

**EUR-OPA MAJOR
HAZARDS AGREEMENT**



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 28 February 2005

AP/CAT (2005) 13
Original French

OPEN PARTIAL AGREEMENT ON THE PREVENTION OF, PROTECTION AGAINST AND ORGANISATION OF RELIEF IN MAJOR NATURAL AND TECHNOLOGICAL DISASTERS

**The Higher Institute of Emergency Planning) (ISPU),
Florival, Belgium
EUR-OPA Major Hazards legal studies centre**

Governmental Crisis Co-ordination Centre
Higher Institute of Emergency Planning

1. A word about ISPU

Since its foundation in 1990, the Higher Institute of Emergency Planning has developed numerous activities at the national and international level.

At the national level the focus is on emergency planning.

The missions of the Higher Institute of Emergency Planning are:

1. to organise specific emergency planning and relief organisation training for the authorities responsible at the level of the Belgian State, Communities, Regions, provinces and municipalities, or persons appointed by them;
2. to improve the exchange of ideas on internal and external emergency planning between the aforementioned public authorities and the operators of potentially hazardous industrial plants;
3. to regularly brief those responsible for organising emergency relief on the potential health risks involved and the precautions they should take.

In 2004 the bulk of the Institute's activity concerned the newly revised Nuclear and Radiological Emergency Plan for Belgium. In 2005 it will be able to address other subjects, such as the debriefing following the accident at Ghislenghien on 30 July 2004, the safety of road rallies, the application of Eurocode 8 in areas with earthquake risks, crisis communication, inter-ministerial risk management, etc.

- As a legal studies centre for the EUR-OPA Major Hazards Agreement, its field of activities covers all the legal aspects of risk management¹.

The last two activities, comparative study of legislation (2003) and comparative analysis of inter-ministerial risk management (2004), clearly revealed that it has become indispensable to broaden the scope of our activities beyond the legal dimension so that we increase our understanding of the organisation of risk management in order to evaluate and improve it.

This situation is linked to the changing role of the law in our societies.

Traditionally, positive law was the means of creating the necessary conditions for a society in which it is pleasant to live. In recent decades the tendency in every field has been towards a "reflexive" kind of law, which only sets a minimum framework, based more on obligations in terms of resources and management, and necessitating the development of other, what we call 'soft law', instruments. Standards, codes of good practice, Best Available Techniques-BAT, certification, etc. are examples of 'soft law' instruments, not developed by law-makers, but essential additional instruments for achieving the political and strategic aims set by the competent authorities (in positive law).

In this changing context the ISPU will direct its future research and consulting activities more towards comprehensive risk management policy, while still focusing on the legal aspects and broadening its scope to other instruments.

The ISPU's four main lines of action:

¹ National civil protection structures – 1996; protecting human rights in crisis situations – 1997; the status of volunteers involved in relief work – 1998; radiation protection – 1999; training modules on the legal aspects of risk management – 2000; comparative study of risk management legislation – 2001-2003 [APCAT(2003)39] ; comparative analysis of inter-ministerial risk management – 2004 [APCAT(2005)13] (*studies coordinated by Kathleen Van Heuverswyn, legal expert*)

1. Documentary research

This is the basic activity, essential to the development of the institute's other activities. It entails collecting information and building up databases on risk management policies at the European and national levels: regulations, information about the competent authorities and the organisation of risk management, brochures and handbooks, etc.

2. Research and comparative analysis relating to all aspects of risk management policy

This is essentially scientific work involving the diagnosis and critical analysis of specific aspects of risk management, sometimes using a horizontal approach (eg inter-ministerial risk management or communication in crisis situations) and sometimes a theme-based approach (eg earthquake or epizootic disease hazards). This research may cover aspects such as legislation operational matters or education and training.

3. Drawing up common guidelines

Based on the above research and comparative analysis, recommendations (not binding) of a methodological or ethical nature may be made. They provide common guidelines for all the authorities involved in risk management: compilation of best practices identified at national, regional and local level, drafting of recommendations or scientific or policy guidelines, etc.

4. Technical consultancy

The expertise developed through the above activities can be put to good use for the benefit of public institutions at the national, regional and local levels.

Methodology

In all its activities the ISPU works in collaboration with the EUR-OPA Agreement's specialised centres and with a network of national experts.

Setting up working groups on different themes is a course of action that may be envisaged in the future.

2. 2004 activity report

Comparative analysis of inter-ministerial management of major hazards

Background:

In 2002-2003 a comparative study of different countries' legislation on major hazard management was carried out for the Council of Europe's EUR-OPA Major Hazards Agreement (document APCAT (2003)39)².

The aim was to take stock of existing laws and practices concerning risk prevention, crisis management, rehabilitation, and controls and sanctions in the field of major hazard management in the 26 states parties to the Agreement.

One of the positive findings was that a horizontal approach and co-ordination efforts can contribute to successful preparation for and management of crisis situations.

The less positive findings included:

- the fact that the distribution of competences and responsibilities has become very complex,
- the lack of a co-ordinated and integrated approach including the 4 components of risk management: prevention, preparation and management, rehabilitation, and a system of controls and sanctions.

At present these four components are brought together mainly at non-central levels (municipality, province, county, etc). These are the levels at which all the legal standards are actually applied, be they theme-specific (particular to a type of hazard) or horizontal (factors common to all hazards).

Following these findings it was decided to examine the question of the need for upstream co-ordination: do legally sound models of inter-ministerial co-ordination exist that can be used to optimise major hazard management?

Four models were examined:

1. inter-ministerial management as provided for in French law;
2. inter-ministerial management as practised (co-ordination not explicitly provided for in the legislation): Belgium and the role of the Crisis Centre;
3. ministerial management by a ministry specialised in hazard control: Emercom in Russia,
4. the civil protection agency and the hazard management standing committees in Bulgaria.

The national mechanisms in these four countries for co-ordinating risk prevention and preparation for and management of crisis situations (excluding rehabilitation and supervision machinery) were examined for two types of risk: floods and major chemical hazards (Seveso).

Methodology

- The basic information was supplied by the research carried out for the previous study (APCAT (2003)39).
- Further information was provided by more specific research on the co-ordination, consultation and collaboration machinery.

² cf. document (2003)39

- A working meeting was held on 6 and 7 December 2004, in which Dr Sockoro Delgado, Mrs Daniella Pantova, Mrs Françoise Tondre and Col. Lionel Lecléi took part, respectively representing Russia, Bulgaria and the EUR-OPA Agreement.
- A working meeting was organised in Paris on 14 December by Mr René Feunteun, the French permanent correspondent for the Agreement, and attended by representatives of the Interior and Ecology and Sustainable Development Ministries.
- A number of national experts were interviewed by telephone or e-mail.
- The descriptions of hazard control organisation in the four countries covered by the study were sent to the permanent correspondents concerned for validation.

Result³:

The results of the comparative analysis of inter-ministerial management in Belgium, France, Russia and Bulgaria⁴ are set out in a discussion paper which includes:

- a section which describes the organisation of risk management in the four countries, listing their strengths and weaknesses and evaluating them in the light of the purpose of the study, which was to identify co-ordination mechanisms at the national level;
- a comparative analysis based on the different countries' strengths and weaknesses, together with ideas from the recent literature (national and international) and recommendations including lines of thought to be followed up;
- conclusions on the need for co-ordination.

³ The present document is just a first step in the search for areas for reflection and recommendation to improve inter-ministerial risk management. We chose to prepare an initial inventory of the strengths and weaknesses of the co-ordination mechanisms in the four countries selected and to consult a broad spectrum of experts to supplement and detail the information and viewpoints collected. In its present form, therefore, the document should be considered as a working document or a discussion paper, rather than a final report. In spring 2005 it will be sent to experts in national administrations, European and international organisations, universities, etc., in order to generate maximum feedback and suggestions. All these results will be presented at a workshop in Florival in autumn 2005. All these stages - this discussion paper, the feedback from the experts, the discussions and findings of the workshop in Florival - will be covered in a final report to be published at the end of 2005: see 2005 activity programme for further details.

⁴ cf. document APCAT (2005)30

Conclusions of the comparative analysis:

Amongst the studies carried out by the Higher Institute of Emergency Planning in recent years, the one on national civil protection structures (1996), the one on the legal framework of risk management (2003) and above all this latest analysis of inter-ministerial risk management clearly illustrate the new trends in major hazard management.

Moving away from the specialisation in a single discipline that has marked recent decades, the tendency today seems to be towards a more comprehensive approach.

Illustrations of the recent specialisation include:

- in risk prevention, the creation of Ministries of the Environment since the 1970s (separate from the ministries responsible for industry),
- and the efforts to step up co-ordination in emergency planning in the wake of the Seveso Directives (Russia and Bulgaria progressed along similar lines). The opening in certain countries of state secretariats or ministries responsible for sustainable development is another illustration of this tendency for a whole new field of competence to emerge as soon as the problem took on a certain political importance.

Whatever its merits, the disadvantage of this specialisation was that it led to compartmentalisation.

The first signs of change appeared within each specialised field as co-ordination machinery was increasingly set in place: co-ordination of planning, co-ordination of prevention, integrated policy on pollution and pollution control, etc.

The recent trend reveals increased awareness of the need for more synergy, and a desire to achieve this, beyond the various components and beyond specialist disciplines.

The analysis shows that initiatives along these lines are being taken, but that they are still only partial.

The interdisciplinary approach to risk management

After years of specialisation, it is very difficult to draw public authorities outside their frames of reference, which are determined exclusively by the responsibilities vested in them. This is also true of scientific experts, who are not in the habit of taking an interest in other disciplines. Whether or not this is considered necessary, simple intellectual curiosity is soon discouraged, because the logic, methods and language used differ from one discipline to another.

The first step towards a more comprehensive approach to risk management including strategy development, risk prevention, preparing for and managing crisis situations, and rehabilitation and the return to normal, is no doubt to make all the players aware of their responsibility and of the fact that they are contributing to a whole which is much broader than their own specific fields of competence.

Integrated multidisciplinary action that respects individual responsibilities

In fact, the lack of readiness to embrace this approach certainly stems at least partly from fear of losing control over one's own field of competence.

The initial point of this analysis was to identify co-ordination mechanisms. In the course of our research, however, we found that talk of co-ordination triggered defensive, protectionist reactions. Probably because co-ordination suggests some sort of high command, someone who would take the reins and to whom one would have to relinquish some of one's power, to whom one would be answerable. Co-ordination is the key to successful emergency planning

and crisis response management, for evident operational reasons; extending co-ordination to the other aspects of risk management, however, is not necessarily the best solution. Other mechanisms that would offer similar advantages (associating authorities with complementary responsibilities) without the perceived disadvantages (no trespassing on people's fields of competence) therefore need to be investigated. The integrated approach probably best reflects this concern to preserve this essential specialisation in a single discipline while trying to fit it into a coherent whole and allowing for the specific dynamics and logic of that whole. This means setting up machinery to restore the chronological and functional links between the various components. Co-ordination thus becomes just one of the many means of forging these links, others being consultation, the exchange of information, formal or informal collaboration, etc.

The challenge is to respect the various entities in their specificities and therefore in their respective powers and responsibilities, to try to make them work together in the manner best suited to the needs, which will vary from one place to another, so that they work better both as separate entities **and** together.

List of recommendations based on the comparative analysis

Terminology – recommendation 1:

It would be useful to compile an international glossary in English and French and have it adopted by as many international organisations as possible, not necessarily as a legally binding document but to give it a certain moral authority.

Risk inventory and analysis – recommendation 2:

It would be useful to encourage all the competent authorities at the national, regional and local levels to make an objective inventory of the risks on their territory and to analyse them: evaluate the likelihood of the contingency, estimate the damage that might be done, determine the perception and acceptability of the risk and so on. The results would provide them with a basis for their risk management policies or strategies.

Strategy – recommendation 3:

It would be useful to encourage national authorities to introduce consultation procedures with a view to developing global risk management strategies, defining common objectives, determining each authority's contribution based on their respective responsibilities and allocating resources in keeping with responsibilities.

The need for inter-ministerial management - recommendation 4:

It would be useful to encourage upper levels of authority (national, federal, regional) to move away from their essentially vertical decision-making processes in order to facilitate application further down the line (at the regional, county and municipal levels and by industry).

Need to clarify the distribution of responsibilities – recommendation 5:

It is essential clearly to allocate responsibility for every aspect of risk management in order to avoid gaps in the strategy or, on the contrary, conflicting interests where responsibilities overlap.

Envisage prevention plans – recommendation 6:

It would be useful to encourage authorities responsible for risk prevention (primary prevention or reduction of exposure to danger) to consider elaborating prevention plans along similar lines to their emergency plans, bringing together all the competent services on the basis of common objectives and clearly stating what each should do in their respective areas of responsibility.

Emergency planning in phase with prevention – recommendation 7:

It would be useful if emergency planning were to make greater allowance for residual risks which are not and/or cannot be controlled and which are the result of (primary) prevention policies.

Post-crisis plans - recommendation 8:

Thought should be given to the possibility of preparing 'post-crisis plans', along similar lines to emergency planning.

Integrating the lessons learned from experience into risk prevention and crisis management - recommendation 9:

It would be useful to encourage the competent authorities to invest in the survey and analysis of incidents, accidents and disasters and to develop means of integrating the findings into their risk prevention strategies and preparations for crisis management.

Exchanging information on skills, best practices and training – recommendation 10:

It would be useful to encourage national authorities to centralise information on available skills, best scientific and other practices and the training dispensed in each country. National databases could usefully be networked.

Knowledge as an aid to decision making – recommendation 11:

Research must be encouraged, in order to improve our understanding of increasingly complex phenomena.

Cost of risk management – recommendation 12:

The competent authorities should be encouraged to introduce cost analysis as a criterion in the assessment of risk management organisation.

Evaluation criteria – recommendation 13:

The competent authorities should be encouraged to define evaluation criteria with a view to increasing the efficacy of their action and adapting it to the objectives to be achieved.

The strategic approach to risk management - recommendation 14:

A strategy document could usefully be drafted covering all aspects of risk management and including sections on each component: strategy, prevention, preparation and management, rehabilitation and evaluation, with chapters in each section explaining the specific approach to each type of risk.

3. 2005 activity programme

- Documentary research – ongoing activity:

1. Compiling a database on risk management policies

- Inventory of competent authorities in the member states
- Inventory of (national, European, international) regulations on risk management

In 2005 priority will be given to the inventory of regulations, with a view to extending the database to other documents.

Results expected:

A maximum number of texts available on CD-Rom in 2005.

Ultimate aim: versions of all these texts in French and English available on the Internet, with search engines offering easy consultation.

- Research and comparative analysis

2. Comparative analysis of legislation on earthquake hazards

The aim is to take the APCAT (2003)39 study on earthquake hazards a stage further:

- identification of countries with 'advanced' legislation in this field;
- description of the legal framework in each country;
- comparative analysis, findings and recommendations.

This activity will be carried out in close collaboration with the EUR-OPA Major Hazards Agreement's specialised centres.

Results expected:

An overview of the existing legal framework, identification of strengths and weaknesses, exchange of national experiences and recommendations presented at a seminar.

- Preparation of common guidelines

3. Workshop on inter-ministerial risk management

Following the comparative analysis of inter-ministerial risk management carried out in 2004, the discussion paper will be sent to national experts (Interior and Environment and Sustainable Development ministries, EUR-OPA Centres, universities, European and international bodies, etc.) for comment and suggestions.

At a workshop in Florival (in October 2005) the findings of the study and the experts' comments will be presented, together with more details of certain 'best practices'. The workshop should give participants an opportunity to discuss the findings and make recommendations.

Results expected:

Publication (in 2006) of the findings of the research on inter-ministerial risk management, including: the discussion paper (2004), the comments and suggestions made by the experts, the conclusions of the discussions and the recommendations made at the Florival workshop.

4. Publication of "best practices" in risk management

Each year, starting in 2005, a number of 'best practices' identified in the course of the Centre's research and activities will be published.

This will be done in close collaboration with the permanent correspondents and experts in the countries concerned.

Results expected:

Ongoing dissemination and exchange of experience on interesting subjects in the form of an annual publication and update.

- Consultancy and technical assistance

Consultancy and technical assistance activities will be provided on request.