



INSIGHT

# INTERNATIONAL AND EUROPEAN EMERGENCY ASSISTANCE TO EU MEMBER STATES IN THE COVID-19 CRISIS: WHY EUROPEAN SOLIDARITY IS NOT DEAD AND WHAT WE NEED TO MAKE IT BOTH HAPPEN AND LAST

CHARLOTTE BEAUCILLON\*

**ABSTRACT:** It is of course too early to draw conclusions about the European Union's response to the COVID-19 crisis in its Member States while we are still in the midst of the health crisis. On the other hand, it is already possible to correct the widely shared first impression that European solidarity had been shattered. The available public data systematized in Section II and the analyses in Section III show that European solidarity has been expressed in two ways: First, bilaterally between EU Member States; second, collectively under the recent impetus of the European Commission. To help explain this impression of the absence of a Union, Section IV proposes three paths that should be the subject of further research: public information and the policy of transparency of European public action, the Union's emergency-reaction autonomy in the face of third countries' *Realpolitik* strategies, and the gap between the expectations of the Union's citizens and its actual competences.

**KEYWORDS:** COVID-19 and the EU – emergency assistance – European solidarity – NATO – transparency – *realpolitik* – competence gap.

## I. INTRODUCTION

After the active centre of the COVID-19 pandemic shifted, according to the World Health Organization, from China to Europe, the European continent and the European Union were hit hard and unevenly by the wave of contamination. The response was a cacophony of national health emergency measures which revealed many of the flaws in European solidarity, giving rise to ample criticism. A series of events widely commented on in the European and international press raised many doubts about the ability of European solidarity to withstand the shock of COVID-19: Italy's appeal for help initially going unanswered by its European partners, the compensatory influx of emergency aid from

\* Professor, Faculty of Law, University of Lille, [charlotte.beaucillon@univ-lille.fr](mailto:charlotte.beaucillon@univ-lille.fr).



third countries, the sporadic cases of predation by one Member State of part of the emergency aid intended for another Member State, and the belatedness of a collective reaction of European States gathered within the Union.

The purpose of this *Insight* is to pave the way for post-COVID-19 emergency research, which will make it possible to learn from this crisis and hopefully to improve upon those mechanisms that have revealed themselves to be unsatisfactory. The angle taken here is that of the emergency assistance that was provided by EU Member States and the Union to some Member States hit particularly hard. The first step will be to take stock of the requests for assistance made by the three EU countries most affected by the COVID-19 pandemic and to examine the responses (Section II). These facts will then be compared with the mechanisms actually available within the European Union and beyond (Section III), in order to draw certain conclusions regarding their optimal operation and articulation in times of crisis and to put forward some proposals and avenues for further research (Section IV).

## II. REQUESTS FOR ASSISTANCE FROM CERTAIN EU MEMBER STATES AND REPLIES RECEIVED

Three European Union Member States – Italy, Spain and France – are among the world's most bereaved countries in terms of absolute numbers of deaths caused by COVID-19. In this context, Italy has served as a sad example to its neighbours, helping them improve their measures to protect the health of their populations. Italy is thus a topical example from within the European Union of how urgent emergency assistance needs can arise in the context of a health major emergency (II.1.). The Spanish and French cases are less well substantiated, but highlight other at times more discreet facets of the emergency assistance needed in the event of a pandemic (II.2.).

### II.1. ITALY

Italy registered its very first case of COVID-19 in Rome in late January 2020, and the first one in Lombardy in mid-February 2020. As early as the end of February, Italy asked the Commission to activate the European Union Civil Protection Mechanism in order to obtain personal protection equipment.<sup>1</sup> However, this request remained a dead letter, as no EU Member State responded to it.<sup>2</sup> It was only after the intervention of the European Commission, and more precisely accurately of the European Commissioner for the Internal Market Thierry Breton,<sup>3</sup> that Germany and France decided to authorize the ex-

<sup>1</sup> N. PIROZZI, *COVID-19 Emergency: Europe Needs a Vaccine*, available at [www.iai.it](http://www.iai.it).

<sup>2</sup> M. MASSARI (Italian Permanent Representative to the European Commission), *Italian ambassador to the EU: Italy needs Europe's help*, in *politico.eu*, 10 March 2020, [www.politico.eu](http://www.politico.eu).

<sup>3</sup> Twitter, 15th March 2020, [twitter.com](https://twitter.com).

port of masks,<sup>4</sup> gowns and other protection to Italy, despite the national requisition measures that had been pronounced.<sup>5</sup>

On 26 March 2020, Italy also submitted an emergency assistance request to NATO's Euro-Atlantic Disaster Response Coordination Centre (NATO – EADRC) for protective equipment (masks and gloves) and hospital equipment (respirators and monitors).<sup>6</sup> At the same time, the region of Lombardy requested bilateral assistance from China, Russia, Cuba and Venezuela.<sup>7</sup>

According to the public data available at the moment, which is necessarily limited, the various responses Italy has received to its requests for assistance are compiled in chronological order in the chart below.<sup>8</sup>

Asking country	Date of delivery	Framework	Helping country	Description of the aid granted	Source
Italy	12/03/20	Bilateral	China	9 doctors and several tons of medical equipment including ventilators, respirators, electrocardiographs and tens of thousands of masks	Press ( <i>Les Echos</i> )
Italy	21/03/20	Bilateral	Cuba	65 doctors and nurses specialized in Ebola and contagious diseases sent to Milan	Press ( <i>Les Echos</i> )

<sup>4</sup> Italian Ministry of Economic Development, *Sblocco delle esportazioni di dispositivi sanitari da Germania e Francia*, 15th March 2020, available at [www.mise.gov.it](http://www.mise.gov.it).

<sup>5</sup> For an analysis of the exports restrictions and trade issues deriving from the COVID-19 crisis, see B. PIRKER, *Rethinking Solidarity in View of the Wanting Internal and External. EU Law Framework Concerning Trade Measures in the Context of the COVID-19 Crisis*, in *European Papers – European Forum, Insight* of 25 April 2020, [www.europeanpapers.eu](http://www.europeanpapers.eu).

<sup>6</sup> NATO, ENCLOSURE 1 OPS(EADRCC)(2020)0079, *Overview of Outstanding Requests for International Assistance*, [www.nato.int](http://www.nato.int); NATO, Press release, 26 March 2020, [www.nato.int](http://www.nato.int).

<sup>7</sup> O. TOSSERI, *Coronavirus: la Lombardia demande l'aide de la Chine, de Cuba et du Vénézuéla*, in *Les Echos*, 20 March 2020, [www.lesechos.fr](http://www.lesechos.fr).

<sup>8</sup> Full references to the table sources: O. TOSSERI, *Coronavirus*, cit.; *Coronavirus, Mosca manda in Italia virologi e medici militari e attrezzature sanitarie*, in *La Stampa*, 22 March 2020, [www.lastampa.it](http://www.lastampa.it). NATO updated situation reports: [www.nato.int](http://www.nato.int); NATO, OPS(EADRCC)(2020)0072(REV1), *EADRCC Situation Report #1 – COVID-19*, 1 April 2020, [www.nato.int](http://www.nato.int); NATO, OPS(EADRCC)(2020)0073(REV1), *EADRCC Situation Report #2 – COVID-19*, 2 April 2020, [www.nato.int](http://www.nato.int); NATO, *EADRCC Situation Report #3 – COVID-19*, 3 April 2020, [www.nato.int](http://www.nato.int); NATO, OPS(EADRCC)(2020)0079, *EADRCC Situation Report #5 – COVID-19*, 8 April 2020, [www.nato.int](http://www.nato.int); NATO, OPS(EADRCC)(2020)0080, *EADRCC Situation Report #6 – COVID-19*, 9 April 2020, [www.nato.int](http://www.nato.int).

<b>Asking country</b>	<b>Date of delivery</b>	<b>Framework</b>	<b>Helping country</b>	<b>Description of the aid granted</b>	<b>Source</b>
<b>Italy</b>	21/03/20 22/03/20	Bilateral	Germany	7 tons of medical equipment and material from Germany arrived in Italy in the weekend of, including 300 ventilators	NATO EADRCC <i>Situation Report #2</i>
<b>Italy</b>	Unknown (From 22/03/20 on)	Bilateral	Russia	virologists, military doctors and equipment	Press ( <i>La Stampa</i> )
<b>Italy</b>	29/03/20	NATO EADRCC	Czech Republic	10.000 protective suits	NATO EADRCC <i>Situation Report #1</i>
<b>Italy</b>	30/03/20	Bilateral	Albania	30 doctors and nurses	NATO EADRCC <i>Situation Report #1</i>
<b>Italy</b>	Unknown (Before 02/04/20)	Bilateral	Poland (Military Medical Institute and the Polish Center for International Aid : NGO)	15 doctors and rescuers	NATO EADRCC <i>Situation Report #2</i>
<b>Italy</b>	Up to 01/04/20	Bilateral	Germany	20 heavy corona cases from Italy to intensive care treatment in German hospitals	NATO EADRCC <i>Situation Report #2</i>
<b>Italy</b>	01/04/20	NATO EADRCC	Turkey	Masks, personal protection equipment and sanitizers/disinfectants	NATO EADRCC <i>Situation Report #1</i>
<b>Italy</b>	Unknown (Before 08/04/20)	EU Civil Protection Mechanism	Austria	3.360 liters of hand disinfection liquid	NATO EADRCC <i>Situation Report #5</i>

Asking country	Date of delivery	Framework	Helping country	Description of the aid granted	Source
Italy	Unknown (Before 08/04/20)	Bilateral	Poland	15.750 liters of sanitizing liquid to Italy	NATO EADRCC Situation Report #5
Italy	Unknown (Before 08/04/20)	Bilateral	United States (US European Command)	Assisted with the delivery of medical supplies to hospitals in northern Italy: approximately 100 hospital beds, 100 mattresses, 10 stretchers, 40 bedside screens, 25 adjustable IV poles, 25 medical cabinets, several folding wheelchairs, and 900+ linens.	NATO EADRCC Situation Report #5 and 6 (Corr)
Italy	Unknown (Before 09/04/20)	Bilateral	Ukraine	5 tons of disinfectant liquid + 20 Ukrainian physicians working in Italy	NATO EADRCC Situation Report #6

This summary, however limited due to the necessarily partial nature of the data available in the midst of the health crisis, nevertheless seems to highlight the following characteristics. First, the assistance received is essentially organized on a bilateral basis. Second, NATO's Euro-Atlantic Disaster Response Coordination Centre often acts as a platform for coordination between requests and offers of assistance between Allied countries. More rarely assistance is channeled through the Centre directly. Third, the EU Civil Protection Mechanism is rarely used, as assistance between EU Member States is provided bilaterally without recourse to the European level.

## II.2. SPAIN AND FRANCE

Similarly to Italy, the first Spanish and French cases of the disease have been registered at the end of January 2020. According to the information available, the requests for assistance appear to have been fewer, or in any case more discreet.

Spain addressed NATO's Euro-Atlantic Disaster Response Coordination Centre before Italy. Its request mainly concerned the supply of test equipment and protective equipment (masks and gloves).<sup>9</sup> Spain has received various forms of assistance in this context. On 29 March, Spain, like Italy, received 10,000 protective suits from the Czech

<sup>9</sup> NATO, *Overview of Outstanding Requests for International Assistance*, cit.

Republic.<sup>10</sup> On April 1st, it received the aid shipment from Turkey containing masks, personal protection equipment and sanitizers/disinfectants at the same time as Italy. These first two responses were effected through the NATO-EADRCC.<sup>11</sup> The NATO Centre also coordinated various offers of bilateral assistance from Germany. The first was for the transfer of critical patients to German intensive care units and has apparently not been accepted to date. The second was the supply, to Spain and Italy, of 7 tons of medical equipment and material including 300 ventilators in total.<sup>12</sup> The third was the delivery of 50 German ventilators to Spain alone.<sup>13</sup> However, it is not clear whether these two deliveries of respirators, reported to NATO on two consecutive days, might actually correspond to a single delivery, the reports only specifying the share of respirators delivered to Spain out of the 300 jointly delivered to Spain and Italy.

France, on the other hand, has requested assistance from the EU Civil Protection Mechanism to provide consular support to EU citizens in late January.<sup>14</sup> As of 30 March 2020, this mechanism had facilitated the repatriation of 4382 EU citizens to Europe from Wuhan, Cape Verde, the Dominican Republic, Egypt, Georgia, Japan, Morocco, the Philippines, Tunisia, the USA and Vietnam.<sup>15</sup> Although perhaps less publicized, France has, like its neighbours Italy and Spain, benefited from various offers from bilateral partners to transfer critical patients to foreign intensive care units. Several transfers have taken place to neighbouring countries such as Germany,<sup>16</sup> Luxembourg, Switzerland<sup>17</sup> and Austria,<sup>18</sup> but have not been made to more distant countries that have offered assistance, such as the Czech Republic, in particular due to the capacity of French hospitals having improved in the meantime.<sup>19</sup>

<sup>10</sup> D. KOUIMTSIDIS, *The Czech Republic becomes the first Nato member to answer Spain's call for medical supplies*, *The Olive Press*, 30 March 2020, [www.theolivepress.es](http://www.theolivepress.es).

<sup>11</sup> NATO, *EADRCC Situation Report #1*, cit.

<sup>12</sup> NATO, *EADRCC Situation Report #2*, cit.

<sup>13</sup> NATO, *EADRCC Situation Report #3*, cit.

<sup>14</sup> European Civil Protection and Humanitarian Aid Operations, press release, *Coronavirus: EU Civil Protection Mechanism activated for the repatriation of EU citizens*, 28 January 2020, at [ec.europa.eu](http://ec.europa.eu).

<sup>15</sup> European Parliament Research Service, *Repatriation of EU citizens during the COVID-19 crisis, The role of the EU Civil Protection Mechanism*, April 2020, [www.europarl.europa.eu](http://www.europarl.europa.eu). As more information becomes available, the figures change considerably. See the difference, for example, with the press release of 23 March 2020, reporting 1381 repatriations through the European Civil Protection Mechanism: [ec.europa.eu](http://ec.europa.eu).

<sup>16</sup> NATO, *EADRCC Situation Report #2*, cit.

<sup>17</sup> *Allemagne, Suisse, Luxembourg... Ces pays qui accueillent des malades français*, in *L'Express*, 23 March 2020, [www.lexpress.fr](http://www.lexpress.fr).

<sup>18</sup> *Coronavirus. L'Autriche va soigner des malades français*, in *Ouest France*, 1 April 2020, [www.ouest-france.fr](http://www.ouest-france.fr).

<sup>19</sup> *Coronavirus: la France renonce finalement à transférer des patients en République Tchèque*, in *L'Express*, 6 April 2020, [www.lexpress.fr](http://www.lexpress.fr).

### III. AVAILABLE ASSISTANCE MECHANISMS AND THEIR USE IN THE COVID-19 CRISIS

Public information available to date suggests that three main mechanisms have been mobilized to respond to requests for assistance from European Union Member States in the COVID-19 crisis. It is now necessary to analyze their respective legal regimes in order to better determine their objectives, operating conditions and possible linkages. I will in turn examine bilateral assistance (III.1), assistance in the NATO framework (III.2) and assistance in the EU framework (III.3).

#### III.1. *AD HOC* ASSISTANCE

*Ad hoc* emergency assistance is undoubtedly the classic option in public international law. It is based on a simple mechanism of request and acceptance.<sup>20</sup> In most cases, a sovereign state appeals for assistance from other sovereign states, which are then called upon to respond individually, in whole or in part. Alternatively, in a context where a sovereign state has been affected by a scourge, whether or not it has previously reported its weakness, third sovereign states may make an offer of assistance. In practice, the encounter of requests for and offers of emergency assistance is generally carried out through diplomatic channels, either at the level of the embassy of the state offering assistance on the territory of the state requesting it, or at the highest level of the Executive. This is what happened in the Italian case, where a direct exchange between Giuseppe Conte and Vladimir Putin caused great debate within the government. Diplomatic channels were preferred in the case of assistance from China and Cuba, but also from several EU Member States, such as Germany and Poland.

This situation raises two questions. The use of diplomatic channels between EU Member States at the expense of available collective mechanisms such as the European Union Civil Protection Mechanism begs the question whether, in the current state of positive law, EU Member States have a duty or an obligation to give precedence to European mechanisms over their national diplomatic channels.<sup>21</sup> The practical advisability of such precedence will also have to be examined.

With regard to the use of diplomatic channels to bring in emergency aid from third countries, the mechanism is well established and poses no difficulty from the point of

<sup>20</sup> See, for example, the request in 2014 by the Presidents of Sierra Leone, Liberia and Guinea for a comprehensive and coordinated UN response to the outbreak of Ebola disease: *S/2014/669, Letter dated 15 September 2014 from the Secretary-General addressed to the President of the Security Council*, 15 September 2014. Today, the work of several learned societies in international law agrees to include epidemics in the field of humanitarian assistance: Institute of International Law, Bruges Session 2003, *Resolution on Humanitarian Assistance*, 2 September 2003, Article I(2); International Law Association, Sydney Conference 2018, *Report of the Global Health Law Committee*, esp. paras 25-30.

<sup>21</sup> See below, III.2. and IV.3.

view of public international law. However, the context in which such bilateral emergency aid by third States was offered to Italy raises questions. This third country aid was in fact channelled to Italy before any European bilateral or collective aid.

This highlights two important points. The first concerns Europe's ability to respond rapidly to the needs of a Member State of the Union, especially in a context where several Member States are severely affected by the same major emergency crisis. The second, related point touches upon the political consequences of such a delay in solidarity. From an internal point of view, these political consequences affect the trust that the citizens of one Member State can have in the other Member States, and hence in the European Union integration project. From an external point of view, these findings invite in-depth discussion on the autonomy of the EU in health and major emergencies issues.

### III.2. THE NATO EURO-ATLANTIC DISASTER RESPONSE COORDINATION CENTRE

According to the data laid out in Section I, which are based mainly on information made public by NATO between 1 April and 14 April 2020, NATO allegedly is the second most requested mechanism for organizing assistance to EU Member States.

The Euro-Atlantic Disaster Response Coordination Centre is the preferred civil protection response instrument in the Euro-Atlantic area. It was established in 1998 following Russia's suggestion in the framework of the multilateral Euro-Atlantic Partnership Council (EAPC) initiative, which brings together the Members of the Alliance and the Members of the Partnership for Peace. In 2004, 2007, 2009 and 2011, its mandate was expanded to receive requests for assistance from Afghanistan and countries in which NATO is militarily active, and then from Members of the Mediterranean Dialogue and the Istanbul Cooperation Initiative, as well as other international partners. It now includes sixty nine Allied and Partner countries.<sup>22</sup>

The Centre functions as a clearing house. It receives a request for assistance from one of its members, forwards it to members of the Alliance as well as to other organizations such as the UN (Office for the Coordination of Humanitarian Affairs) and the EU (Emergency Reaction Coordination Centre), and registers offers of assistance made in return. The requesting State retains full sovereignty to accept all, part or none of the bilateral offers made through this mechanism.<sup>23</sup>

It is noteworthy that in NATO's Situation Reports UN-OCHA is not mentioned among the institutional mechanisms mobilized to provide assistance to members of the European Union.

In addition, it is important to note that NATO situation reports are only an incomplete source of information as they do not relay intra-EU initiatives, such as the activation of the Civil Protection Mechanism for the repatriation of EU citizens to Europe by France.

<sup>22</sup> Euro-Atlantic Disaster Response Coordination Centre, Presentation, [www.nato.int](http://www.nato.int).

<sup>23</sup> NATO EADRCC Clearing House Mechanism, Infography, [www.nato.int](http://www.nato.int).



The EU-ERCC, via the Civil Protection Mechanism, is mentioned only once, in connection with the assistance provided by Austria to Italy. However, using the available data for the three Member States examined, numerous bilateral offers of assistance have been received from other EU Member States, including Germany, the Czech Republic, Poland, Austria, Belgium and Luxembourg. This raises the question of the extent to which international and European emergency assistance mechanisms should be co-ordinated so that Member States, perhaps in a spirit of sincere cooperation,<sup>24</sup> make privileged use of European channels. The question also arises as to what extent such political precedence would be useful, realistic and desirable from an operational point of view.

### III.3. THE EU CIVIL PROTECTION MECHANISM

The EU Civil Protection Mechanism was created in 2013 and takes the baton from the Civil Protection Mechanism set up in 2001 under Euratom, whose financial instrument expired in 2013.<sup>25</sup>

The Mechanism rests “on a Union structure consisting of an Emergency Response Coordination Centre (ERCC), a European Emergency Response Capacity (EERC) in the form of a voluntary pool of pre-committed capacities from the Member States, trained experts, a Common Emergency Communication and Information System (CECIS) managed by the Commission and contact points in the Member States”.<sup>26</sup> Like NATO’s EADRCC, the functioning of the EU Mechanism is based on the coordination of requests for assistance and responses offered by member and 6 other participating States.<sup>27</sup> We will see below that, unlike NATO, the European Mechanism operates both with regard to international humanitarian aid in the framework of the EU’s external relations and with regard to civil protection within its Member States.

The mandate of the Mechanism is rather broad: it “should cover primarily people, but also the environment and property, including cultural heritage, against all kinds of natural and man-made disasters, including environmental disasters, marine pollution and acute health emergencies, occurring inside or outside the Union”.<sup>28</sup> It “should also contribute to the implementation of Article 222 of the Treaty on the Functioning of the European Union”.<sup>29</sup>

<sup>24</sup> Art. 4, para. 3, TEU.

<sup>25</sup> Decision 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism, recital 2. On the Mechanism, see also H. DE POOTER, *Coronavirus: la Commission européenne crée une réserve médicale rescUE*, in *Dalloz Actualités*, 24 March 2020, [www.dalloz-actualite.fr](http://www.dalloz-actualite.fr).

<sup>26</sup> *Ibid.*, point 12.

<sup>27</sup> Iceland, Norway, Serbia, North Macedonia, Montenegro, and Turkey. EU Civil Protection Mechanism Coordination Process: [ec.europa.eu](http://ec.europa.eu).

<sup>28</sup> Decision 1313/2013, cit., recital 3.

<sup>29</sup> *Ibid.*, recital 4.

The Mechanism is based on Art. 196 TFEU, which first paragraph sets the role of the Union in the field of civil protection: “The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters. Union action shall aim to: (a) support and complement Member States’ action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union; (b) promote swift, effective, operational cooperation within the Union between national civil-protection services; (c) promote consistency in international civil-protection work”. Under this provision, the Union therefore has both internal and external competences, an allocation that is reflected in the Civil Protection Mechanism. As for the nature of these competences, according to Article 6(f) of the TFEU, when acting in the field of civil protection, the Union is limited to supporting, coordinating or supplementing the actions of the Member States.

This explains the articulation of the Mechanism with other existing international initiatives and national responsibilities: “The Union Mechanism constitutes a *visible expression of European solidarity* by ensuring a practical and timely contribution to prevention of and preparedness for disasters and the response to disasters and imminent disasters without prejudice to the relevant guiding principles and arrangements in the field of civil protection. This Decision should *therefore not affect the reciprocal rights and obligations of the Member States under bilateral or multilateral treaties*, which relate to the matters covered by this Decision, *nor Member States’ responsibility to protect people, the environment, and property on their territory*”.<sup>30</sup> The first part of this wording undoubtedly refers to the external competence of the European Union, whose action cannot prejudice the international initiatives of the Member States. The last part of this wording refers to the internal competence of the EU and recalls the Member States’ responsibility to protect their population.

With regard to external competences, this provision confirms that Member States are free to maintain their international agreements in parallel with the Mechanism, as is the case with the EADRCC in the NATO framework. It is also important to underline that the Union can use the Civil Protection Mechanism to provide assistance to third States. Where involved, the United Nations assumes an overall coordinating role. Coordination by the European Union is presented as a *sine qua non* for the effectiveness of the Union’s contribution to international aid.<sup>31</sup> In cases where assistance is part of humanitarian aid, the Union’s actions are based not only on the Mechanism but also on Council Regulation (EC) 1257/96.<sup>32</sup> The logic of the complementary competences set out in Art.

<sup>30</sup> *Ibid.*, recital 5, text underlined by the author.

<sup>31</sup> *Ibid.*, recital 14.

<sup>32</sup> Council Regulation (EC) 1257/96 of 20 June 1996, concerning humanitarian aid.

4, para. 4, TFEU in relation to humanitarian aid<sup>33</sup> then applies: “The Commission should ensure the effectiveness, coherence and complementarities of the overall Union response respecting the European Consensus on Humanitarian Aid”.<sup>34</sup>

With regard to internal competences, the Mechanism is designed to strengthen “the cooperation between the Union and Member States and facilitate (...) coordination in the field of civil protection, allowing more effective actions by reason of scale and complementarity. Where a disaster overwhelms the response capabilities of a Member State, that State may decide to appeal to the Union Mechanism to complement its own civil protection and other disaster response resources”.<sup>35</sup> This unequivocal formulation confirms that recourse to the European Mechanism remains a mere option for Member States, which may prefer other international assistance mechanisms such as NATO’s or, on the contrary, may not request any.

In 2019, the EU Civil Protection Mechanism was further complemented by the creation of RescEU, a tool designed “to provide assistance in overwhelming situations where overall existing capacities at a national level and those pre-committed by Member States to the European Civil Protection Pool are not, in the circumstances, able to ensure an effective response to the various kinds of disasters”<sup>36</sup> covered by the EU Civil Protection Mechanism. It is important to note the motivation behind the creation of RescEU, which seems almost premonitory: “Recent experience has shown that *reliance on voluntary offers of mutual assistance, coordinated and facilitated by the Union Mechanism, does not always ensure that sufficient capacities are made available to address the basic needs of people affected by disasters in a satisfactory manner, or that the environment and property are properly safeguarded. This is particularly the case when Member States are simultaneously affected by disasters that are both recurrent and unexpected, whether natural or man-made, and where collective capacity is insufficient*”.<sup>37</sup>

The above undoubtedly clarifies what can be expected of the European Union in the current state of positive law, and helps outline the division of competences between the Union and its Members: the coordination of Member States’ responses to activations of the Mechanism by other Member States, and the facilitation of a collective response at the level of the European Union by the Commission, possibly in the framework of RescEU.

<sup>33</sup> Art. 214 TFEU. By analogy with the development policy, which is of the same “complementary” nature, see B. VAN VOOREN, R. WESSEL, *EU External Relations Law: Text, Cases and Materials*, Cambridge: Cambridge University Press, 2014, p. 312.

<sup>34</sup> Decision 1313/2013/EU, recital 14; Joint Statement of 30 January 2008 by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, *European Consensus on Humanitarian Aid*.

<sup>35</sup> Decision 1313/2013, recital 24.

<sup>36</sup> Decision (EU) 2019/420 of 20 March 2019 of the European Parliament and of the Council of 13 March 2019 amending Decision 1313/2013/EU on a Union Civil Protection Mechanism, Art. 12 replaced.

<sup>37</sup> *Ibid.*, recital 4, text underlined by the author.

According to the available data, the Art. 222 TFEU Solidarity Clause has not been activated by a EU Member State. As shown in Section I, two requests for activation of the European Civil Protection Mechanism have nevertheless been made.<sup>38</sup> The first, made by France for the repatriation of EU citizens, was quickly implemented. The second, made by Italy, was reportedly not acted upon for almost a month. The data partially available to date show that various EU Member States have subsequently partially responded to Italian requests, but without going through the Union Mechanism, with the exception of Austria. Further research should undoubtedly scrutinize this trend and understand why Member States did not use the mechanism they had created for this purpose within the Union framework.

As for the Union's own initiatives in the field of emergency and civil protection, the Commission took action at the beginning of April with various proposals, consisting amongst others of activating emergency aid to cope with the COVID-19 pandemic on the basis of Art. 122 TFEU in the framework of economic policy,<sup>39</sup> mobilizing the margin of manoeuvre for contingencies to provide emergency aid to the Member States and strengthening the Civil Protection Mechanism/RescEU,<sup>40</sup> and rectifying the general budget of the Union to this end.<sup>41</sup>

Let us mention for the sake of completeness that the European Union has also affirmed its role as a global player in the fight against the pandemic. Indeed, the Mechanism made it possible to send 12 tons of aid to China as early as January 2020,<sup>42</sup> and this aid amounted to 56 tons of equipment actually delivered to China in February 2020.<sup>43</sup> After being hit hard by the wave of contagion, the European Union decided at the beginning of

<sup>38</sup> This is confirmed by the Commission's belated and not very detailed but useful summary of the manifestations of European solidarity in the face of COVID-19: *Coronavirus: European solidarity in action*, Factsheet, 7 April 2020, ec.europa.eu.

<sup>39</sup> Communication COM(2020) 175 final from the Commission of 2 April 2020, on a proposal for a Council Regulation activating the emergency support under Council Regulation (EU) 2016/369 of 15 March 2016 and amending its provisions in respect of the COVID-19 outbreak.

<sup>40</sup> Communication COM(2020) 172 final from the Commission of 2 April 2020, on a proposal for a Decision of the European Parliament and of the Council on the mobilisation of the Contingency Margin in 2020 to provide emergency assistance to Member States and further reinforce the Union Civil Protection Mechanism/rescEU in response to the COVID-19 outbreak.

<sup>41</sup> Communication COM(2020) 170 final from the Commission of 2 April 2020, draft amending budget no. 2 to the general budget 2020 Providing emergency support to Member States and further reinforcement of the Union Civil Protection Mechanism/RescEU to respond to the COVID-19 outbreak.

<sup>42</sup> Statement by Commissioner for Crisis Management Janez Lenarčič on EU support to China for the Coronavirus outbreak, 1 February 2020, ec.europa.eu.

<sup>43</sup> European Commission, Press Release of 6 April 2020, *Coronavirus: Chinese aid to the EU delivered to Italy*, ec.europa.eu.

April to bring together its partners<sup>44</sup> around an initiative called “Team Europe”, a synergistic framework for its contribution to the international response to the pandemic.<sup>45</sup>

#### IV. LESSONS LEARNED AND FURTHER RESEARCH PATHS

Why, then, has the general impression at the heart of the health crisis been that the European Union remained absent, and that European solidarity had been inexistent? Three possible leads for an explanation should be the subject of further research: the lack of public information and the need for transparency of European public action (IV.1.), the Union’s autonomy in responding to emergency situations in the face of the *Realpolitik* strategies of certain third countries (IV.2.) and the gap between the expectations of Union citizens and the competences of the Union (IV.3.).

##### IV.1. THE LACK OF PUBLIC INFORMATION AND THE NEED FOR TRANSPARENCY OF EUROPEAN PUBLIC ACTION

Two and a half months after the confirmation of the first contaminations in the European Union, and two months after the first requests for assistance from France and Italy, there is little publicly available data on the requests for assistance and the responses given.

This entails a methodological problem that has been regularly pointed out in this contribution: only partial data are currently available. It was therefore necessary to work mainly from the European and international press and institutional press releases; the first are media that are per definition representative of public preconceptions about the EU, while the second lack detailed data that can be used in a scientific context.

Paradoxically, NATO, a military organisation with a necessarily very strict confidentiality policy, is the institution to communicate the greatest amount of useful information through declassified documents that provide a very regular and detailed inventory of offers and requests for assistance in the COVID-19 crisis.

The European Commission seems to have become aware of this difficulty and has been developing its communication since the beginning of April, 2020, emphasizing the manifestations of intra- and extra-European solidarity.<sup>46</sup>

It will therefore be necessary to carry out systematic work on the basis of European sources in order to determine the reality of the functioning of the European Civil Protection Mechanism. It should be noted that the absence of such sources and exploitable data, with the exception of rare and brief press releases on the website of the EU Civil

<sup>44</sup> The European Investment Bank, the European Bank for Reconstruction and Development, together with European development finance institutions, Member States Development Agencies and Technical Assistance providers, as well as International Financial Institutions.

<sup>45</sup> Joint Communication JOIN/2020/11 final of 8 April 2020 to the European Parliament, the Council, the European economic and social committee and the Committee of the Regions, ec.europa.eu.

<sup>46</sup> See the EU webpage *Coronavirus: European Solidarity in action*: ec.europa.eu.

Protection Mechanism, does not contribute to the knowledge of the European Union's action in this field. On the contrary, a European policy of systematic publication of raw data could facilitate knowledge of the reality of EU action and help balance certain perceptions that have been distorted in particular by certain *Realpolitik* strategies.

#### IV.2. *REALPOLITIK* AND THE CIVIL-PROTECTION AUTONOMY OF THE UNION

In the COVID-19 crisis, the geopolitical stakes are high. The impression of the absence of the European Union or the feeling of a lack of European solidarity are not insignificant for the constitution of a new international equilibrium.

Thus, the fact that China and Russia, but also Cuba and Venezuela, have publicly represented their assistance to Italy as a necessary palliative measure to compensate the failings of the European Union undeniably contributed to weakening the image of the project of European integration and called into question its validity. This alliance hardly came about by chance, in a context where China, Russia and Venezuela are all subject to both American and European sanctions reacting to human rights violations, a political context that does not usually stimulate the impulses of solidarity. The division of Europe could be a side effect of humanitarian aid that would be quite timely for its providers.

This puts into perspective the strategic importance of the European Union's autonomy in terms of assistance to its Member States and civil protection. The Union's autonomy is strategic from a symbolic point of view, insofar as the very widely shared feeling of solidarity among the peoples of Europe is hampered by the inability of the Union or its members to provide assistance to one of their own before China or Russia. Secondly, the Union's autonomy is strategic from a political point of view, insofar as the COVID-19 crisis has shown how fragile political balance is in times of a continental health crisis, and how the irruption of one or more third-party bilateral alliances in the political game of emergency aid can be destabilizing at a national and regional level. Finally, the Union's autonomy is strategic from a material point of view, as the pandemic has shown the extreme mutual dependence of the European continent in the supply of protective equipment and hospital equipment in particular.<sup>47</sup>

<sup>47</sup> Paradoxically, the conclusion of a Joint Procurement Agreement (JPA) to procure medical countermeasures was launched as early as 2014 on the basis of Art. 5 of the decision 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. It was only in the light of the COVID-19 pandemic that it received its last signatures in February, March and April 2020: ec.europa.eu. On the lack of anticipation on the part of the Member States (and Associated States) and the Commission: H. DE POOTER, *La pandémie de COVID-19 rappelle l'importance du droit international pour la consolidation d'un « pacte social sanitaire »*, in *Le Club des Juristes*, 8 April 2020, [www.leclubdesjuristes.com](http://www.leclubdesjuristes.com).

#### IV.3. THE GAP BETWEEN EU CITIZENS' EXPECTATIONS AND THE UNION'S COMPETENCES

An examination of the EU's positive law shows that the EU has had a Civil Protection Mechanism only since 2013,<sup>48</sup> which has been reinforced in 2019, and that it had till then been operating under the support competences regime defined by Art. 6 TFEU, leaving priority to the Member States in respect of the principle of subsidiarity.

However, the expectations of the populations of the Member States of the Union were much higher, and it is this asymmetry between the expectations of the populations and the reality of the Union's competences that explains the impression of the absence of the Union and the breakdown of European solidarity.

Under positive law, the European Union's Civil Protection Mechanism operates both to provide international humanitarian aid to third parties and to assist a Member State in an emergency situation. The mechanism at work, namely an exchange between requests for assistance and offers of aid, is no different from *ad hoc* bilateral or multilateral mechanisms in the framework of NATO. This suggests that we need to go beyond the international *status quo* in the context of the European integration project. In this case, the instruments for responding to a request for assistance from a third country would have to be separated from the instruments for responding to a request for assistance from a Member State. The former could continue to be processed through the traditional clearing house mechanisms. The latter, by contrast, would probably have to be processed centrally by the Union, most likely by the European Commission.<sup>49</sup>

The intensification of global trade and the great pressure exerted by human activities on global ecosystems increase the risk of emergence of new zoonotic viruses. The pandemic is probably not the only case in which several EU Member States are likely to be hit hard and simultaneously by a scourge of this nature. The COVID-19 crisis has shown that the Commission's intention in creating RescUE in 2019, based on the observation that the clearing house mechanisms in place were not sufficient, was the right one. It will also have shown that, despite major budgetary efforts, the Union is unlikely to be able to deal with more continental emergencies unless the Member States rethink the distribution of their competences with those of the Union, in favor of the latter, so as to build up a regional response capacity capable of making up for the simultaneous shortcomings of one or more Member States. It is therefore to be hoped that the bitter lessons of the COVID-19 crisis will lead to the emergence of a new institutional face of European solidarity.

<sup>48</sup> It was operating under Euratom between 2001 and 2013.

<sup>49</sup> For converging conclusions on this trend, see S. COUTTS, *Citizenship, Coronavirus and Questions of Competence*, in *European Papers – European Forum, Insight* of 25 April 2020, [www.europeanpapers.eu](http://www.europeanpapers.eu), p. 4, and B. PIRKER, *Rethinking Solidarity in View of the Wanting Internal and External*, *cit.*, p. 10 *et seq.*

