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Swedish Institute for European Policy Studies

Humanitarian aid policy in the EU´s external relations

The post-Lisbon framework

Peter Van Elsuwege
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– SIEPS 2016:3 –

Preface

The Treaty of Lisbon endowed the European Union with an express competence in the field of humanitarian aid, a competence which it shares with the Member States. Acknowledging the important role which the EU had already played in the field, this codification has turned humanitarian aid into a full-fledged EU external policy, based on its own principles and objectives. At the same time, the formal inclusion of humanitarian aid into the EU external action framework entails new institutional and policy challenges.

In this timely report, Peter van Elsuwege, Jan Orbie and Fabienne Bossuyt recall the incremental development of a EU humanitarian policy, and decrypt the ramifications of its 'constitutionalisation'. Bringing out the tension between the specificity of humanitarian aid, in terms of status, principles and objectives, and the general coherence imperative which governs the EU external action; the analysis also identifies several ways to address its implications.

This study is the sixth report SIEPS publishes in the context of its research project *The EU external action and the Treaty of Lisbon*.

Eva Sjögren
Director

About the authors

Peter Van Elsuwege is Professor of European Union Law and co-director of the Ghent European Law Institute (GELI) at Ghent University in Belgium. His research activities focus on the law of EU external relations and EU citizenship.

Jan Orbie is Professor at the Department of Political Science and Director of the Centre for EU Studies at Ghent University. His research focuses on the 'soft' (trade, development, social, democracy promotion) dimensions of EU external relations and on the EU's role as a normative power.

Fabienne Bossuyt is postdoctoral fellow at the Centre for EU Studies at Ghent University. Her research focuses on the EU's external relations and policies.

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List of abbreviations

AASM	Association of the Associated African States and Madagascar
ACP	African, Caribbean and Pacific
AGIR	Alliance Globale pour l'Initiative Résilience Sahel
CFSP	Common Foreign and Security Policy
CMPD	Crisis Management and Planning Directorate
COHAFA	Council Working Party on Humanitarian Aid and Food Aid
CPCC	Civilian Planning and Conduct Capability
CSDP	Common Security and Defence Policy
DG DEVCO	Directorate General for International Cooperation and Development
DRR	Disaster Risk Reduction
ECHO	European Commission Humanitarian Aid Office
EDF	European Development Fund
EDRIS	European Emergency Disaster Response Information System
EEAS	European External Action Service
EEC	European Economic Community
ERC	Emergency Response Centre
EU	European Union
EUCPM	EU Civil Protection Mechanism
EUFOR CAR	EU Mission for the Central African Republic
EUMC	EU Military Committee
EUMS	EU Military Staff
EVHC	European Voluntary Humanitarian Aid Corps
FPA	Framework Partnership Agreement
GHD	Good Humanitarian Donor ship
GSP	Generalized System of Preferences
HAC	Humanitarian Aid Committee
LRRD	Linking Relief, Rehabilitation and Development
MFN	Most Favoured Nation
OECD	Organisation for Economic Cooperation and Development
PMG	Politico-Military Group
PSC	Political and Security Committee
SHARE	Supporting Horn of Africa Resilience
TFEU	Treaty on the Functioning of the European Union
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
WTO	World Trade Organisation

Executive summary[1]

The aim of this report is to map out the distinctive features of EU humanitarian aid as a separate external policy of the EU before analysing how this can be reconciled with the ambitions of the Lisbon Treaty to make the EU a more coherent external actor.

The EU's humanitarian aid policy has progressively expanded over the past decades. It started in the framework of relations with the ACP (African, Caribbean and Pacific) group of countries and without an explicit legal basis in the Treaties. The creation of the European Commission's Humanitarian Aid Office (ECHO), a separate institutional service for humanitarian aid, in 1991 contributed to the growing recognition of humanitarian assistance as a specific and important external policy. However, the political and legal foundations of this policy remained very weak. In 1996, Council Regulation 1257/96 was adopted under the disputable legal basis of development cooperation, and ECHO failed to operate as a truly independent institutional structure throughout the 1990s. In this context, the Convention on the Future of Europe (2002-2003) proposed the introduction of a specific Treaty provision devoted to humanitarian aid in order to strengthen the elaboration of a more professional and independent humanitarian aid policy at the EU level. The eventual non-ratification of the Constitutional Treaty did not mean the end for the recognition of the specificity of humanitarian aid within the EU's external action. The Lisbon Treaty literally recycled the Constitutional Treaty's humanitarian aid provisions. Moreover, in December 2007, the European Commission, the European Parliament and the Council jointly adopted the "European Consensus on Humanitarian Aid". Accordingly, the EU's humanitarian aid policy can build upon a solid legal and political framework.

Article 214 TFEU not only codifies the EU's competence to act in the field of humanitarian aid, but also underlines the importance of respect for the key principles derived from international humanitarian law as a crucial precondition for the implementation of the EU's humanitarian activities. Nevertheless, the new Treaty provision also creates new challenges as far as respect for those principles is concerned. NGOs active in the field of humanitarian assistance have

raised concerns that the political inspiration for the establishment of a European Voluntary Humanitarian Aid Corps (EVHC), as well as the integration of the EU's humanitarian aid policy within the general framework of the EU's external action and the comprehensive approach to crisis management, might negatively affect the independence of the EU's humanitarian action and strain its commitment to the humanitarian principles.

In principle, there are sufficient safeguards to protect the independence of the EU's humanitarian operations. Decision-making in the field of humanitarian aid is still essentially steered within Directorate General (DG) ECHO of the Commission. The integration of civil protection functions in the activities of DG ECHO has improved the coherence of the EU's strategy for crisis response, and relations with the European External Action Service (EEAS) do not appear to have undermined the fundamental role of the humanitarian principles. Nevertheless, several outstanding issues continue to exist.

First, the trend towards a more comprehensive approach to crisis management, including a more active coordinating role for the EEAS, may lead to further institutional tensions with DG ECHO. A clear-cut division of responsibilities, as well as a sufficient awareness of the humanitarian aid specificities among all of the actors, are crucial to ensuring effective cooperation both at the policy level and on the ground. A revision of Regulation 1257/96 and the European Consensus on Humanitarian Aid could be useful to more clearly spell out the independent and coordinating role of DG ECHO and its relations with other institutional actors such as the EEAS.

Secondly, there still has been little practical progress on linking emergency aid, rehabilitation and development. Also in this area, it is important that all of the actors involved, both in Brussels and in the delegations, understand each other's principles, objectives and modalities, and agree on a common framework for action.

Thirdly, the ambition of the Lisbon Treaty to facilitate the combination of different policy instruments in response to global emergencies faces political and legal obstacles. This is clearly illustrated by the EU's response to the floods in Pakistan in 2010, where the temporary introduction of autonomous trade preferences faced strong opposition both within the EU and at the level of the WTO.

In sum, the EU has created a solid legal and political framework for humanitarian aid policy over the past decade. It appears that the EU is a key player when it comes to providing and coordinating humanitarian assistance. It has also strongly supported the humanitarian principles. However, difficulties remain regarding the integration of humanitarian aid programmes into more comprehensive strategies of disaster response. Although the post-Lisbon framework includes

several safeguards protecting the specificity of the EU's humanitarian aid policy, the trend towards a more comprehensive approach to emergency situations puts the humanitarian principles under pressure.

1   Introduction

The European Union (EU) has a long tradition of providing humanitarian assistance and is one of the world's largest donors of humanitarian aid.[2] Providing aid to address the needs of people struck by natural and man-made disasters contributes to the EU's profile as an international actor and is a crucial component of its "civilian power".[3] Therefore, it may be somewhat paradoxical that a specific provision devoted to humanitarian aid was introduced in the Union's primary legal framework only with the Treaty of Lisbon. Pursuant to Article 214 of the Treaty on the Functioning of the European Union (TFEU) (see Annex 1), the granting of "*ad hoc* assistance and relief and protection for people in third countries who are victims of natural and man-made disasters" is now explicitly recognised as an EU external policy in its own right. This new legal basis complements Council Regulation 1257/96 concerning humanitarian aid[4] and the "European Consensus on Humanitarian Aid", which was adopted in December 2007 as a Joint Statement of the Council, the European Commission, the European Parliament and the Member States.[5]

The combined reading of Regulation 1257/96, Article 214 TFEU and the European Consensus reveals the specific characteristics of the EU's humanitarian aid policy. Whereas the scope of this policy, i.e. tackling the humanitarian consequences of natural or man-made disasters, such as floods, drought, earthquakes, volcano eruptions, tsunami, civil war, state failure or ethnic cleansing, may be considered to be very broad,[6] there are also important limitations. First, humanitarian aid is limited to emergencies in third countries. Disaster relief within the EU is subject to the solidarity clause in Article 222 TFEU.[7] This distinction has been

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[2]   In 2013, the European Commission alone provided humanitarian assistance to more than 124 million people in 90 countries outside of the EU, for a total amount of € 1.35 billion. Together, the EU and its Member States provide over half of the global funding for humanitarian aid. See: http://ec.europa.eu/echo/files/media/publications/annual_report/2013/COM_2014_537_en.pdf.

[3]   It is, therefore, no surprise that the European Commission is actively involved in the preparations for the first World Humanitarian Summit, which will be organised in Istanbul on 23-24 May 2016. See: http://ec.europa.eu/echo/partnerships/european-and-international-cooperation/world-humanitarian-summit_en.

[4]   Regulation 1257/96 concerning humanitarian aid, [1996] OJ L163/1. Remarkably, this Regulation was adopted on the legal basis of former Article 130w of the EC Treaty (later Art. 179 EC; now Art. 209 TFEU) relating to development cooperation. On the problems regarding this choice of legal basis, see *infra* at part 2.2.

[5]   European Consensus on Humanitarian Aid, [2008] OJ C25/1.

[6]   A. Dashwood, 'Conflicts of Competence in Responding to Global Emergencies', in: A. Antoniadis, R. Schütze and E. Spaventa (eds.), *The European Union and Global Emergencies. A Law and Policy Analysis* (Oxford: Hart, 2011), 38.

[7]   For comments, see: S. Blockmans, 'L'Union fait la force: Making the Most of the Solidarity Clause (Article 222 TFEU', in: I. Govaere and S. Poli (eds.), *EU Management of Global Emergencies: Legal Framework for Combating Threats and Crises* (Boston-Leiden: Brill, 2014), 111-136.

made very explicit after the European Council called for concrete proposals from the Commission "to the put in place the capacity for humanitarian aid internally" in response to the refugee crisis.[8] Proceeding from the observation that Article 214 TFEU "can only be relied upon to adopt measures assisting affected people in third countries", the Commission drafted its proposal for a new Council Regulation on the provision of emergency support within the Union on the legal basis of Article 222 (1) TFEU.[9] Second, measures adopted under Article 214 TFEU are designed to provide *ad hoc* support in the event of emergencies, whereas long-term and structural assistance fall under either Article 208 TFEU (development cooperation) or Article 212 TFEU (economic, financial and technical cooperation). Third, EU humanitarian aid is confined to addressing "humanitarian needs". In this respect, it differs from civil protection cooperation, which is another tool at the disposal of the EU to provide relief assistance to people faced with the immediate consequences of natural or man-made disasters. The latter is based on Article 196 TFEU and can be mobilised both internally within the EU and in third countries. It typically focuses on search and rescue operations and often includes technical types of assistance such as firefighting (in case of forest fires), pumping capacity (floods), ships to combat pollution (oil spills) and detection and decontamination facilities (chemical, biological or nuclear incidents).[10] Last but not least, the EU's humanitarian aid policy is based on specific principles, which are derived from international humanitarian law. Despite slight differences in the formulation of those core principles,[11] they essentially reflect the so-called "humanitarian imperative", meaning that assistance is offered to prevent or restrict human suffering, irrespective of any political considerations. It follows that, in contrast to civil protection, EU humanitarian aid cannot be used as a tool for facilitating and supporting Common Foreign and Security Policy (CFSP) crisis management operations.[12] The humanitarian principles are considered to be "an operational necessity helping to provide access to assistance, to protect the most vulnerable and to ensure the security of humanitarian workers".[13]

The implementation of an independent EU humanitarian aid policy – meaning autonomous from economic, political and military considerations – faces

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[8] European Council Conclusions, 18-19 February 2016, EUCO 1/16.

[9] European Commission, Proposal for a Council Regulation on the provision of emergency support within the Union, COM (2016) 115 final.

[10] For comments, see: F. Fink Hooijer, 'The EU's Competence in the Field of Civil Protection', in: Govaere and Poli, *op. cit.*, 137-146.

[11] Article 214 (2) TFEU refers to "impartiality, neutrality and non-discrimination" as fundamental principles guiding the EU's humanitarian aid, whereas the European Consensus refers to "humanity, neutrality, impartiality and independence". For an analysis of those differences, see *infra* section 3.2.

[12] The European Consensus explicitly states that "EU humanitarian aid is not a crisis management tool", para. 15.

[13] Communication from the Commission to the European Parliament and the Council, 'Towards the World Humanitarian Summit: A global partnership for principled and effective humanitarian action', COM (2015) 419 final, p. 3.

numerous challenges. First, the term "humanitarian" is often (ab)used in other contexts, creating the risk that its essential feature of impartiality will be undermined. For instance, the notion of "humanitarian intervention" involves the threat and use of military force in order to halt or avert large-scale human suffering.[14] Hence, this concept is disconnected from the understanding of "humanitarian aid". Nevertheless, the involvement of EU Member States in humanitarian interventions – even when they are not acting under an EU mandate – almost unavoidably interferes with the perception of the EU as an independent donor. Second, humanitarian assistance is particularly challenging in relation to disputed areas. This is clearly illustrated by the conflict in the eastern part of Ukraine. Both the EU and Russia are offering humanitarian aid to Ukrainian civilians, but the parties regard each other's efforts as foreign policy actions.[15] Third, the humanitarian principles are not uncontested. It has been argued that humanitarian aid simply cannot be apolitical and neutral, because it cannot be disconnected from the political context in which it is provided. Moreover, the desirability of a principle-driven humanitarian approach has been under discussion.[16] Providing access and assistance to people in need may require negotiations with dictatorial regimes and armed non-state actors, thus providing them power and legitimacy.[17] At worst, humanitarian aid may have unintended consequences. For instance, humanitarian assistance provided to Rwandan genocidaires residing in refugee camps in 1994 only aggravated the suffering and killing of people.[18] More recently, there have been reports that ISIS abuses humanitarian aid provided by international humanitarian organisations to strengthen its presence in the region.[19] Fourth, given the close connection between the origins of a humanitarian crisis (a civil war, natural disaster, extreme poverty, etc.) and its consequences (large numbers of displaced people, social and economic difficulties), humanitarian aid is almost always closely related to other policy areas. As a result, ensuring coherence in its response to crisis situations, while safeguarding the specific characteristics of humanitarian aid, is a crucial concern for the EU. This has particularly been the case since the entry into force of the Lisbon Treaty. On the one hand, the introduction of Article 214 TFEU underlines the separate nature of humanitarian aid as a self-standing external

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[14] On the concept of "humanitarian intervention" see, e.g., A. Hehir, *Humanitarian Intervention. An Introduction* (New York: Palgrave, 2010).

[15] N. Paukov, 'Ukraine calls Russian aid convoy act of cynicism', *Moscow Times,* 13 August 2014.

[16] See e.g. C. Dany, 'Politicization of Humanitarian Aid in the European Union', *European Foreign Affairs Review* (2015), 425; J. Gross Stein, 'In the Eye of the Storm: Humanitarian NGOs, Complex Emergencies and Conflict Resolution', *Peace and Conflict Studies* (2001).

[17] A clear example of this "humanitarian dilemma" is the attempt of the International Committee of the Red Cross (ICRC) to build a relationship with the Islamic State militant group (ISIS) in the hope of helping some 10 million people who live in ISIS-controlled areas. See: J. Moore, 'Red Cross attempting to build relationship with ISIS to help those under its control', *Newsweek*, 7 December 2015.

[18] See e.g. the critical book of L. Polman, *War Games: The Story of Aid and War in Modern Times* (London: Penguin Books, 2011).

[19] A. Rosen, 'Here's how ISIS abuses humanitarian aid', at: http://uk.businessinsider.com/how-isis-abuses-humanitarian-aid-2015-2

policy. On the other hand, the institutional and legal innovations of the Lisbon Treaty essentially aim to increase the coherence of the EU's external activities.[20] This is, amongst other things, reflected through the inclusion of a single set of external action objectives in Article 21 TEU and the explicit provision in Article 214 (1) TFEU that the EU's humanitarian activities "shall be conducted within the framework of the principles and objectives of the external action of the Union".

The spirit of the Lisbon Treaty resulted in the elaboration of the EU's comprehensive approach to external conflicts and crises.[21] The latter aims to better link the various EU policies and capacities on the basis of a shared vision and common objectives. At the same time, it is recognised that "humanitarian aid shall be provided in accordance with its specific *modus operandi,* respectful of the principles of humanity, neutrality, impartiality and independence, solely on the basis of the needs of affected populations, in line with the European Consensus on Humanitarian Aid".[22] In other words, reconciling the specific features of humanitarian aid and the ambition to establish more coherence between its external policies is of fundamental importance for the EU's post-Lisbon response to emergency situations.

This report examines how the EU has coped with the identified challenges in practice. It does not intend to assess the impact or the effectiveness of the EU's activities in the field of humanitarian aid; instead, the report is essentially a stocktaking exercise, mapping out the key features of the legal, institutional and political framework of the EU's post-Lisbon humanitarian aid policy. It also aims to synthetise the relatively limited academic literature and the available primary documents on EU humanitarian aid policy, setting the stage for further research into its effectiveness in specific cases. After analysing the historical development of the EU's humanitarian aid policy (1) and its specific characteristics under Article 214 TFEU (2), the issue of coherence is addressed from an institutional (3) and substantive (4) dimension. The institutional dimension spells out the interaction between the various actors involved in the formulation and implementation of the EU's humanitarian aid policy. The substantive dimension provides an in-depth analysis of the relationship between humanitarian aid and three other external policy domains, namely crisis management, development and trade. Based on an analysis of policy documents and legal texts, we explore whether and how the two policy goals of the Lisbon Treaty (independent humanitarian aid and increased policy coherence) are pursued together. It is argued that the post-Lisbon framework includes several safeguards protecting the specificity of the EU's humanitarian aid policy. Nevertheless, the trend

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[20] P. Van Elsuwege, 'EU External Action after the Collapse of the Pillar Structure: In Search of a New Balance between Delimitation and Consistency', 47 *CML Rev.* (2010), 987-1019.

[21] European Commission and High Representative of the EU for Foreign Affairs and Security Policy, *The EU's comprehensive approach to external conflict and crises*, JOIN (2013) 30 final.

[22] *Ibid.*, 4.

towards a more comprehensive approach to emergency situations puts the humanitarian principles under pressure. The conclusions end with a number of recommendations about how these challenges can be addressed.

2 The gradual development of an EU humanitarian aid policy

The European Union's humanitarian aid policy goes back a long time. This section provides an overview of the gradual expansion and institutionalisation of the EU's humanitarian aid policy over the past decades. It is structured chronologically around three phases: the historical antecedents to the establishment of the European Commission Humanitarian Aid Office (ECHO)[23] in 1991 (2.1), the first decade of ECHO's functioning in the 1990s (2.2), and the evolutions since the 2000s, most notably with the European Consensus on Humanitarian Aid and the Lisbon Treaty provisions (2.3).

2.1 From Yaoundé II until the creation of ECHO

Historical antecedents
The EU has a long-standing policy in relation to developing countries. Part IV of the Treaty of Rome contained a separate Part IV on the "Association of the Overseas Countries and Territories" of the Member States. However, humanitarian aid was not mentioned in the EU's founding treaties. It was only after the independence of the Member States' colonies that the European Economic Community (EEC), for the first time, engaged in this domain. Specifically, Article 20 of the second Yaoundé Convention (1969) with the AASM (Association of the Associated African States and Madagascar) refers to "exceptional aid". The purpose was rather limited: providing emergency aid to the governments of AASM countries suffering from exceptional economic difficulties (e.g. collapsing commodity prices) or natural disasters (e.g. floods or famine).

One decade later, the scope would be extended through the second Lomé Convention (Article 254) with the ACP group (African, Caribbean and Pacific countries). First, in addition to economic and natural emergencies, man-made disasters, notably civil wars and ethnic conflict, could be addressed. The category of "exceptional aid" was replaced by the concept of "emergency aid".[24] To date, this remains an important (though often blurred) distinction, e.g.

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[23] Originally, ECHO stood for "European Office for Emergency Humanitarian Aid", then it was changed to "European Community Humanitarian Office", and later, "European Commission Humanitarian Aid Office". Since 2010, ECHO has been the European Commission's office for Humanitarian Aid and Civil Protection.

[24] G. Scappucci, *The Humanitarian Aid of the EU: "Alibi", "Smokescreen" or "Solidarity in Action"?* (Brussels: European Interuniversity Press, 1998), 30.

when determining whether DG ECHO or the EEAS should take the lead in an emergency situation.[25]

Second, this humanitarian assistance would go directly to the victims and not to the national government of the ACP country.[26] On the one hand, this brought the European Community's humanitarian aid policy more in line with the international humanitarian principles, emphasising the apolitical and independent nature of humanitarian aid. On the other hand, the bypassing of national governments also mirrored the EU's changing approach towards violations of democracy and human rights by the late 1970s.[27] Whereas the first Lomé Agreement put a lot of emphasis on the sovereignty of the newly independent ACP countries, political issues such as the atrocities under Idi Amin's regime in Uganda provoked a more critical stance by the Community. To date, the EU's humanitarian aid has mainly been distributed through specialised international non-governmental organisations (e.g. Red Cross) and international institutions (e.g. UN agencies such as UNICEF). Humanitarian aid for the ACP countries was financed by the European Development Fund (EDF).

Moreover, in 1971, the European Parliament had already created a separate budgetary line for humanitarian aid. This applied to all of the developing countries, including those that were not former colonies of the Member States, thereby further extending the geographical reach of the EEC humanitarian aid provision. This was also in line with general trends whereby from the 1970s onwards, the Community started to develop external relations with countries that did not belong to the immediate neighbourhood or the former colonies of the Member States.[28] In addition, separate aid instruments were created for "aid for refugees and displaced persons" (managed by DG VIII – Development) and "emergency food aid" (DG VI – Agriculture).[29] However, it was not until the early 1990s that the EU's humanitarian aid policy became more visible and institutionalised.

The creation of ECHO: a specific institutional service for humanitarian aid
Based on the recommendations of a European Commission Task Force on the improvement of emergency aid activities, the Commissioners then in charge of external relations established ECHO in November 1991.[30] This new service was located within the Commission and was exclusively dedicated to the management

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[25] For more on this point, see Section 4 below.

[26] H. Versluys, *European Humanitarian Aid Policy From a Political Science Perspective: An Analysis of Delegation and Coherence* (Ghent University, Doctoral Dissertation, 2008), 9.

[27] K.E. Smith, *European Union Foreign Policy in a Changing World* (Cambridge: Polity Press, 2003), 97-101.

[28] M. Holland and M. Doidge, *Development Policy of the European Union* (Basingstoke: Palgrave Macmillan, 2012), 3.

[29] Scappucci, *op. cit.*, 31.

[30] European Commission Decision to set up a European Office for Humanitarian Aid, P/91/69, 06/11/1991

of humanitarian assistance. To date, the acronym ECHO is associated with the EU's humanitarian aid policy, although its meaning and institutional position have changed several times.[31]

The creation of ECHO can be explained by a combination of five interrelated factors.[32] First, the EU's humanitarian aid system was considered to be relatively weak and inadequate because of a fragmentation of resources. Although the EEC's humanitarian aid budget had significantly grown since the 1970s, the responsibilities remained scattered among different Directorate-Generals within the Commission. Depending on the nature of the crisis and the destination, humanitarian aid would be managed by DG I (external relations), DG VIII (development) or DG VI (agriculture). Creating a single service would enhance the efficiency of EU aid.

Second, the creation of a single focal point for humanitarian assistance would also increase the visibility of the EU on the international scene. Before 1992, the public was practically unaware of the EU's actions regarding humanitarian aid.[33] In its decision establishing ECHO, the Commission explicitly refers to the lack of visibility among the general public within and outside of Europe as one of the shortcomings that the creation of ECHO should address. Or, as the later Commissioner Bonino put it: "I would like the little known Samaritan which is the EU, to have the public profile it deserves".[34] The quest for visibility in humanitarian aid policy and development policy more broadly has also been noted by other scholars[35], and it remains relevant to date, for instance, with the establishment of a Voluntary Humanitarian Aid Corps (cf. *supra*).[36]

Third, the post-Cold War context provided an opportunity for the EU to profile itself more clearly on the international front; this also became clear in the Maastricht Treaty, which transformed the former European Political Cooperation system into a Common Foreign and Security Policy. The end of the Cold War also removed some previous constraints against humanitarian aid, such as the almost

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[31] See *supra* note 23.

[32] See also H. Versluys, 'European Humanitarian Aid: Lifesaver or Political Tool?', in: J. Orbie (ed.), *Europe's Global Role. External Policies of the European Union* (Abingdon: Ashgate, 2008); C. Bretherton and J. Vogler, *The European Union as a Global Actor* (London: Routledge, 2006), 131; M. Holland and M. Doidge, *The European Union and the Third World* (Basingstoke: Palgrave, 2012), 109-110; T. Mowjee, 'The European Community Humanitarian Office (ECHO): 1992-1999 and Beyond', 22 *Disasters* 3 (1998), 250-267. Scappucci, *op. cit.*, 33-35.

[33] Scappucci, *op. cit.*, 29.

[34] *Ibid.*, 74.

[35] G.R. Olsen, 'Changing European Concerns: Security and Complex Political Emergencies instead of Development', in: K. Arts and A.K Dickson, *EU Development Cooperation: From Model to Symbol* (Manchester: Manchester University Press, 2004), 87; F. Petiteville, *Les ONG et l'action humanitaire dans la mise en scène internationale de l'Union européenne* (Paper presented at Colloque ONG et action humanitaire: entre militantisme transnational et action publique. Faculte de droit et de science politique, 12-13 April 2001).

[36] For more on the Voluntary Humanitarian Aid Corps, see Section 3 of this report.

inherently political nature of assistance, the difficulties in reaching victims in the other "bloc", and the prioritisation of military resources.[37] The same period also witnessed a number of severe humanitarian challenges, e.g. in Iraq after the first Gulf War and in former Yugoslavia. Against this backdrop, the number of humanitarian interventions increased, and the notion of "responsibility to protect" was developed.

Fourth, providing humanitarian aid not only had the advantage of being a visible form of external action, it could also divert attention from internal disagreements on foreign and security policy issues. As such, EU humanitarian aid could also be seen as a foreign policy "by default". When the EU is faced with an international crisis and fails to achieve a common position, it can more easily fall back on its significant budget for humanitarian assistance. More cynically, it could also be seen as an "alibi", giving the EU a "good conscience" in the absence of a real Common Foreign and Security Policy.[38]

Fifth, and finally, the existence of an insulated administrative structure such as ECHO makes it easier to resist political interference, and thus, to engage with the humanitarian principles. As principal-agent models have shown at length, the principals (e.g. the EU Member States) delegate specific tasks to the agencies (e.g. at the EU level) in order to realise policy goals (e.g. humanitarian principles) that would be more difficult to achieve within a more politicised context (e.g. Member State foreign policy or DG External Relations). Being insulated from day-to-day electoral pressures makes it easier to take a needs-based approach, to focus on the "forgotten crises" in the world, and to make an objective choice of its NGO partners.[39] At the same time, the emphasis on ECHO's neutrality may also stem from the Member States' desire to limit the Commission's role in foreign affairs.[40]

2.2 The 1990s: teething problems and a new legal framework

Despite the growing recognition of humanitarian aid as a specific and important external policy within the Commission's institutional structure, European integration in this area was still limited during the beginning of the 1990s. ECHO constituted a separate "office" within the Commission, which may be more sustainable than a "task force", but it was not (yet) a full-fledged DG.[41] The office was initially established for a "trial period" of seven years. More importantly, a clear legal basis for EU humanitarian aid was lacking. Although

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[37] Scappucci, *op. cit.*, 14-15.

[38] *Ibid.*

[39] Versluys, *European Humanitarian Aid Policy*, *op. cit.*, 24-25.

[40] E. Brusset and C. Tiberghien, *Trends and Risks in EU Humanitarian Action. The New Humanitarianism: A Review of Trends in Global Humanitarian Action* (Overseas Development Institute, Humanitarian Policy Group, HPG Report 11, 2002), 57.

[41] Scappucci, *op. cit.*, 34.

ECHO was established during the same period as the intergovernmental conference leading to the Treaty of Maastricht[42], the latter did not include a single reference to humanitarian aid.

It took until 1996 for a legal framework to be provided, and it emerged only through secondary law, namely Council Regulation 1257/96 on humanitarian aid.[43] This Regulation was adopted on the legal basis of former Article 130w of the EC Treaty (later Art. 179 EC; now Art. 209 TFEU) relating to development cooperation. This choice of legal basis, which may be explained by the historical links with humanitarian assistance to the ACP countries and the absence of a more specific Treaty basis at the time, is somewhat controversial.[44] First, the scope of application of Regulation 1257/96 is not restricted to developing countries, and following the logic of the *Community Guarantee to EIB* case, it may well be argued that such a legal act cannot be adopted on the ground of development competences alone.[45] Second, the adoption of a humanitarian aid instrument in the framework of development cooperation risks undermining the specificity of humanitarian assistance, as it could blur the lines between humanitarian aid and development cooperation. Nevertheless, the preamble and Article 1 of the Regulation point at the needs-based and impartial nature of the humanitarian assistance.

Apart from this Regulation, a number of initiatives were taken, which gradually increased the EU's capacity as a humanitarian aid donor. In 1993, the first Framework Partnership Agreement (FPA) with specialised humanitarian organisations was signed. The partnership formula aims to emphasise that the EU is not just a "cash dispenser", but that it is on an equal footing with the actors engaged in relief operations. To date, the relationship between DG ECHO and the international organisations, UN agencies, Member State agencies and NGOs continues to be settled by FPAs. Once they sign a FPA[46], partners can submit project proposals to ECHO. In 1996, the Humanitarian Aid Committee (HAC) was set up to enable EU Member States to provide input in ECHO's decision making. In the same year, the Commission issued its first Communication on Linking Relief, Rehabilitation and Development (LRRD)

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[42] Emergency humanitarian aid from the Community: Commission guidelines (Memo P 91/56, 24/07/1991) European Commission Decision to set up a European Office for Humanitarian Aid, P/91/69, 06/11/1991.

[43] Regulation 1257/96 concerning humanitarian aid, [1996] OJ L163/1.

[44] M. Broberg, 'Undue Assistance? An Analysis of the Legal Basis of Regulation 1257/96 concerning Humanitarian Aid', 34 *ELRev.* 5 (2009), 769-778.

[45] In this case, the ECJ found that a decision granting a Community guarantee to the European Investment Bank (EIB) against losses under loans and loan guarantees for projects outside of the Community had to be adopted under the dual legal basis of former Article 179 EC (now Art. 209 TFEU) and former Article 181a EC (now Art. 212 TFEU) reflecting the adoption of such measures with respect to developing countries, on the one hand, and non-developing countries, on the other hand. See: ECJ, Case C-155/07, *European Parliament* v. *Council* ECR [2008] I 8103, para. 67-72.

[46] For UN agencies, these are "Financial and Administrative Framework Agreements" (FAFA).

in order to address the "grey zone" between short-term humanitarian assistance and long-term development aid.[47] Despite these improvements in terms of legal framework and political implementation, the 1990s were characterised by a series of financial and managerial problems, as well as a politicisation of humanitarian aid decisions. ECHO's increasing financial responsibilities, combined with the understaffing of the agency, contributed to several shortcomings. These ranged from long delays and cumbersome procedures to a lack of control of partner organisations and even financial scandals. The partnership formula turned out to be inefficient and overly complicated. Attempts by the Commission to provide a legal basis for humanitarian aid in the Amsterdam Treaty, possibly in the section on development policy, were unsuccessful.[48] In 1997, the Court of Auditors issued a report critical of ECHO.[49] In 1999, following the seven-year trial period, the internal evaluation of ECHO also contained strong criticism. Fraudulent contracts in the context of Bosnia and the African Great Lakes region were part of the scandals that led to the demise of the Santer Commission in 1999. In the context of widespread suspicion among the Member States and even within the Commission, ECHO's budgetary resources declined in the second half of the 1990s.[50]

Apart from management-related challenges, ECHO's compliance with the humanitarian principles was also questioned. Under Commissioner Bonino (1995-1999), ECHO became a visible part of the EU's international policies, but according to Versluys, it "sometimes engaged in activities which, strictly speaking, went beyond humanitarian assistance and were more oriented towards conflict resolution or development".[51] For instance, Bonino was strongly involved in human rights activism in Afghanistan, against the Taliban's oppression of women.[52] In 1999, ECHO's budget showed a dramatic increase, but only because of the EU's involvement in the Kosovo crisis, which was mostly inspired by political and security concerns.[53]

2.3 The 2000s: Political reforms and the constitutionalisation of humanitarian aid as a specific EU external policy

The new Commissioner Nielson (1999-2004) initiated not only a new style, but also a range of institutional reforms. Under his tenure, ECHO "lost some of its idealism and romance, but gained in efficiency and speed" and became "more middle aged and mature, less high spirited perhaps, but a leaner, meaner, more

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[47] On the concept of LRRD, see further at section 5.2 of this report.

[48] Scappucci, *op. cit.*, 41-43.

[49] Court of Auditors Special Report No 2/97 Concerning humanitarian aid from the European Union between 1992 and 1995 together with the Commission's replies, OJ (1997) C 143/1-65.

[50] Versluys, *European Humanitarian Aid Policy*, *op. cit.*, 5.

[51] Versluys, 'European Humanitarian Aid: Lifesaver or Political Tool?', *op. cit.*, 93.

[52] Versluys, *European Humanitarian Aid Policy*, *op. cit.*, 5.

[53] Versluys, 'European Humanitarian Aid: Lifesaver or Political Tool?', *op. cit.*, 102.

professional aid machine".[54] The distinction between relief, on the one hand, and crisis management and development, on the other hand, was more consistently made. Internal reforms led to a more professional management. For example, the fast-track procedure for decision-making in Brussels was introduced in 2001, and clear performance indicators for partners on the ground were elaborated. Under Nielson, the Commission also clarified its core mandate and policies, strongly emphasising its needs-based, neutral and non-discriminatory approach. ECHO adopted a proactive strategy to defend the principles of international humanitarian law, supporting the adoption of the Principles and Good Practices of Humanitarian Donorship in Stockholm (2003), confirming that humanitarian funding should be allocated on the basis of needs assessment. Also, Member State donors started to recognise the positive steps taken by the Commission.[55]

These reforms coincided with a general professionalisation of the EU's development policy architecture, including the creation of EuropeAid for the implementation of development assistance.[56] Despite this progress, there were still several challenges ahead. The Convention on the Future of Europe (2002-2003) addressed two thorny (and interrelated) issues that continued to plague the EU's image regarding humanitarian aid: the absence of a clear treaty base and the blurred relationship with foreign and security policy concerns. The ground-breaking work of the European Convention may be surprising, because initially, the members did not even consider the incorporation of a special title on humanitarian aid.[57] A number of Member States even wanted to reinforce the operational links between humanitarian aid and CFSP because of their disappointment with the slow progress in military cooperation.[58] It was only after Commissioner Nielson's appeal to the Convention that "humanitarian assistance should be covered by a distinct chapter of external policy, subject to specific Community decision-making mechanisms and not fall under crisis management procedures"[59] that a separate article on humanitarian aid was proposed.[60] This upgraded status of humanitarian aid into primary EU law was barely contested

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[54] International Crisis Group, quoted in Versluys, 'European Humanitarian Aid: Lifesaver or Political Tool?', *op. cit.*, 93.

[55] European Commission, *Report on progress against commitments* (Cabinet of Commissioner Nielson, July 2004), 27-29.

[56] J. Orbie, 'The EU as an Actor in Development: Just Another Donor, European Norm Maker, or Eclipsed by Superpower Temptations?', in: S. Grimm, D. Makhan and S. Gänzle (eds), *The European Union and Global Development: an Enlightened Superpower in the Making?* (Houndmills, Basingstoke: Palgrave, 2012), 20.

[57] CONV 161/02, 3 July 2002; CONV 200/02, 16 July 2002; CONV 252/02, 10 September 2002.

[58] P. Nielson, 'EU Aid: What Works and Why', ReCom/UNU-WIDER Working Paper No. 2012/76, p.15.

[59] CONV WG VII – WD 48, 21 November 2002.

[60] WG VII – WD 21 REV 1, 22 November 2002; WG VII – WD 21 REV 2, 29 November 2002; CONV 685/03, 23 April 2012.

in the Convention discussions.[61] A political consensus about the need for a more professional and independent humanitarian aid policy at EU level had clearly emerged. The idea to establish a European Voluntary Humanitarian Aid Corps was also featured in the new Treaty article, although this was more contested within the Convention.[62]

The non-ratification of the Constitutional Treaty did not mean the end for the recognition of the specificity of humanitarian aid within the EU's external action. The Lisbon Treaty, which was signed on 13 December 2007 and entered into force on 1 December 2009, literally recycled the Constitutional Treaty's humanitarian aid provisions.[63] Moreover, in December 2007, the European Commission, the European Parliament and the Council jointly adopted the "European Consensus on Humanitarian Aid".[64] A similar consensus on development had been adopted in December 2005,[65] revealing the distinction between the two policy areas.

The European Consensus on humanitarian aid strongly reaffirms the EU's adherence to the fundamental humanitarian principles of neutrality, humanity, impartiality and independence.[66] To date, it remains the major reference to the EU's commitment in relation to humanitarian aid. Interestingly, the European Consensus outlines the "common vision that guides the action of the EU, both at its Member States and Community levels". As such, it also refers to the ambition of DG ECHO not only to establish itself as an independent humanitarian donor, but also to "Europeanise" the Member States' activities in this area.

With the European Consensus and Art. 214 TEU, the EU has put in place "a solid humanitarian policy that is in line with the GHD (Good Humanitarian Donorship) principles, is anchored in relevant legislation and is applicable across the Commission and Member States".[67] Several explanations behind this evolution have already been mentioned: increasing efficiency and economies of scale, insulating the humanitarian principles from political pressures, and enhancing the legitimacy and visibility of the EU as an international actor. Somewhat paradoxically, the expansion of a Common Foreign and Security Policy at the EU level also may have contributed to the growing independence

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[61] The only two elements that provoked some debate in the Convention were the questions of whether "neutrality" should be added to the principles in paragraph 2 and whether a reference to the European Voluntary Humanitarian Aid Corps in the Treaty would be desirable (see *infra* part III). For a summary of the amendments, see: CONV 685/03, 23 April 2012.

[62] For more on the Voluntary Humanitarian Aid Corps, see Section 3 of this report.

[63] See Section 3 of this report for a detailed analysis of Article 214 TFEU.

[64] Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, The European Consensus on Humanitarian Aid. OJ C 25, 30.1.2008.

[65] OJ C 42, 24.2.2006.

[66] In 2008, an Action Plan was approved (SEC/2008/1991 29.5.2008). There was also a mid-term review in 2010 and annual progress reports.

[67] Development Assistance Committee (DAC), *European Union: Peer Review 2012* (Paris: OECD), 24.

of the EU humanitarian aid sphere. Since the EU now has several foreign policy related instruments in its toolbox, there is no need to rely on humanitarian resources for these purposes.[68]

However, privileged observers such as former Commissioner Nielson[69] and the VOICE network of humanitarian aid NGOs[70] warn that the humanitarian principles are often poorly understood and constantly under pressure from the actors involved in development, as well as foreign and security policies. NGOs tend to see the 2007 Humanitarian Consensus as the high point of the EU's commitment to apolitical and needs-based humanitarian aid. However, this document dates back almost a decade, and the Action Plan was not extended after 2013. The question can be raised of whether the quest for more coherence may have the (intentional or unintentional) effect of eroding the commitments made in the Humanitarian Consensus. Following a legal analysis of the specific characteristics of humanitarian aid under Article 214 TFEU (Section 3), the rest of the report will take a closer look at the possible implications of the Lisbon Treaty for guaranteeing the specific position of humanitarian aid within the broader context of the EU's external action.

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[68] Versluys *European Humanitarian Aid Policy op. cit.*
[69] P. Nielson, *op. cit.*
[70] Interview with Kathrin Schick, Director of VOICE, 4 February 2013.

3 The specific features of EU humanitarian aid: implications of Article 214 TFEU

Arguably, the introduction of Article 214 TFEU reinforces the specific nature of humanitarian aid as a separate EU external policy. It not only codifies the EU's competence to act in this field (3.1.), but also underlines the importance of respect for key principles derived from international humanitarian law as a crucial precondition for the implementation of the EU's humanitarian activities (3.2.). Nevertheless, the new Treaty provision also creates new challenges as far as respect for those principles is concerned (3.3.)

3.1 The legal nature of the EU's competence in the field of humanitarian aid

Pursuant to Article 4 (4) TFEU, the EU is competent "to carry out activities and conduct a common policy" in the areas of development cooperation and humanitarian aid. Significantly, "the exercise of that competence shall not result in Member States being prevented from exercising theirs". Accordingly, the Treaty of Lisbon codified the shared and parallel nature of the EU's humanitarian aid competence.[71] Just as in the area of development cooperation, EU initiatives to develop a common humanitarian aid policy do not have a pre-emptive effect on the Member States. Both the EU and its Member States can conclude international agreements with third countries and international organisations on matters related to humanitarian assistance.[72]

Even though the EU and the Member States can act in parallel, they are nonetheless under an obligation to take each other's activities into account. This follows from the duties of consistency and loyal cooperation, which have been given an even more prominent place with the Treaty of Lisbon.[73] Moreover, Article 214, paragraph 1 TFEU explicitly provides that "the Union's measures and those of the Member States shall complement and reinforce each other", whereas paragraph 6 endows the European Commission with the competence

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[71] In the *Bangladesh* case of 1993, the European Court of Justice had already observed that "the Community does not have exclusive competence in the field of humanitarian aid, and that consequently the Member States are not precluded from exercising their competence in that regard collectively in the Council or outside it". See: Joint cases C-181/91 and C-248/91, *European Parliament* v. *Council* [ECR] 1993, I-3685, para. 16.

[72] Art. 214 (4) TFEU.

[73] See articles 4(3) TEU, 13(1) TEU and 7 TFEU.

to "take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures".

The existence of parallel EU and Member State competences regarding development cooperation and humanitarian aid can be linked to the particular characteristics of both policies. Taking into account their important budgetary implications, visibility and close connections to foreign policy objectives and preferences, the Member States appear reluctant to accept a far-reaching competence transfer to the EU level.[74] Moreover, parallel action by the Union and the Member States, either individually or collectively, can contribute to a better burden-sharing of the technical and financial efforts related to development and humanitarian aid. This may result in more intensive assistance than would be the case if Union action excluded further Member State activities in support of developing countries and/or in the wake of an emergency. Or, to paraphrase Advocate General Kokott: the more development and humanitarian assistance, the better.[75]

Despite the similarities between the EU's development and humanitarian aid competences, subtle differences exist. Whereas Article 209 (1) TFEU allows for the adoption of "measures necessary for the *implementation* of development cooperation", Article 214 (3) TFEU only refers to "measures defining the *framework* within which the Union's humanitarian aid operations shall be implemented".[76] This may be linked to the specific features of EU humanitarian assistance, which is essentially implemented by NGOs and specialist international organisations or bodies through Framework Partnership Agreements (FPAs, see above).[77] A key objective of the EU's humanitarian aid policy is to operate as a facilitator for providing first aid and relief in emergency situations. In this context, Article 214 (6) TFEU gives a mandate to the European Commission to "take any useful initiative to promote *coordination* between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures". Arguably, this general focus on coordination reveals that the division between "shared" and "coordinating" competences in Articles 4 and 6 TFEU is not straightforward.[78]

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[74] On the Member States' sovereignty concerns with respect to the EU's humanitarian aid policy, see also: F. Pusterla and E. Pusterla, 'The Uniqueness of the EU Humanitarian Aid Policy between Sovereignty and Humanitarian Concerns', *EFA Rev.* (2015), 247-266.

[75] See: Opinion of Advocate General Kokott in Case C-13/07, *Commission* v. *Council*, para. 70. The Opinion of the Advocate General only concerned the parallel nature of the Community's development cooperation competences at the time, but the same reasoning applies *mutatis mutandis* with regard to humanitarian aid.

[76] Emphasis added.

[77] Articles 7 and 8 of Regulation 1257/96. Article 9 of the same Regulation provides that "where necessary, the Community may also finance humanitarian operations by the Commission or the Member States' specialised agencies".

[78] P. Craig, *The Lisbon Treaty. Law, Politics and Treaty Reform* (Oxford: OUP, 2010), 395.

As far as humanitarian aid (and development cooperation) is concerned, the EU is both a significant actor/donor and a coordinator of Member State actions.

The Commission's competence to promote coordination between humanitarian actions of the Union and the Member States is nothing new, because it is already included with so many words in Article 10 (1) of Regulation 1257/96 and also appears prominently in the European Consensus document (see above 2.3).[79] Article 10 (2) of Regulation 1257/96 deals with the Commission's coordinating role in relation to international organisations and agencies, in particular those which form part of the United Nations system, and Article 10 (3) provides that the Commission "shall endeavour to develop collaboration and cooperation between the Community and third-country donors in the field of humanitarian aid". It is noteworthy that Article 214 (7) TFEU endows the task of coordination with international organisations and bodies to the Union, rather than specifically to the Commission, whereas Article 214 TFEU remains silent on the task of coordination with other third country donors. This is a direct consequence of the Lisbon Treaty innovations, which granted the responsibility for cooperation with international organisations to the High Representative and the Commission[80] and resulted in the establishment of Union – rather than Commission – Delegations. In practice, the Commission actively pursues a coordinating role both in relationship to the activities of the Member States and other international actors, whether they are international organisations, agencies or third country donors. The initiative of Commissioner Georgieva to convene a major donor conference in response to the unfolding humanitarian crisis in Syria provides a good illustration of the Commission's coordinating activities in the field of humanitarian aid.[81]

3.2 A policy based on principles of international humanitarian law

The EU's external action is based upon the strict observance and development of international law.[82] As a result, the EU's humanitarian aid policy is embedded within the broader framework of international humanitarian law (IHL).[83] The latter is essentially based upon the four Geneva Conventions of 1949 and two

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[79] In 1996, ECHO was already better equipped than many EU Member States and their staff in terms of expertise, most notably through its extensive network of field experts (Versluys, *European Humanitarian Aid Policy*, *op. cit.*, 21). However, this coordination commitment was barely implemented. The European Consensus has brought this ambition back to the fore, leading to a further Europeanisation of humanitarian aid.

[80] Article 220 (2) TFEU.

[81] 'Humanitarian response to the Syrian crisis: EU Commissioner convenes donors, Syria's neighbours and aid agencies', see: http://europa.eu/rapid/press-release_IP-12-1032_en.htm.

[82] Art. 3 (5) TEU and Art. 21 (1) TEU.

[83] See: Art. 214 (2) TFEU and the updated EU guidelines on promoting compliance with international humanitarian law, OJ (2009) C 303/12.

Protocols of 1977.[84] In addition, other international conventions and customary international law determine the content and scope of IHL.[85]

The principles of humanity, neutrality and impartiality are generally recognised as the common denominator in international legal instruments related to humanitarian aid in disaster situations.[86] The notion of independence, which is also often mentioned, may be considered as a "derived principle" in so far as its substance, i.e. the autonomy of humanitarian objectives from political, military or economic influences, follows from the other principles.[87] The same reasoning applies with regard to the principle of non-discrimination. Nevertheless, like independence, non-discrimination is sometimes explicitly included as a separate concept alongside the notions of humanity, neutrality and impartiality. This is, for instance, the case in Article 9 of Additional Protocol I to the Geneva Conventions relating to the protection of victims of international armed conflicts,[88] in the International Code of Conduct for the Red Cross and Red Crescent Movement,[89] and in Article 6 of the draft Convention on Protection of Persons in the Event of Disasters, which is currently being prepared by the International Law Commission.[90]

The EU's 2007 European Consensus refers to "humanity, neutrality, impartiality and independence" as four "fundamental humanitarian principles". The document also provides a definition of those terms. Humanity implies that "human suffering must be addressed, wherever it is found, with particular attention to the most vulnerable in the population", neutrality means that humanitarian aid "must not favour any side in an armed conflict or other dispute", impartiality requires that "humanitarian aid must be provided solely on the basis of need, without discrimination between or within affected populations" and respect for independence entails "the autonomy of humanitarian objectives from political, economic, military or other objectives". Hence, the sole purpose of humanitarian aid is "to relieve and prevent the suffering of victims

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[84] For the text of the Conventions and the Protocols, see: https://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp.

[85] An overview of the principle legal instruments of IHL are included in an annex to the updated EU guidelines on promoting compliance with international humanitarian law, OJ (2009) C 303/12.

[86] Memorandum by the Secretariat of the International Law Commission, 'Protection of Persons in the Event of Disasters', A/CN.4/590, para. 11. See also: G. Venturi, 'International Disaster Response Law in Relation to Other Branches of International Law', in: A. De Guttry, M. Gestri and G. Venturi, (eds.), *International Disaster Response Law* (New York: Springer, 2012), 52.

[87] Casolari, *op. cit.*, 134.

[88] Text available at: http://www.icrc.org/eng/.

[89] Text available at: http://www.ifrc.org/Docs/idrl/I259EN.pdf.

[90] Draft Article 6 of this Convention provides: "Response of disasters shall take place in accordance with the principles of humanity, neutrality and impartiality, and on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable". See: International Law Commission, A/CN.4/L776.

of humanitarian crises".[91] The four humanitarian principles, as defined in the European Consensus, correspond with the practice of the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA)[92] and are based on a number of UN General Assembly and Security Council Resolutions.[93]

It is noteworthy that Article 214 (2) TFEU refers to "impartiality, neutrality and non-discrimination" as fundamental principles guiding the EU's humanitarian aid. In other words, there is a striking difference between the humanitarian principles included in the European Consensus and those in the Treaty. This unavoidably leads to the question of whether this distinction is intentional and what implications it may have. Arguably, this discrepancy, which seems remarkable at first sight, can only be understood in light of the history behind the Lisbon Treaty.[94] The 2004 draft Constitutional Treaty included a provision that was identical to what became Article 214 TFEU. During the negotiations on the Lisbon Treaty, the easiest option was therefore to simply copy/paste the old provision without further discussion. Whereas the addition of "humanity" would not have sparked much debate, the notion of "independence" was more controversial, because it potentially contrasts with the ambition to develop a more "comprehensive approach" in response to crisis situations. Hence, a suggestion by the European Commission to include all four of the humanitarian principles in the European Consensus in the new Lisbon Treaty provision "was declined out of fear that it would open a Pandora's Box".[95]

Despite the absence of an explicit reference to humanity and independence in Article 214 (2) TFEU, it is difficult to maintain that those principles would not bind the institutions and the Member States in pursuing the EU's humanitarian aid policy.[96] After all, Article 214 (2) also contains a reference to "the principles of international law", and pursuant to Article 21 TEU, the Union's external action shall by guided by, amongst other things, "respect for human dignity, the

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[91] *Ibid.*, para. 14.

[92] See: http://ochanet.unocha.org/p/Documents/OOM_HumPrinciple_English.pdf.

[93] General Assembly Resolution 46/182 of 19 December 1991 on 'Strengthening of the coordination of humanitarian emergency assistance of the United Nations' laid down that "humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality", A/RES/46/182. General Assembly Resolution 58/114 of 17 December 2003 reaffirmed those principles and recognised that "independence, meaning the autonomy of humanitarian objectives from the political, economic, military and other objectives that any actor may hold with regard to areas where humanitarian action is being implemented, is also an important guiding principle for the provision of humanitarian assistance", A/RES/58/114. Security Council Resolution S/RES/1674 of 28 April 2006 on the protection of civilians in armed conflicts also "stresses the importance for all, within the framework of humanitarian assistance, of upholding and respecting the humanitarian principles of humanity, neutrality, impartiality and independence".

[94] See: M. Broberg, 'EU Humanitarian Aid after the Lisbon Treaty', 22 (3) *Journal of Contingencies and Crisis Management* (2013), 168.

[95] *Ibid.*, 169.

[96] See also: F. Casolari, 'The External Dimension of the EU Disaster Response', in: A. De Guttry, M. Gestri and G. Venturi, (eds.), *op. cit.*,152.

principles of equality and solidarity and respect for the principles of the United Nations Charter and international law". Respect for the key rules of international humanitarian law – including the principles of humanity and independence – falls within the scope of those provisions.[97] Moreover, Article 1 of the Charter of Fundamental Rights unequivocally states that "[h]uman dignity is inviolable. It must be respected and promoted". This reflection of the humanity principle binds the EU institutions, bodies, offices and agencies of the Union and the Member States when they are acting under Article 214 TFEU.

3.3 The paradox of Article 214 TFEU: humanitarian principles under pressure?

Despite the clear link between EU humanitarian aid and IHL, concerns have been raised that the humanitarian principles may be under pressure. In particular, NGOs did not appear to be entirely satisfied with the drafting of Article 214 TFEU.[98] Two issues are of particular concern. First, Article 214 (5) TFEU explicitly provides for the establishment of a European Voluntary Humanitarian Aid Corps (EVHC). There is a fear that the political inspiration of this initiative may contrast with the humanitarian principles (3.3.1.). Second, there is also a more general concern that the integration of humanitarian assistance within the framework of the EU's external action may negatively affect the independence of the EU's humanitarian action (3.3.2.)

3.3.1 The EU Aid Volunteers Initiative: humanitarian and citizenship objectives

Former Greek Minister for Foreign Affairs George Papandreou launched the idea of a European Voluntary Humanitarian Aid Corps (EVHC) at the European Convention that was to draft the EU's Constitutional Treaty. His source of inspiration was the American "Peace Corps", established in the 1960s by President Kennedy as an initiative for American students to be involved in development activities all over the world.[99] The proposal was introduced at a later stage in the discussions within the Convention and became part of the Constitutional Treaty's provision on humanitarian aid. It received some criticism from different corners. First, the NGO community feared that a voluntary aid corps may undermine the increasing professionalism in the humanitarian aid sector, potentially leading to dangerous situations in conflict areas.[100]The European Commission also found it inadvisable to send European volunteers to high-risk crisis situations and suggested the inclusion of the idea of a voluntary

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[97] Significantly, the EU's Strategic Framework on Human Rights and Democracy specifies that the Union will, amongst other things, promote the observance of international humanitarian law in the context of its external action. Council of the EU, doc. 11855/12, 25 June 2012.

[98] http://www.ngovoice.org/documents/HA-Dev_NGO_response18Jun03.pdf.

[99] Broberg, 'EU Humanitarian Aid after the Lisbon Treaty', *op. cit.*

[100] VOICE Press Release: 'EU Constitution endangers humanitarian aid', 27 October 2003 (available at: http://www.ngovoice.org/documents/VOICEPressReleaseIGC_27-10-03.pdf).

corps in the Treaty provision on development cooperation or citizenship.[101] Second, several members of the Convention, as well as academic commentators, questioned the need for a specific Treaty provision on voluntary work. According to Bruno De Witte, the inclusion of a reference to the EVHC in the Treaty illustrates "the relentless accumulation of constitutional law" in the field of EU external relations: "In most states, such an initiative would be announced in a press statement of the government and not in the Constitution!"[102] Third, several members of the Convention questioned whether the EU is the appropriate level to organise such a volunteer initiative. There were some concerns that this initiative may be primarily aimed at being a promotional tool to increase the visibility of the EU's humanitarian actions.[103] As stated above (see 2.1), the emphasis on visibility has been a constant (albeit much contested) consideration since the establishment of an EU humanitarian aid policy. Arguably, such visibility requirements may conflict with the humanitarian imperative to provide aid on a needs-based approach. Moreover, it may affect the independence from political, economic, military or other objectives.

Notwithstanding the above-mentioned critical voices, the idea of an EVHC remained part of the Treaty provision on humanitarian aid. Arguably, the widespread popular support for the initiative[104], as well as the ambition to use the new corps as an instrument of community building[105] explained its inclusion in Article 214 TFEU. Nevertheless, the implementation of this newly acquired competence faced numerous challenges. There was little support for the idea within the family of humanitarian aid workers. Moreover, there was neither an exact definition of a "volunteer" nor a clear description of the possible tasks or required training. In the given context, the Commission launched a broad consultation with stakeholders in 2010[106] before drafting a legislative proposal in 2012.[107]

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[101] Broberg, 'EU Humanitarian Aid after the Lisbon Treaty', *op. cit.*

[102] B. De Witte, 'Too Much Constitutional Law in the European Union's Foreign Relations?', in: M. Cremona and B. De Witte (eds.), *EU Foreign Relations Law. Constitutional Fundamentals* (Oxford: Hart, 2008), 13.

[103] VOICE Press Release, *op. cit.*

[104] According to a 2010 Eurobarometer report, up to 88% of the European population supports the proposal of an EVHC.

[105] In this respect, it is noteworthy that the Commission's proposal on establishing an EVHC underlined that raising "the levels of awareness about the Union's humanitarian aid and its visibility" is an underlying objective of this initiative. See: Proposal for a Regulation of the European Parliament and of the Council, Establishing the European Voluntary Humanitarian Aid Corps, COM (2012) 514, Brussels, 19.9.2012, p. 2.

[106] Communication from the European Commission to the European Parliament and the Council, 'How to express EU citizen's solidarity through volunteering: first reflections on a European Voluntary Humanitarian Aid Corps', COM (2010) 683 final.

[107] European Commission, Proposal for a Regulation of European Parliament and of the Council, 'Establishing the European Voluntary Humanitarian Aid Corps – EU Aid Volunteers', COM (2012) 514 final.

The Commission proposal and Regulation No 375/2014 of 3 April 2014[108] reflect the multiple objectives behind the EVHC, which was rebranded as the "EU Aid Volunteers Initiative". On the one hand, the initiative "should contribute to efforts to strengthen the Union's capacity to provide needs-based humanitarian assistance". On the other hand, it should also "help Europeans of all ages to demonstrate active European citizenship. The initiative should thus contribute to promoting volunteering across the Union and to the personal development and intercultural awareness of participating volunteers".[109] In other words, the aims of the humanitarian aid corps go beyond mere humanitarian assistance to also include an explicit citizenship dimension. This is expressly confirmed in Article 4 of Regulation 375/2014.

In order to reassure the humanitarian aid community, Regulation 375/2014 also includes numerous references to the European Consensus and the principles of humanity, neutrality, impartiality and independence. Moreover, the selection process occurs in close cooperation with the NGO sector and includes training sessions for applicants. From 2011 onwards, the European Commission has launched a number of pilot projects led by a consortium of humanitarian organisations in anticipation of the real start of the programme in 2015. By 2020, more than 18,000 citizens are expected to be deployed as EU Aid Volunteers in humanitarian projects worldwide.[110] Whereas the initial scepticism among humanitarian aid workers seemed to fade away after the adoption of a legal and financial framework,[111] some objections remain in place. As indicated by former Commissioner Georgieva, the success of the programme largely depends upon "expectations management". There are a large number of candidates, but the selection of volunteers should be based on a thorough assessment of what is needed in terms of skills and profiles in the field.[112]

3.3.2 Humanitarian aid as part of the EU's external action

According to Article 214 (1) TFEU, EU humanitarian aid shall not only be implemented in compliance with the general principles of international (humanitarian) law, it shall also be conducted "within the framework of the principles and objectives of the external action of the Union". This reference is included as a standard clause in all Treaty provisions dealing with EU external

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[108] Regulation (EU) No 375/2014 of the European Parliament and of the Council of 3 April 2014 establishing the European Voluntary Humanitarian Aid Corps ('EU Aid Volunteers Initiative'), OJ (2014) L 122/1.

[109] See considerations (6) and (15) of the preamble to Regulation 375/2014.

[110] See: http://ec.europa.eu/echo/en/what/humanitarian-aid/eu-aid-volunteers.

[111] A budget of € 147.9 million is foreseen for the period 2014-2020.

[112] K. Georgieva, 'The lessons learned and ways forward for EU Aid Volunteers', EU Aid Volunteers Conference, Brussels, 16 September 2013, available at: http://europa.eu/rapid/press-release_ SPEECH-13-712_en.htm

policies[113] and reflects a general preoccupation of the Lisbon Treaty with ensuring the coherence of the Union's action on the international scene.[114] The key reference point listing the EU's general principles and objectives is Article 21 TEU.

A strict reading of Article 214 (1) TFEU may suggest that humanitarian aid can be used as an instrument to achieve the entire list of objectives mentioned in Article 21 TEU, including, for instance, the ambition to preserve peace, prevent conflicts and strengthen international security.[115] Obviously, such an interpretation potentially affects the independence of humanitarian operations and risks a movement towards the instrumentalisation of humanitarian aid. It would confirm the longstanding fears of NGOs and critical observers that political and other considerations could overshadow the humanitarian principles and that humanitarian aid could be used instrumentally for the purpose of other foreign policy goals. Theoretically, this would correspond to what scholars have called "malign coherence",[116] namely coherence stemming from the dominance of a particular policy objective within a particular institutional setting over a weaker institutional setting with different objectives. In contrast to "positive" or "synergetic" coherence, which is the outcome of two (or more) policy fields joining hands in pursuit of a common goal, malign coherence denotes that coherence is not always a win-win situation, but that it can be the result of a political conflict between competing objectives and bureaucratic institutions.[117]

However, the inclusion of a horizontal list of external action objectives in Article 21 TEU does not absolve the institutions from respecting the principle of conferral as expressed in the specific legal bases mentioned in the Treaties.[118] Pursuant to Article 214 (2) TFEU, the Union is only competent to pursue a humanitarian aid policy with respect to international (humanitarian) law and the principles of impartiality, neutrality and non-discrimination (cf. *supra*). The latter precludes humanitarian operations from being used to pursue the political, military or economic objectives of the EU's external action listed in Article 21 TEU. The first sentence of Article 214 (1) TFEU cannot affect this legal obligation. Moreover, Article 40 TEU forms an additional guarantee of the independence of EU humanitarian aid in relation to potential foreign policy and

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[113] Art. 207 TFEU (Common Commercial Policy); Art. 208 TFEU (development cooperation); Art. 212 TFEU (economic, technical and financial cooperation with third countries); Article 24 TEU (Common Foreign and Security Policy).

[114] See Art. 23 TEU and 205 TFEU.

[115] Art. 21 (2) (c) TEU.

[116] S. Nuttall, 'Coherence and Consistency', in: C. Hill and M. Smith (eds.), *International Relations and the European Union* (Oxford: Oxford U. Press, 2005), 76-77; C. Gebhard, 'Coherence', in: C. Hill and M. Smith (eds.), *op. cit.*, 111-112.

[117] This point is further illustrated in Section 4 of this report.

[118] This can be derived from Art. 3 (6) TEU, which states: "The Union shall pursue its objectives by appropriate means commensurate the competences which are conferred upon it in the Treaties". See also: Dashwood, *op. cit.*, 35.

military influences. According to this provision, the implementation of CFSP measures cannot affect the application of the procedures and the extent of the powers of the institutions under the EU's non-CFSP action and *vice versa*.[119] Hence, the incorporation of a specific Treaty provision on humanitarian aid helps to consolidate the specific features of EU action in this field without, however, solving the often blurred boundaries with other policy areas in practice. In the following sections, the report assesses how this dilemma is addressed at the institutional level (Section 4) before paying particular attention to the links between humanitarian aid and closely related policies, such as crisis management, development and trade (Section 5).

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[119] For comments on Art. 40 TEU, see: P. Van Elsuwege, *op. cit.,* 987-1019.

4 The institutional framework of EU humanitarian aid

This section addresses the issue of coherence from an institutional angle. Following an introductory part, which highlights the opportunities and challenges of the main institutional innovations relating to EU humanitarian aid, the section outlines the institutional and operational framework of the EU's humanitarian aid (4.1). Next, it sheds light on the institutional and operational interaction between DG ECHO and the other EU external action players involved in the formulation and/or implementation of the EU's humanitarian aid policy (4.2). The next part looks at the institutional interaction between DG ECHO and the Member States (4.3). The section then turns to the institutional relation of DG ECHO with Common Security and Defence Policy (CSDP)/military aspects (4.4). The section ends by focusing on the EU's Comprehensive Approach to External Conflicts and Crises and assessing its implications for ECHO as a separate institutional actor within the EU's external policy machinery (4.5).

As highlighted above, the recognition of humanitarian assistance as a distinct policy resulted in the creation of ECHO as a separate service and later a Directorate General within the Commission.[120] The institutional insulation of ECHO as an autonomous DG has been an important factor in guaranteeing the independence of the humanitarian aid sphere at the EU level. This is strongly reflected by the fact that DG ECHO remains separated from the European External Action Service (EEAS). The appointment of a separate Commissioner responsible for humanitarian aid in 2009 is another important institutional development (see Annex II). According to the OECD, this has "raised the profile of humanitarian aid internally, while protecting the independence of decision making, and strengthened the EU voice externally".[121] However, having a separate Commissioner for humanitarian aid is, in itself, not a guarantee that the humanitarian principles will be respected. Whereas the tenure of Emma Bonino as the Commissioner for Humanitarian Aid (1995-1999) is associated with a dilution of the humanitarian principles for the benefit of the EU's visibility and its foreign policy goals, the tenures of Poul Nielson (1999-2004) and Louis Michel (2004-2009), who both combined the Development and Humanitarian

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[120] Under the Barroso I Commission, in 2004, ECHO was transformed from a specialised directorate into a full-fledged Directorate-General. The FPAs with NGOs and international organisations were updated in 2009. ECHO's openness to regular dialogue has been appreciated by the partners in the humanitarian community, although the administrative requirements remain burdensome (OECD-DAC Report 2012, 88).

[121] OECD/DAC, 'European Union: Peer Review 2012' (Paris: OECD), 87.

Aid portfolios (see Annex II), coincided with a growing professionalism and independence of humanitarian aid. Former Commissioner Georgieva built up a strong reputation in EU policy circles, and it remains to be seen whether her successor, Christos Stylianides, will stand on his authority in defending humanitarian aid policy to an equal extent.[122] In this respect, it is noteworthy that he is responsible for "humanitarian aid and crisis management" (see Annex II). Whereas such a combination makes sense from the perspective of the EU's comprehensive response to crisis situations, it potentially raises questions about the independence of humanitarian assistance from broader foreign policy concerns (see below).

A similar concern exists with regard to the combination of humanitarian assistance and civil protection as part of DG ECHO's responsibilities. Since 2004, the scope of DG ECHO and the portfolio of the Commissioner dealing with humanitarian aid have been broadened to include civil protection. Therefore, DG ECHO was renamed "Directorate General for Humanitarian Aid and Civil Protection". Previously, the Civil Protection unit was based at DG Environment. Within ECHO's organisational chart, Humanitarian Aid and Civil Protection Operations are combined in the same structure (ECHO.B): The organisational divisions are not between humanitarian aid and civil protection, but according to regions (B.1 to B.5) (See Table 1). The logic behind such a combination is that both policies provide complementary tools to address relief assistance to people faced with the immediate consequences of natural or man-made disasters. However, as was mentioned above, civil protection has a different legal basis (Art. 196 TFEU) and bears different characteristics. Therefore, NGOs have expressed concerns about bringing civil protection and humanitarian aid together under the same umbrella.[123] On the other hand, the integration of civil protection functions into the activities of DG ECHO could improve the coherence of the EU's strategy for crisis response, and as will be shown above, relations with the EEAS do not appear to have undermined the fundamental role of humanitarian principles.[124]

Another important institutional innovation, which should be seen as a further continuation of the Lisbon spirit, can be witnessed at the level of the College of Commissioners. The new High Representative, Federica Mogherini, was tasked by the President of the European Commission, Jean-Claude Juncker, to revitalise the so-called Relex group, i.e. the EU Commissioners dealing with EU external relations. As a result, they are now working much more closely together. Similarly, this raises both opportunities and challenges for the EU's humanitarian aid policy. While this strengthened coordination inside the College of Commissioners is beneficial in terms of increased awareness about each other's

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[122] Georgieva was named "European of the year" and "EU Commissioner of the year" in 2010.
[123] K. Schick (2013), Director of VOICE, Interview on 4 February 2013.
[124] OECD/DAC, *op. cit.*, 90-95.

principles, objectives and modalities and the higher likelihood of agreeing on a common framework for action, there is again a risk that this enhanced coordination will lead to a degree of integration that will negatively affect the goal of humanitarian aid to address the needs of crisis-affected populations.[125]

Finally, as will be shown below, separate funding arrangements should further contribute to the independence of EU humanitarian assistance. At the same time, the EU's increasing preoccupation with the vertical and horizontal coherence of its external policies has led to a multitude of institutional arrangements and initiatives designed to formalise coordination and communication between the various external policy actors and institutions, which automatically draw humanitarian aid into the wider sphere of the EU's external action.

4.1 The organisational framework of EU humanitarian aid policy

DG ECHO comprises three organisational parts: Directorate A, which covers strategy, policy and international cooperation, Directorate B, which is responsible for humanitarian and civil protection operations, and Directorate C, which deals with resources, partnerships and operational support.[126] Directorate A is further divided into five units: A/1 Strategy, Coordination and Inter-Institutional Relations, A/2 Information and Communication, A/3 Policy and Implementation Frameworks, A/4 Specific Thematic Policies and A/5 Civil Protection Policy, Prevention, Preparedness and Disaster Risk Reduction. Directorate B is also composed of five units. While B/1 is responsible for emergency response, the other four units in the directorate each cover specific geographic regions (see Table 1). Directorate C, in turn, consists of four administrative units (see Table 1).

DG ECHO operates with a staff base of about 340 at its headquarters in Brussels and has around 460 staff based in the field.[127] In 2013, ECHO's global field network was composed of 140 international humanitarian experts and 320 local staff members based in 44 field offices across 39 countries.[128] ECHO's field presence is highest in Sub-Saharan Africa, followed by Asia, Europe, Latin America, and the Middle East and North Africa.[129] The network operates based on a continuous assessment of the humanitarian needs of the countries and regions concerned. This means that the assessments determine the need for, as well as the size and budget of, the field offices. Apart from identifying and evaluating humanitarian needs, the field offices are tasked with the supervision of ongoing ECHO-funded operations, the provision of administrative and

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[125] VOICE, Newsletter, issue 21, May 2015, 17-18.
[126] See http://ec.europa.eu/echo/en/who/about-echo/organisational-chart.
[127] See http://ec.europa.eu/echo/node/2525.
[128] See: ECHO field network, http://ec.europa.eu/echo/files/about/jobs/experts/ECHO_Field_Network.pdf.
[129] See http://ec.europa.eu/echo/en/interactive-map.

Table 1: DG ECHO organisational chart		
Directorate A Strategy, Policy and International Co-operation	*Directorate B Humanitarian and Civil Protection Operations*	*Directorate C Resources, Partnerships and Operational Support*
A/1 – Strategy, Coordination and Inter–Institutional Relations	**B/1** – Emergency Response	**C/1** – Human Resources, Security, Document Management
A/2 – Information and Communication	**B/2** – Central Africa, Sudan and South Sudan	**C/2** – Budget, External Audit, Informatics
A/3 – Policy and Implementation Frameworks	**B/3** – East, West and Southern Africa, Indian Ocean	**C/3** – Finance, Legal Affairs and Partner Support
A/4 – Specific Thematic Policies	**B/4** – European Neighbourhood, Middle East, Central and South–Western Asia	**C/4** – Field Network, Transport and Logistics
A/5 – Civil Protection Policy, Prevention, Preparedness and Disaster Risk Reduction	**B/5** – Asia, Latin America, Caribbean, Pacific	

logistical support to the ongoing operations and projects, and the facilitation of donor coordination.[130]

Within the annually agreed budget, ECHO is free to decide on any activities below three million euro. ECHO funding decisions above three million euro are made following the "comitology" process, which means that they require approval from the Member State representatives in the Humanitarian Aid Committee (HAC) and from the European Parliament. Funding for humanitarian aid is provided through the European Humanitarian Aid Instrument. In ACP countries, some of the EU's humanitarian aid work can also be financed through the European Development Fund (EDF). In 2014, for instance, 30 million euro was committed by the EDF to support ECHO's humanitarian work on the Ebola virus outbreak in West Africa.[131] In addition, ECHO can call upon the Emergency Aid Reserve in order to respond to major emergencies that were

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[130] See: ECHO Field Network, http://ec.europa.eu/echo/files/about/jobs/experts/ECHO_Field_Network.pdf.

[131] Interview with ECHO official, 6 November 2014.

unforeseeable when the EU budget for humanitarian aid was drawn up.[132] In 2012, for instance, the Emergency Aid Reserve was mobilised to enable swift humanitarian action in Syria, Mali and the Sahel.[133] In order to ensure a swift reaction, emergency funding decisions up to 10 million euro are only subject to the interdepartmental consultation procedure within the Commission and only need to be sent to the HAC for information within 48 hours of their adoption. Emergency funding decisions above 10 million euro require approval by the HAC and the European Parliament.

4.2 Interaction between DG ECHO and the Member States: addressing the challenge of vertical coherence

At the policy-making level, coordination and interaction between DG ECHO and the Member States take place through the Council Working Party on Humanitarian Aid and Food Aid (COHAFA). This working group, which acts as a forum for discussion on humanitarian aid between the Member States and ECHO, meets once a month, with additional meetings taking place in the event of major sudden crises. The incoming EU Council Presidency, together with ECHO, establish the work plan for the meetings, covering specific humanitarian crises and policy issues.[134] COHAFA also serves to increase the coordination and coherence of the Commission's and the Member States' humanitarian aid activities.

The ambition to promote coordination between the Commission and the Member States, "both at [the] decision-making level and on the ground", was already mentioned in the 1996 Regulation (Art. 10). At that time, ECHO was already better equipped than many EU Member States in terms of staff and expertise, most notably through its extensive network of field experts.[135] However, this coordination commitment was barely implemented. The 2007 European Consensus brought the ambition to Europeanise humanitarian aid back to the fore, which resulted in the creation of COHAFA as a forum for strategic and policy debates on humanitarian aid. While effective coordination remains a challenge (see below), notable progress has been made in this regard since the establishment of COHAFA in 2009: There is an annual exchange within COHAFA on humanitarian aid policies and budgets; the Member States use information or analysis provided by ECHO when planning their humanitarian interventions; the Member States' humanitarian aid activities in specific crises are better coordinated; and EU positions on specific humanitarian issues are

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[132] See: http://ec.europa.eu/budget/explained/budg_system/flex/flex_en.cfm.

[133] See: https://www.eutrainingsite.com/2014-2020.php?id=131.

[134] ECHO Annual Report Policy Fiche, 28/05/2013, see: http://ec.europa.eu/echo/files/media/publications/annual_report/2012/AR2013_policy_fiche_Institutions.pdf.

[135] Versluys, *European Humanitarian Aid Policy, op.cit.,* 21. This is still the case today. Apart from the UK, DG ECHO is actually the only European actor working full-time on humanitarian matters. Most Member States only have a limited presence in both geographical and temporal terms (Pusterla and Pusterla, op.cit., 261).

discussed ahead of international meetings.[136] In addition, a new information tool, the European Emergency Disaster Response Information System (EDRIS), was created in 2011 to share relevant information and to track ECHO's and the Member States' humanitarian aid contributions.[137] Until recently, however, COHAFA struggled to liaise with geographical Council working groups, and via these groups, with the Political and Security Committee (PSC), COREPER and the Foreign Affairs Council. According to Rosita Šorytė, who acted as COHAFA chair during Lithuania's EU Council Presidency in 2013, communication and coordination with other working groups has now improved.[138]

Nevertheless, important challenges continue to exist. As the Chief of Cabinet of former Commissioner Georgieva admitted, there are diverse traditions within the Member States, and the Commission does not intend to push them too harshly in a certain direction, playing the role of a "facilitator" and "soft coordinator" instead.[139] Even though this approach may lead to sustainable progress in the medium term, the OECD-DAC recommended that the Commission take a stronger lead.[140] A recent study of the VOICE network representing European NGOs also found that, despite the general acceptance of the European Consensus on Humanitarian Aid, there are certain gaps between rhetoric and actual practice.[141] For example, the Member States tend to be influenced more by foreign policy and electoral concerns than by an objective needs assessment. Sometimes, this relates to the power of the Foreign Affairs Ministry over the Development Departments – whereby the development sphere is less autonomous at the Member State level than at the EU level. The study finds that more could be done to monitor the Member States' application of the consensus in their humanitarian aid policies and recommends that the European Parliament could also play a role in this respect.

4.3 Interaction between DG ECHO and other EU external policy actors: addressing the challenge of horizontal coherence

ECHO has a specific unit responsible for coordination and inter-institutional relations, namely unit A.1. Outside of this unit, inter-institutional contacts with other external policy actors mostly take place between the geographical units within ECHO and their counterparts within the Commission's Directorate

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[136] ECHO Annual Report Policy Fiche, 28/05/2013, see: http://ec.europa.eu/echo/files/media/ publications/annual_report/2012/AR2013_policy_fiche_Institutions.pdf.

[137] See: https://webgate.ec.europa.eu/hac/.

[138] NGO VOICE, interview with COHAFA Chair Rosita Šorytė, 11 December 2013. See: http://eudevdays.eu/news-views/interview-cohafa-chair-rosita-%C5%A1oryt%C4%97#. VGtfGfmG8dU.

[139] EU Governance of Global Emergencies, Conference, Brussels, 22 October 2012.

[140] OECD/DAC, op. cit., 96.

[141] VOICE, 'The European Consensus on Humanitarian Aid. An NGO Perspective', May 2014, p. 16, available at: http://reliefweb.int/report/world/european-consensus-humanitarian-aid-ngo-perspective.

General for International Cooperation and Development (DEVCO) and the EEAS (see Figure 1). Since the start of the crisis in Syria, for instance, there has been a lot of coordination and information-sharing between the respective geographical desk officers in ECHO and EEAS.[142] As will be indicated in more detail in Section 5, ECHO closely cooperates with DEVCO on resilience and "linking relief, development and rehabilitation" (LRRD) (see also Figure 1).

ECHO's institutional and operational interaction with the EEAS follows the procedural guidelines and principles laid down in the "Working Arrangements between Commission Services and the EEAS in relation to External Relations Issues".[143] The document provides specific guidelines for ECHO-EEAS operational co-operation in the field and their institutional cooperation on external crises. To begin with, an ECHO field mission or office is required to keep close contact with the EU Delegation in the country concerned and regularly brief the Head of Delegation to ensure that ECHO's activities are "compatible" with other EU programmes.[144] In turn, the Head of Delegation is required to involve ECHO employees in internal Delegation meetings, as well as in meetings with Member State representatives when these pertain to humanitarian issues. S/he is also required to brief them on issues that may be relevant to ECHO's activities.[145] However, the Working Arrangement does specify that ECHO field offices are only required to liaise with the EU Delegation in so far as this is "without prejudice to ECHO's mandate".[146] In practice, ECHO humanitarian experts in the field will be careful in their contacts with the EU Delegations, in the sense that they do not want to be closely associated with the EU's political mandate.[147] This also means that ECHO will be selective in its information-sharing with the EU Delegations to avoid compromising the humanitarian principles of neutrality and independence.[148] Depending on the situation in the country and the available space in the EU Delegations, ECHO field offices are co-located with the EU Delegations, but this does not change anything about their institutional relationship.

The Working Arrangements between the Commission and the EEAS also provide procedural guidelines on ECHO-EEAS cooperation and the exchange of information on external crises at the headquarters' level. With respect to crisis response, it is stipulated in the Working Arrangement that "the nature of a crisis will determine whether DG ECHO's Emergency Response Centre (ERC), under the authority of the Director-General of DG ECHO, or the

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[142] Interview with ECHO official, 6 November 2014.
[143] Working Arrangements between Commission Services and the EEAS in relation to External Relations Issues, SEC(2012)48, 13/1/2012.
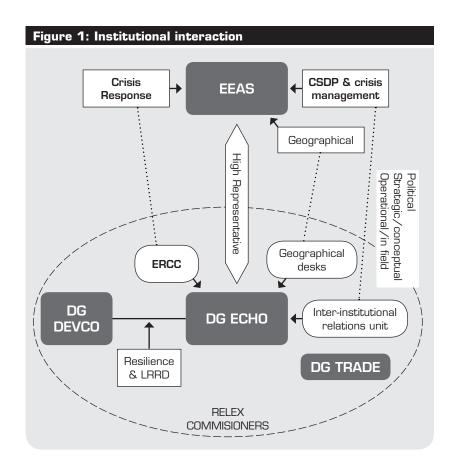[144] *Ibid.*
[145] *Ibid.*
[146] *Ibid.*
[147] Interview with ECHO official, 6 November 2014.
[148] *Ibid.*

Figure 1: Institutional interaction

EEAS Situation Room, under the authority of the Managing Director for Crisis Response, will initiate the exchange of information". In practice, this means that the EEAS takes the initiative in the case of external crises that may affect the EU's security or other interests.[149] In such cases, the EEAS Department for Crisis Response and Operational Coordination initiates the exchange of information, calls the meetings and takes on the task of ensuring a coordinated EU response and follow-up. The department will activate the EEAS Crisis Response System, which comprises the Crisis Platform, the EU Situation Room and the Crisis Management Board. The EEAS Crisis Platform is a forum for ensuring the exchange of relevant information across all relevant EU institutions with a view to providing the EEAS and the relevant Commission services with clear political and/or strategic guidance for responding to a crisis. Depending on the nature of a given crisis, the EEAS Crisis Platform can convoke – on an ad-hoc basis – various EEAS crisis response/management structures (e.g. Crisis Management

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[149] Authors' interview with DG ECHO official, 6 November 2014.

and Planning Directorate and EU Military Staff), relevant geographical and thematic EEAS Departments, the EU Military Committee and the relevant Commission services, including ECHO.

Within the EEAS Crisis Response Department, the Crisis Response Planning and Operations division is responsible for the overall planning, organisation and coordination of the EU's crisis response. They also support the EU High Representative in her duty to ensure the coherence of the EU's external action.[150] The EU Situation Room, in turn, is the EEAS's crises centre, which gathers intelligence and provides worldwide monitoring around the clock. It acts as a situation information hub for all relevant stakeholders from EU institutions.[151]

In the case of other crises, such as natural disasters and man-made humanitarian crises without strong implications for EU security, it is the Commission that will initiate the exchange of information.[152] DG ECHO will regularly convene meetings with all relevant services, including the EEAS, to exchange relevant information about the crisis. This takes place within the framework of ARGUS, the Commission's internal rapid alert system.[153] Irrespective of the nature of a crisis, DG ECHO is responsible for the coordination of EU civil protection and humanitarian assistance, both with Member States and humanitarian partners. Coordination with the Member States is managed by the Emergency Response Coordination Centre (ERCC) within ECHO. The ERCC was set up in 2013 to enable a coordinated and faster European response to emergencies across the globe via the EU Civil Protection Mechanism (EUCPM). Operating around the clock, the ERCC continuously monitors risks and emergencies, and thus also serves as an EU information and coordination hub during emergencies.[154] It liaises with the Member States through the EUCPM to map the available response assets, which the Member States voluntarily want to commit, in order to set up a pre-identified pool of the Member States' response assets that can readily be deployed in any major emergency. Once a disaster-stricken country has made a request to the EU for emergency assistance, the ERCC activates the EUCPM and coordinates the EU's disaster response efforts by matching Member State offers of in-kind assistance to the country's relief needs.[155] The ERCC's coordination efforts also involve pooling shipments from various Member States to the affected country.

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[150] ECHO ERC Factsheet, see: http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/ERC_en.pdf.

[151] *Ibid.*

[152] Authors' interview with DG ECHO official, 6 November 2014.

[153] *Ibid.*

[154] See: http://ec.europa.eu/echo/en/what/civil-protection/emergency-response-coordination-centre-ercc.

[155] ECHO ERC Factsheet, see: http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/ERC_en.pdf.

4.4 Interaction between DG ECHO and the CSDP/military aspects[156]

Despite a traditional reluctance within ECHO to involve military support in its humanitarian aid operations, ECHO increasingly sees itself relying on military assets.[157] Overall, civil-military cooperation in EU humanitarian aid operations occurs in two sorts of instances. To begin with, certain humanitarian emergency relief situations, and in particular, large-scale natural disasters, such as floods and earthquakes, may require specific capabilities or equipment that is exclusively or predominantly available from the military, such as emergency evacuations and air lifts. A second type of assistance by the military to humanitarian aid operations occurs in conflict situations, namely through the protection of civilians and/or humanitarian workers. Especially in cases where the government of the affected country is no longer able or willing to safeguard security, foreign military may be mandated for the provision of safe conditions in which the local population and/or humanitarian actors can operate.

ECHO interacts with CSDP military structures at several levels within the EU foreign policy system. At the political level, ECHO will engage with relevant discussions in the Council, notably through the Political and Security Committee (PSC) and its working groups, the Politico-Military Group (PMG) and the EU Military Committee (EUMC). Moreover, ECHO represents the Commission in the regular weekly meetings of the EUMC. At the strategic, conceptual and planning level, ECHO coordinates closely with the EEAS crisis management structures, including the Crisis Management and Planning Directorate (CMPD), the EU Military Staff (EUMS) and the Civilian Planning and Conduct Capability (CPCC). Since 2010, ECHO has even had a specific civil-military relations office, based within Unit A.1. This office will always see to it that military assistance in support of EU humanitarian operations abides by the internationally agreed MCDA rules[158] and Oslo guidelines.[159] These rules and guidelines were set up in order to ensure that civil-military cooperation preserves the humanitarian space (namely by maintaining a clear distinction between the identities, functions and roles of humanitarian personnel and military actors) and does not compromise the humanitarian principles of independence, neutrality and impartiality.[160]

On the ground, ECHO coordinates with CSDP/military actors at different levels. Once a CSDP operation is launched in support of a humanitarian aid mission,

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[156] This subsection only looks at the interaction at the institutional level. More details on the interaction are provided in subsection 5.1.

[157] ECHO, Civil-Military Relations in Humanitarian Crises, see: http://ec.europa.eu/echo/en/what/humanitarian-aid/civil-military-relations.

[158] Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies, Rev. 1 (January 2006).

[159] Guidelines on the Use of Foreign Military and Civil Defence Assets In Disaster Relief.

[160] ECHO, Civil-Military Relations in Humanitarian Crises, see: http://ec.europa.eu/echo/en/what/humanitarian-aid/civil-military-relations.

ECHO will liaise with the CSDP Operation Headquarters to define general guidelines for the interaction between the operation and the humanitarian action.[161] In addition, ECHO will liaise with the Force Headquarters for daily activities, for instance, to reduce the risk of collision. Sometimes, contacts are also made between the ECHO field office and EU military personnel operating in the field. For the civil-military aspects of the EU's relief activities in the Central African Republic, for instance, ECHO keeps regular contact with the EU Mission for the Central African Republic (EUFOR CAR). This CSDP military operation was set up in June 2014 to contribute to achieving a safe and secure environment in the Bangui area as part of international efforts to protect the populations that are most at risk and to create the conditions for the provision of humanitarian aid.[162] ECHO maintains contacts with the Operations Headquarters in Larissa (Greece), which manages the military operation.[163] Moreover, when relevant, meetings are organised with the Operational and Force commanders.

Through the EU Civil Protection Mechanism, ECHO has operational arrangements with the EU Military Staff, which allow ECHO to instantly mobilise military transport or other assets if civilian means are not sufficient to meet the humanitarian needs.[164] ECHO made use of this "gap-filling mechanism", for instance, to provide relief during the floods in Pakistan in 2010 and for the evacuation of third country nationals during the Libya crisis.[165] Through the CPM, ECHO can also rely on Member State military assets for Medevac operations.

4.5 ECHO and the Comprehensive Approach: "In but Out"

Interaction between ECHO and the EEAS, including its CSDP and crisis management structures, is set to further increase, especially in view of the Comprehensive Approach to External Conflicts and Crises.[166] The EU's comprehensive approach, which was launched in 2013 as a Joint Communication by the Commission and the High Representative, "sets out a number of concrete steps that the EU, collectively, is taking towards an increasingly comprehensive approach in its external relations policies and action", and in particular, to external conflict and crises.[167] The approach is aimed at all stages of the crisis cycle, "through early warning and preparedness, conflict prevention, crisis response and management to early recovery, stabilisation and peace-building in order to help countries getting back on track towards sustainable long-term

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[161] *Ibid.*

[162] See: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/140951.pdf.

[163] Authors' interview with ECHO official, 6 November 2014.

[164] ECHO, Civil-Military Relations in Humanitarian Crises, see: http://ec.europa.eu/echo/en/what/humanitarian-aid/civil-military-relations.

[165] *Ibid.*

[166] Joint Communication between the Commission and the High Representative to the European Parliament and the Council, 11 December 2013, JOIN(2013) 30 final.

[167] *Ibid.*, 2.

development".[168] Following the Council Conclusions of May 2014,[169] which endorsed the Comprehensive Approach, the Commission and the EEAS discussed the operationalisation of the various aspects and goals mentioned in the document. One of the goals listed, which directly involves ECHO's services, is the development of shared analysis. To this end, the Joint Communication calls for an improvement of the combined situational awareness and analysis capacity, in particular, by better linkage between the dedicated facilities in the various EU institutions and services, including ECHO's Emergency Response Coordination Centre and the EEAS' Situation Room.[170] In this regard, a shared risk analysis tool was recently developed, InfoRM, which enables a global, open-source risk assessment for humanitarian crises and disasters.[171] Moreover, both the Joint Communication and the Council Conclusions call for closer cooperation and coordination of the various situation and emergency management centres of the EU and the Member States. In addition, the various EU actors involved in crisis response and crisis management are encouraged to strengthen information-sharing, coordination and team-work among all those responsible, both in the EU's Brussels headquarters and in the field (including EU Delegations, CSDP missions and operations, Member States and EU Special Representatives).[172]

Another goal set out in the Joint Communication, which is directly linked to ECHO's services, is to mobilise the different strengths and capacities of the EU in support of a shared vision and common objectives relating to crisis response and crisis management. To this end, the Joint Communication calls for a more systematic use of the Crisis Platform mechanism, chaired by the EEAS with the participation of Commission services, "to facilitate coordination, share information and contribute to the identification and intelligent sequencing of available EU instruments as required".[173] It also encourages the various emergency response functions of the EU to further strengthen their operational cooperation, using their complementary expertise.[174]

The concrete steps and initiatives are outlined in an Action Plan, which was jointly prepared by the EEAS and the Commission and was presented to the Council in April 2015.[175] The Action Plan also identifies pilot projects to which the Comprehensive Approach should be applied, including projects in the Sahel, the Horn of Africa and Afghanistan.

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[168] *Ibid.*

[169] Council of the EU, 2014. Council conclusions on the EU's comprehensive approach. Foreign Affairs Council Meeting, Brussels, 12 May 2014.

[170] Joint Communication, 2013, p.5.

[171] See: http://inform.jrc.ec.europa.eu/

[172] Joint Communication, 2013, p.5.

[173] *Ibid.*, 7.

[174] *Ibid.*

[175] European Commission and High Representative, Joint Staff Working Document, 'Taking forward the EU's Comprehensive Approach to external conflict and crises - Action Plan 2015', SWD(2015) 85 final, 10 April 2015, http://data.consilium.europa.eu/doc/document/ST-7913-2015-INIT/en/pdf.

ECHO remains a lukewarm supporter of the Comprehensive Approach. While ECHO readily commits to more enhanced cooperation with the other EU external actors and acknowledges the EU's view that its external action must be coherent, it strongly feels that humanitarian aid should not become simply one of the tools in the EU's external action tool box. Hence, ECHO is in favour of achieving a certain culture of cooperation between the various institutions of the EU and enhancing information sharing, while ensuring that humanitarian aid is not subordinated to other foreign policy instruments and goals. Instead, it must continue to be provided on the basis of needs, rather than interests, in line with the humanitarian principles.[176] In other words, with respect to the Comprehensive Approach, ECHO is "In-but-Out".[177]

While ECHO will continue to reassert its independence and act as a principled donor, it fully realises that, as part of the wider EU action, it is very difficult and often almost impossible to achieve this independence and maintain a neutral profile, in particular, in conflicts in which the EU unambiguously takes sides, such as Ukraine, Somalia and Afghanistan.[178] Equally, the tendency of the Commissioner responsible for humanitarian aid and the High Representative to publish joint press releases (since the Lisbon Treaty) fits with the "comprehensive approach", but it might also undermine the (perceived) neutrality of humanitarian aid.

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[176] Authors' interview with ECHO official, 6 November 2014; and NGO VOICE, interview with COHAFA Chair Rosita Šorytė, 11 December 2013. See: http://eudevdays.eu/news-views/interview-cohafa-chair-rosita-%C5%A1oryt%C4%97#.VGtfGfmG8dU.

[177] ECHO, Civil-Military Relations in Humanitarian Crises, see: http://ec.europa.eu/echo/en/what/humanitarian-aid/civil-military-relations.

[178] ECHO, Civil-Military Relations in Humanitarian Crises, see: http://ec.europa.eu/echo/en/what/humanitarian-aid/civil-military-relations; authors' interview with ECHO official, 6 November 2014.

5 Humanitarian aid and the challenge of policy coherence

With the Treaty of Lisbon, several innovations have been introduced to increase the coherence of the EU's external action. Apart from the creation of new institutional functions and structures, the inclusion of a general list of EU external action objectives in Art. 21 (1) TEU is of particular significance. Following the horizontal application of Article 21 TEU, the objective "to assist populations, countries and regions confronting natural or man-made disasters" – laid down in Art. 21 (1) (g) – does not exclusively relate to the EU's humanitarian aid policy, but can, in principle, also be pursued on the basis of other EU policies.[179] In this respect, the links between humanitarian aid and crisis management (5.1.), development (5.2.) and trade (5.3.) deserve particular attention.

5.1 The nexus between humanitarian aid and crisis management operations

The European Consensus explicitly states that "EU humanitarian aid is not a crisis management tool".[180] This also follows from the EU's humanitarian principles mentioned in Article 214 (2) TFEU and the division between CFSP and non-CFSP measures under Article 40 TEU (cf. *supra*). Nevertheless, Article 43 TEU provides that the Union may use civilian and military means to pursue, amongst other things, humanitarian tasks. In other words, whereas Article 214 TFEU and the European Consensus prohibit humanitarian operations from being used for political or military objectives, the opposite is possible. Under certain circumstances, measures adopted within the context of the EU's Common Security and Defence Policy (CSDP) may be used to support humanitarian operations. This is in line with the horizontal application of Article 21 (2) (g) (cf. *supra*). Nevertheless, the use of CSDP instruments in the context of humanitarian operations remains controversial. This is particularly the case for man-made disasters because of their inherent political dimension.

In response to natural disasters, civil protection resources can provide an essential contribution to humanitarian assistance without any risk to the neutrality and impartiality of the latter. With regard to man-made disasters, on the other hand, the situation is completely different. For this reason, the European Consensus

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[179] According to Art. 21 (3) TEU, the principles and objectives of the EU's external action, set out in paragraphs 1 and 2 of this provision, are respected and pursued in the development and implementation of the different EU external policies and the external aspects of its other policies.
[180] European Consensus on Humanitarian Aid, OJ (2008) C 25/1 para. 15.

provides that "in complex emergencies, recourse to civil protection assets should rather be the exception".[181] A similar reasoning applies with regard to the use of military assets in support of humanitarian actions:

> In order to avoid a blurring of lines between military operations and humanitarian aid, it is essential that military assets and capabilities are used only in very limited circumstances in support of humanitarian relief operations as a 'last resort', i.e. where there is no comparable civilian alternative and only the use of military assets that are unique in capability and availability can meet a critical humanitarian need.[182]

Respect for international humanitarian law also requires EU military operations supporting humanitarian assistance to be subject to strict conditions.[183] For instance, such operations can only be employed upon request by UNOCHA and if all civilian alternatives have been explored and exhausted. Crucially, any military assets used under this scenario must remain under civilian coordination and must respect the need-based and neutral nature of humanitarian aid. In other words, the humanitarian imperative has to be respected under all circumstances.

A concrete example of the interplay between CSDP activities and humanitarian assistance was the adoption by the Council, on 1 April 2011, of Decision 2011/210/CFSP on a European Union military operation in support of humanitarian assistance operations in response to the crisis situation in Libya (EUFOR Libya).[184] This decision did not imply the immediate employment of an EU mission on the ground, but only allowed for further and more detailed contingency planning by appointing an EU operation commander (Rear Admiral Claudio Gaudiosi) and EU operational headquarters located in Rome. The then High Representative, Catherine Ashton, was given the responsibility to ensure the consistency with the EU's external action as a whole, "including the Union's humanitarian aid activities".[185] Significantly, the actual implementation of the EUFOR mission required a prior request from UNOCHA and an additional decision of the Council. Since the approval from UNOCHA never came, EUFOR has never been operational in Libya.

The preparation of the EUFOR mission with full respect for the European Consensus and international humanitarian guidelines has been regarded as

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[181] *Ibid.,* para. 60.

[182] *Ibid.*, para. 61.

[183] Those conditions are laid down in the 'Guidelines on the use of military and civil defense assets in disaster relief' (Oslo guidelines) and the 'Guidelines on the use of military and civil defense assets to support United Nations humanitarian activities in complex emergencies' (MCDA guidelines). See: European Consensus on Humanitarian Aid, OJ (2008) C 25/1, para. 57.

[184] Council Decision 2011/2010/CFSP of 1 April 2011 on a European Union military operation in support of humanitarian operations in response to the crisis situation in Libya, OJ (2011) L 89/17.

[185] Article 4 of Decision 2011/210/CFSP.

a "good practice example that could be used to guide future European civil military co-operation".[186] Nevertheless, the Union's response to the Libyan crisis also revealed a number of institutional tensions between the European External Action Service (EEAS) and the European Commission. Within the EEAS, the "Crisis Response and Operational Coordination Department" was mandated to coordinate the EU's reaction to the unfolding crisis. This created certain frictions with DG ECHO of the European Commission, particularly after the Managing Director of the EEAS crisis response unit depicted a visit to Benghazi and meetings with the Libyan National Transitional Council as a "humanitarian mission".[187]

The EU's response to the crisis in Syria provides another example of the increasingly blurred borderline between humanitarian assistance and crisis management. On 24 June 2013, the European Commission and the High Representative jointly announced "a comprehensive EU approach to the Syrian crisis",[188] which was later supplemented with the joint communication "elements for an EU regional strategy for Syria and Iraq as well as the Da'esh threat".[189] The comprehensive EU response has multiple objectives, including the facilitation of a political solution to the crisis, the prevention of regional destabilisation and the offer of humanitarian assistance. In other words, humanitarian aid is part and parcel of a broader EU strategy to tackle the crisis situation in Syria and Iraq. Arguably, such an approach entails the risk that EU-funded humanitarian aid will be perceived as a foreign policy tool.[190] This is particularly the case because the plea for more humanitarian aid to Syria came from the EU Ministers of Foreign Affairs at the same meeting at which the sanctions against the Syrian government were tightened.[191] In order to address the humanitarian needs of the Syrian civilian population, the EU Member States may exceptionally authorise the sale, supply or transfer of key equipment and technology for strategic sectors (oil, gas, banking) in Syria. This is only possible under certain conditions, including prior consultation with the Syrian National Coalition

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[186] OECD/DAC, *op. cit.*, 96.

[187] N. Helwig, P. Ivan, H. Kostanyan, 'The European External Action Service in the New EU Foreign Policy Architecture: Reviewing Two Years of Practice' (Brussel: Centre for European Policy Studies, 2013), 41, available at: www.ceps.eu/ceps/dld/7711/pdf.

[188] European Commission and High Representative of the EU for Foreign Affairs and Security Policy, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Towards a Comprehensive EU Approach to the Syrian Crisis', JOIN (2013) 22, Brussels, 24 June 2013.

[189] European Commission and High Representative of the EU for Foreign Affairs and Security Policy, Joint Communication to the European Parliament and the Council, 'Elements for an EU regional strategy for Syria and Iraq as well as the Da'esh threat', JOIN (2015) 2 final, Brussels, 6 February 2015.

[190] Pontiroli, A., Ponthieu, A. and Derderian, K., 'Losing Principles in the Search for Coherence? A Field-Based Viewpoint on the EU and Humanitarian Aid', *The Journal of Humanitarian Assistance* (2013) http://sites.tufts.edu/jha/archives/tag/comprehensive-approach.

[191] Council of the EU, Foreign Affairs, Brussels, 22 July 2013, doc. 23584/13.

for Opposition and Revolutionary Forces.[192] Arguably, such a condition puts pressure on the basic prerequisite that humanitarian aid should be free from any political interference. Even though the Commission's proposal for a regional and comprehensive approach towards Da'esh explicitly states that humanitarian aid will be delivered "to vulnerable populations on the basis of needs and in full respect of the internationally recognised humanitarian principles of humanity, neutrality impartiality and independence", it also stresses the significance of public diplomacy and the visibility of aid in this respect.[193] Moreover, the EU's strategy is very explicit in its political objective, which is a political transition in Syria, including support for the moderate opposition and increased pressure on the Assad regime.

This type of action explains why the humanitarian community is concerned that the further development of EU crisis management capabilities may lead to the erosion of humanitarian principles.[194] In particular, there is a fear that an expanded interpretation of the coordinating role of the EEAS and the evolution towards a more comprehensive approach to crisis management may lead to a politicisation of humanitarian aid delivery.[195] Concrete examples of the trend towards a more comprehensive approach are the adoption of strategic frameworks for the Horn of Africa and the Sahel region.[196] Both strategies aim to bring together all relevant actors and instruments in order to ensure a more coherent EU external action *vis-à-vis* the respective regions. This involves the launch of CSDP missions and the appointment of special representatives.[197] Whereas the general assessment of these strategies is rather positive, there are also some implementation issues on the ground. For instance, a European Parliament report found that the EU strategy for the Sahel region is "a very comprehensive and well-prepared EU strategy document", which, however, "did not lead to satisfactory implementation until the situation in Mali deteriorated

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[192] See Arts 6, 10, 16 and 23 of Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria, OJ (2013) L 147/14.

[193] JOIN (2015) 2 final.

[194] VOICE briefing paper, 'EU crisis management – A Humanitarian Perspective', Brussels, January 2004.

[195] Conference report 'From comprehensive approach to comprehensive action: enhancing the effectiveness of the EU's contribution to peace and security', Wilton Park, 17-18 December 2012, available at: https://www.wiltonpark.org.uk/wp-content/uploads/WP1202-final-report.pdf. For a discussion and application to the EUFOR mission in Chad, see J. Orbie and K. Del Biondo, 'The European Union's "Comprehensive Approach" in Chad: Securitisation and/or Compartmentalisation?', 29 *Global Society* 2 (2015).

[196] Council Conclusions on the Horn of Africa, Brussels, 14 November 2011, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/126052.pdf; EEAS, 'Strategy for Security and Development in the Sahel', available at: http://www.eeas.europa.eu/africa/docs/sahel_strategy_en.pdf.

[197] In the Horn of Africa, three operations were set up: a counter-piracy operation (EUNAFOR Atalanta), a training mission for Somali soldiers (EUTM Somalia) and a coastguard training mission for countries in the region (EUCAP NESTOR). In the Sahel region, CSDP missions were launched in Niger (EUCAP SAHEL Niger) and Mali (EU Training Mission – EUTM). Mr. Alexander Rondos was appointed EU Special Representative for the Horn of Africa; Mr. Michel Dominique Reveyrand-de Menthon fulfills this task for the Sahel region.

dramatically".[198] Moreover, the report concluded that the potential of the Lisbon Treaty innovations, such as the coordinating role of the High Representative and the EEAS, has not been fully exploited. In particular, the Commission's services appeared to adopt a restrictive approach "protecting its own competences and minimising coordination functions with the EEAS". Even though the humanitarian principles necessarily imply a more cautious approach as far as DG ECHO is concerned, it was nevertheless stressed that this service "is still part of the EU and, consequently, […] more should be done to enhance cooperation and coordination between ECHO and the EEAS".[199] Hence, a certain tension can be observed between the preoccupation of humanitarian aid workers and DG ECHO with ensuring that humanitarian assistance remains free from any political interference, on the one hand, and the ambition of more policy coherence in the EU's response to complex emergencies in line with the objectives of the Lisbon Treaty provisions and the EU's comprehensive approach to external conflicts and crises, on the other.

5.2 The nexus between humanitarian aid and development policy

As humanitarian aid and development cooperation are inherently intertwined, it is often difficult to identify an exact boundary between the ad-hoc assistance under Article 214 TFEU and the structural assistance under Article 208 TFEU. The changing global context – the increase in major disasters, the destructive effects of climate change and the increasingly complex crises[200] – is requiring EU humanitarian and development actors to cooperate more closely, as large-scale emergencies affect the stability of livelihoods and communities' longer-term development prospects. In order to address the "grey zone" between short-term humanitarian assistance and long-term development aid, the European Commission has been engaged in the global initiative on Linking Relief, Rehabilitation and Development (LRRD).[201] The concept of LRRD goes back to the 1980s, when practitioners and scholars detected a funding and operational gap between humanitarian assistance, rehabilitation and development activities in Western response efforts to the African food crisis. LRRD covers the measures and interventions developed to fill those gaps, and creates synergies between short-term and long-term assistance. Although it was not until 1996 that the Commission issued its first Communication on Linking Relief, Rehabilitation and Development, it has been a leading actor in that field ever since.

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[198] European Parliament Report on the EU comprehensive approach and its implications for the coherence of EU external action, 21 February 2014, A7-0138/2014, para. 39.

[199] *Ibid.*, para. 20.

[200] Communication from the Commission to the European Parliament and the Council, 'Towards the World Humanitarian Summit: A global partnership for principled and effective humanitarian action', COM (2015) 419 final, p. 2.

[201] European Commission communication on Linking Relief, Rehabilitation and Development (LRRD), Brussels, 30.04.1996, COM (96) 153final; European Commission communication on Linking Relief, Rehabilitation and Development – An assessment. Brussels, 23.04.2001, COM (2001) 153 final.

The EU has supported LRRD in several ways. To begin with, it has committed to the concept in its policy documents. LRRD is highlighted, for instance, in the 2007 Commission Communication towards an EU response to situations of fragility[202] and in the 2006 Strategy for food security,[203] which sets out to guarantee food security in transition periods by developing LRRD country strategies. The European Consensus on Humanitarian Aid endorses the concept of LRRD by emphasising that "achieving better linkage between Relief, Rehabilitation and Development (LRRD) requires humanitarian and development actors to coordinate from the earliest phases of a crisis response and to act in parallel with a view to ensuring a smooth transition. It necessitates mutual awareness of the different modalities, instruments and approaches on the part of all aid actors and flexible and innovative transition strategies".[204] The Action Plan accompanying the Consensus singled out a number of measures to improve the link between humanitarian aid and longer-term development.[205] However, the 2010 mid-term review of the Action Plan concluded that only limited progress had been made on LRRD.[206]

Apart from committing to the concept in its policy documents, the EU has developed specific mechanisms to support LRRD and to smooth the transition between the different types of assistance. In 2003, an Inter-Service group on Transition, co-chaired by DG ECHO and EuropeAid, was created to ensure a more coherent approach, but in practice, the inter-service group has not been very functional.[207]

In addition, the EU has incorporated legal provisions on LRRD in several of its financing instruments, namely in the Instrument for Humanitarian Aid, the Development Cooperation Instrument, the Instrument for Stability and the European Development Fund (EDF). The 2010 revised Cotonou agreement also contains legal provisions on LRRD, namely articles 60, 72, 72a and annex IV.[208] DG ECHO can use up to a quarter of the so-called B-Envelope of the EDF to implement actions designed to phase out humanitarian aid and support the transition from short-term relief to rehabilitation and development.[209] Moreover, the EU can transfer EDF funds from Envelope-A to ECHO in cases where EU

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[202] European Commission Communication towards an EU response to situations of fragility, COM (2007) 643.

[203] A Thematic Strategy for Food Security, COM (2006) 21.

[204] European Consensus on Humanitarian Aid. OJ C 25, 30.1.2008.

[205] Action Plan. SEC/2008/1991, 29.5.2008.

[206] Communication from the Commission to the European Parliament and the Council. The mid-term review of the European Consensus on Humanitarian Aid Action Plan: implementing effective, principled EU humanitarian action, COM(2010) 722, 8.12.2010.

[207] P. Morazán, F. Grünewald, I. Knoke and T. Schäfer, *Strengthening the Link between Relief, Rehabilitation and Development (LRRD) in the EU's Financing Instruments for Development and Humanitarian Aid under the MFF 2014-220*, study requested by the European Parliament's Subcommittee on Security and Defence Committee on Development, August 2012, 18.

[208] Cotonou agreement, 3rd revision of 22 June 2010.

[209] Morazán et al., *op.cit.*, 14.

development programming is not yet feasible. For Côte d'Ivoire, for instance, EDF funds were transferred in 2014 to finance ECHO operations supporting the health sector within the "Partnership for Transition" LRRD initiative in order to facilitate the transition from humanitarian aid to public funding of the health sector.[210]

So far, however, it has been difficult for the EU to implement LRRD in practice. Moreover, several evaluations indicate that LRRD has mostly been implemented ad-hoc, rather than systematically.[211] Synergies between DG ECHO and DG Development in the "grey zone" of rehabilitation have furthermore proven to be difficult to achieve.[212] This is related to the different views and goals of the development and humanitarian actors within the EU, but also to institutional and operational obstacles, including the lack of flexibility of the development financing instruments and divergent implementation modes and timeframes.[213]

In its post-emergency assistance after the 2010 earthquake in Haiti, for instance, the EU experienced significant problems when dealing with the transition towards long-term development.[214] Several studies have shown that relief, rehabilitation and development were not sufficiently linked, and revealed a considerable funding gap between short-term relief and long-term development.[215] This was partly because the 10th EDF was not adequately adapted to such post-emergency situations.[216] Moreover, according to an evaluation of the Court of Auditors, ECHO and DEVCO did not have "a clear common country strategy on LRRD to optimise the synergy and smooth transition between their respective activities".[217] There was also insufficient coordination between ECHO and the EU delegation.

Former Development Commissioner Piebalgs and former Humanitarian Aid Commissioner Georgieva admitted that the EU's approach to LRRD could be improved in terms of concrete output on the ground, for example, by making

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[210] http://ec.europa.eu/echo/files/funding/decisions/2014/HIPs/cote_ivoire_en.pdf.

[211] V. Ramet, *Linking Relief, Rehabilitation and Development: Towards More Effective Aid*, study commissioned by the European Parliament's Committee on Development, July 2012, 7.

[212] Versluys, 'European Humanitarian Aid: Lifesaver or Political Tool?', *op. cit.*, 105; K. Koddenbrock and M. Büttner, 'The Will to Bridge? European Commission and U.S. Approaches to Linking Relief, Rehabilitation and Development', in: *Humanitarian Assistance. Improving U.S. European Cooperation* (2009), 127-129, available at: <http://www.gppi.net/fileadmin/gppi/RTB_book_chp8.pdf>; Bretherton and Vogler, *op. cit.,* 131-132.

[213] Koddenbrock and Büttner, *op. cit.,* 127-129; Morazán et al., *op. cit.*, 18.

[214] Ramet, *op.cit*, 7; G. Werleigh and E. J. Brouwer, 'How to help Haiti help itself', *European Voice,* 13 January 2011.

[215] Court of Auditors, *EU support for rehabilitation following the earthquake in Haiti*, Special Report, No. 13, Luxembourg: Publications Office of the European Union, 2014; Morazán et al., *op. cit.*, 25; Ramet, *op. cit.*, 7.

[216] Ramet, *op.cit.*, 8.

[217] Court of Auditors, *op. cit.*, 2014, 22.

the EU's funding tools more flexible.[218] Humanitarian NGOs have called for an increased political commitment to LRRD, an Action Plan with clear definitions and concrete measures for progress, and adequate funding mechanisms.[219]

In the last few years, attention has been increasingly steered towards "resilience". Resilience is defined by the EU as "the ability of an individual, a household, a community, a country or a region to withstand, to adapt, and to quickly recover from stresses and shocks".[220] As such, it requires a comprehensive approach that includes adequate risk assessment tools, a focus on prevention and preparedness, and an enhanced response to crises. A policy based on enhancing resilience implies that the donors do not just intervene to address the consequences of emergency crises, but that they also tackle the root causes of recurrent crises.[221] Since this requires a coherent approach between humanitarian aid and development assistance, the concept of resilience has been central to debates about improving the EU's LRRD policy. In contrast to previous LRRD initiatives, it puts more emphasis on the role of the recipient side in EU interventions, as it seeks to enhance local emergency response and prevention capacities.[222]

Following the release of a Commission Communication on resilience in 2012, a Resilience Action Plan was launched in 2013.[223] Drawing on the EU's experience with addressing recurrent food crises, mainly in the Sahel and the Horn of Africa, the Action Plan sets out a framework to deliver early results and improve approaches and tools to help vulnerable communities in crisis-prone situations to build resilience to future shocks, bringing together humanitarian action, long-term development cooperation and on-going political engagement.[224] The concept enjoys broad international support, and the approach outlined by the Commission is also strongly endorsed by both the Parliament and the Council.[225]

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[218] A. Piebalgs, 'Haiti, one year after: Keeping our promises and accelerating our efforts', speech at the conference 'Haiti, One Year after the Earthquake', Brussels, Egmont Palace, 23 February 2011; K. Georgieva, 'Policy Priorities – achievements and mapping the ways ahead', speech at the Development Committee of the European Parliament, 25 May 2011.

[219] V. Hauck, 'What can bridge the divide between humanitarian aid and development?', ECDPM Talking Point, 19 September 2012, available at: http://www.ecdpm-talkingpoints.org/what-can-bridge-the-divide-between-humanitarian-aid-and-development.

[220] Communication from the Commission to the European Parliament and the Council, 'The EU Approach to Resilience: Learning from Food Security Crises', Brussels, 3.10.2012, COM (2012) 586, 5.

[221] *Ibid.*, 2.

[222] See e.g. Public Hearing in the European Parliament about LRRD, 3 September 2012.

[223] Action Plan for Resilience in Crisis Prone Countries 2013-2020, Brussels, SWD (2013) 227 final, 19.6.2013.

[224] *Ibid.*

[225] See e.g. Council Conclusions on EU Approach to Resilience, 3241st Foreign Affairs Council Meeting, Brussels, 28.5.2013; European Parliament, Draft Report on the EU Approach to Resilience and Disaster Risk Reduction in Developing Countries: Learning from Food Security Crisis, 2013/2110(INI), 26.9.2013.

The budget available to implement the resilience strategy is allocated to a wide range of measures, including school-based disaster preparedness sessions, land resource management for rural and pastoralist communities, supporting vulnerable livelihoods dependent on livestock to increase their income opportunities and designing sustainable solutions for refugee crises.[226] In Kenya, for instance, the EU has contributed to an improved early warning system for droughts and has supported community-level livelihood projects focussed on enhancing people's economic opportunities.[227]

The activities in Kenya are part of the "Supporting Horn of Africa Resilience" (SHARE) programme. Together with the "Alliance Globale pour l'Initiative Résilience Sahel" (AGIR), it is considered a flagship initiative in the EU's approach to resilience.[228] The EU's goal is to further elaborate its resilience strategy by building on the experience gained through those two programmes. Launched in the wake of the severe food crisis in the Horn of Africa in 2011, the SHARE programme seeks to enhance resilience "by increasing the opportunities of farming and pastoralist communities to make a living, and also enhance the capacity of public services to respond to crises".[229]

However, while the EU's new resilience strategy is generally being lauded, its full potential, including that of flagship programmes such as SHARE, still remains to be seen. In the case of Somalia, for instance, some warn that the EU's resilience approach might not be apt for the realities on the ground and lacks a thorough understanding of the country's socio-political complexity and conflict-prone dynamics, thereby risking the further aggravation of the situation instead of improving it.[230] Moreover, as claimed by the same authors, the value-added of SHARE "is mainly perceived [by the EU] to be a 'pillar' or a 'component', complementing other, political and security, pillars of the EU's comprehensive framework".[231] Similarly, some have denounced resilience as "a new buzzword of a floundering aid system, pushed by donors increasingly looking for cost effectiveness and a way to marry all components of aid to a process of state

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[226] http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/resilience_en.pdf.

[227] COM (2012) 586, 10.

[228] COM (2012) 586, 7; VOICE-CONCORD position paper 'Linking Relief Rehabilitation and Development: Towards a more joined up approach enhancing resilience and impact', July 2012; Morazán et al., *op. cit.*, 23.

[229] http://ec.europa.eu/echo/en/what/humanitarian-aid/resilience/horn-of-africa-share

[230] T. Henökl and C. Webersik, 'The Impact of Institutional Change on Foreign Policy-Making: The Case of the EU Horn of Africa Strategy', 19 (4) *European Foreign Affairs Review* 532 (2014), 536-537.

[231] *Ibid.*, 536.

building".[232] Therefore, it could be argued that the resilience concept is at odds with a core humanitarian approach to crises.[233]

5.3 The nexus between humanitarian aid and trade policy

Also, with respect to the EU's common commercial policy, the Lisbon Treaty stipulates that it "shall be conducted in the context of the principles and objectives of the Union's external action" (Art 207 (1) TFEU). Whereas a lot of attention has gone to the coherence of the EU's trade policy with its development objectives, there are not many instances of the EU deliberately using its trade instruments as a response to humanitarian crises. Two examples are worth mentioning, one before and one after the Lisbon Treaty entered into force. However, the humanitarian motives behind each of them should be nuanced.

First, the European Commission attempted to accelerate the entry into force of beneficial trade preferences for countries that suffered from the 2004 Indian Ocean Tsunami. When the Tsunami took place, the Commission and Council were already negotiating a revised Generalized System of Preferences (GSP) that would be more generous in terms of access to the EU market compared to the previous system. The new GSP was expected to come into force on 1 July 2005. In a reaction to the Tsunami, the then Trade Commissioner Peter Mandelson proposed to advance the starting date to 1 April.[234] As a result, countries that were hit by the Tsunami, such as Sri Lanka, Thailand and Indonesia, would benefit more quickly from more favourable tariffs for export products, such as shrimp, textiles and clothing. All of the Member States were in favour of the Commission's Tsunami proposal. Eventually, the Council's approval of the new GSP was delayed, but not because of disagreements on this "humanitarian" trade initiative.[235] Therefore, this potentially coherent link between humanitarian aid and trade policy never materialised. In any case, its impact was likely to be modest and temporary. The Commission's Tsunami proposal can also be seen as a strategic manoeuvre aimed at facilitating the approval of the new GSP, which would further liberalise the EU market for imports from developing countries (not only those affected by the Tsunami).

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[232] J. Whittall, M. Philips and M. Hofman, 'Opinion and Debate: Building Resilience by Deconstructing Humanitarian Aid', Doctors without Borders, 7 February 2014. Available at: http://www.msf.org.uk/article/opinionand-debate-building-resilience-deconstructing-humanitarian-aid; also see: J. Joseph, 'The EU in the Horn of Africa: Building Resilience as a Distant Form of Governance', 52 (2) *JCMS* (2014), 285-301.

[233] C. Dany, *op. cit.*, 434-5.

[234] Commission Communication concerning amendment of the Commission's proposal for a Council Regulation applying a scheme of generalised tariff preferences for the period 1 July 2005 to 31 December 2008, Brussels,10.02.2005, COM (2005) 43final.

[235] There were disagreements about the graduation threshold for textiles from India. *Agence Europe* 22 January 2005, 18 March 2005, 25 March 2005, 8 April 2005.

Second, the European Council proposed improving Pakistan's access to the EU market in reaction to the devastating floods in 2010.[236] This time, the proposed trade instrument was not the GSP, but "autonomous trade preferences". Autonomous trade preferences are rather exceptional in the EU's trade policy. According to the Commission's website, they "are granted by the EU on a temporary basis, taking into account the specific situation of the different countries covered".[237] They have been granted to countries in the European neighbourhood for a number of economic *and* clearly political reasons: to Moldova (since 2008) because it would be harmed by Romania's accession to the EU and in the context of the European Neighbourhood Policy, to the Western Balkans countries (since 2009) in the framework of the Stabilization and Association Agreements, and since 2014, to Ukraine in order to advance the implementation of the tariff liberalisation provided under the Deep and Comprehensive Free Trade Agreement and against the context of the Russia-Ukraine war.

The European Council's proposal to use a trade policy instrument for the achievement of a humanitarian objective seems fully in line with the rationale of Article 21 TEU and the Lisbon Treaty to increase the coherence of the EU's external action. The European Commission quickly drafted a proposal for regulation.[238] The proposed preferences would liberalise an additional number of 75 tariff lines (compared to normal GSP) "specific to Pakistan's core export sectors in those areas worst hit by the floods".[239] Nonetheless, the initiative faced significant legal and political obstacles. It was challenged by several members of the European Parliament, as well as by Member States that feared competition for their import-sensitive industries (France, Italy, Portugal and Spain). They raised concerns about the economic implications for the EU's textiles and ethanol industries, and about the absence of any political conditionality in the Commission's proposal.[240] The European Parliament only accepted the proposed regulation after the introduction of an economic safeguard clause (Art.4), the limitation of the duration of the preferential trade measures (Art.11) and the inclusion of explicit political conditionality provisions. For instance, Pakistan would only be entitled to benefit from the preferential arrangements if it does not engage in "serious and systematic violations of human rights, including core labour rights, fundamental principles of democracy and the rule of law" (Art.2).[241]

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[236] European Council Conclusions, 16 September 2010, Annex II, Declaration on Pakistan, EUCO/21/1/10 REV 1, p. 10.

[237] http://exporthelp.europa.eu/thdapp/display.htm?page=cd/cd_AutonomousTradeRegimes.html&docType=main&languageId=EN.

[238] COM (2010) 552: Proposal for a Regulation of the European Parliament and of the Council introducing emergency autonomous trade preferences for Pakistan, 7 October 2010.

[239] Consideration 8 of Regulation No 1029/2012.

[240] Debate in the European Parliament on emergency autonomous trade preferences for Pakistan, 9 May 2011.

[241] Regulation No 1029/2012 introducing emergency trade preferences for Pakistan, OJ, 2012, L 316/43.

The latter point is of particular interest, taking into account the humanitarian rationale for the trade initiative. According to the humanitarian principle of independence, aid to people in need cannot be subject to any political, economic or military conditions (cf. *supra* section 3). Adding such conditions to the granting of temporary autonomous trade preferences adopted to address an emergency situation would thus, arguably, contradict the spirit, the nature and the purpose of the proposed measure.[242] On the other hand, the measure is adopted in the context of the EU's Common Commercial Policy (CCP) under the legal basis of Article 207(2) TFEU and not as part of the EU's humanitarian assistance under Article 214 TFEU. That being the case, the humanitarian principles laid down in Article 214(2) TFEU and reflected in the European Consensus do not automatically apply to this type of measure. Within the context of the CCP, the granting of trade preferences can be made conditional upon respect for fundamental rights.[243] Moreover, the political conditionality provisions in the autonomous trade preferences for Pakistan are similar to the GSP conditionality. Also, the GSP regulation, from which Pakistan already benefits, provides that trade preferences can be withdrawn in case of serious and systematic violations of a number of international conventions relating to human rights and core labour rights. Thus, this was not a new condition for Pakistan, which already benefited from the standard GSP.

Problems with the EU's initiative to support Pakistan also emerged at the level of the World Trade Organisation (WTO). Since autonomous trade preferences are typically provided on a rather ad hoc basis for a number of particular political and economic reasons, their compatibility with international trade law is often contestable. The unilateral introduction of trade preferences to Pakistan would be in breach of the Most Favoured Nation (MFN) principle (Article I(1) GATT) and of the principle of non-discriminatory administration of quantitative restrictions (Article XIII GATT), because other developing countries would not benefit from the same trade liberalisation scheme. Therefore, the EU had to request a waiver from the application of those provisions in accordance with Article IX of the Agreement establishing the WTO. A first attempt to obtain such a waiver, which requires consensus within the WTO Council for Trade in Goods, failed due to resistance from Pakistan's neighbours. India argued that the EU proposal would help Pakistan's textile industry, not flood victims.[244] Only the

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[242] See, in this respect, the intervention of Commissioner Nellie Kroes during the Parliamentary debates, 9 May 2011.

[243] However, granting trade preferences for reasons related to foreign policy may not always be compatible with international trade law, as became clear in the EC-Tariff Preferences case (WTO Appellate Body Report, W T/DS246/AB/R, 20 April 2004). See e.g. L. Bartels, 'The WTO Legality of the EU's GSP+ Arrangement', 10 (4) *Journal of International Economic Law* (2007), 869-886; I. Govaere and A. Van Bossuyt, 'Le commerce à visage de plus en plus humain? Les droits de l'homme dans la politique commerciale commune', in: M. Candela Soriano (ed.), *Les droits de l'homme dans les politiques de l'Union européenne* (Brussels: De Boeck/Larcier, 2006), 225-254.

[244] Economic Times, 5 May 201.1

introduction of further amendments, including the increased use of tariff rate quotas instead of full liberalisation, led to the acceptance of the EU's waiver.[245]

Because of these disagreements, it took until more than two years after the catastrophic events before only a watered down version of the Commission's proposal was adopted.[246] The Regulation expired on 31 December 2013. It provides that by the end of 2015 at the latest, the Commission should submit a report on the effects "in terms of job creation, poverty eradication and the sustainable development of Pakistan's working population and poor".[247] Given the more limited scope, as well as the shorter duration of the trade preferences, their impact is likely to be limited.[248] Since MEPs also managed to insert a statement in the regulation saying that the measure is not a precedent for the EU's trade policy, but strictly a response to the specific situation in Pakistan, it seems unlikely that there would be many more cases whereby trade preferences are used in the context of humanitarian crises.

However, it can be questioned whether humanitarian motives were the main impetus behind the proposed emergency trade preferences for Pakistan. The country's geostrategic importance for the EU and its unsatisfactory access to the EU market under the GSP seem to be more important considerations.[249] Even the Council Regulation explicitly states that the EU's response to the disaster should "take into account the geostrategic importance of Pakistan's partnership with the Union, mainly through Pakistan's key role in the fight against terrorism, while contributing to the overall development, security and stability of the region".[250] Moreover, within the European Commission's DG Trade, some officials were dissatisfied with what they considered undue influence from the European Council, and in particular, the UK government, because of geopolitical considerations.[251] It should be noticed that the EU is a founding member of the "Friends of Democratic Pakistan" group within the United Nations National Assembly.[252] There are also a number of historical antecedents that lend further support to the thesis that the EU's granting of additional market access to Pakistan fits within a broader foreign policy agenda, rather than

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[245] http://www.wto.org/english/news_e/news12_e/good_02feb12_e.htm (accessed 1 May 2013).

[246] In a statement added to the adoption of the EU Regulation introducing emergency autonomous trade preferences for Pakistan, Sweden expressed its regret "that the adoption of the regulation comes late, is limited in scope, and will endure, de facto, only a short period of time". Council document 13867/12, 21 September 2012.

[247] Consideration 21 of Regulation No 1029/2012.

[248] See also S. Khorana, M.T. Yeung, W.A. Kerr and N. Perdikis, 'The Battle over the EUs Proposed Humanitarian Trade Preferences for Pakistan: A Case Study in Multifaceted Protectionism', 46 (1) *Journal of World Trade* (2012), 33.

[249] S. Gstöhl, 'No Strings Attached? The EU's Emergency Trade Preferences for Pakistan', in: I. Govaere and S. Poli (eds.), *EU Management of Global Emergencies: Legal Framework for Combating Threats and Crises* (Boston-Leiden, Brill: 2014), 47-73.

[250] Consideration 5 of Regulation No 1029/2012.

[251] Interview, European Commission, DG Trade, 31 August 2013.

[252] http://europa.eu/rapid/press-release_MEMO-10-491_en.htm?locale=en

economic or developmental concerns. First, in 1997, the EU ignored a request by international trade union movements to withdraw GSP trade preferences from Pakistan because of child labour and forced labour practices. The EU's failure to apply sanctions at the time was, according to some sources, related to Pakistan's geostrategic and economic importance for the EU.[253] Second, in November 2011, the EU decided to grant even more favourable trade preferences to Pakistan. The additional market access was officially because of the government's role in the fight against drugs production and trafficking, but in fact, it was a barely veiled attempt to reward Pakistan for its role in the fight against terrorism. Because of its lack of an objective economic or developmental basis, this decision was successfully challenged by India at the WTO.[254] Third, in 2012, when the European Commission proposed its new GSP regulation, the vulnerability criterion for the eligibility of the "GSP+ scheme", which grants even more trade preferences to countries ratifying and effectively implementing sixteen human rights conventions and several conventions on the environment and governance, was relaxed from 1% to 2%. The implication of this seemingly small adjustment is that Pakistan also became eligible for the GSP+. Subsequently, Pakistan successfully applied for the GSP+ scheme. Since 1 January 2014, Pakistan has received the GSP+ preferences, so that its privileged access to the EU market will continue after the expiry of the "flood" preferences. It remains to be seen the extent to which this implies that the country will effectively implement the relevant human rights convention, including the moratorium on the death penalty, and the extent to which the recent practices of capital punishment (in December 2014, following the massacre of school children by the Taliban) will impact the EU's views on whether Pakistan is entitled to receive the GSP+ trade preferences.

Because of Pakistan's geopolitical importance, there has been one case preventing the withdrawal of trade preferences, and three cases attempting to extend trade preferences beyond the standard GSP tariffs (the drugs GSP system, the floods initiative, and finally, the GSP+). As in the case of the Tsunami initiative, the "humanitarian" trade initiative proved to be instrumental for advancing a broader trade or security-related agenda.

In conclusion, the Pakistan case demonstrates that the EU's trade policy may be used as an instrument to promote humanitarian objectives in the wake of a global emergency. However, it also shows the limits and challenges to such an approach. Moreover, the final EU Regulation does not safeguard the independence of the humanitarian initiative, given the introduction of conditionality and safeguard clauses.

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[253] T. Greven, *Social Standards in Bilateral and Regional Trade and Investment Agreements. Instruments, Enforcement, and Policy Options for Trade Unions* (Geneva: Friedrich-Ebert-Stiftung, 2005), 22.
[254] Bartels, *op. cit.*, 869-886.

6 Conclusion and policy recommendations

The EU's humanitarian aid policy has progressively expanded over the previous decades. As was illustrated in the historical overview, this has involved (i) a substantive shift from natural to man-made disasters; (ii) a geographical shift from the ACP group to all third countries; (iii) an institutional shift from fragmentation to a centralised office within the European Commission; (iv) a bureaucratic shift of ECHO from an office to a separate DG within the Commission and the further professionalisation of ECHO; (v) an increase in policy initiatives, including LRRD, DRR and a Voluntary Corps; (vi) a growing ambition to Europeanise the Member States' national humanitarian aid policies; (vii) an increased budget; and last but not least, (viii) a strengthening of the legal basis from a Council Regulation (with development aid as its legal basis), over a political document (the Humanitarian Consensus), to primary law (the ill-fated Constitutional Treaty, and finally, the Lisbon Treaty).

Despite the EU's long-standing international involvement as a humanitarian assistance donor, it is only with the Treaty of Lisbon that a specific provision devoted to humanitarian aid has been introduced into the primary legal framework of the EU. Accordingly, the granting of "ad hoc assistance and relief and protection for people in third countries who are victims of natural and man-made disasters, in order to meet the humanitarian needs resulting from these different situations" is now indisputably an EU external policy in its own right. With this explicit recognition, the Treaty of Lisbon underlines the separate nature of humanitarian aid in comparison to other external policies, such as development co-operation or CFSP.

While the Lisbon Treaty raises the profile of humanitarian aid as a separate external policy of the Union, it also aims to increase the coherence of the EU's external action and offers new institutional and legal provisions to combine humanitarian aid activities with other external action instruments and institutions. Within the post-Lisbon institutional setting, a lot of attention has been focused on finding ways to provide a more coherent and comprehensive response to crises and large-scale disasters. However, the implications of the new institutional and legal provisions to combine humanitarian aid activities with other external action instruments and institutions are not uncontested, as enhanced coordination and cooperation may undermine the independence and distinct status of humanitarian aid policy. The actors involved in humanitarian assistance, foreign policy, development and trade each have different agendas; they pursue different principles and objectives, and diverge regarding the levels and modalities of intervention. For humanitarian aid policy, this means that

the quest for more coherence may come at the expense of the humanitarian aid principles to which the EU is committed.

In principle, there are sufficient safeguards to protect the independence of the EU's humanitarian operations. Decision-making in the field of humanitarian aid is still essentially steered by DG ECHO of the Commission. The integration of civil protection functions into the activities of DG ECHO has improved the coherence of the EU's strategy for crisis response and its relations with the EEAS do not appear to have undermined the fundamental role of humanitarian principles. Moreover, there is increased cooperation with the Member States through institutional structures such as COHAFA and EDRIS. Nevertheless, several issues continue to exist.

First, the trend towards a more comprehensive approach to crisis management, including a more active coordinating role for the EEAS, may lead to further institutional tensions with DG ECHO. A clear-cut division of responsibilities, as well as a sufficient awareness of the humanitarian aid specificities among all of the actors, are crucial to ensuring effective cooperation on the ground. For this purpose, an action plan to spread the knowledge about the European Consensus and systematic information exchanges with the NGOs that are active on the ground are recommended.[255] More generally, a re-assessment of the European Consensus and Council Regulation 1257/96 could help to reframe the EU's humanitarian aid policy in light of Article 214 TFEU.[256] The Regulation, in particular, was adopted in a completely different context and on the disputable legal basis of development assistance. An up-to-date version of the Regulation – based on Article 214 TFEU – could be useful to more clearly spell out the independent and coordinating role of DG ECHO and its relations with other institutional actions such as the EEAS.

Second, in order to be effective, humanitarian aid must not only be neutral, but also must be perceived as such. The EU's increasing involvement in crisis management operations and the publishing of joint press releases on behalf of the High Representative and the Commissioner for Humanitarian Aid put this perception under pressure. For this reason, the internal institutional independence of DG ECHO should also be made visible externally. For this purpose, ECHO could consider adopting a new logo allowing a clear distinction from other actors, such as EUFOR missions or election observation missions.[257]

[255] See also, on this point, the recommendations included in the VOICE study 'The European Consensus and Humanitarian Aid: An NGO Perspective', May 2014, available at: http://daraint.org/2014/05/23/5133/report-european-consensus-humanitarian-aid-ngo-perspective/.

[256] It is noteworthy that according to Enrique Guerrero, the European Parliament's standing rapporteur on humanitarian assistance, "there are many actors in humanitarian aid who fear that if we open this discussion [i.e. on a revision of the Consensus] the risks will be higher than the opportunities especially when EU Member States are reducing their budgets". See: VOICE Newsletter, May 2015, p. 17.

[257] This recommendation can also be found in OECD/DAC, *op. cit.*, 98.

Third, there has still been little practical progress on linking emergency aid, rehabilitation and development. Further, in this area, it is important that all of the actors involved, both in Brussels and in the delegations, understand each other's principles, objectives and modalities, and agree on a common framework for action.

Fourth, the ambition of the Lisbon Treaty to facilitate the combination of different policy instruments in response to global emergencies faces political and legal obstacles. This has been clearly illustrated with the Pakistan case, where the temporary introduction of autonomous trade preferences faced strong opposition, both within the EU and at the level of the WTO. Taking into account the humanitarian principles, as well as international trade law, the EU should develop clear guidelines about the conditions under which trade instruments can be used for humanitarian purposes. In doing so, it would be important to avoid the perception (accurate or not) that economic or foreign policy considerations determine when so-called humanitarian concerns inform trade policy decisions.

Fifth, a lot of effort has gone into strengthening the institutionalisation of an EU humanitarian aid policy, but surprisingly little attention has been devoted to assessing the effectiveness of the EU's humanitarian aid efforts. As was recognised by the European Commission in its preparations for the first World Humanitarian Summit, which will take place in Istanbul in May 2016, "there are no reliable and comparable assessments of humanitarian needs".[258] As a result, humanitarian aid risks being driven by an institutional competition for funds with investments in the most visible humanitarian crises. In order to ensure full respect for the humanitarian imperative, "there is a need for common tools to measure whether the assistance addresses actual needs and brings the expected impact".[259]

In sum, it appears that the EU is a key player when it comes to providing and coordinating humanitarian assistance, but difficulties remain regarding the integration of humanitarian aid programmes into more comprehensive strategies of disaster response, especially because this trend towards a comprehensive approach puts the humanitarian principles under pressure.

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[258] COM (2015) 419 final, p. 6.
[259] *Ibid.*

Annex 1

Article 214 of the Treaty on the Functioning of the European Union (TFEU)

HUMANITARIAN AID

Article 214

1. The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union. Such operations shall be intended to provide ad hoc assistance and relief and protection for people in third countries who are victims of natural or man-made disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's measures and those of the Member States shall complement and reinforce each other.

2. Humanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination.

3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures defining the framework within which the Union's humanitarian aid operations shall be implemented.

4. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in paragraph 1 and in Article 21 of the Treaty on European Union. The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude agreements.

5. In order to establish a framework for joint contributions from young Europeans to the humanitarian aid operations of the Union, a European Voluntary Humanitarian Aid Corps shall be set up. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall determine the rules and procedures for the operation of the Corps.

6. The Commission may take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures.

7. The Union shall ensure that its humanitarian aid operations are coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations system.

Annex 2

| | | Table 2: Overview of Commissioners responsible for humanitarian aid | | |

European Commission	Responsible Commissioner for Humanitarian Aid	Portfolio of the responsible Commissioner
Juncker 2014–	Christos Stylianides	Humanitarian aid and crisis management *Development Commissioner: Neven Mimica*
Barroso II 2009–2014	Kristalina Georgieva	International Cooperation, Humanitarian Aid and Crisis Response *Development Commissioner: Andris Piebalgs*
Barroso II 2004–2009	Louis Michel	Development and Humanitarian Aid
Prodi 1999–2004	Poul Nielson	Development and Humanitarian Aid
Santer 1995–1999	Emma Bonino	Consumer Policy, Fisheries and ECHO *Development Commissioner: João de Deus Pinheiro*
Delors III 1992–1994	Manuel Marin	Cooperation, development and humanitarian aid
Before Delors III 1969–1991	Scattered over different Directorate Generals	Agriculture, Development, External Relations…

Svensk sammanfattning[260]

Syftet med denna rapport är att kartlägga de särskiljande dragen i EU:s humanitära bistånd som ett enskilt externt EU-politiskt sakområde och sedan analysera hur detta kan förenas med Lissabonfördraget och dess ambition att göra EU till en mer sammanhållen extern aktör.

EU:s biståndspolitik har successivt utvidgats under de senaste årtiondena. Det började inom ramen för relationerna till AVS-staterna (Afrika, Västindien och Stillahavsområdet) och utan en tydlig rättslig grund i fördragen. 1991 skapades Generaldirektoratet för humanitärt bistånd och civilskydd (ECHO), en separat institutionell tjänst för humanitärt bistånd, vilket bidrog till att humanitär hjälp i ökande grad sågs som ett specifikt och viktigt externt sakområde. Men de politiska och rättsliga grunderna för denna politik förblev mycket grumliga. 1996 antogs Rådets förordning 1257/96, grundad på den något diskutabla rättsliga grunden "utvecklingssamarbete", och under hela nittiotalet misslyckades ECHO med att agera som ett verkligt självständigt institutionellt organ. I detta sammanhang föreslog Europeiska konventet (2002-2003) att en specifik fördragsbestämmelse om humanitärt bistånd skulle införas för att stärka utvecklingen av en mer professionell och självständig humanitär biståndspolitik på EU-nivå. Att det konstitutionella fördraget inte kunde ratificeras innebar dock inte slutet för erkännandet av det humanitära biståndets specificitet inom ramen för EU:s yttre åtgärder. Lissabonfördraget återanvände helt enkelt de humanitära biståndsbestämmelserna i det konstitutionella fördraget. Därutöver antog Europeiska kommissionen, Europaparlamentet och rådet gemensamt "en europeisk konsensus gällande humanitärt bistånd" i december 2007. Därmed kan också EU:s humanitära bistånd sägas bygga på säker rättslig och politisk grund.

Artikel 214 FEUF kodifierar inte bara EU:s kompetens att agera inom området, den understryker också hur viktigt det är att respektera de grundprinciper som härrör från internationell humanitär rättspraxis och är en förutsättning för tillämpningen av EU:s humanitära verksamhet. Dock skapar också den nya bestämmelsen nya utmaningar vad gäller beaktandet av dess principer. Frivilligorganisationer som är verksamma inom biståndsområdet har uttryckt viss oro över de politiska drivkrafterna bakom grundandet av en europeisk frivilligkår för humanitärt bistånd (EVHC) samt integreringen av EU:s biståndspolitik inom den allmänna

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[260] Denna rapport grundar sig delvis på: P. Van Elsuwege and J. Orbie, 'The EU's Humanitarian Aid Policy after Lisbon: Implications of a New Treaty Basis', in: I. Govaere and S. Poli (eds.), *EU Management of Global Emergencies: Legal Framework for Combating Threats and Crises* (Boston-Leiden: Brill, 2014), 20-45 and J. Orbie, P. Van Elsuwege and F. Bossuyt, 'Humanitarian Aid as an Integral Part of the European Union's External Action: The Challenge of Reconciling Coherence and Independence', 22 *Journal of Contingencies and Crisis Management* 3 (2014), 158-165. Vi riktar ett tack till Christophe Hillion, Inge Govaere, Sara Poli, Kathrin Schick, Thomas Henökl och två anonyma bedömare för deras värdefulla kommentarer till tidigare versioner av den här rapporten.

ramen för EU:s yttre åtgärder och den övergripande krishanteringsstrategin. Från organisationernas sida menar man att detta skulle kunna leda till ett ifrågasättande av EU:s oberoende när det gäller agerande i humanitära frågor och ha en negativ inverkan på dess engagemang för de humanitära principerna.

Det finns i princip tillräckliga garantier för att garantera oberoendet i samband med EU:s humanitära operationer och beslutsfattandet inom området styrs fortfarande i huvudsak av Generaldirektoratet ECHO inom kommissionen. Integreringen av de civila skyddsfunktionerna inom ECHO har förbättrat sammanhållningen i EU:s krishantering, och relationerna till Europeiska utrikestjänsten (EEAS) verkar inte ha underminerat de humanitära principernas grundläggande ställning. Flera problemområden kvarstår dock:

För det första kan trenden mot en mer övergripande krishanteringsstrategi, med en ökad aktiv samordnarroll för EEAS, leda till ytterligare institutionella spänningar i förhållandet till GD ECHO. En tydlig ansvarsfördelning och medvetenhet om det humanitära biståndets betydelse hos alla aktörer är avgörande för att säkerställa ett effektivt samarbete både på den politiska nivån och på fältet. Det skulle eventuellt underlätta att revidera Förordning 1257/96 och "en europeisk konsensus gällande humanitärt bistånd" för att klargöra GD ECHOs självständiga och samordnande roll och dess relationer till institutionella aktörer som EEAS.

För det andra har väldigt få praktiska framsteg gjorts när det gäller att knyta samman katastrof-, återanpassnings- och utvecklingsbistånd. Även inom dessa områden är det viktigt att alla inblandade aktörer – såväl i Bryssel som i de olika delegationerna – förstår varandras principer, målsättningar och modaliteter, och kan enas om ett gemensamt ramverk.

För det tredje finns det politiska och rättsliga hinder för Lissabonfördragets målsättning att underlätta integrationen av olika politiska instrument som svar på globala katastrofer. Detta illustreras tydligt av de åtgärder som EU vidtog i samband med översvämningar i Pakistan 2010, där det tillfälliga införandet av handelspreferenser mötte starkt motstånd inom såväl EU som Världshandelsorganisationen (WTO).

Sammanfattningsvis kan man konstatera att EU under de senaste tio åren har skapat ett starkt rättsligt och politiskt ramverk för biståndspolitiken. EU framstår som en central aktör när det gäller att tillhandahålla och samordna humanitär hjälp, och man har mycket kraftfullt hävdat de humanitära principerna. Vissa problem kvarstår dock vad gäller integreringen av biståndsprogram i mer omfattande strategier för katastrofhjälp. Även om ramverket i och med Lissabonfördraget innefattar en rad mekanismer avsedda att garantera biståndspolitikens ställning i EU, leder trenden mot en mer övergripande krishanteringsstrategi vid katastrofsituationer till att de humanitära principerna sätts under ökat tryck.

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Peter Van Elsuwege, Jan Orbie and
Fabienne Bossuyt