CHAPTER 2

The EU’s Humanitarian Aid Policy after Lisbon: Implications of a New Treaty Basis

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1 Introduction

Despite the long-term involvement of the European Union (EU) in humanitarian actions, 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 an EU external policy in its own right.¹ 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 Common Foreign and Security Policy (CFSP). It also clearly distinguishes humanitarian aid and civil protection as two different yet complementary pillars of the EU’s disaster response mechanism.²

Notwithstanding the absence of an explicit legal basis in the pre-Lisbon period, the EU has a long-standing tradition of providing humanitarian assistance to third countries. Already in 1969, a humanitarian aid programme was initiated in the context of the Yaoundé II Convention with the countries of Africa, the Caribbean and the Pacific (ACP). In 1992, the European Community Humanitarian Office (ECHO) was set up for the purpose of “managing humanitarian actions for the benefit of the populations of all third countries suffering from natural disasters or exceptional events requiring swift response or

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¹ Article 214 TFEU.
² With regard to civil protection, the Lisbon Treaty introduced new Article 196 TFEU. On the link between humanitarian aid and civil protection as the two main tools of the EU’s disaster response policy, see COM (2010) 600 final.

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the implementation of accelerated procedures’. The adoption of Council Regulation 1257/96 provided the basic legal framework for the further elaboration of a specific humanitarian aid policy on behalf of the European Community.

Since the early 2000s, the EU’s humanitarian aid policy has gradually become more independent from the development realm on the one hand, and from the foreign and security policy sphere on the other. This became clear for the first time during the drafting of the Constitutional Treaty by the European Convention in 2002–2003. The European Consensus on Humanitarian Aid, adopted in December 2007 and signed on behalf of the Council, the European Commission, the European Parliament and the Member States, also stresses the independent nature of the EU’s policy in this field. The principles that apply to humanitarian aid (neutrality, impartiality, humanity and independence) are specific and distinct from other forms of aid. They differ from development cooperation, the practices and principles of which are outlined in a separate European Consensus, and from the EU’s involvement in crisis management, civil protection and consular assistance. Of course, 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. One of the key challenges for the EU is therefore to ensure coherence and complementarity in its response to crisis situations while respecting the constitutional division of competences and the specific characteristics of its different policies.

In this contribution it will be argued that the attribution of an explicit legal basis for the elaboration of an EU humanitarian aid policy is the logical next step in a gradual process to achieve this objective. After analysing the historical development of the EU’s humanitarian aid policy (2), the legal nature of the EU’s competence in this field is discussed (3). Subsequently, the link between the EU’s humanitarian aid policy and the principles of international humanitarian law is scrutinised (4). Finally, specific attention is devoted to the

5 European Consensus on Humanitarian Aid, OJ, 2008, C 25/1, para. 22. For an analysis of the humanitarian principles, see infra part 4.