the actions implemented under this management mode will depend on the capacity and expertise of the implementing partners.

21. To this end, a thorough prior assessment of prospective implementing partners will be essential for ensuring the regularity and sound financial management of the UCPM operations implemented under indirect management. Article 154(3-4) of the Financial Regulation requires the Commission to carry out an assessment of the rules and procedures used by prospective implementing partners before it enters into a contract with them ⁽³³⁾.

22. Despite these requirements being imposed by the Financial Regulation, the ECA's recent audit work has detected some legality and regularity errors in emergency actions under the indirect management mode, such as the ineligibility of costs ⁽³⁴⁾.

Protection of the financial interests of the Union, and on-the-spot checks by the ECA

23. In general, we consider that our audit rights are sufficiently protected by the new recital 19 and the reference to the application of the Financial Regulation in Articles 25 and 27 of the Proposal. However, we have the concern that Article 27 may not make the extent of the ECA's audit rights sufficiently clear to readers in non-EU countries. Our concerns stem from the fact that the Article mentions that OLAF is entitled to carry out on-the-spot checks, but makes no reference to the ECA's right to do the same thing.

24. This lack of reference to the ECA's audit rights is a problem. It is established in the Treaties and in the Financial Regulation that the ECA has the right to carry out audits on the spot at all bodies which administer revenue or expenditure on the Union's behalf, and at the premises of recipients of Union funds. This is a familiar concept to readers who are conversant with the EU's institutional set-up. But for readers in non-EU countries, and third parties which are less familiar with EU legislation, a reference in the recitals may not be sufficiently clear. To remedy this, we suggest that the parenthesis 'including on-the-spot checks' should be moved to the first sentence of Article 27. It should then be deleted from the second sentence to avoid repetition.

⁽³¹⁾ 'The Commission shall submit a report to the European Parliament and to the Council [...] every two years. The report shall include information on progress made towards the capacity goals and remaining gaps [...], taking into account the establishment of rescEU capacities [...]. The report shall also provide an overview of the budgetary and cost developments relating to response capacities, and an assessment of the need for further development of those capacities.'

⁽³²⁾ New Article 25: 'The Commission shall implement the Union's financial support in accordance with the Financial Regulation in direct management or in indirect management with bodies referred to in Article 62(1)(c) of the Financial Regulation.'

⁽³³⁾ 'The Commission shall ensure a level of protection of the financial interests of the Union equivalent to the one that is provided for when the Commission implements the budget' (direct management mode). The Commission shall do so by carrying out an assessment of the systems, rules and procedures of the persons or entities implementing Union funds, if it intends to rely on such systems, rules and procedures for the implementation of the action, or by taking appropriate supervisory measures.'

⁽³⁴⁾ Annual report 2019 (to be published) (Chapter 7 – MFF3) – Box 7.3 – Salary costs overstated and EDF Annual report 2019 (to be published) – Box 5 – Examples of quantifiable errors.

Remarks concerning the performance potential of the UCPM***A minimum level of spending in each of the prevention, preparedness and response pillars is not guaranteed***

25. The EU crisis response strategy has three pillars: prevention, preparedness and response. Annex I of the UCPM Decision sets minimum funding percentages (with a flexibility of 8 percentage points in either direction) for each of these fundamental pillars, as follows:

- Prevention: 20 % +/- 8 percentage points, meaning between 12 % and 28 %.
- Preparedness: 50 % +/- 8 percentage points, meaning between 42 % and 58 %.
- Response: 30 % +/- 8 percentage points, meaning between 22 % and 38 %.

26. These percentages guarantee that a minimal amount will certainly be allocated to each pillar. In our view, this is a good thing. But in its Proposal, the Commission argues that the Annex I has hindered flexibility in responding to the COVID-19 outbreak. The Commission therefore proposes to delete the Annex. As a result, there will be no minimum financial allocation for each strategic pillar.

27. The Commission justifies this proposed deletion by stating that 'the percentages outlined in Annex I do not appear to ensure sufficient flexibility so that the Union can achieve the objectives it has set. During an emergency, the percentages in Annex I lead to undue administrative burden and may limit the flexibility needed to adapt to the disaster needs in any given year' ⁽³⁵⁾.

28. As the explanatory memorandum to the Proposal states, '[o]ver the long term, preventing and minimising the impact of disasters with better preparedness is more cost-effective than responding'. Preparedness is the backbone of crisis management; this has been a core concept since the inception of the UCPM. In our view, the deletion of Annex I implies that a minimum financial allocation for each strategic pillar is no longer guaranteed. We consider that the legislation should recall that the Commission should invest in all three strategic pillars (prevention, preparedness and response) of the disaster management cycle.

There are gaps in the monitoring of some of the UCPM's new activities

29. The Proposal contains only the following additional main indicator: 'the number of rescEU capacities established to provide assistance in overwhelming situations' ⁽³⁶⁾.

30. Some of the new activities and objectives proposed for the UCPM do not have any indicator or specific monitoring associated with them. The following are cases in point:

- directly and jointly procured expenditure,
- simplification/response/effectiveness of indirect management operations,
- reinforcement of cross-sectoral and societal preparedness,
- the new role in terms of operational coordination and monitoring of the Emergency Response Coordination Centre (ERCC),
- more investment in preparedness at Union level.

31. In our view, the Proposal should include additional indicators which specifically monitor the items described above.

⁽³⁵⁾ Explanatory memorandum to the proposal (COM(2020) 220 final), Section 5, 2nd bullet point, 'Detailed explanation of the specific provisions of the proposal', p. 6.

⁽³⁶⁾ Article (3)(2), point (b) of the Proposal.

32. In addition, since the Proposal does not set a minimum level of spending for each of the three key strategic pillars of the EU's emergency response operations strategy (prevention, preparedness and response), we consider that it would be helpful to include a mechanism for reporting actual spending under the UCPM for each of these pillars.

This Opinion was adopted by the Court of Auditors in Luxembourg on 28 September 2020.

For the Court of Auditors

Klaus-Heiner LEHNE

President
