Analysis of Law in the European Union pertaining to Cross-Border Disaster Relief

Prepared for the International Federation of Red Cross and Red Crescent Societies by

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Strategy 2020 voices the collective determination of the International Federation of Red Cross and Red Crescent Societies (IFRC) to move forward in tackling the major challenges that confront humanity in the next decade. Informed by the needs and vulnerabilities of the diverse communities with whom we work, as well as the basic rights and freedoms to which all are entitled, this strategy seeks to benefit all who look to Red Cross Red Crescent to help to build a more humane, dignified, and peaceful world.

Over the next ten years, the collective focus of the IFRC will be on achieving the following strategic aims:

1. Save lives, protect livelihoods, and strengthenrecovery from disasters and crises
2. Enable healthy and safe living
3. Promote social inclusion and a culture of non-violence and peace

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About this report

This report was commissioned by the International Federation and prepared by Justine Stefanelli and Sarah Williams of the British Institute of International and Comparative Law.

It is one element of a broader project being undertaken by the International Federation and the National Red Cross Societies of Austria, Bulgaria, France, Germany, the Netherlands and the United Kingdom to study EU and Member States'regulations for cross-border disaster assistance within Europe.

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About the IDRL Programme

The International Federation's "International Disaster Response Laws, Rules and Principles" (IDRL) Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. It works in three areas: (1) collaborating with Natioanl Red Cross and Red Crescent Societies and other partners to offer technical assistance to governments on disaster law issues; (2) building the capacity of National Societies and other stakeholders on disaster law; and (3) dissemination, advocacy and research.

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Table of Abbreviations

ACP	African, Caribbean and Pacific
CECIS	Common Emergency Communication and Information System
CPM	Civil Protection Mechanism
DG	Directorate-General
EACP	Euro-Atlantic Partnership Council
EADRCC	Euro-Atlantic Disaster Response Coordination Centre
EADRU	Euro-Atlantic Disaster Response Unit
EC	European Community
ECHO	Directorate-General for Humanitarian Aid
ECJ	European Court of Justice
ECMT	European Conference of Ministers of Transport
EEA	European Economic Area
EEC	European Economic Community
EFFIS	European Forest Fire Information System
EFTA	European Free Trade Area
EMU	Economic and Monetary Union
EU	European Union
Euratom	European Atomic Energy Community
ICRC	International Committee of the Red Cross
IDRL	International Disaster Response Law
IFRC	International Federation of the Red Cross and Red Crescent Societies
IHR	International Health Regulations
ITF	International Transport Forum
JHA	Justice and Home Affairs
MIC	Monitoring and Information Centre
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
OCHA	Office for the Coordination of Humanitarian Affairs
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
VAT	Value Added Tax
WHO	World Health Organisation

Analysis of Law in the European Union
pertaining to Cross-Border Disaster Relief

Chapter 1: Introduction

Chapter 1

Introduction

1a. The Context of the Study

The occurrence of natural and technological disasters within the territory of the Member States of the European Union (EU) has long been a concern in the EU. Between 2002 and 2008, the EU Civil Protection Mechanism (CPM) was involved in 77 incidents occurring within the EU territory. Such incidents ranged from earthquakes in Italy to flooding in Romania and Bulgaria. When these disasters are on a large scale, or their effects cross international boundaries, international assistance and co-operation become a necessary component of disaster relief planning. However, it is often the case that the applicable legal framework does not consider the legal and technical measures necessary to facilitate international assistance, for example, expedited procedures for crossing borders or importing relief goods.

In 2001 the International Federation of Red Cross and Red Crescent Societies (IFRC) initiated its International Disaster Response Laws, Rules and Principles (IDRL) Programme to study global legal frameworks within which disaster assistance is provided and used. The Programme and its partners reviewed the international, regional and national frameworks regarding international response to natural and technological disasters. Among the several dozen studies produced was an initial examination of the broad lines of EU law for disaster relief, carried out in 2003 by the Austrian Red Cross in co-operation with the IFRC.[1]

After several years of research and global consultations with governments and other stakeholders evaluating common problem areas and best practice, the IFRC spearheaded negotiations for the development of the "Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance" (IDRL Guidelines).[2] In November 2007, the state parties to the Geneva Conventions unanimously adopted the IDRL Guidelines at the 30th International Conference of the Red Cross and Red Crescent. In addition to joining the consensus on the Guidelines, the EU Member States[3] and their National Societies[4] signed specific pledges in support of the use of the Guidelines. Support for the IDRL Guidelines was also included in the EU Consensus on Humanitarian Aid in 2007. A recent report by the IFRC notes some of the progress in implementing the IDRL Guidelines since that time.[5]

The current study was commissioned by the IFRC and is funded in substantial part by the European Commission. The study builds upon the IDRL Guidelines, examining the degree to which national and European legal frameworks address problems related to the facilitation of international assistance. Its scope is limited strictly to the provision of disaster assistance within the EU and does not examine disasters resulting from armed conflict situations or terroristic acts. It examines EU law at the regional level and reviews international and regional legal instruments

1. *'The Regulatory Framework for Disaster Response established within the European Union: A focus on Humanitarian Aid and Civil Protection Legal Study' (2005).* 2. *IFRC, "Introduction to the Guidelines for the Domestic Faciiltation and Regulation of International Disaster Relief and Initial Recovery Assistance" (2008), available at:* http://www.ifrc.org/idrl. 3. *Pledges on IDRL: Section 3.1 – Strengthening the legal framework for international response to disasters, Government, EU Joint Pledge, Pledge #95.* 4. *ibid, National Societies, Pledge #56.* 5. *IFRC, "The Right Aid at the Right Time : Progress Report on the Guidelines for the Dwomestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance" (November 2009), available at: http:* www.ifrc.org/idrl.

with potential application to disaster relief within the EU. This Report also, in part, updates and expands upon the 2005 study by the Austrian Red Cross and IFRC mentioned above. This study will form part of a wider project, and will be supplemented by an evaluation of the relevant law of six EU Member States, prepared by the Red Cross Societies of Austria, Bulgaria, France, Germany, the Netherlands and the United Kingdom.

1b. The EU and Disaster Relief

The EU has a long tradition of concern for disaster relief. This has been expressed in part through the development of institutions and rules for humanitarian assistance and also for civil protection cooperation. To date, the institutions and rules related to humanitarian assistance have applied only to relief efforts outside of the EU, whereas civil protection cooperation has been expanded, over time, to apply both inside and outside the EU. The past few years have seen some rapprochement of these strands, in particular in the recent proposal of Commission President Barroso to merge ECHO and the Civil Protection Mechanism into a single Directorate-General for International Cooperation, Humanitarian Aid and Crisis Response.

Nevertheless, this study will focus only on the delivery of disaster assistance *within* the territory of the Member States. It will consider relief sources from both within and outside the EU. For this reason, it will not be examining humanitarian assistance structures.

EU law-making on civil protection cooperation began with the May ministerial meeting in Rome in 1985. That meeting was followed by six resolutions on civil protection over the next nine years, the most significant being the Resolution of 9 July 1991 on improving mutual aid between Member States in the event of technological disasters.[6] Each of these resolutions formed the framework of what is now the CPM and has evolved into two primary pieces of legislation. Since then, the CPM has become a comprehensive framework for emergency assistance notification, request and response, and has developed an elaborate training and exercise programme to improve coordination and enhance experts' skills. Since January 2002, the Mechanism has handled almost 200 events ranging from practice exercises to responses to large-scale disasters, such as the 2004 tsunami in Asia or the 2009 earthquake in the l'Aquila Province in Italy.

Many of the provisions under the Mechanism correspond to considerations in the proposed IDRL Guidelines, but there are several gaps that have not been addressed by the Mechanism legislation or by other relevant Community policies.

Given the above, this report seeks to accomplish the following:

1. Conduct a review of the current EU legal framework for disaster relief, both within the Civil Protection Mechanism and in other relevant policy areas in order to assess the degree to which the current legal framework corresponds to the IDRL Guidelines;

6. *In fact, the first Decision establishing the CPM (2001/792/EC) refers to the benefits derived from the 1991 Resolution but acknowledges that the scope of protection must be extended to include other emergencies such as radiological or chemical emergencies and marine pollution (Preamble 1). Other resolutions of note were the: Resolution of the Council and of the representatives of the Governments of the Member States, meeting within the Council of 26 February 2001 on strengthening the capabilities of the European Union in the field of civil protection, Resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council, of 31 October 1994 on strengthening Community cooperation on civil protection and Resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council of 23 November 1990 on Community cooperation on civil protection. For a complete look at the legislative history of civil protection in the EU, see:* http://ec.europa.eu/environment/civil/prote/legal_texts.htm.

2. Provide an assessment of practice under the existing EU framework for disaster relief; and
3. Survey selected international and regional agreements, together with relevant bilateral agreements between the EU and third countries, that might impose obligations on EU Member States in addition to those under the Community framework.

The Report concludes with three annexes. Annex I is a list of individuals who aided in the drafting of this report, either through interviews conducted by telephone or responses provided by email. Annex II is a table of the legislation cited in this Report. Annex III is a table of selected bilateral agreements regulating assistance between EU Member States.

All treaty articles referenced in the Report are those which appear in the newly-enacted Treaty of Lisbon. The Treaty entered into force on 1 December 2009 and is comprised of two separate treaties: the Treaty on European Union (Lisbon TEU) and the Treaty on the Functioning of the European Union (Lisbon TFEU). One consequence of the entry into force of the Lisbon Treaty is the renumbering of articles from the Treaty of Nice.[7] Therefore, references to the Lisbon Treaty will be accompanied in brackets by reference to previous articles in the Treaty of Nice where appropriate.

7. *Comprising the Treaty on European Union (Treaty of Maastricht) and the Treaty Establishing the European Communities (Rome Treaty).*

Chapter 2: Legislative Competence and Legal Bases for Action

Chapter 2

Legislative Competence and Legal Bases for Action

2a. Legal Bases and Competence

Under the TEC, there are three types of competence.

- Exclusive
- Shared
- Complementary

The Lisbon Treaty effectively mirrors the current situation under the TEC, but explicitly places each area of policy within a category of competence.

Delineating the exact levels of competence in the areas where competence is shared or complementary is a lengthy exercise that would involve an evaluation of all EU law in a given subject area to determine what has been regulated by the EU and what specifically has been left to the Member States to regulate. Therefore, this Report attempts to provide a broad overview of the types of competence and the subject areas which fall under each category.

There are three main types of competence that the Community can exercise in the implementation of its policies: exclusive, shared and complementary. Areas of *exclusive competence* result from allocations in the European Treaties. Once the EC has legislated in a given area, the Member States are no longer competent to legislate in that area unless competence is transferred back to them by the Community. The European Commission has traditionally argued for a broad approach to exclusivity, i.e., that a power is exclusive once it has been conferred on the EC, whether or not the EC has actually exercised the competence. The areas of agriculture, customs, value added tax (VAT) and indirect taxation are considered areas of exclusive competence under the Treaty Establishing the European Community (TEC) as it currently stands.

When a competence is *shared*, both the Community and the Member States may legislate and adopt legally binding acts in the subject area. The Member States may only exercise their competence insofar as the Community has not exercised its own. Also, the Community can only act insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States on their own. The areas of telecommunications, environment and transport[8] are examples of areas of shared competence under the TEC.

Complementary competence exists in areas where the Community supports, co-ordinates or supplements the actions of the Member States. Although there is a Community policy, it may never lead to harmonisation of Member States' national legislation. Member States may continue to follow and determine their own policy. Civil protection and public health are areas that fall into this category.

8. *Transport has been declared exclusive by the European Court of Justice (ECJ) in one case because of the particular circumstances: Case 22/70,* Commission v Council (ERTA) *[1971] ECR 263.*

Finally, it should be noted that actions taken under the third pillar – police and judicial co-operation – are exclusively within the competence of the Member States. This is pertinent to the discussion of EU regulation of controlled substances and care for victims of terrorism.

Whereas under the TEC there is some confusion regarding which subject areas fall into which categories, the Treaty of Lisbon specifies exactly the limits of competence, basically reflecting the current situation in practice. Some examples of exclusive competence under the Lisbon Treaty are:

- customs union;
- monetary policy for the Member States who have adopted the Euro.[9]

Shared competence occurs in relation to areas such as:

- internal market;
- agriculture and fisheries, excluding the conservation of marine biological resources;
- environment;
- transport;
- trans-European networks;
- area of freedom, security and justice;
- common safety concerns in public health matters, for the aspects defined in this Treaty.[10]

Finally, areas of complementary competence include:

- protection and improvement of human health;
- civil protection.[11]

The arrangements under the Lisbon Treaty largely mirror the current situation under the TEC, therefore the current framework for civil protection should not be altered drastically. However, civil protection is now a specifically listed objective of the Union and further legislation in the area will be possible. Furthermore, Article 222 of the Lisbon Treaty introduces the Solidarity Clause. The Solidarity Clause specifies that "the Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster." The Clause is accompanied by Declaration 37 which reinforces the fact that nothing in Article 222 affects a Member State's right to choose the most appropriate means to comply with its solidarity obligations. A statement made by Mr Stavros Dimas, the European Commissioner for the Environment supports the fact that the Solidarity Clause has created a binding legal obligation for the Member States to help each other in the context of civil protection.[12]

2b. The Pillar Structure of the EU

When the Treaty on European Union (TEU) entered into force in 1993, it introduced a the three pillar structure of the European Union. The first pillar is the Community pillar and comprises the three Communities: the European Community, the European Atomic Energy Community and the former European Coal and Steel Community. The second pillar is devoted to the common

9. *Art 3 Lisbon TFEU.* **10.** *ibid art 4.* **11.** *ibid art 6.* **12.** *Civil Protection Forum, "Towards a more resilient society", 25-26 November 2009, Speech/09/556, available at:* http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/556&format=PDF&aged=0&language=EN&guiLanguage=en.

foreign and security policy which comes under Title VI of the TEU and is within the competence of the Member States. The third pillar, originally entitled 'Justice and Home Affairs' is devoted to police and judicial co-operation in criminal matters between the Member States, coming under Title VI of the EU. This report is concerned only with actions in the first and third pillars and where relevant, reference to the pillars will be made.

2c. Types of Legislation

Under the TEC, there are three main types of legislation. The binding nature of the legislation depends on its form.

- Directives: binding as to the result to be achieved
- Regulations: binding in their entirety
- Decisions: binding in their entirety on whom they are addressed
- Resolutions: non-binding

The majority of the relevant legislation is in the form of a Directive, Regulation or Decision, each possessing varying degrees of binding authority.[13] As defined in Article 249 TEC, a Directive is "binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods." A Regulation is general in its application and "binding in its entirety and directly applicable in all Member States". A Decision is "binding in its entirety upon those to whom it is addressed". Finally, although they are not legally binding and are not specifically mentioned in the TEC, Resolutions have been instrumental in the development of the EU's civil protection policy. They are typically drafted as statements of intention to develop policy in a given area.

In the context of the third pillar, the relevant types of legislation are joint actions, framework decisions and decisions.[14] Joint actions address specific situations where operational action by the Union is required. They commit the Member States in the positions they adopt and in the conduct of their activities. Framework decisions are adopted by the Council unanimously in order to approximate the laws and regulations of the Member States and function much like directives: they are binding as to the result to be achieved, but the Member States may choose the form of method of achieving the end result. Decisions are somewhat similar, only it is the Council that adopts the necessary implementing measures. Decisions are adopted by the Council with qualified majority for any purpose, other than the approximation of Member States' laws and regulations, consistent with the objectives of Title VI TEU, which contains the provisions on police and judicial co-operation in criminal matters.

13. *Another consequence of the Treaty of Lisbon is that the nature and types of legal instruments has changed. At the time of writing, it is not clear whether and how these changes will affect the legal instruments cited in this Report.* **14.** *Article 14 (regarding joint actions) and Article 34 (decisions and framework decisions) TEU.*

2d. Applicability of EU Legislation in the Private Sphere

- The binding nature of EU legislation on private bodies is dependent upon the type of legislation at issue.
- Directives are only capable of binding the State, but they can be relied upon by private individuals and bodies to assert their rights.
- Regulations are binding upon both the State and private bodies and individuals.
- There is no specific EU regulation of charitable organisations; that is left to the Member States.

At the outset, it should be mentioned that there is at present, no general EU regulation of charitable organisations. While the EU has developed some legislation in the area of companies law, it is specifically inapplicable to non-profit organisations.[15] Consequently, legal regulation of these bodies occurs nationally, sometimes resulting in hardship for non-profit organisations that work across borders. Therefore, as one recent commentator has noted, the current EU regulatory regime "prevents non-profit organizations from fully enjoying the benefits of the common market."[16] Non-profit organisations will, however, be bound by and derive benefit from EU legislation regulating other areas of law.

i. Who is legally obligated under EU law?

Depending on the type of legislation involved, European law may impose obligations on private individuals and bodies. Directives are only capable of producing vertical direct effect. That is, they impose obligations only upon the Member States to whom they are addressed. They do not bind private individuals and, consequently, do not have what is called horizontal direct effect.[17]

As directives and decisions can only bind states, the definition of 'state' is relevant. The ECJ has defined 'state' broadly as including all organs of the State.[18] In *Foster v British Gas*,[19] the ECJ developed a four-prong test to determine whether a body can be regarded as the state for purposes of direct effect:

1. the body must provide a public service;
2. the service must be provided pursuant to a measure adopted by the State;
3. the service provided must be under the control of the State; and
4. the body must possess special powers beyond those normally applicable in relations between individuals.

The following types of bodies have been held to be emanations of the State by the ECJ:

- Local and regional authorities[20]
- National health authorities[21]
- Police[22]
- Nationalised industries[23]

Based on the *Foster* test, national courts have ruled that charities established by a private act such as a will or trust deed, even if they provide a public service, are not considered as the 'state' unless it

15. *Some of this legislation is discussed below in Part II.b.c.* **16.** *OB Breen, 'EU Regulation of Charitable Organisations: The Politics of Legally Enabling Civil Society', The International Journal of Not-for-Profit Law, vol 10, issue 3 (June 2008).* **17.** *Case 152/84* Marshall v Southampton and South West Hampsire Area Health Authority (Teaching) *[1986] ECR 723.* **18.** Marshall *(n 17).* **19.** *Case C-188/89 [1990] ECR I-3313.* **20.** *Case C-103/88* Fratelli Constanzo SpA v Comune di Milano *[1989] ECR 1839.* **21.** Marshall *(n 17).* **22.** *Case 222/84* Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary *[1986] ECR 1651.* **23.** Foster *(n 19).*

is part of the State system.[24] This has not been specifically questioned before the ECJ, but it seems likely that charitable organisations such as National Red Cross Societies or non-governmental organisations, for example, would not be bound directly by EC directives and decisions.

It should be noted, however, that once a directive has been correctly implemented by the Member States, it becomes part of national law and therefore applicable to private individuals and bodies as well as the State. So, in that sense, directives may also bind private bodies or individuals.

By their very definition, regulations are of 'general application' and therefore impose obligations not only on the Member States, but also on private individuals. Much of the EC legislation discussed in this Report is in the form of a regulation. Consequently, if involved in the types of activities regulated by this legislation, private individuals and bodies within the EU will be bound by provisions relating to:

- The implementation of the Community Customs Code[25]
- Visa requirements for third country nationals[26]
- Food quality standards[27]
- Pharmaceutical standards and rules regarding controlled substances[28]
- EU vehicle registration requirements[29]
- Euratom safeguards[30]
- The European Centre for Disease Prevention and Control[31]

Treaty articles concerning free movement are also capable of producing obligations between individuals.[32] Therefore, those provisions of the TEC regarding free movement of persons and workers such as those on the recognition of professional qualifications or establishment, produce binding obligations on the Member States as well as private individuals or bodies.

ii. Who can exercise rights?

Directives and decisions can only confer rights on individuals against the State; In order for these instruments to have this effect, they must satisfy three conditions:

1. the date of implementation must have passed;[33]
2. the provision at issue must be sufficiently clear and precise so as to demonstrate an intention to confer rights;[34] and
3. the provision must be unconditional, i.e., not require any further decision or act of the Community or the Member State.[35]

24. National Union of Teachers and Others v. Governing Body of St Mary's Church of England (Aided) Junior School and Others *[1997] CMLR 630; [1997] ICR 334, Court of Appeal (England and Wales).* **25.** *See Part III.b.iii.* **26.** *Part III.b.i.* **27.** *Part III.b.iv.* **28.** *Part III.b.v.* **29.** *Part III.b.vii.* **30.** *Part III.e.i.* **31.** *Part III.e.iv.* **32.** *Case C-281/98* Roman Angonese v Cassa di Risparmio di Bolzano *[2000] ECR I 4139: Article 29 TEC covers the discriminatory conduct of private parties in relation to the free movement of workers; Case 90/76* S.r.l. Ufficio van Ameyde v S.r.l. Ufficio Centrale Italiano di Assistenza Assicurativa Automobilista in Circolazione Internazionale *[1977] ECR 1091: demonstrates that the ECJ has applied Article 43 in relation to freedom of establishment to private parties, although it is not clear whether this is a strict rule; Joined Cases C-51/96 and C-191/97* Christelle Deliège V Ligue Francophone de Judo et Disciplines ASBL*: Article 49 on free movement of services is applicable to private rules aimed at regulating the profession of services in a collective way.* **33.** *Case C-129/96* Inter-environnement Wallonie *[1997] ECR I-7411.* **34.** *Case 148/78* Criminal Proceedings against Tullio Ratti *[1979] ECR 1629.* **35.** *Case 8/81* Becker *[1982] ECR 53. This does not mean that the provisions of a directive will not be directly effective because the rights it grants are dependent upon an objective factor or event; rather, it means that the provision must not be dependent on the judgment or discretion of the Community institutions or national authorities (TC Hartley,* The Foundations of European Community Law *(5th ed) OUP 2003 p 199).*

Although private bodies such as the National Red Cross Societies or non-governmental organisations are not bound directly by directives, they may assert any rights provided in the directives against the State.

As regulations are generally applicable and create obligations on the part of the State and individuals, private individuals and bodies may assert their rights vertically (against the State) or horizontally (against other individuals). The same is true regarding the Treaty provisions on free movement.

Considering the foregoing, private individuals and bodies such as the National Red Cross Societies will benefit from EU law if certain conditions are met. The type of law concerned will dictate whether they can assert their rights against the State or both the State and other private individuals or bodies. EU law may also create obligations that bind private individuals or bodies. Again, this depends on the type of law at issue. Regulations may directly bind these bodies if they become involved in the subject matter concerned by the regulation. Directives may indirectly bind private individuals and bodies involved in the regulated subject matter after their provisions have become part of national law.

2e. The EEA and Switzerland

In addition to the TEC and the TEU, two other agreements should be mentioned at this stage. The European Economic Area Agreement (EEA Agreement) entered into force in 1994 and expanded the EU internal market to all the European Free Trade Area (EFTA) States. Currently, only three EFTA States take part in the EEA Agreement: Norway, Iceland and Liechtenstein. As part of the EEA Agreement, the EFTA States must implement all EU legislation relevant to the functioning of the internal market. This includes respect for the basic principles of the internal market, such as the free movement of goods, persons, capital and services.

The EU has also entered into several agreements with Switzerland, covering various areas of legislative policy. After the first agreement on free trade in 1972, the EU and Switzerland have entered into approximately 100 bilateral agreements. The most notable negotiations occurred in two main rounds: Bilateral I in 1994 and Bilateral II in 2004. Bilateral I consists of a series of seven agreements in the following areas: (1) free movement of persons; (2) civil aviation; (3) overland transport; (4) agriculture; (5) public procurement; (6) technical barriers to trade; and (7) research. The Bilateral II package concerns (1) security and asylum; (2) co-operation in the fight against fraud; and (3) previously open issues in the fields of agriculture, environment, media, education, care of the elderly, statistics and services. Most recently, in December 2008, Switzerland became a member of the Schengen Treaty, discussed below. Essentially, these agreements operate similarly to the EEA Agreement and make Switzerland a 'virtual' member of the EEA. Consequently, most EU law will apply universally throughout the EU, EEA and Switzerland.

Chapter 3: Areas of EU Regulation

Chapter 3

Areas of EU Regulation

3a. Civil Protection Mechanism

IDRL Guidelines

Part II of the IDRL Guidelines provides for the "expeditious sharing of information about disasters".

- The CPM provides an alert and response centre to alert states to the existence of disasters and the need for assistance as well as any assistance offered.

Part III of the IDRL Guidelines provides that decisions to request relief must be made and communicated in a timely manner; the same is applicable to notification of the termination of relief.

- The MIC provides one platform for these notifications to be made as soon as possible within Europe. In addition, state specification of the types and amounts of assistance is included in the MIC alerts.

i. Legal Provisions

The main EU mechanism which deals with disaster relief assistance inside the EU is the CPM, which has traditionally been managed by the Commission's Directorate General for the Environment (DG Environment), but which will apparently be managed in the future from the new Directorate-General for International Cooperation, Humanitarian Aid and Crisis Response. The CPM consists of two primary pieces of legislation covering disaster prevention, preparedness and response: Council Decision 2007/779/EC, Euratom establishing a Community Civil Protection Mechanism (recast) and Council Decision 2007/162/EC, Euratom establishing a Civil Protection Financial Instrument. These will be discussed in more detail below. The CPM is applicable to "major emergencies",[36] which is defined as "any situation which has or may have an adverse impact on people, the environment or property and which may result in a call for assistance under the Mechanism". In the past, earthquakes, floods, forest fires, storms, tsunamis, biological, chemical, environmental, radiological & technological disasters, marine pollution, and terrorist attacks have been categorised as falling within this definition.[37]

Previously, the legal basis for the CPM was somewhat indirect. Although it was managed by DG Environment, the legal basis and origin of competence of the CPM does not fall under the Community's environmental policy, which is an area of shared competence. Article 3 of the TEC, which lists the objectives of the Community, specifically cites in subsection (1)(u) measures relating to civil protection. Civil protection was therefore part of the competence of the European Community (EC) under the first pillar, but it was not exclusive, it was complementary to the Member States' competence. However, Article 3(1)(u) did not itself serve as a legal basis for action

36. *Council Decision 2007/779/EC, Euratom establishing a Community Civil Protection Mechanism (recast), Article 1(1).*
37. *'Community co-operation in the field of civil protection', European Civil Protection, available at:* http://ec.europa.eu/environment/civil/prote/cp01_en.htm.

in that sphere and the TEC did not provide a separate provision on which to base such action. Therefore, the civil protection legislation cited Article 308 TEC as the relevant legal basis. Article 308 allows the institutions to take any appropriate measures that are necessary to attain one of the objectives of the Community and the TEC.

The characterisation of civil protection as a complementary competence has been more emphatically cemented by its explicit listing in the Lisbon Treaty under Article 6 TFEU, discussing complementary action. However, the Community has acknowledged the added value of making an EU-level mechanism available as a supplement to Member States' systems in the event that a Member State becomes overwhelmed by a disaster. The support of the CPM is available on request should the affected state decide that its own mechanisms are insufficient to provide an adequate response.

Under the Treaty of Lisbon, the EU shall have competence to carry out actions to support, co-ordinate or supplement the actions of Member States in civil protection. Title XXIII, Article 196 TFEU provides that the EU:

> shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters. Union action shall (a) aim to support and complement Member States' action at national, regional and local level in risk prevention, in preparing the civil-protection personnel and in responding to natural or manmade disasters within the Union; (b) aim to promote swift, effective operational cooperation within the Union between national civil protection services; and (c) promote consistency in international civil-protection work.
>
> The European Parliament and the Council shall establish the measures necessary to help to achieve the objectives referred to in Art. 196 (1), excluding all harmonisation of the laws and regulations of the Member States.

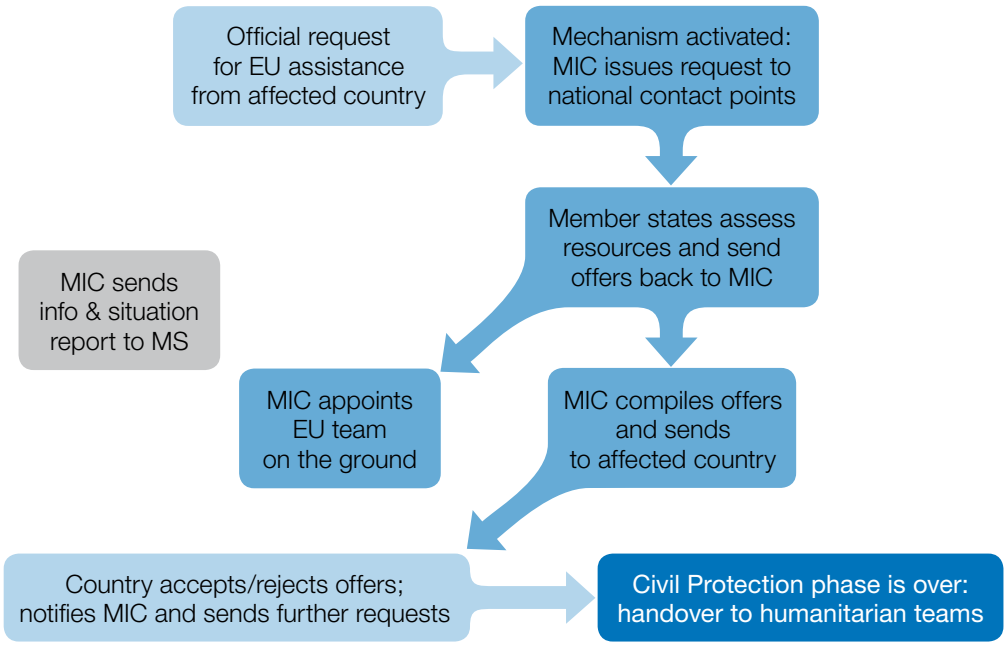
The Lisbon Treaty therefore formalises what has already been the case in practice: the competence of the Community with regard to civil protection is complementary in nature. This might explain why, as the treaties stand, it is difficult to find detailed provisions regarding disaster relief operations in the EC legislation under the first pillar.

The EU has identified civil protection as being one of four priority areas of civilian action under the European Security and Defence Policy. Civil protection in this sense, however, is mostly in relation to armed conflict. According to the Council, in an effort to respond effectively to crisis management tasks, certain civil protection goals have been set with a deadline of the end of 2010.[38] These targets consist of actions such as establishing co-ordination teams with round the clock availability and creating large-scale intervention teams that can be dispatched on short notice. It is thought that that these crisis management tools could be used regularly for civil protection operations abroad in the context of EU-led autonomous missions or in civil protection operations led by organisations like the UN or the OSCE. It is possible that these innovations could be replicated and used for disasters occurring within the Community; however it is unclear whether these procedures encompass all of the considerations of the IDRL Guidelines.

38. *The Civilian Headline Goal 2010 is available at:* http://www.consilium.europa.eu/uedocs/cmsUpload/Civilian_Headline_Goal_2010.pdf.

The CPM currently includes 31 countries (the EU 27 plus Liechtenstein, Iceland, Norway and Croatia). As discussed above, the CPM consists of two main pieces of legislation, one covering general co-operation regarding co-ordination of civil protection assistance, and a financial instrument[39] which enables the EU to fund activities under the framework focused on prevention, preparedness and response. The Decision establishing the Community CPM[40] provides for various methods of co-operation and action including: (1) establishing a central inventory of available assistance and intervention teams or modules in the Member States; (2) training programmes for the teams; (3) workshops and seminars geared toward aspects of intervention; (4) the creation of assessment and co-ordination teams; (5) the creation of a Monitoring and Information Centre (MIC) and a Common Emergency Communication and Information System (CECIS) to liaise between the MIC and Member States' contact points; (6) aiding in the development of detection and early warning systems; (7) emphasising the importance of information exchange in order to facilitate access to equipment and transport; (8) freeing up additional transport resources; and (9) conducting exercises.[41]

The EU Commission facilitates the mobilisation of civil protection resources from the Member States through the MIC, which is the heart of the CPM. Based in Brussels, it is accessible 24 hours a day and 7 days a week. Any state affected by a disaster can request assistance through the MIC. The request will be forwarded immediately to a network of national contact points, which, in return, inform the MIC whether they are able to offer assistance. The MIC collects the information and informs the requesting state about the available assistance. The requesting country then selects the assistance it needs and establishes contact with the assisting countries. Moreover, the CPM has a database with information concerning the national civil protection capabilities available for assistance interventions. It also receives contents of the military database, compiled by the EU Military Staff, providing a picture of all available resources to manage the consequences of disasters. The responsibility to co-ordinate the contributions received through the CPM during operations within the EU remains with the requesting state.[42]



39. *Council Decision 2007/162/EC, Euratom establishing a Civil Protection Financial Instrument.* **40.** *Council Decision 2007/779/EC, Euratom (n 36).* **41.** *ibid art 2.* **42.** *'Improving the Community Civil Protection Mechanism' COM(2005) 137 final 5.*

The CPM Decision provides the basis for its implementing legislation. This includes Commission Decision 2004/277/EC, Euratom laying down rules for the implementation of [the CPM Decision], which formally implements most of the suggested action in the CPM Decision, such as: (1) the creation of the MIC and CECIS; (2) mandatory information exchange between Member States regarding available resources; and (3) procedures for requests for assistance by a disaster-affected state. This Decision was amended by Commission Decision 2008/73/EC, Euratom which primarily covers the tasks and rules governing civil protection modules.

Article 8(2) of the CPM Decision provides that the Member State holding the Presidency of the Council is responsible for the overall co-ordination of civil protection assistance, whereas the Commission is charged with operational co-ordination, the latter pertaining specifically to individual relief operations as differentiated from general co-ordination of the CPM as a whole. This operational co-ordination is chiefly handled by the MIC which serves as the contact point for assistance requests and responses and handling the dialogue between Member States. A contact in the EU's Civil Protection Unit stated that although in theory this could include technical considerations such as transit and customs, in practice it does not. For example, in a situation where a Belgian pumping team was travelling from Belgium to Romania and encountered practical difficulties at borders or with regulations such as restrictions on driving, the MIC would try to facilitate the resolution of these problems by contacting the relevant civil protection points of the country where there is a difficulty. However, this action is very ad hoc and there are no formal agreements on the subject.

The CPM has various tools at its disposal to aid the Member States to be as best prepared for disaster situations as possible. The CPM uses training courses, simulation exercises and the exchange of experts to improve competency and to promote complementarity and compatibility among response teams. Training courses are aimed at a wide variety of participants, from assessment and co-ordination experts, to environmental experts. They consist of theory and field experience, as well as overviews of applicable international guidelines.[43] According to the CPM website, since its launch in 2004, the training programme has expanded into 11 courses teaching over a thousand experts among the participating states.[44] Exercises at the Community level are typically organised by the Member States and partially funded by the Commission. They are offered to all actors involved in CPM operations and are focused on contingency planning, decision-making procedures and lessons regarding the provision of information to the public. Already in 2009, there have been four simulation exercises covering flooding and earthquake training. In the past, exercises have covered disasters such as chemical, biological, radiological and nuclear attacks, terrorism-related accidents and forest fires. The expert exchange mechanism operates according to a secondment procedure whereby national civil protection experts are sent to the administrations of other participating states to gain experience and knowledge on all aspects of disaster prevention through familiarisation with new techniques and approaches.

The CPM framework is essentially just that: a framework for co-operation against which the Member States can co-ordinate their action in times of disaster. EU activity itself is quite modest, as civil protection has been deemed to be largely a matter for Member States under the principle of subsidiarity.[45] Therefore, civil protection is necessarily linked to other policy areas such as environment, humanitarian aid, agriculture, immigration and customs where the EC has competence to take the relevant actions required.

43. *'The European Community Civil Protection Mechanism Training Programme', available at:* http://ec.europa.eu/environment/civil/prote/pdfdocs/Training_Civil_Protection.pdf. **44.** *'Training and exchange of experts', at:* http://ec.europa.eu/environment/civil/prote/activities.htm. **45.** *Vade-mecum of Civil Protection in the European Union, available at:* http://ec.europa.eu/environment/civil/pdfdocs/vademec.pdf, *p 8.*

ii. The CPM and Non-Governmental Organisations

The CPM generally does not work directly with non-governmental organisations (NGOs); it is a state-to-state mechanism. According to an official at the EU's Civil Protection Unit, NGOs are engaged on an ad hoc basis only. Even in cases of external action based on Article 8 of the Decision establishing the CPM Financial Instrument,[46] action takes place via state-to-state co-ordination without the direct involvement of NGOs or other international organisations. The CPM works on the assumption that the government is the sovereign in these situations and should be respected. Therefore, within the CPM, there are no eligibility criteria for NGO participation. In contrast, the EU's humanitarian aid office, DG ECHO, which operates externally, and its humanitarian aid programme, engage with not only NGOs, but also United Nations (UN) agencies, and the Red Cross and Red Crescent Movement.

iii. The Civil Protection Mechanism in Practice

Since January 2002, the MIC has been involved with over 200 events many of which have occurred within the EU. For example, in 2005, the MIC co-ordinated offers of assistance by France, Italy, Germany, the Netherlands, Slovakia, Spain and Norway to aid Portugal in its struggle with forest fires. That same year, the MIC fielded requests for and offers of assistance to Bulgaria, Romania and Central European Member States which were inundated with flooding. Similar assistance and co-ordination was provided in relation to flooding in Bulgaria, Romania, Hungary and the Slovak Republic in 2006, Cypriot and Bulgarian forest fires in 2007, and most recently, forest fires in Italy and France in July 2009.

iv. Reviewing the Civil Protection Mechanism

In February 2009, the Commission requested an impact assessment on the Community approach to the prevention of natural and man-made disasters.[47] The purpose of the document was to assess whether the Community should develop its own strategy on disaster prevention in an effort to improve the protection of people, the environment and property. The assessment was based on external consultation with the Member States and stakeholders who identified gaps in the current framework for prevention. The document states that the current approach to disaster prevention is fragmented in both the EU and the Member States and that there is a need for developing disaster prevention as "a discipline in its own right".[48] The conclusion of the assessment was that the best way to achieve the stated goal was through the pursuit of three objectives: (1) developing knowledge of disaster prevention policies at all levels of government; (2) linking sectoral policies to improve co-ordination and support an overall approach to disaster prevention; and (3) strengthening existing disaster prevention instruments.

On 4 June 2009, the Council published conclusions on raising civil protection awareness.[49] The conclusions call for more focused action by the Commission and the Member States regarding (1) targeted public information and/or education on how to prepare and react to emergencies; (2) enhanced security for rescue personnel in the EU; and (3) enhanced knowledge and skill for diplomatic personnel. It would seem that the EU is taking a more practical approach to civil protection, which will perhaps lead to increased regulation in those areas that will affect the effective functioning of the CPM and which are covered by the IDRL Guidelines. Specifically in relation to

46. *2007/162/EC, Euratom (n 39).* **47.** *'A Community approach for the prevention of natural and man-made disasters: Impact Assessment', COM(2009) 82, SEC(2009) 203.* **48.** *ibid 13.* **49.** *2946th Justice and Home Affairs Council meeting Luxembourg, 4 June 2009.*

the security of rescue personnel, the Council has invited the Commission to "develop an overview of the security of rescue service personnel based on Member States' experience" and to make recommendations to the Council as to possible measures that may be needed in this area.

On 25-26 November 2009, the EU will be holding a Civil Protection Forum to provide an opportunity to discuss the governance of European disaster management, with a specific focus on resilience.[50]

Establishing a comprehensive disaster management strategy would enable Europe to improve its resilience, to better protect its citizens both inside and outside Europe, and to become a stronger partner in the management of emergencies on the international scene. The Forum aims to:

- strengthen Europe's emergency management capacity, focusing on the prevention and preparedness phase of the emergency life cycle;
- develop the network between all civil protection actors and interested parties, including the private sector;
- increase the knowledge of new prevention, preparedness and response technologies available on the market; and
- raise public awareness.

The Forum demonstrates the Commission's ongoing commitment to effective disaster management and a willingness to promote an even more comprehensive management strategy.

v. EU Member States and NATO

In addition to and separate from the EU Civil Protection Mechanism, the Member States also have the option of participating in NATO's framework for disaster response, which is led by NATO's Civil Defence Committee.[51] Although NATO is primarily aimed at military operations, it has had a long history of involvement in international disaster assistance. In 1951, NATO established the Civil Defence Committee to oversee the protection of the civilian population.[52] Since then, NATO civil protection has evolved into the creation of the Euro-Atlantic Disaster Response Coordination Centre (EADRCC) in 1998 and the Euro-Atlantic Disaster Response Unit (EADRU) by the Euro-Atlantic Partnership Council (EAPC) and its Policy for Disaster Assistance in Peacetime. The Policy abides by three main principles: (1) the affected State retains responsibility for disaster management, (2) the UN has the primary role in co-ordination of international disaster relief operations and so EADRCC efforts should be complementary and supportive of UN relief operations; and (3) the EADRCC's primary role is that of co-ordination rather than direction. The main responsibilities of the EADRCC are (1) to co-ordinate responses to disasters happening in the territory of the Euro-Atlantic Partnership Council; (2) to act as an information-sharing clearance house; and (3) to liaise closely with UN Office for the Coordination of Humanitarian Affairs (OCHA), the EU and any other organisations involved in international disaster response. Most recently within the EU, the EADRCC co-ordinated assistance in relation to the 2008 Bulgarian forest fires. NATO's disaster response also involves the Euro-Atlantic Disaster Response Unit consisting of volunteers from EAPC countries, such as rescue and medical personnel, and also equipment and materials volunteered.

50. *'Towards a More Resilient Society – Civil Protection Forum 25-26 November 2009 Brussels', available at:* http://ec.europa.eu/environment/civil/forum2009/index.htm. **51.** *The North Atlantic Treaty was adopted in 1949 and created the North Atlantic Treaty Organisation (NATO) which currently consists of 28 member countries, including 21 EU Member States.* **52.** *The Civil Defence Committee was renamed the Civil Protection Committee in 1995.*

3b. Operational Regulation

Part V of the IDRL Guidelines discusses the technical measures for facilitation of entry and operations regarding personnel, equipment and goods. These provisions acknowledge the existence of administrative and legal barriers to the efficient delivery of disaster assistance. In July 1991, the Council and representatives of the Member States adopted a resolution on improving mutual aid between Member States in the event of a natural or technological disaster.[53] This Resolution provided for many of the considerations under Part V of the IDRL Guidelines. It envisioned the dispatch of aid teams and equipment to the Affected State and in return asked that the Affected State:

(1) grant the aid teams all access to the areas where their co-operation is required (paragraph 5);
(2) examine procedures for the rapid issue of the necessary permits and free use of infrastructures where fees are normally charged (paragraph 5);
(3) endeavour to reduce border checks and formalities to a minimum for aid teams (paragraph 6); and
(4) authorise aircraft from other Member States taking a direct part in the rescue operations or transporting equipment to overfly, land and takeoff its territory (paragraph 7).

This Resolution helped form the basis of the existing CPM legislation. However, the provisions relating to legal facilitation of entry and operation were not included in the final legislation. As there is no harmonised document for technical co-operation, disaster assistance teams must satisfy the general requirements of EU law relating to the specific areas below. Although resolutions are not legally binding, their validity does not lapse. It is therefore conceivable that the basic tenets of the resolution can be revisited and used as a possible basis for future legislation.

i. Entry into EU territory

IDRL Guidelines

Part V Section 16 of the IDRL Guidelines provides that Affected States should provide for expedited or free-of-charge visa and work permit procedures for recovery personnel.

- Directive 2004/38/EC provides general rules for the entry and exit of EU Citizens, allowing them to move freely throughout the EU without the need for a visa or work permit. This includes third country nationals who are connected in a significant way to an EU Citizen.
- Regarding third country nationals, the Schengen Area has been set up under a common framework of conditions for entry into the EU at its external borders so that once a non-EU national has been granted entry by one Member State, he or she will be allowed access into the territory of the other participating Schengen states. The rules relating to visas are uniform in the Member States.
- EC legislation permits, but does not require, Member States to exempt relief personnel from the visa requirement in the event of a disaster or accident, or to derogate from the Schengen visa procedures in the event of national urgency.
- By contrast, the procedures relating to the granting of work permits is a matter of national law.

53. *Resolution of the Council and of the representatives of the Governments of the Member States, meeting within the Council of 8 July 1991 on improving mutual aid between Member States in the event of natural or technological disaster, OJ C-198, 27/07/1991 p 1.*

Since 1985, there has been established a territory without internal frontiers known as the 'Schengen area' which now includes every Member State.[54] After the Treaty of Amsterdam in 1999, the Schengen area became part of the competence of the Community as part of the attainment of the objective of free movement. Some non-EU countries have chosen to participate in the scheme as well: Iceland, Norway, Switzerland and Liechtenstein have all signed agreements with the EU in this regard. The Schengen Implementing Agreement covers free movement of persons and contains provisions relating to short and long-stay visas and the short-term free movement of third country nationals. Under Section 1 of Chapter 3 on Visas, the Contracting Parties are to adopt a common policy on visa arrangements for third country nationals for stays of no longer than three months. These common arrangements may be derogated from in "exceptional cases" if "overriding reasons of national policy require urgent attention". The type of visa referred to may be either a travel visa valid for one or multiple entries, or a transit visa which allows its holder to pass through the territories of the Contracting Parties en route to a third State. Based on the Schengen Implementing Agreement, the Schengen participants established a common definition of the conditions for entry at external borders and common rules and procedures for checks there and harmonisation of the conditions of entry and visas for short stays.[55]

Council Regulation 539/2001/EC lists those countries whose nationals must possess a visa to cross the external borders of the EU and any exemptions.[56] Article 1(1) states the basic principle that third country nationals listed in the included Annex must have a visa when crossing the external borders into the Member States. Article 4(1) permits Member States to make exceptions from the visa requirement in certain situations including: (1) civilian air and sea crew, and (2) flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident.

Furthermore, as discussed above, Directive 2004/38/EC provides general rules for the entry and exit of EU Citizens, allowing them to move freely throughout the EU. It also includes provision for those non-EU nationals who have some connection to an EU citizen, for example, a spouse, partner or caretaker.

ii. Rights of workers and recognition of professional qualifications

IDRL Guidelines

Part V Section 20 of the IDRL Guidelines provides that the Affected States should grant assisting organizations and their personnel temporary domestic legal status, allowing them to enjoy certain private rights while they are in the affected state.

54. *Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. The participation of the United Kingdom, Ireland and Denmark in Schengen varies and is beyond the scope of the current study. See also the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen* acquis*, 26/10/2004, fully implemented on 12 December 2008.* 55. *see Common Manual OJ C-313/98 (2002) (Common Border Code) regarding common conditions for entry from external borders and Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts, OJ C-313/01 (2002) on harmonisation.* 56. *Council Regulation 539/2001/EC listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. This Regulation replaces Regulation 574/1999/EC which covers similar subject matter.*

- One of the fundamental freedoms of the European Community is the freedom of movement of people under Title III TEC. This principle allows the nationals of Member States to reside in other Member States and be treated without discrimination. Therefore, the private rights available to nationals of the affected state would also be available to non-national EU citizens. Rights of third country nationals in this respect are the subject of national regulation, unless the third country national has some connection (i.e., spouse, partner, caretaker) to an EU citizen.
- Rules regarding the temporary domestic legal status of relief organisations are not governed by EU law, but by the Member States' domestic laws.

Part V Section 16 of the IDRL Guidelines suggests that Affected States should establish procedures for the temporary recognition of professional qualifications of foreign medical personnel, architects and engineers.

- EC legislation has provided for a general system for the recognition of EU-obtained qualifications in relation to most professions, including architects, doctors, lawyers and engineers. The decision of whether a qualification obtained outside the EU is recognised is a matter for the Member States to decide.
- EC legislation requires that Member States permit the temporary provision of services by a person established in another Member State without being subject to certain authorisation and registration requirements.

As part of the Community's free movement of persons principle based in Title IV Lisbon TFEU (ex Title III TEC), EU citizens are entitled to move freely between the Member States.[57] Chapter 1 concerns the rights of workers to move freely in the Union and to not be subject to discrimination. The freedom of movement of workers was first secured through Regulation 1612/68/EEC on freedom of workers within the Community. That Regulation has been significantly amended by Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. This Directive provides not only for the free movement of EU citizens, but also for non-EU citizens who have some connection to an EU citizen, for example, a spouse, partner or caretaker. Therefore, any relief assistance personnel who are EU citizens should not encounter any barriers to entry if providing relief within the EU. Non-EU citizens will have to comply with the basic rules regarding entry above. It is important to note that, as is discussed below in subsection c, the matter of doing business within the EU is largely left to the Member States to regulate. It is therefore up to the Member States to determine any benefits that would attach to companies or non-profit bodies in terms of domestic legal status.

EC legislation provides a procedure for the automatic recognition of professional qualifications possessed by EU citizens, but not necessarily obtained from within the EU.[58] The use of the term 'automatic' may be somewhat misleading, however, as a procedure must be followed to acquire such recognition. The Directive distinguishes between those individuals established in other Member States who want to provide services in another, and individuals wanting to re-locate and establish themselves in a new Member State. Where an individual wishes only to provide services in a Member State on a temporary basis, the Directive provides under Article 5(1) that

57. *See also the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, 21/06/1999.*

58. *Directive 2005/36/EC on the recognition of professional qualifications.*

the Member States may not restrict the individual's freedom to provide services. However, Article 7 permits the Member States to require that the service provider issue a written declaration to the host Member State's competent authority to the effect that the individual intends to provide services in that Member State. The competent authority may then require additional documentation such as proof of establishment, proof of nationality or evidence of professional qualifications. The competent authority then has one month to come to a decision as to whether the authority is going to carry out an in-depth check of the individual's qualifications. There is no expedited procedure. Presumably, most Member States will choose to include this declaration in their implementing legislation, and indeed, that was the choice made by the United Kingdom in its implementing Regulations.[59]

The Directive briefly refers to applications for recognition by third country nationals and provides that Member States are not prohibited from recognising qualifications obtained by such individuals if they respect the minimum rules regarding training.[60] This, however, is a matter for each Member State to decide under its own national rules.

iii. Customs and Taxation

IDRL Guidelines

Part V Section 17 of the IDRL Guidelines provides for the exemption from customs duties, taxes, tariffs, import restrictions and fees on goods and equipment intended for recovery. Section 18 of the IDRL Guidelines discusses the reduction of barriers to the importation of special goods and equipment. EC legislation provides some relief in these areas by suspending import duties on:

- Goods imported intended for free distribution to victims of disaster;
- Goods imported to meet the needs of disaster relief agencies during their activity in the Member States;
- Relief materials temporarily imported to meet the needs of disaster-affected territories;
- Medical, surgical and laboratory equipment; and
- Certain weapons and military equipment used for civil purposes in the case of natural disasters.

The definition of 'goods' under EC law is broad and should be interpreted to include food and medicines.
EC legislation also exempts disaster goods and certain transactions, such as hospital and medical care, from VAT as provided for in the IDRL Guidelines under Part V Section 21.

Customs

Article 28 Lisbon TFEU (ex Article 23 TEC) provides for the free circulation for Community goods throughout the European Union. The principle of free circulation applies to goods made in

59. *The European Communities (Recognition of Professional Qualifications) Regulations 2007 SI No 2781, reg 12.* 60. *ibid Preamble 10.*

the Community and imported goods that have been released for free circulation after payment of any duties for which they are liable. Release of non-Community goods into free circulation gives the goods the status of Community goods. A customs declaration is the means by which goods are entered into the free circulation procedure. Under EC law the definition of 'goods' is broad. The basic understanding of the term is to include "any moveable physical object to which property rights or obligations attach (and which can therefore be valued in monetary terms, whether positive or negative)".[61] This broad definition includes food and equipment. Therefore, rules exempting goods intended for disaster relief from customs duties and VAT will also include customs duties on food and equipment intended for relief.

Customs rules have been more inclusive of provisions relating to disaster assistance than any other policy area. Regulation 2454/93/EEC, which implements the Community Customs Code,[62] contains provisions regarding temporary importation and exempts from disaster relief materials duties. Such materials are defined as: "materials to be used in connection with measures taken to counter the effects of disasters affecting the customs territory of the Community". The exemption will apply as long as the goods are (1) imported on loan free of charge, and (2) intended for state bodies or bodies approved by the competent authorities.[63] In this context, 'competent authorities' refers to the customs authorities of the relevant Member State.

Article 677 relates to the temporary importation of medical, surgical and laboratory equipment free from duties. Such equipment will be exempt if it: (1) is intended for hospitals or other medical institutions; (2) has been dispatched on an occasional basis, on loan free of charge; and (3) is intended for diagnostic or therapeutic purposes. 'Dispatched on an occasional basis' is defined as: "dispatched at the request of a hospital or other medical institution which is facing exceptional circumstances and has urgent need of such equipment to make up for the inadequacy of its own facilities."[64]

Council Regulation 918/83/EEC setting up a Community system of reliefs from customs duty sets forth in Title XVI, Part C that:

> "goods imported by State organizations or other charitable or philanthropic organizations approved by the competent authorities shall be admitted free of import duties when they are intended:
>
> for distribution free of charge to victims of disasters affecting the territory of one or more Member States; or
>
> to be made available free of charge to the victims of such disasters, while remaining the property of the organizations in question."[65]

The Regulation also suspends import duties for goods imported to meet the needs of disaster relief agencies during their activity in the Member State,[66] but does not apply to materials and equipment intended for rebuilding disaster areas.[67] Any grant for relief is subject to a decision by the Commission at the request of the affected Member State(s); however, Member States may suspend the imposition of any chargeable import duties pending the Commission's decision.[68]

61. *Case C-2/90* Commission v Belgium *[1992] ECR I-4431 (opinion of AG Jacobs), reiterated in* Cinéthèque v Fédération Nationale des Cinémas Français, *para* 10. **62.** *Commission Regulation 2454/93/EEC laying down provisions for the implementation of Council Regulation (EEC) 2913/92 establishing the Community Customs Code.* **63.** *art 678.* **64.** *art 677(3).* **65.** *art 79(1). It seems that the main thrust of these provisions is that as long as the goods are either being given directly to the victims or being made available for them to obtain themselves, free of charge, the exemption applies.* **66.** *art 79(2).* **67.** *art 80.* **68.** *art 81.*

The procedure generally applicable to goods entering the EU territory involves a pre-arrival declaration. This declaration must be made electronically within the timeline set under customs legislation.[69] This can be anywhere between one and 24 hours, depending on the transportation mode and the duration of the transport carrying the goods into the EU. Article 76 of the Community Customs Code and Title IX of its implementing legislation allow for simplified procedures. Under Title IX, Article 254 allows for incomplete declarations at the discretion of the customs authorities, providing that certain information is included, such as a description of the documents, the value of the goods, and any other particulars deemed necessary by the customs authorities to identify the goods. Article 260 describes the simplified declaration procedure which allows for the use of other documents rather than the standard Single Administrative Document. Finally, Article 263 discusses the local clearance procedure where goods are entered at the premises of the customs declarant or any other place approved by the customs authorities. In such cases, the declaration may also be incomplete or simplified, and the declarant may be permitted not to present the goods to customs.[70]

An official at the UK's HM Customs and Revenue Office commented on the practical aspects of customs declarations and exemptions. He stated that largely the procedures taken are quite reactive to the needs of the situation. In the context of an emergency situation, it may be the case that the authorisation is relatively instantaneous, especially where the body importing the goods is already recognised as an approved body. This would be the case for the Red Cross. Where other private bodies have been hired to import the goods, documentation regarding their status would be required at the time of import. He also commented that there is scope for a 'blanket' authorisation covering a set time period for all imports of humanitarian goods arriving in an affected Member State.

Taxation

Title VII of Council Directive 83/181/EC[71] exempts goods imported for the benefit of disaster victims from the Community harmonised VAT[72] where they are intended for distribution free of charge to victims of disasters affecting the territory of one or more Member States, or to be made available free of charge to the victims of such disasters, while remaining the property of the organisations in question.[73] As with the customs Regulation discussed above, no relief will be applied to goods intended for the rebuilding of disaster areas.[74]

The recast Council Directive 2006/112/EC on the common system of value added tax applies to the production and distribution of goods and services and mandates that Member States must exempt certain *transactions* from VAT, including (1) hospital and medical care and closely related activities undertaken by bodies governed by public law; (2) the provision of medical care in the exercise of the medical and paramedical professions; (3) the supply of human organs, blood and milk; (4) the supply of services and goods closely linked to the protection of children and young persons by bodies governed by public law; and (5) the supply of transport services for sick or injured persons in vehicles designed for that purpose.[75] Pursuant to Article 131, it is for the Member States

69. *Guidance on the applicable time limitations is available in the European Commission's guidance: 'Guidelines on entry and summary declarations in the context of Regulation 648/2005/EC', available at:* http://ec.europa.eu/taxation_customs/resources/documents/customs/security_amendment/procedures/import_entry_guidelines_en.pdf. *Regulation 648/2005/EC amends the Community Customs Code.* **70.** *Details concerning specific import scenarios may be found in Commission Guidance document, available at:* http://ec.europa.eu/taxation_customs/resources/documents/customs/security_amendment/procedures/import_scenarios_en.pdf. *However, import in the context of disaster is not considered in this document.* **71.** *Council Directive 83/181/EC determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods.* **72.** *Established in Directive 77/388/EEC, ibid and recast in Council Directive 2006/112/EC on the common system of value added tax.* **73.** *art 49.* **74.** *art 50.* **75.** *art 132.*

to determine the conditions for these exemptions. This provision does not, however, specifically refer to disaster relief and so it is unclear whether it would be applicable in such circumstances. However, as the situations described in (1) through (5) may arise in the context of a disaster, it seems likely that the VAT exemptions would apply to at least some transactions.

In 2003 the Council adopted Regulation 150/2003/EC. While this Regulation is mainly directed at suspending duties on certain weapons and military equipment, which is outside the scope of this report, it also applies to the use of goods "for civil purposes due to unforeseen or natural disasters".[76] When used temporarily for such purposes by the military, certain goods can be imported into the EU customs area free from customs duties.[77]

iv. Food

IDRL Guidelines

Part V Section 17 of the IDRL Guidelines contemplates the exemption or simplification of procedures relating to customs and taxes for goods and equipment exported by, or on behalf of, assisting States and humanitarian organisations.

- There is extensive EC legislation concerning the quality of food items for purposes of marketing and sale to consumers. None of this legislation includes provisions related to food intended as disaster aid.
- Regarding the applicable customs and tax rules, as discussed above in Part III.b.iii, food is considered a 'good' under Community law and, if intended as disaster relief, would therefore be exempt from the applicable duties.

Before food can be imported into the EU for distribution, it must satisfy several general and specific pieces of legislation regarding food hygiene, plant health, animal health and animal welfare. Most of the legislation is applicable to food produced within and outside the EU, but some additional requirements may apply to food coming from third countries. The definition of 'food' under EU law can be found in Regulation 178/2002/EC: "any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans. 'Food' includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment".[78] Obligations are incurred when food is placed on the market. This concept, under Article 3(8) of the Regulation, includes: "the holding of food … for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves". Relief organisations purchasing food and distributing it as aid free of charge are thus likely to be responsible under for ensuring that any food they purchase and distribute satisfies the requirements of EU food law.

Regulation 178/2002/EC provides a framework for specific legislation relating to food hygiene, food standards and animal feed. The Regulation lists several key definitions (above) and places

76. *art 2(4).* **77.** *The goods are specified in Annex I of the Regulation.* **78.** *art 2, para 1, Regulation 178/2002/EC laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. The Regulation also applies to 'feed' which is defined as 'any substance or product, including additives, whether processed, partially processed or unprocessed, intended to be used for oral feeding to animals'. However, since this report is concerned primarily with 'food', references to 'feed' have been left out.*

general obligations on food business operators relating to food safety, labelling and presentation, traceability of food and procedures for withdrawal from the market in the event the food is unsafe. It applies to all stages of production, processing and distribution of food and places legal responsibility for ensuring safety on food business operators. Article 14 prohibits the sale of unsafe food, that is, food that is injurious to human health or unfit for human consumption. Where an operator has reason to believe that food which has been imported, produced, processed, manufactured or distributed is not in compliance with food law requirements, the operator must initiate procedures to withdraw the food from the market and alert the competent authorities.[79] A 'Food business operator', is defined under Article 3(3) of the Regulation as: "the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control". This would appear to encompass individuals or organisations importing or distributing aid.

In addition to the general legislation, several regulations deal with food hygiene. Regulation 852/2004/EC is the general legislation and is applicable to all food business operators, including third country business operators.[80] It does not apply to the production of food primarily for domestic use. The Regulation provides for: (1) operator monitoring of the food safety of products and processes;[81] (2) hygiene during and after primary production;[82] (3) microbiological requirements;[83] (4) special hazard management procedures;[84] and (4) registration of establishments[85]. It also provides for specific requirements such as those relating to: (1) food premises; (2) conveyances and containers for food; (3) waste; (4) water supply; and (5) personal hygiene.

Businesses established in the EU and handling products of animal origin will also have to comply with the requirements of Regulation 853/2004/EC.[86] This Regulation mainly requires that such businesses gain prior approval from the relevant food authority before they are permitted to trade in that Member State. Food business operators within the EU must show (1) that imported food and food components are from a third country appearing on the Community list and satisfy any applicable specific food law requirements; (2) that the establishment from which the components originate must appears on an approved Community list; and (3) supporting documentation of the foregoing.[87]

Other legislation includes Regulation 854/2004/EC, which lays down specific rules for the control of products of animal origin, such as inspections, certifications, audits and food sampling.[88] Regulation 882/2004/EC elaborates on the procedures applicable to Member State official controls to ensure the verification of compliance with food and feed law, and animal health and welfare rules. The control procedures therein are to apply to food and feed from within the EU and also from third countries, without prejudice to other more specific legislation that might be applicable.[89] Chapter II establishes an import procedure for foods not of animal origin, such as fruits and vegetables. The Commission has the responsibility of ensuring that third countries intending to export goods into the EU provide information relating to: (a) any sanitary or phytosanitary regulations adopted or proposed within its territory; (b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures operated within its territory; (c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection; and (d) any follow up from

79. *art 19.* **80.** *Regulation 852/2004/EC on the hygiene of foodstuffs.* **81.** *art 3.* **82.** *arts 4.1 and 4.2.* **83.** *art 4.3.* **84.** *art 5.* **85.** *art 6.* **86.** *Regulation 853/2004/EC laying down specific hygiene rules on the hygiene of foodstuffs. Article 1 specifies that establishments involved in producing products of animal origin made from ready processed ingredients, such as cooked meat, fish or cheese, are exempt from the requirements of the Regulation. Production primarily for domestic use is also exempt.* **87.** *The third country establishment lists are available at:* http://ec.europa.eu/food/food/biosafety/establishments/third_country/index_en.htm. **88.** *Regulation 854/2004/EC laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption. Further detailed rules regarding the veterinary certification of animals and animal products are presented in Directive 96/93/EC.* **89.** *Directive 97/78/EC (discussed below).*

recommendations made by the Commission during its evaluation of the compliance or equivalence of third country legislation with EU food law under Article 46.[90]

In addition to hygiene and food safety requirements, importers must also comply with legislation concerning veterinary checks on products entering the Community from third countries. According to Directive 97/78/EC, imports of products of animal origin must be presented at a Community border inspection post following prior notice of the arrival of the products. Notice is to be made in accordance with the national rules of the Member State in which the border inspection post is situated. Food consignments will only be accepted if they originate from an EC-approved country, region or establishment. Some specific cases will trigger special import restrictions or conditions.[91] The veterinary check consists of the following: (1) an identity check (e.g., verification that packaging, labelling or health marks are genuine), and (2) a physical check to ascertain whether Community legislation requirements have been satisfied. Following a satisfactory veterinary inspection, the official veterinarian will issue a certificate for the consignment that will remain with the goods until arrival at their destination. Regulation 136/2004/EC updates and details the procedures discussed in the Directive.[92]

Food of animal origin from third countries must also comply with Directive 2002/99/EC which governs the prevention of the introduction of animal diseases into the EU. The Directive sets out animal health rules for the production, processing, distribution and introduction of products of animal origin for human consumption. Finally, animal welfare requirements must be respected under Directive 93/119/EC which governs protection requirements at the time of slaughter.

In addition to the above requirements, there is also legislation concerning specific areas of food quality such as: (1) genetically modified food and feed;[93] (2) contamination and environmental factors;[94] (3) prohibited plant protection products;[95] (4) requirements connected to organically grown agricultural products;[96] (5) food additives;[97] (6) the addition of vitamins and minerals;[98] (7) authorised colorants;[99] (8) sweeteners;[100] (9) hormones in meat;[101] (10) foods for special medical purposes;[102] (11) pesticide residues;[103] and (12) residues of veterinary medicines[104].

90. *Article 46 allows the Commission with the aid of experts, to verify through official controls, the compliance or equivalence of third country legislation and systems with Community feed and food law and animal health legislation.* **91.** *Specific cases are listed in Articles 9 to 15. Article 11 concerns specific rules for goods in transit; Article 12 concerns goods intended for a free zone, a free warehouse or a customs warehouse.* **92.** *Regulation 136/2004/EC laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries.* **93.** *See, e.g., Regulation 1829/2003/EC on genetically modified food and feed; Regulation 1830/2003/EC concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC; Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EC.* **94.** *See, e.g., Regulation 315/93/EC laying down Community procedures for contaminants in food; Regulation 1881/2006 setting maximum levels for certain contaminants in foodstuffs.* **95.** *See, e.g., Directive 79/117/EEC prohibiting the placing on the market and use of plant protection products containing certain active substances; Directive 91/414/EEC concerning the placing of plant protection products on the market; Directive 2000/29/EC on protective measures against the introduction in to the Community of organisms harmful to plants or plant products and against their spread within the Community.* **96.** *See, e.g., Regulation 834/2007/EC on organic production and labelling of organic products and repealing Regulation 2092/91/EC;* **97.** *See, e.g., Directive 89/107/EEC on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption; Directive 95/2/EC on food additives other than colours and sweeteners; Directive 81/712/EEC laying down Community methods of analysis for verifying that certain additives used in foodstuffs satisfy purity criteria.* **98.** *Regulation 1925/2006/EC on the addition of vitamins and minerals and of certain other substances to foods; Regulation 108/2008/EC on the addition of vitamins and minerals and of certain other substances to foods.* **99.** *Directive 94/36/EC on colours for use in foodstuffs.* **100.** *Directive 94/35/EC on sweeteners intended for use in foodstuffs.* **101.** *Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of ß-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (as amended by Directive 2003/74/EC).* **102.** *Directive 1999/21/EC on dietary foods for special medical purposes (as amended by Directive 2006/141/EC); Directive 2001/15/EC on substances that may be added for specific nutritional purposes in foods for particular nutritional uses.* **103.** *Regulation 296/2005/EC on pesticide residues.* **104.** *Regulation 2377/90/EEC laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin.*

EU food legislation does not contemplate scenarios or simplified procedures related to natural or technological disasters. An official at the European Commission in the Food & Veterinary Office commented that food produced within an EU Member State being transferred to another Member State should encounter no impediment to its travel, as it should have been produced in accordance with Community regulations. Food entering the Community from third countries must satisfy EU import requirements. However, as food is considered to be included in the scope of the definition of 'goods' under Community law, any applicable customs duty exemptions relating to disaster relief goods should encompass food as well, as described above.

v. Medicines

IDRL Guidelines

Part V Section 18 of the IDRL Guidelines discusses special goods and equipment, specifically regarding the reduction of legal and administrative barriers to the exportation, transit importation and re-exportation of medications by assisting States.

- EC legislation on pharmaceuticals is mainly restricted to good manufacturing practice and procedures for the authorisation of certain medical products for human and veterinary use, with the ultimate aim of safe marketing of the product. There is no relevant legislation concerning the import or export of such products. However, as discussed above in Part III.b.iii on customs, medicinal products are considered a 'good' under Community law and would therefore receive exemptions from otherwise applicable duties.
- The EU has limited competence to legislate in the realm of controlled substances. It is an area of competence that is mostly left to the Member States, specifically with regard to the criminalisation of certain acts and customs procedures. However, the EU has legislated in the area of illicit drug trafficking and has sought to harmonise the Member States' laws in order to support co-ordination and co-operation. The EU has also legislated to require Member States to penalize certain activity relating to trafficking, such as the unlawful export or import of controlled substances.

Pharmaceuticals

The basis for the regulation of medicinal products by the EC is found in its provisions on the approximation of laws. Article 114(1) Lisbon TFEU (ex Article 95 TEC) provides that the Council must adopt measures for the approximation of laws in the Member States that are aimed at the establishment and functioning of the internal market. Article 115 Lisbon TFEU (ex Article 94 TEC) provides the precise legal basis for the adoption of legislation. Article 168 Lisbon TFEU (ex Article 152(4)) also provides a specific basis for legislating in the area of human health, particularly with regard to the adoption of: (1) measures setting high quality standards for safety of organs and substances of human origin; (2) veterinary or phytosanitary rules aimed at protecting public health; and (3) incentive measures aimed at improving and protecting public health. The Article 352 Lisbon TFEU (ex Article 308 TEC) catch-all provision related to the common market has also been cited as a legal basis in pharmaceutical legislation. It should be noted that the EEA states have adopted the Community *acquis* on medicinal products and so the legislation discussed below is also applicable to those states.

EC legislation on medicinal products ranges from general to very specific requirements. Legislation covers pharmaceuticals for human use, and rules relating to medical devices.[105] There are two main texts relating to products for human use: (1) Directive 2001/83/EC on the Community code relating to medicinal products for human use;[106] and (2) Directive 2003/94/EC laying down the principles and guidelines of good manufacturing practice in respect of medicinal products for human use and investigational medicinal products for human use. The over-arching goal of this legislation is free movement of medicinal products within the EU.

Directive 2001/83/EC is applicable to industrially produced medicinal products for human use intended to be placed on the market in Member States. The Directive does not provide a definition for the phrase 'intended to be placed on the market', but as in the context of food, it may also include medicine distributed without charge. Products both manufactured within the EU and outside of it must comply with the Directive's standards. The Directive lays down a procedure for a national marketing authorisation and the mutual recognition of such an authorisation throughout the EU. Member States have 90 days to recognise the marketing authorisation (unless public health grounds apply). Article 51 states that the quality of medicinal products originating from a third country must also satisfy the requirements of a marketing authorisation. Whether an authorisation is granted is dependent upon the submission of documentation attesting to considerations such as the product's quality of manufacture, content and testing results.[107] Annex I to the Directive contains details of the analytical, pharmacotoxicological and clinical standards and protocols applicable to testing medicinal products.

Directive 2003/94/EC lays down guidelines for good manufacturing practice. Products both manufactured within the EU and outside of it must comply with the Directive's standards. These guidelines are elaborated upon in additional guidance created by the Commission.[108] Essentially, the Directive provides best practice rules relating to quality management, personnel, premises and equipment, documentation, production, quality control and complaints procedures.

Regulation 726/2004/EC establishes a centralised Community authorisation procedure that is compulsory for certain types of medicinal products listed in its Annex. It is applicable to medicinal products for human use. Where the Community procedure does not apply, the procedures in the Directives establishing the Community codes on human medicine (i.e., national procedures) will apply. The holder of a Community authorisation must be established in one of the Member States. It therefore does not apply to third countries. Once the authorisation is granted, it will be valid across the EU and Iceland, Norway and Liechtenstein. The holder can then market its product in all EU countries. The Regulation also creates the European Medicines Agency whose main role is to assess every medicine for which a centralised authorisation application has been submitted and to make recommendations to the Commission.

In addition to the general legislation described above, specific legislation has been drafted in several areas: (1) good practice with regard to clinical trials in the Member States;[109] (2) orphan

105. *Much of the legislation is also applicable to medicinal products for veterinary use which is outside the scope of this Report.* **106.** *As amended by Directive 2004/24/EC and Directive 2004/27/EC.* **107.** *art 8.* **108.** *These guidelines (and all pharmaceutical guidelines) are available at:* http://ec.europa.eu/enterprise/sectors/pharmaceuticals/documents/eudralex/index_en.htm . **109.** *See, e.g., Directive 2001/20/EC on the approximation of laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use; Commission Directive 2005/28/EC laying down principles and detailed guidelines for good clinical practice as regards investigational medicinal products for human use, as well as the requirements for authorisation of the manufacturing or importation of such products.*

medical products;[110] (3) medicines for paediatric use;[111] (4) blood and blood plasma products;[112] and (5) advanced therapy medicines.[113]

The EC also has a system for the regulation of medical devices covering products ranging from bandages and spectacles to life maintaining implantable devices and sophisticated diagnostic imaging and minimal invasive surgery equipment. The system is particularly focused on market access, international trade relations and competition. The basic legislation on medical devices is Directive 93/42/EC concerning medical devices. It contains provisions regarding the approximation of Member State laws, rules regarding classification and assessment and essential device requirements of design and construction. It also provides for an EC-procedure allowing for verification that the device conforms to the Directive. Depending on the type of device as specified in the Directive, the manufacturer will have to conform to various procedures as set out in the annexes relating to full quality assurance, production quality assurance, product quality assurance, or a combination. The Directive does not contemplate exemptions in the event of natural disasters in the Member States, nor does it provide for any expedited procedures.

Controlled Substances

In addition to pharmaceutical medicines discussed above, it may be the case that relief organisations need to import controlled substances for medical purposes. Drugs such as methadone, morphine, opium, codeine and tranquilisers are often necessary for legitimate medical treatment. Relief organisations therefore run the risk of being construed as drug traffickers if they are not aware of the types and amounts of controlled substances that can be brought into the Member States.

The EU has limited competence to act within the drug field. The TEU was the first European Treaty to specifically reference drugs in the context of public health (Article 129) and justice and home affairs (Article 29). Using those bases along with the provisions in the TEC relating to the internal market, the EU has legislated in the fields of drug trafficking and drug dependence. However, its legislative role has been mainly focused at co-operation in enforcement and the common criminalization of offences relating to drug trafficking.[114]

While the EU is not itself a party to the relevant international agreements on controlled substances, all 27 Member States are parties. Therefore, the EU does not have its own system for the classification of narcotics. Rather, it uses the system adopted in the UN Single Convention on Narcotic Drugs (1961) and the UN Convention on Psychotropic Substances (1971).[115] However, the EU

110. *Orphan medicinal products are intended for the diagnosis, prevention or treatment of life-threatening or very serious conditions that affect not more than 5 in 10,000 persons in the European Union. See, e.g., Regulation 141/2000/EC on orphan medicinal products; Regulation 847/2000/EC laying down the provisions for implementation of the criteria for designation of a medicinal product as an orphan medicinal product and definitions of the concepts 'similar medicinal product' and 'clinical superiority'.* **111.** *See, e.g., Regulation 1901/2006/EC on medicinal products for paediatric use and amending Regulation 1768/92/EEC, Directive 2001/20/EC, Directive 2001/83/EC and Regulation 726/2004/EC; Regulation 1902/2006/EC amending Regulation 1901/2006/EC on medicinal products for paediatric use.* **112.** *Directive 2002/98/EC setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC.* **113.** *Regulation 1394/2007/EC on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation 726/2004/EC.*
114. *In fact, the European Community's first legislative action in the field of drug policy was to ratify Article 12 of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) on drug precursors control. See also, Council Joint Action 96/750/JHA adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking; Joint Action 96/698/JHA on cooperation between customs authorities and business organisations in combating drug trafficking; Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking.* **115.** *Discussed in Part IV.b.*

does have its own system for the rapid classification of all new psychoactive substances.[116] The main thrust of the system is a three-step procedure for (a) early warning regarding new drugs; (b) assessment of risks caused by the use of or trafficking in the drug; and (c) control measures for specific drugs.

The EU has also adopted Community legislation relating to trade in drug precursors between the Community and third countries. This legislation introduces authorisation and licensing requirements for those operators within the EU engaged in importing or exporting precursor substances.[117] It is also focused on the creation of harmonised measures for manufacturing and licensing systems.[118] However, it is difficult to see how this legislation would affect relief organisations, as it is aimed solely at manufacturers of narcotic substances. This legislation does not provide for any exemptions for medical use. It seems that such considerations are left for the Member States in light of their obligations under international conventions.

vi. Animals

IDRL Guidelines

Section 18 of the IDRL Guidelines discusses the exemption of special goods and equipment from legal and administrative barriers to exportation, transit importation and re-exportation or provisions providing for the reduction of such barriers. Sniffer dogs may be considered within the scope of this provision.

- Community law provides for the free circulation of pet animals between Member States if accompanied by a passport, and of animals from third countries if accompanied by an approved health certificate. These animals will therefore not be subject to lengthy verification and/or veterinary checks at the border. Although not specifically cited, it is likely that sniffer dogs are included in this regime.
- Non-pet animals from third countries must still be subjected to lengthy documentary and veterinary checks
- Community legislation does not provide for exception in relation to animals required for relief assistance.

Rescue operations in Europe sometimes involve specially-trained dogs. Accordingly, regulation on their entry into affected states may be important. The EC regulates the non-commercial movement of animals within the Community and also from third states. Regulation 998/2003/EC on the animal health requirements applicable to the non-commercial movement of pet animals essentially provides that pet animals may be moved between the Member States if accompanied by a passport issued by a veterinarian certifying that the animal has received the requisite vaccinations.[119] Article 3 of the Regulation defines 'pet animal' as: "animals of the species listed in Annex I which are accompanying their owners or a natural person responsible for such animals on behalf of the owner during their movement and not intended to be sold or transferred to another owner."

116. *Council Decision 2005/387/JHA on the information exchange, risk-assessment and control of new psychoactive substances.* **117.** *Regulation 111/2005/EC laying down rules for the monitoring of trade in drug precursors between the Community and third countries.* **118.** *Regulation 273/2004/EC on drug precursors; Commission Regulation (EC) No 1277/2005 of 27 July 2005 laying down implementing rules for Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and for Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors Text with EEA relevance.* **119.** *art 5.*

An official at the Commission's DG for Health and Consumers explained that there is no specific regime applicable to sniffer dogs. If the sniffer dog falls within the scope of that definition, then they may enter based on the Regulation. If they do not, then they must satisfy the requirements of Directive 92/65/EEC.[120] Because the Directive 92/65/EEC concerns trade in certain species, it can be assumed that sniffer dogs would not be included within its scope and would therefore be allowed entry based on Regulation 998/2003/EC. The United Kingdom, Ireland, Malta, Sweden and Finland have been allowed to make the entry of pet animals into their territory subject to additional constraints with regard to certain diseases, such as rabies, echinococcosis and tick borne diseases. However, this is a transitional regime that will expire at the end of June 2010, although there is a Commission proposal to extend the system until the end of 2011.[121] Chapter III describes the conditions relating to movements of animals from third countries. Article 8 covers the various requirements of health depending on the country of origin. Subsection 2 provides that third country pet animals must be accompanied by a certificate issued by an official veterinarian. The procedures applicable to the issue of such certificate are found in Decision 2004/203/EC.[122] The certificate should be issued and signed by an official veterinarian designated by the competent authority of the country of dispatch.

Commission Decision 2003/803/EC establishes a model passport for the intra-Community movement of specific animals which is required to contain details of the animals' health in accordance with Regulation 998/2003.[123]

Council Directive 91/496/EEC is specifically focused the procedures for veterinary checks on third country animals that are not family pets accompanying travellers for non-commercial purposes. Article 4 provides that the Member States must ensure that the animals are subjected to a documentary and identity check at the border, as well as an official veterinarian check before transit through the territory is authorised. This legislation does not specifically discuss the entry of animals from third countries in the context of disaster assistance, or make any provision for expedited procedures in exceptional circumstances.

vii. Transport

IDRL Guidelines

Part V Section 19 discusses several provisions relating to transport, including speedy passage of land, marine and air vehicles operated by relief organisations.

- The EC policy of common transport provides for the freedom to travel within the Community for land, air and sea vehicles that are registered in the Member States.
- The legislation pertaining to the carriage of goods by road includes an exemption related to the authorisation system for disaster relief goods.

120. *Directive 92/65/EEC laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC.* 121. *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 998/2003 on the animal health requirements applicable to the non-commercial movement of pet animals, COM(2009) 268 final, 16 June 2009, available at:* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0268:FIN:EN:PDF. 122. *Establishing a model health certificate for non-commercial movements from third countries of dogs, cats and ferrets.* 123. *Specifically, dogs, cats and ferrets.*

Section 16(c) of the IDRL Guidelines recommends expedited procedures for the recognition of driving licenses.

- EC legislation harmonises the conditions for issuing drivers licenses in Member States and provides for the mutual recognition of EU-issued licenses across the territory for drivers of land, air and sea vehicles either through special legislation of through the general directive on mutual recognition of professional qualifications.
- However, this legislation does not provide for any expedited procedure in case of emergency.

Transport is one of the Community's common policies governed under Title VI Lisbon TFEU (ex Title V TEC). The policy is focused on eliminating borders between Member States and contributing to the free movement of goods and people. Provided that the vehicles originate from another EU Member State, movement of vehicles between Member States would not present a problem. In much of the legislation, relationships with third countries are the province of the Member States within a framework of the duty to co-operate with the principles of the Community. Harmonising legislation has been developed in the key areas relevant to the IDRL Guidelines.

Road Transport

In 1998, recognising that most EU Member States were party to the 1968 Vienna Convention on Road Traffic (discussed in Part IV.b), the Council adopted Regulation 2411/98/EC on the recognition in intra-Community traffic of the distinguishing sign of the Member State in which motor vehicles and their trailers are registered. This Regulation applies to vehicles registered and driven within the Community. The Regulation creates a uniform distinguishing sign for vehicle registration plates that must be recognised as equivalent to any other distinguishing sign that a Member State may recognise in order to identify the State of registration.

The EC has also introduced legislation harmonising the conditions for issuing drivers licenses in Member States and a Community model license. Directive 91/439/EEC on driving licenses provides for the mutual recognition of driving licenses issued by Member States. This legislation has been partially repealed by Directive 2006/126/EC which is a recasting of the first directive and will not be wholly operative until 2013. The recast directive is aimed at reducing the possibilities of fraud and guaranteeing true freedom of movement for EU drivers, but not third country drivers. It includes further harmonisation measures for other forms of road transport, such as mopeds and motorcycles. Parts of the recast directive have been in force since 19 January 2009, including those regarding mutual recognition in Article 2.

Regulation 881/92/EEC on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States provides for an authorisation system for the carriage of goods by road carried out in EU territory on behalf of a third party. The authorisation is applicable to carriers established in an EU Member State and once granted is valid for five years. If a third state is involved, a separate agreement between the EU and that third state is necessary. The Annex to the Regulation provides an exception to the authorisation procedure for "Carriage of medicinal products, appliances, equipment and other articles required for medical care in emergency relief, in particular for natural disasters". Regulation 3118/93/EEC elaborates on the conditions by which non-resident carriers may operate within a Member State after obtaining an authorisation under Regulation 881/92/EEC. It provides that drivers who are nationals of a third country must be in possession of

a driver attestation in order to operate within the EU. However, it does not include any exception regarding carriage of disaster goods. Presumably, once a carrier has acquired an authorisation or has proven that authorisation is unnecessary in light of the exception in the Annex, the driver attestation would not be required.

An official at the European Commission in DG Energy and Transport clarified the procedure for the transport of disaster relief goods by both EU and non-EU carriers, with reference to the International Transport Forum (ITF).[124] Currently, 26 EU Member States belong to the ITF.[125] EU haulers travelling within the EU and carrying disaster relief materials will not need a license or authorisation, as long as they can prove that their transport is genuinely for the provision of emergency assistance. There is no prior approval necessary; the checks take place at the border. If the carrier is an enterprise such as a dedicated Red Cross vehicle, the situation is quick and simple; if the carrier is a private company hired to transport relief items by an enterprise such as the Red Cross, the private carrier will have to have the paperwork recording the contract for haulage as part of the approval process. Non-EU carriers will always need a license when travelling in the EU. The license may be granted bilaterally (between the individual Member State and the non-EU country or between the EU as a whole and the non-EU country, as is the case with Switzerland) or multilaterally through the ITF. Under the ITF rules, disaster relief transports are exempted from the licensing requirement and no special procedures apply. For non-EU and non-ITF carriers, the relevant bilateral agreements must be consulted. Furthermore, as regards non-EU and non-ITF carriers, two types of bilateral permits or authorisations might apply: one for loading or unloading and one for transiting across a territory to reach the final destination. As the official explained, if goods are transported by a Macedonian hauler to the United Kingdom via Croatia and Serbia, the hauler will need a permit for unloading in the UK as well as permits to transit through Croatia and Serbia. The applicable bilateral agreements will dictate the exact legal situation.

Directive 96/26/EC[126] relates to the mutual recognition of diplomas, certificates and other evidence of formal qualifications of road haulage and road passenger operators. Operators must satisfy three criteria: (1) good repute; (2) financial standing; and (3) professional competence. Certificates and documents issued by a Member State must be accepted by other Member States as sufficient proof that the requisite conditions for operation have been satisfied by their holder.

The EU has entered into agreements with third countries concerning land transport. The EC/Switzerland Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road entered into force on 1 July 2002 and is aimed at liberalising access to the parties' transport markets. The agreement permits EC and Swiss road and rail haulers to freely carry out transports between a Member State and Switzerland. The EEA Agreement between the EU, Norway, Iceland and Liechtenstein requires that the latter three countries apply Community road transport rules in the same way as the EU Member States.[127] Finally, the Community entered into the INTERBUS agreement with Albania, Bosnia-Herzegovina, Bulgaria, Croatia. Former Yugoslavian Republic of Macedonia, Moldova, Romania and Turkey which provides for a harmonised regulatory framework for passenger services. The agreement entered into force on 1 January 2003.[128]

124. *Formerly the European Conference of Ministers of Transport (ECMT). The ECMT transformed into the ITF in 2007.* **125.** *Cyprus is not a member.* **126.** *As amended by Directive 98/76/EC.* **127.** *Annex XIII of the EEA Agreement contains the Community transport* acquis. **128.** *Council Decision 2002/917/EC on the conclusion of the Interbus Agreement on the international occasional carriage of passengers by coach and bus.*

Air Transport

Regulation 1008/2008/EC establishing common rules for the operation of air services in the Community (Recast)[129] regulates the licensing of Community air carriers, the law applicable to them and the pricing of air services. Undertakings established in the Community cannot carry passengers, cargo or mail by air unless they have obtained an operating license under the conditions of this Regulation. Specifically, the undertaking is required to hold an Air Operator Certificate, comply with ownership and insurance requirements and satisfy the financial requisites. Licensed Community operators are permitted to operate air services throughout the Community without restriction.[130] The Regulation does not discuss any situations regarding disaster relief operations; however, Article 21 on emergency measures provides that the Member States may refuse, limit or impose conditions on the exercise of traffic rights to deal with sudden problems resulting from unforeseeable circumstances.

Council Directive 91/670/EEC on the mutual acceptance of licences for persons working in civil aviation provided the conditions under which Member States must recognise licenses issued by other Member States, as well as any associated privileges or certificates. The conditions in the Directive have been carried over and elaborated upon in the new Regulation 216/2008/EC on common rules in the field of civil aviation and establishing a European Aviation Safety Agency. The new Directive specifies the qualifications necessary for the distribution of pilot and cabin crew licenses and the conditions for their issue. Neither piece of legislation refers to any disaster-specific exception or scenario. They are primarily focused on civil aviation safety.

Rail Transport

Directive 95/18/EC establishes the criteria applicable to the licensing of railway undertakings established in the Community. Once issued, a license will be valid across the territory of the EU. The Directive does not cover undertakings whose activities are limited exclusively to urban, suburban or regional services or undertakings transporting road vehicles through the Channel Tunnel. There is no provision within the Directive specifically relevant to disaster relief situations. This Directive was extended by Directive 2001/13/EC to other forms of railway undertakings established in the EU and not covered by Directive 95/18/EC.

Directive 2007/59/EC on the certification of train drivers operating locomotives and trains on the railway system in the Community provides for the conditions for granting a drivers license to train drivers operating within the Community and the procedures for obtaining an infrastructure certificate indicating where and what the operator is permitted to drive. The Directive includes mandatory exemptions to the infrastructure certificate requirement, including "when a disturbance of the railway service necessitates the deviation of trains or maintenance of tracks"[131] but does not provide for any exceptions or expedited procedures applicable in the event of a disaster. Mutual recognition of qualifications in this sector is governed by Directive 2005/36/EC on the general system of recognition described above.

129. *This Regulation repeals and replaces three Regulations from the "Third aviation package": Regulation No 2407/92 on licensing of air carriers, Regulation No 2408/92 on access for Community air carriers to intra-Community air routes, and Regulation No 2409/92 on passenger fares and air cargo rates.*
130. *Agreement between the European Community and the Swiss Confederation on Air transport, 21/06/1999. This agreement is applicable to Swiss airline companies and is more commercial in nature. The agreement allows such companies to fly to all destinations in the EU Member States without restriction.*
131. *art 4(2)(a).*

Inland Waterways

As part of the common transport policy, Directive 87/540/EEC lays down rules regarding access to the occupation of carrier of goods by waterway and mutual recognition of diplomas.[132] It operates like similar directives discussed above by providing common conditions governing access to the profession and the issuance of a certificate upon confirmation that the applicant possesses the requisite competences. As with the other directives, this applies to carriers established within the Community and forms part of the freedom of movement for workers regime in the EU. It also provides for mandatory mutual recognition of diplomas obtained in the Member States.

Council Regulation 3921/91/EEC lays down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State in which they are not established. A non-resident is permitted to carry out the national transport of persons or goods by inland waterway in another Member State provided that he or she is established in another Member State and licensed to carry out his or her services there. The carrier must carry on board a certificate attesting to those conditions at all times. There is no provision for exclusions or expedited procedures.

Council Regulation 1356/96/EC is applicable to the transport of goods or passengers by inland waterway for journeys between Member States and in transit through them. As with inland transport, the carrier must: (1) be established in a Member State and be licensed for carriage there; (2) use inland waterway vessels registered in a Member State; and (3) satisfy the conditions in Article 2 of Regulation 3921/91/EEC discussed in the previous paragraph. Again, there are no relevant rules pertaining to emergency procedures.

viii. Telecommunications

IDRL Guidelines

Part V Section 18 states that Affected States should waive or expedite licensing procedures regarding the use of telecommunications and information technology equipment.

- The EC telecommunications Framework Directive establishes a system for authorisation and access to electronic communications networks and radio frequencies.
- The Framework Directive is complemented by the Authorisation Directive which attaches a condition to authorisation relating to special terms of use to ensure communications between authorities in times of major disaster.

Title XVI Lisbon TFEU (ex Title XV TEC) on Trans-European Networks allows the Community to contribute to the development of trans-European networks in the areas of transport, energy infrastructures and telecommunications in order to achieve the objectives of economic and social cohesion and the internal market. Article 155 permits the Community to implement any measure necessary to ensure the interoperability of networks. Based on this, the EU has developed a regulatory framework for electronic communications mainly aimed at strengthening competition

132. *Council Directive 87/540/EEC on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation.*

through facilitated market access. The Framework consists of five directives (one general, four specific) and a decision on radio frequency access.[133]

Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive) establishes the general framework for the harmonisation of e-communication networks and services regulation. It consists of general rules regarding scope, definitions, the national regulatory authorities and granting access to essential resources such as radio frequencies.

Directive 2002/20/EC on the authorisation of electronic communications networks and services (Authorisation Directive) applies to all electronic communications and network services, whether or not they are provided to the public, and also to rights of use of radio frequencies. Under Article 3, Member States are required to ensure freedom to provide e-communications networks and services subject to conditions set forth in the Directive. Article 6 states that the authorisation may be subject to conditions listed in the Annex. Part A paragraph 12 of the Annex states as one of the conditions which may be attached to a general authorisation: "Terms of use during major disaster to ensure communications between emergency services and authorities and broadcasts to the general public." It is unclear on the face of the Directive who may have access to communications facilities under these conditions. However, it is likely that the individual Member State authorities would determine the exact parameters of the conditions attached to access. Part B paragraph 8 relating to conditions attached to the use of radio frequencies includes as a condition "Obligations under relevant international agreements relating to the use of frequencies", for example, the Tampere Convention discussed below in Part IV.b. This means that obligations that the freedom to provide e-communications networks and services may be subject to certain obligations under the Tampere Convention or any other relevant international agreement.

There is no specific reference to the importation of telecommunications equipment into the EU. However, provided that such equipment is considered a 'good' under EC law, normal customs rules would apply, including any exemption on duties for disaster relief goods.

ix. Currency

IDRL Guidelines

Part V Section 20(2) of the IDRL Guidelines urges that Assisting States and organisations be granted the right to freely bring the necessary funds and currencies in or out of the affected country and to obtain legal exchange rates in connection with their disaster relief or recovery assistance.

- The TEC created an area of economic union with a single currency that contributes to the general policy of free movement of capital between the Member States.
- EC law limits the amount of cash a natural person can carry into or out of the EU to €10,000 or its equivalent in other currencies.

133. *This Report will not discuss Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (Universal Services Directive), Decision 676/2002/EC on a regulatory framework for radio spectrum policy in the European Community, or Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) as these are not pertinent to the discussion herein.*

One of the four freedoms of the European Community is free movement of capital under Title IV, Chapter 4 Lisbon TFEU (ex Title III, Chapter 4 TEC). Article 56 prohibits "all restrictions on the movement of capital between Member States and between Member States and third countries" that causes or threatens to cause serious difficulties for the operation of the economic and monetary union.

Title VIII Lisbon TFEU (ex Title VII TEC) establishes the Economic and Monetary Union (EMU). The EMU is based on close co-ordination of the Member States' economic policy at EU level to promote stability and growth. The EMU led to the development of the single currency, the euro, in 1999. Not all of the EU Member States participate in the euro: currently 15 of 27 Member States have introduced the currency; the United Kingdom and Denmark have opted out of the scheme under the TEU; the rest are in the process of qualifying for the single currency framework.

Free movement of capital was first fully realized in Directive 88/361/EEC. Article 1 requires Member States to abolish any restrictions on movements of capital taking place between natural or legal persons resident in Member States and imposes a single exchange rate on foreign transactions.

Countries in the process of becoming full participants in the single currency framework are party to the Agreement of 16 March 2006 between the European Central Bank and the national central banks of the Member States outside the euro-zone. The Agreement is aimed at maintaining stable exchange rates between the euro and participating national currencies through the creation of a central exchange rate.[134] People and organisations based in Member States that have adopted the euro should not encounter any difficulties regarding the right to bring currency in or out of the country or in relation to exchange rates.

There are rules regarding how much cash can be brought into and out of the EU. Article 3 of Regulation 1889/2005/EC on controls of cash entering or leaving the Community states that a person carrying more than € 10,000 (or its equivalent in other currencies) into or out of the EU territory must declare it to the customs officials. Article 2 of the Regulation defines cash as:

(1) Bearer-negotiable instruments, including monetary instruments in bearer form such as travellers cheques;
(2) Negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;
(3) Incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee's name omitted;
(4) Currency, i.e. banknotes and coins that are in circulation as a medium of exchange.[135]

The obligation to declare the cash is on any *natural* person. Where a person is carrying cash for a legal entity, he or she must give the name of the company in the declaration. The limit applies to

134. *Agreement of 16 March 2006 between the European Central Bank (ECB) and the national central banks (NCBs) of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union (EMU). Member countries are: Czech Republic, Denmark, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia, Slovakia, Sweden, United Kingdom. Romania and Bulgaria became parties with the Agreement of 21 December 2006 between the European Central Bank and the national central banks of the Member States outside the euro area amending the Agreement of 16 March 2006 between the European Central Bank and the national central banks of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of economic and monetary union.* **135.** *More information is available at:* http://ec.europa.eu/taxation_customs/customs/customs_controls/cash_controls/article_6140_en.htm.

persons individually travelling in a group. Depending on the Member State at issue, declarations may be made either on a common form, or a national form.[136] There is no special exemption for emergency situations.

x. Extended hours

IDRL Guidelines

Part V Section 23 of the IDRL Guidelines provides that Affected States should ensure that state-operated offices and services essential to the timely delivery of international disaster relief operate outside normal business hours in the event of a disaster.

- Existing EC legislation on working time provides for discretionary options for Member States in this regard, specifically concerning derogations from the maximum working week time for managing executives or others with decision-taking powers. Such people might be involved in the provision of disaster assistance, for example, customs or immigration officials.
- However, nothing in the EC legislation requires government offices to remain open in times of disaster.

EC Directive 2003/88/EC concerning certain aspects of the organisation of working time is intended to lay down the minimum requirements regarding the safety and health of all workers in the EU in all sectors of activity, both public and private. It applies specifically to (a) minimum periods of daily, weekly and annual rest/leave and (b) certain aspects of night work, shift work and work patterns.[137] The Directive also sets out a maximum weekly working time of 48 hours.[138] Article 17 provides for a number of discretionary derogations from the basic principles due to the "specific characteristics of the activity concerned". Those most relevant to this study are subparagraph 1(a) "managing executives or other persons with autonomous decision-taking powers" and regarding the need for continuity of service, subparagraph 3(c)(iii) "press, radio, television, cinematographic production, postal and telecommunications services, ambulance, fire and civil protection services" and 3(c)(iv) "gas, water and electricity production, transmission and distribution, household refuse collection and incineration plants". While the Directive applies to key government officials, nothing in it requires government offices to remain open in times of disaster or any other special circumstance.

3c. Criteria for Eligibility for Action

Section 14 of the IDRL Guidelines provides that States should establish criteria for assisting humanitarian organisations seeking eligibility for legal facilities. There is no provision in EU law, including in the new Lisbon Treaty, that regulates this issue.

3d. Public Procurement Rules

EC Directive 2004/18/EC regulates the procedures for the award of public works contracts, public supplies contracts and public services contracts by state, regional or local authorities, bodies

136. *More information concerning the type of form used by Member States is available at:* http://ec.europa.eu/taxation_customs/customs/customs_controls/cash_controls/declaration_form/index_en.htm. 137. *art 1(2).* 138. *art 6.*

governed by public law, associations formed by one or several of such authorities or bodies governed by public law. It applies to written contracts only and excludes several things from its scope, including contracts in the water, energy, transport and postal sectors,[139] contracts aimed at providing or exploiting public telecommunications networks, secret contracts relating to security measures, contracts relating to immovable property and employment contracts.[140] The Directive also does not apply where contracts are awarded pursuant to international agreements in conformity with the TEC such as the WTO Agreement on Government Procurement.[141] Furthermore, in order for the Directive to be applicable, certain threshold amounts much be reached depending on the type of contract at issue.[142] However, even where the Directive does not apply, or the threshold value has not been met, the ECJ has held that the procurement procedure used by the Member State must comply with the fundamental principles of Community law, in particular, the principle of non-discrimination.[143]

In the interest of transparency and non-discrimination, the Directive requires that the contracting body publicize a notice setting out its needs and requirements.[144] It then provides for three types of procedures: (1) open procedures, in which any interested economic operator[145] may submit a tender; (2) restricted procedures, whereby any economic operator may request to participate, but only those invited by the contracting authority may submit a tender; and (3) negotiated procedures, where the contracting authorities engage economic operators of their choice and negotiate the terms of contract with such operator. It is preferred under the Directive that procedures (a) and (b) are used. However, in exceptional cases, a contracting authority may be permitted to award contracts by negotiated procedure, without the publication of a tender notice. Article 29 also allows Member States the option to follow a competitive dialogue procedure in the case of particularly complex contracts. Article 31(1)(c) provides that for each type of contract the Directive covers, contracting authorities may use the negotiated procedure without prior publication of a contract notice:

> "insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit for the open, restricted or negotiated procedures with the publication of a contract notice as referred to in Article 30 cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority."[146]

The guidance issued to accompany the original legislation before its recasting in 2004, explains the meaning of the exception in 31(1)(c):

> "The concept of unforeseeable events is taken to mean occurrences that overwhelmingly transcend the normal bounds of economic and social life (for example, an earthquake or flooding

139. *Governed by Directive 2004/17/EC. The provisions in this Directive are essentially similar to those in Directive 2004/18/EC, including the derogation provision discussed below.* **140.** *Directive 2004/18/EC arts 14, 16.* **141.** *Concluded in the framework of the Uruguay Round multilateral negotiations. However, Member States must apply the same conditions they apply to third country applicants for procurement contracts to any Member State applicants (art 5, Directive 2004/18/EC).* **142.** *art 7.* **143.** *Joined Cases C-20/01 and C-28/01* Commission v Germany *[2003] ECR I-3609 para 62; Case C-525/03* Commission v Italy *[2005] ECR I-9405, Opinion of AG Jacobs para 8.* **144.** *art 29.* **145.** *'Economic operator' encompasses the concepts of contractor, supplier and service provider according to article 1(8).* **146.** *The provisions in Article 29 regarding 'competitive dialogue' demonstrate that a possibly lengthy procedure of opening dialogue, engaging in dialogue, assessing tenders and formally terminating the dialogue is applicable. Article 38 governs the time limits for receipt of requests to participate and for receipt of tenders. Paragraph 1 mandates that when fixing the time limits, Member States must take into account the complexity of the contract and the time necessary for drawing up tenders and that, in the case of open procedures, the minimum time limit for receipt of tenders must be at least 52 days from the date the contract notice was sent. Regarding restricted procedures, the minimum time limit is 40 days, and regarding the dialogue referred to above, the minimum time limit for receipt of requests to participate is 37 days.*

in the wake of which essential supplies are needed as a matter of the utmost urgency in order to provide relief and shelter for the victims."[147]

A contracting authority can only rely on this provision to cope with the event immediately after it occurs, which, according to the guidance, should equal a period of approximately one month. Any products, supplies or services needed subsequently must be tendered for according to the normal procedures in the Directive.

This issue was briefly touched upon in Advocate General Jacob's Opinion in the case *Commission v Italy* which involved Italy's acquisition of fire-fighting aircraft to deal with seasonal forest fires.[148] The case was declared inadmissible by the ECJ, but AG Jacobs took the view that the derogation could not be applied where equipment or services were sought for recurring events.

EC public procurement rules may therefore interfere with a Member State's ability to receive assistance, certainly in the long term after the immediate aftermath has subsided, but also possibly in relation to ongoing or recurring emergencies.

3e. Privileges and Immunities

Under Article 343 Lisbon TFEU (ex Article 291 TEC), the Community "shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks". A protocol was drafted and attached to the Treaty which presents the conditions of such privileges and immunities.[149] The Protocol applies to the Community institutions and staff, including the European Central Bank, the European Investment Bank, the Community Courts and missions of third countries accredited to the EC. It provides privileges and immunities regarding direct taxation and customs duties[150] and contains provisions regarding official communications and travel passes for officials and other servants of the Communities.[151] It also provides for the free movement of Members of European Parliament in respect of customs and exchange control while travelling to and from its meetings[152], and grants Members immunity from liability from legal proceedings during parliamentary sessions.[153] Chapter V of the Protocol grants certain privileges and immunities to officials and other servants of the European Communities but does not define 'servants'; thus, it is uncertain whether consular mission staff can benefit from this provision if they are working as part of an EU team.

The Protocol is strictly concerned with privileges and immunities of the Communities and its staff. It makes no mention of whether humanitarian organizations, member state civil protection personnel or international organizations are considered 'servants of the Communities' in the context of relief operations, nor does it make any separate provisions for such bodies. Neither does there seem to be a separate EU document specifically addressing this issue.

147. *Guide to the Community Rules on Public Supply Contracts other than in the Water, Energy, Transport and Telecommunications Sectors: Directive 93/36/EEC. Although this guidance is aimed at previous legislation applying specifically to supply contracts, it has been stated by the Advocate General in* Commission v Italy *(n 143) that "whatever view is reached with regard to one directive will be valid with regard to the other" as the same derogation was present in the legislation specifically relating to public service contracts. Of course, that legislation has been consolidated into the current regime in Directive 2004/18/EC and the derogation applies not only to those two types of contracts, but also to public works contracts.* **148.** *(n 143).* **149.** *Protocol (No 36) on the privileges and immunities of the European Communities (1965).* **150.** *Articles 3 and 4.* **151.** *Articles 6 and 7.* **152.** *Article 8.* **153.** *Article 10.*

3f. Other Forms of EU Co-operation

i. Nuclear Safety

The Council has adopted legislation to promote the early exchange of information in the event of a radiological emergency.[154] The decision is intended to apply to situations where a Member State chooses to take broad measures in response to accidents involving or likely to involve a significant release of radioactive material or the detection of abnormal levels of radioactivity.[155] The Member State taking action must notify the Commission and any Member States that are or might be affected by the measures of its intention to take action and its reasons for doing so, and must provide them with information relating to the radiological consequences of the incident.[156] The informed Member States must then do the same if they decide to take action themselves.[157]

The Council has also adopted measures relating to public health protection measures in the event of a radiological emergency.[158] The purpose of the Directive is "to define, at Community level, common objectives with regard to measures and procedures for informing the general public".[159] The Member States must supply the public likely to be affected with information concerning the applicable health protection measures in the event of a radiological emergency. The information should be updated and distributed regularly.[160] In the event of a radiological emergency, the Member States must inform the affected population immediately as to any steps to be taken and any related health measures.[161]

ii. Marine Pollution

The European Community has been involved in response to marine pollution since its 1978 Council Resolution setting up an action programme on the "control and reduction of pollution caused by hydrocarbons released at sea", which was later amended to deal with other harmful substances. There are three current pieces of legislation relating to Community protection against marine pollution. The first is Decision 2850/2000/EC of Parliament and Council setting up a Community framework for co-operation in the field of accidental or deliberate marine pollution which was applicable from 1 January 2000 to 31 December 2006. Its aims are to:

- Support Member States' efforts to combat marine pollution;
- Help improve Member States' capacity to respond to accidents;
- Encourage and strengthen mutual assistance through activities such as exchange of experts, training and exercises; and
- Promote Member State co-operation relating to compensation for damage according to the polluter-pays principle.

Under this Decision, DG Environment set up a Community Information System for the exchange of data on preparation and response to marine pollution and a rolling three-year plan consisting of training, expert exchange, exercises and pilot projects in order to implement the framework for co-operation.

Following this Decision, the Council adopted the first CPM, which is also applicable to marine pollution. The CPM was discussed above in Part III.a.

154. *Council Decision 87/600/Euratom on Community arrangements for the early exchange of information in the event of a radiological emergency.* **155.** *ibid art 1.* **156.** *ibid art 2.* **157.** *ibid art 4.* **158.** *Directive 89/618/Euratom on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency.* **159.** *ibid art 1.* **160.** *ibid art 5.* **161.** *ibid art 6.*

In 2002 Regulation 1406/2002/EC established a European Maritime Safety Agency.[162] The Agency's objective is to provide technical and scientific assistance to the European Commission and Member States related to proper implementation of European legislation by ships and to carry out specific tasks with regard to oil pollution response.

In December 2006, the Commission issued a Communication[163] regarding the state of Community action in the field of accidental or deliberate marine pollution and establishing its intent regarding efforts from 2007. According to the Communication, as of 2007, 20 Member States, along with Norway and Iceland, participate in the Community framework for co-operation. It discussed the role played by the CPM and the MIC in relation to the *Prestige* marine pollution incident of 2002 and a MIC response in 2006 to maritime pollution in Lebanon. Its goals for the 2007+ cycle included improving consistency of Community policy regarding preparedness, enhancing preparedness actions of the European Maritime Safety Agency, increasing the exchange of good practice at Community level, enhancing response through greater consistency at the European level and improving operational support to the Member States.

The European Community is also party to the following regional instruments:

- The Convention of 1974 and 1992 on the protection of the marine environment of the Baltic Sea area (Helsinki Convention);
- The Convention of 1976 for the protection of the Mediterranean Sea against pollution (Barcelona Convention) and its Protocols;[164]
- The Agreement of 1983 for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (Bonn Agreement); and
- The cooperation Agreement signed in 1990 for the protection of the coasts and waters of the North-East Atlantic against pollution (Lisbon Agreement – not yet in force).

iii. Forests

DG Environment and the Joint Research Centre created the European Forest Fire Information System (EFFIS) in 1998 to support fire fighting services in the Member States and to provide services and Parliament with information on European forest fires and statistics to aid in response.[165] EFFIS conducts scientific and technical research on forest fires and issues annual reports on forest fires in Europe. It also maintains a large database which records the occurrence of fires within Europe. EFFIS is supported by a team of experts from 22 EU Member States that meets regularly.

iv. Pandemic Influenza

Although it is primarily the responsibility of Member States to adopt measures best suited to fight the onset of human influenza pandemics, the EU has stressed that a single Member State may be unable to deal with an outbreak on its own, especially where the outbreak crosses its border and affects its surrounding neighbours. To that end, the EU considered it necessary to develop EU-level co-ordination measures to strengthen international co-operation and reduce the impact of any

162. *Information on the Agency is available at:* http://www.emsa.europa.eu/. **163.** *Communication from the Commission to the Council and the European Parliament, to the European Economic and Social Committee and to the Committee of Regions: Cooperation in the field of accidental or deliberate marine pollution after 2007, COM(2006) 863 final.* **164.** *See* http://europa.eu/legislation_summaries/environment/water_protection_management/l28084_en.htm *for more details concerning the adoption of the eight protocols.* **165.** *More information on EFFIS is available at:* http://effis.jrc.ec.europa.eu/.

pandemic. The World Health Organization (WHO) has issued guidelines[166] regarding action to take before and during pandemics that are followed by most countries. Any EU-level action will also follow these recommendations, taking into account specific measures necessary due to circumstances particular to the EU. The EU has a long-standing relationship with the WHO, beginning in 2000 with an exchange of letters.[167] The letters were aimed at strengthening co-operation between the Commission and the WHO and identified a number of priority areas, including communicable diseases, environment and health.

Bearing in mind the above, the EC adopted Regulation 851/2004/EC establishing a European Centre for disease prevention and control. The Centre is intended to "enhance the capacity of the Community and the Member States to protect human health through the prevention and control of human disease".[168] The main task of the Centre is to "identify, assess and communicate current and emerging threats to human health from communicable diseases".[169] It has the authority to act on its own initiative in the event of an outbreak that may spread within the Community where the origin of the illness is unknown.[170] The Centre acts largely as an information clearing house, providing scientific and technical information to the EC institutions and Member States and co-ordinating any bodies operating in the fields coming within the scope of its mission.[171] The Member States also have a duty to provide the Centre with timely information related to its purpose and to forward to the Centre any messages received through its early warning network.

The basis for the European Centre for Disease Prevention and Control is a previous Decision of the Parliament and Council in 1998 regarding the creation of a network for surveillance and control of communicable diseases.[172] This Decision called for the improvement of existing networks between Member States dedicated to the monitoring of intra-Community communicable diseases, as well as heightened measures for the early exchange of information between Member States. The Decision set up a network at Community level tasked with surveillance and early warning and response with a view toward strengthening co-operation and co-ordination among the Member States.[173] The Member States are obliged to consult with each other and the Commission in order to co-ordinate their efforts for the prevention and control of communicable diseases.

More recently, the Commission has issued communications regarding strengthened co-ordination on preparedness for health emergencies at EU level[174] and on preparedness and response planning specifically in relation to pandemic influenza[175]. Together, these documents form the basis for future Community-level action that will assist the Member States in developing their own plans to deal with public health emergencies. The Commission has identified six key issues to address at Community level: (1) information management; (2) communications; (3) scientific advice; (4) liaison and command and control structures; (5) preparedness of the health sector; and (6) preparedness in all other sectors and inter-sectorally.[176]

166. *These guidelines are available at:* http://www.who.int/csr/resources/publications/influenza/WHO_CDS_CSR_GIP_2005_5.pdf. **167.** *Exchange of Letters between the World Health Organisation and the Commission of the European Communities concerning the consolidation and intensification of cooperation and attached Memorandum concerning the framework and arrangements for cooperation between the World Health Organization and the Commission for the European Communities (2001/C 1/04).* **168.** *Regulation 851/2004/EC art 3(1).* **169.** *ibid.* **170.** *ibid.* **171.** *ibid art 3(2).* **172.** *Decision 2119/98/EC setting up a network for the epidemiological surveillance and control of communicable diseases in the Community.* **173.** *ibid art 1.* **174.** *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on strengthening coordination on generic preparedness planning for public health emergencies at EU level, COM(2005) 605 final, 28 November 2005.* **175.** *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Pandemic Influenza Preparedness and Response Planning in the European Community, COM(2005) 607 final, 28 November 2005.* **176.** *COM(2005) 605 final (n 174) 5; see also ibid, p 7.*

On 15 September 2009, the Commission adopted a strategy paper on pandemic H1N1 supporting the Member States' efforts to respond to the pandemic. The strategy paper emphasises the co-ordination of preparations in order to effectively respond to pandemics. It highlights vaccinations as an effective means of prevention and urges Member States to revise their vaccination strategies in light of current scientific trends. The paper discusses the need to give support to third countries and to improve international co-operation to ensure a coherent global public health response. Business continuity concerns are also addressed, as pandemics often lead to other social and economic consequences such as lower productivity and a decline in retail activity. The Commission was requested to review and report on five specific areas[177] in relation to pandemics which formed the basis of discussions of the health ministers on 12 October 2009.

The International Health Regulations (IHR) should also be mentioned. The IHR entered into force in 2007 and is binding on all Member States of the WHO, including all the EU Member States. The IHR is aimed at co-operation in prevention and response to health risks that have the potential to cross borders and cause a world-wide pandemic. The IHR includes reporting requirements in the event of an outbreak and establishes procedures to follow should an outbreak occur. The IHR also place an obligation on member countries to strengthen their existing frameworks for preparation and response.

v. Victims of Terrorism

Although the prevention and punishment of terrorism is outside of the scope of this Report, it should be mentioned that the EU has an extensive programme in place regarding the fight against terrorism. Of particular relevance, since 2004, the Commission has been actively pursuing a programme to aid victims of terrorist attacks. This has mainly been done through the financing of a project dedicated to victim assistance. The EU is in the process of adopting legislation concerning compensation for harm suffered and the provision of material, psychological, medical and social assistance.[178] Council Directive 2004/80/EC relating to compensation to crime victims requires Member States to set up compensation schemes for victims of violent international crimes committed within their territories.

3g. Recent Trends in Co-Operation

In the last ten years, the EU has entered a phase of co-operation with third countries that is inclusive of concerns related to disaster assistance. These agreements demonstrate a willingness of the EU to share its disaster response capacity with those states less able to cope with the effects of disasters. The agreements tend to include form language related to co-operation in natural disasters. They demonstrate an awareness on the part of the EU of the importance of co-operation in the field of natural disasters. Although they seem specifically geared toward coming to the aid of their third country partners, the agreements provide for 'co-operation' and therefore contemplates assistance between all partners, including the EU Member States.

For example, the 2000 Partnership Agreement between the EC and its Member States and the African, Caribbean and Pacific (ACP) States includes Chapter 6, Humanitarian and Emergency Assistance, which pledges that assistance to the ACP population will be provided in situations "resulting from natural disaster, man-made crises such as wars and other conflicts or extraordinary circumstances having comparable effects".[179]

177. *These areas were: vaccine development, vaccine strategies, joint procurement, communication to the public and support to third countries.* **178.** *European Parliament, 'Protection of Victims of Crime', available at:* http://www.europarl.europa.eu/comparl/libe/elsj/zoom_in/17_en.htm. **179.** *Article 72.1.*

Chapter 4:
Other Sources of Norms

Chapter 4

Other Sources of Norms

Much of the relevant regional materials have been discussed in a 2007 study by the IFRC entitled 'Law and legal issues in international disaster response: a desk study'. Some will be repeated here, but this report attempts to uncover additional regional agreements relevant to the EU Member States in relation to response to disasters. As the reader will see below, aside from the Conventions listed, there are several European partnerships centred on disaster relief. Before detailing the relevant instruments, it is necessary to consider briefly the legal status of such instruments within the EC legal order.

4a. The Legal Status of Agreements in the EC Order

- The legitimacy of any international agreement made by the Member States is dependent upon whether the agreement was concluded before or after the entry into force of the TEC in 1958.
- Where there is a conflict between international agreements and primary EC law, primary EC law has priority unless the rights of a third country are affected.

i. Agreements with Third States

Article 351 Lisbon TFEU (ex Article 307 TEC) refers to international agreements of Member States with third countries prior to EU accession. It states that any rights and obligations arising from agreements with third countries entered into prior to 1958 (i.e. when the TEC entered into force and hence when the Member States became obligated under the EC legal order) will not be affected by the TEC. It then continues to read that Member States must take "all appropriate steps to eliminate the incompatibilities" and work together in the attempt to repair the incongruities.

ii. Agreements between Member States

There are established rules and jurisprudence regarding the matter of so-called 'inter-se' agreements between Member States. In general, the conclusion of inter-se agreements is permissible, even if they fall within the Community competence, as long as co-operation is compliant with Community law and does not impede EU co-operation or policy making.

Primary EC law (the Treaties, directives and regulations) has priority over conflicting national law, including international agreements, unless the rights of a third country are affected. However, the legal limit of Member State action in inter-se agreements is found in the duty of co-operation in Article 4 Lisbon TEU (ex Article 10 TEC). States may not use intergovernmental co-operation that they have established among themselves as an argument to impede the development of an EU policy.

Agreements concluded by a Member State following its accession to the EU must respect EC law.

4b. International Agreements

The 1970 *Recommendation of the Customs Co-operation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters* was partially integrated into specific annexes of the International Convention on the simplification and harmonization of Customs procedures (Kyoto Convention) of 1974 (and revised in 2000). Its provisions recommend that parties waive export and import conditions regarding relief consignments and are largely mirrored in Annexes B3 and J5. The Convention also takes into account the UN OCHA Model Customs Facilitation Agreement between the UN and a State or Government, which provides measures to expedite the import/export and transit of relief consignments, as well as the personal items of relief personnel.

The *UN Convention on the Privileges and Immunities of the United Nations* (1946) and the *Convention on the Privileges and Immunities of the Specialized Agencies* (1947) are an expansion of Articles 104 and 105 of the Charter of the United Nations that clarify the legal status, rights and privileges and immunities of UN personnel and specialized agencies such as the International Labour Organization or the International Monetary Fund. It is much like the privileges and immunities protocol of the TEC in that it determines the status of UN property, Member State representatives to the UN and UN officials, and sets out the rules applying to the UN Laissez-Passer.[180] One hundred fifty-seven states are party to the 1946 Convention, while 116 states are party to the Convention relating to Specialized Agencies.

The *Convention on the Safety of United Nations and Associated Personnel* (1994) and its *Optional Protocol* (2005) applies to UN operations: "(i) where the operation is for the purpose of maintaining or restoring international peace and security; or (ii) where the Security Council or the General Assembly has declared, for purposes of the Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation".[181] The Convention is narrowly focused and does not apply to other peacekeeping missions. Therefore, in 2005, the General Assembly adopted the Optional Protocol in order to expand the scope of the Convention to UN and associated personnel "delivering emergency humanitarian assistance or providing humanitarian, political or development assistance in peace building".[182] The Convention entered into force on 15 January 1999 and currently has 87 parties; the Protocol has 18 parties, but is not yet in force.

The *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations* (1999) establishes a framework for facilitating the use of telecommunications resources in the event of a disaster by requiring state parties to reduce or remove any barriers to bringing telecommunications equipment across borders during and after a disaster. It requires states, non-state entities and intergovernmental organisations to co-operate to facilitate the use of telecommunication resources for disaster mitigation and relief. It also includes provision for conferring the necessary privileges and immunities on disaster relief personnel. There are currently only 37 parties, including 25 EU Member States. It has been in force since 8 January 2005.

The *Convention on Temporary Admission (Istanbul Convention)* (1990) is a consolidation of several agreements relating to temporary admission. Annex A concerns temporary admission papers and replaces the A.T.A. Convention of 1961. Annex B.2 covers professional equipment, for example, transmission and communication equipment. Annex B.9 allows the free importation of goods imported for humanitarian purposes such as relief consignments and medical equipment, as

180. *The UN Laissez-Passer is a travel document issued by the United Nations to its staff which can be used like a national passport (in connection with travel on official missions for the United Nations only).* **181.** *Article 1(c).* **182.** *Article II.1.*

long as they are intended for re-export. Annex C covers temporary admission of means of transport. Annex D allows for the temporary admission of rescue animals. It has been in force since 27 November 1993. The Convention has 51 parties; the EC became a party in 1993.[183]

The *Convention on Early Notification of a Nuclear Accident* was adopted in 1986 following the Chernobyl nuclear plant accident. It establishes a notification system for nuclear accidents that are capable of having international transboundary effect and requires States to report the time, location and type of release in connection with the accident either directly to the affected States or through the International Atomic Energy Agency. The Convention has 105 parties; Euratom became a party to the Convention in 2005.[184] At the same time, the *Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency* was adopted under the auspices of the International Atomic Energy Agency and has been in force since 1986. This Convention establishes a framework for international co-operation to facilitate assistance and support in the event of a radiological or nuclear emergency. States have to notify the Agency of their available relief resources, such as experts and equipment, and decide whether it is capable of responding to any requests for assistance. The Agency functions as the co-ordinator between States in this regard. The Convention has 103 parties; Euratom acceded to this Convention in 2005.[185]

The 1992 *Convention on the Transboundary Effects of Industrial Accidents* entered into force on 19 April 2000 and has 37 parties, including the EC.[186] It operates under the framework of the UN Economic Commission for Europe. The Convention applies to all industrial accidents capable of having transboundary effects, including accidents caused by natural disasters, except:

- nuclear accidents or radiological emergencies;
- accidents at military installations;
- dam failures;
- land-based transport accidents;
- accidental release of genetically-modified organisms; and
- accidents caused by activities in the marine environment.

The Convention operates against a framework of co-operation and information exchange. It obliges the Contracting Parties to identify hazardous activities within their jurisdiction and to inform any affected parties as to their intention to conduct such activities. The Parties are also required to establish a system of notification and to designate a single point of contact to receive and send notifications.

The 1968 *Vienna Convention on Road Traffic* replaced the 1949 Geneva Convention on Road Traffic and is aimed at facilitating international road traffic and increasing road safety. It provides that Contracting Parties must recognise the legality of vehicles from other signatory countries and imposes obligations on signatories regarding the display of vehicle registration numbers. The Convention entered into force on 21 May 1977. It currently has 68 parties, including 24 EU Member States. The Convention has been supplemented by the *European Agreement Supplementing the Convention on Road Traffic*, adopted on 1 May 1971 and entering into force on 7 June 1979. This later agreement has 33 parties, including 22 EU Member States.

183. *Council Decision 93/329/EEC concerning the conclusion of the Convention on Temporary Admission and accepting its annexes.* **184.** *Decision 2005/844/Euratom concerning the accession of the European Atomic Energy Community to the Convention on Early Notification of a Nuclear Accident.* **185.** *Council Decision 2005/845/Euratom concerning the accession of the European Atomic Energy Community to the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency* **186.** *Council Decision 98/685/EC concerning the conclusion of the Convention on the Transbounary Effects of Industrial Accidents.*

Regarding medicines, three UN Conventions are relevant. The *Single Convention on Narcotic Drugs* (1961) and the *Convention on Psychotropic Substances* (1971) are aimed at creating an international system for the control and monitoring of the production of narcotic drugs and psychotropic substances. Together, the Conventions prohibit any use or possession of scheduled substances and call on States Parties to the conventions to criminalize these and related offences. Both Conventions include an exception for use of the substances when exclusively intended for medical purposes.[187] The 1961 Convention entered into force on 8 August 1975 and currently has 153 parties, including 24 EU Member States.[188] The 1971 Convention entered into force on 16 August 1976 and has 183 parties, including all the EU Member States, but not the EC itself.

The *UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* requires States Parties to criminalize certain acts relating to the actions prohibited under the 1961 and 1971 UN Conventions. Although the 1988 Convention does not cite medical purposes as an explicit exception, because such usage is permissible under the earlier conventions, such use is also possible under the 1988 Convention. The 1988 Convention entered into force on 11 November 1990 and currently has 184 parties, including the EC itself.[189]

4c. Regional Agreements

The *EUR-OPA Major Hazards Agreement* (Partial Agreement on the Prevention of, Protection Against, and Organization of Relief in Major Natural and Technological Disasters) was drafted by the Council of Europe in 1987 so as to establish a forum for co-operation between Eastern Europe, Western Europe and the Southern Mediterranean region. Its main objective is to "make a multidisciplinary study of the co-operation methods for the prevention of, protection against, and organisation of relief in major and technological disasters". The Agreement is a so-called 'partial' agreement and is therefore not a formal international treaty, but rather a method of cooperation within the Council of Europe. It has a unilateral accession mechanism. To date, it has 25 members and the European Commission has 'participant' status.[190]

The *European Convention on Establishment* was drafted by the Council of Europe states in 1955 and entered into force on 23 February 1965. The Convention guarantees several benefits to nationals of the Contracting Parties such as facilitated entry for temporary visits and free travel, equal treatment with respect to the possession and exercise of private rights, the right to engage in gainful employment and legal and judicial protection. The Convention has been signed by 12 EU Member States and ratified by ten.

The *European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations* (1986) has been in force since 1 January 1991 and appears to be the sole international instrument pertaining to the recognition of foreign NGOs; however, it only has 11 ratifications. It provides a method for the recognition of "associations, foundations and other private institutions" satisfying certain conditions via production of the NGO's memorandum and articles of association.

187. *art 4.c, 1961 Convention; art 5.2, 1971 Convention.* **188.** *Estonia, Malta and Slovenia are neither signatories nor parties to the Convention.* **189.** *Council Decision 90/611/EEC concerning the conclusion, on behalf of the European Economic Community, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.* **190.** *A list of acceding states is available at:* http://conventions.coe.int/Treaty/Commun/ListeTableauAP.asp?AP=6&CM=&DF=&CL=ENG. .

In 1996, under a programme entitled the Central European Initiative, the governments of Austria, Croatia, Hungary, Italy, Poland and Slovenia concluded the *Cooperation Agreement on the Forecast, Prevention and Mitigation of Natural and Technological Disasters* via the Central European Initiative.[191] Co-operation under the agreement is based on the exchange of scientific and technical information, common research programmes and expert training with a view toward setting up common programmes on Civil Protection and Disaster Management.[192] The agreement entered into force on 1 August 1994.

The *EU Euro-Med Civil Protection Bridge* is a programme established by the EU. The first phase of the programme took place from 2003 to 2008 and sought to strengthen the civil protection capacities in the Mediterranean region through information and expert exchange and the provision of technical assistance in the context of prevention, risk reduction and response capacity. A new programme has been funded by the EU from 2008 to 2011 which focuses more specifically on prevention issues.[193] Other similar programmes under the umbrella of the EU include The Northern Dimension and the Council of the Baltic Sea States. *The Northern Dimension*[194] was established in 1999 and includes an Environmental Partnership which seeks to strengthen the dialogue between the EU, Norway, Iceland and the Russian Federation. The Environmental Partnership focuses on nuclear safety and natural resources. *The Council of the Baltic Sea States* was established in 1992 and consists of the 11 states of the Baltic Sea region as well as the European Commission and was formed with the overarching purpose of regional inter-governmental co-operation.[195] It has experienced success in fields such as nuclear safety and the facilitation of cross-border co-operation. *The Barents Euro-Arctic Council* involving Norway, Finland, Russia and Sweden is similar.[196]

EU Member States Bulgaria, Greece and Romania are, together with Albania, Armenia, Azerbaijan, Georgia, Ukraine, Russia and Moldova, parties to the *Agreement of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Manmade Disasters*, concluded in 1998.[197] The agreement enables the passage of assistance across the territory of the states parties and establishes bodies and focal points for notification and co-ordination of assistance in case of emergencies. Furthermore, the agreement provides for free medical assistance, food and accommodation for the assisting party as well as simplified border crossing procedures. It refers to quarantine rules for search dog teams and exempts equipment and goods of assistance from customs duties, taxes and fees. Finally, it exempts emergency operations aircraft from royalties for landing, parking and taking off. There are also provisions regarding the bearing of costs, the waiving of damage claims and the protection of personal data.

In 2005, seven EU Member States signed the *Convention on the Stepping Up of Cross-Border Cooperation, Particularly in Combating Terrorism, Cross-Border Crime and Illegal Migration, or the 'Prüm Treaty'*.[198] The Prüm Treaty is focused on mutual exchange of law enforcement information such as DNA profiles, fingerprint data, vehicle registration data and other bits of personal data. Most relevant to this study is Article 26, which provides for co-operation in connection to major events, disasters and serious accidents. It provides for prompt notification of any serious event,

191. *Information on the Initiative is available at: http://www.ceinet.org/.* **192.** *Article 1.* **193.** *More information on the Euro-Med Bridge is available at:* http://www.euromedinfo.eu/site.313.content.en.html. **194.** *More information on the Northern Dimension Environmental Partnership is available at:* http://www.ndep.org/home.asp. **195.** *More information on the Council of the Baltic Sea States is available at:* http://www.cbss.org/. **196.** *More information on the Barents Euro-Arctic Council is available at:* http://www.beac.st/contentparser.asp?deptid=25225. **197.** *Available at:* http://www.ifrc.org/Docs/idrl/I260EN.pdf, *last visited 17 August 2009.* **198.** *One year later, the Administrative and Technical implementing Agreement to the Prüm Convention was signed in order to make operative certain technical matters of the Treaty. The text has not been published.*

co-ordination of police measures, and the dispatch of assisting officers, specialists, advisers and equipment if an affected State requests such assistance. In 2008, the EU adopted Council Decision 2008/615/JHA[199] recognizing the substantive provisions of the Prüm Treaty and incorporating them into the legal framework of the EU thereby making them applicable to the Member States.

4d. Bilateral Agreements between Member States

There is a multitude of bilateral agreements on mutual disaster relief assistance in Europe. In this Report, a broad overview of the treaties that were publicly available and accessible to the researchers will be presented. A more detailed examination of bilateral agreements between Member States will be presented in the individual national reports.

From 27 EU Member States, 23 were found to be parties to at least one bilateral or multilateral agreement on mutual assistance in civil protection or disaster and accident operations on EU territory. Exceptions are Cyprus, Malta[200] Ireland and the United Kingdom. The post Cold War era has resulted in several bilateral disaster relief agreements in Central and Eastern Europe. Austria, Belgium, France and Germany have concluded agreements with all their European neighbours.

The research covered 33 bilateral agreements concluded between 1973 and 2002.[201] The instruments range from rather vague general declarations on good neighbourly relations, training and data exchange, to detailed treaties regulating the crossing of common borders of personnel and material, data protection, exemption of taxes and customs duties and the repatriation of evacuees. Most of them regulate the compensation of costs as well as death, injury and damage claims.[202]

With a view to Part V of the IDRL Guidelines, the following observations can be made:

i. Personnel

The rules are inconsistent. Some agreements waive visa, residence and work permit requirements completely for disaster relief operation personnel. Others do not regulate the area at all or are less specific, referring to quick and minimal formalities or granting free access to emergency sites. Team members and team leaders are usually required to present a piece of identity or a certificate (permission) issued by the requesting state. In only one case does the agreement refer directly to the Schengen *acquis*.

ii. Goods and Equipment

Most agreements provide for the facilitation of entry and exit of goods and equipment in general terms, reducing frontier crossing formalities to the absolute minimum. Some waive import/export/transit documents and others expressly exempt equipment from all duties, tariffs and charges. In most cases, a list of materials has to be shown to the border authorities. The rules are rather heterogeneous; 13 out of 33 agreements found do not regulate the subject matter at all.

199. *Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.* **200.** *Cyprus and Malta are part of the Co-operation group for the Prevention of, Protection Against, and Organisatin of Relief in Major Natural and Technological Disasters of the European Council (status as of 24 June 2009, see* www.conventions.coe.int*; see also Council of Europe Resolution (87)2 as of 20 March 1987.* **201.** *See Annex III for a complete table of these bilateral agreements. No agreements have been concluded past 2002.* **202.** *Bochum University for the IFRC, 'A Preliminary Overview and Analysis of Existing Treaty Law: Summary of the report conducted by Professor Horst Fischer', January 2003, available at:* http://www.ifrc.org/docs/pubs/disasters/idrl_lawtreaty.pdf.

iii. Special Goods and Equipment

In several cases, agreements exempt narcotic drugs and/or psychotropic substances from national legislation regarding import and export and use of such substances. Telecommunication, licenses, the approval of medication, labelling etc. are generally not regulated to the extent recommended by the Guidelines.

iv. Transport (speedy passage of land, marine and air vehicles)

In most agreements, there are explicit provisions regulating the use of airspace, over flight and landing rights as well as the free-of-charge use of airfields and airports, and, in one case, the exemption of motorway and tunnel fees. More recent agreements waive vehicle permits or mandatory insurance required in a Member State. Seventeen agreements do not regulate the subject matter at all.

v. Temporary domestic legal status and Taxation (VAT)

These areas are left unregulated by all agreements.

vi. Security

In some agreements, the requesting state grants the provision of food, temporary accommodation and medical treatment for the emergency personnel of the assisting state.

vii. Extended Hours

No agreement contains regulations regarding this issue.

viii. Costs

Twenty out of 33 agreements contain provisions regarding the allocation of costs caused by the disaster relief operations. Costs are sometimes borne by the requesting state, sometimes by the assisting state. In most agreements, the parties mutually waive claims for damages caused during the performance of the operations.

4e. Bilateral Agreements with Third States

i. United States

In 1990 the EU and the United States signed the Transatlantic Declaration on EC-US Relations that provides a framework for co-operation through regular presidential summits. While this agreement does not envision co-operation in the field of disaster response, the Community CPM was activated in the United States after Hurricane Katrina and representatives from the MIC have met with the US Federal Emergency Management Agency on a number of occasions.

203. *The Road Maps are available at:* http://ec.europa.eu/external_relations/russia/common_spaces/index_en.htm.

ii. Russia

In 2005 the EU and Russia entered into package agreement of so-called 'roadmaps',[203] which established and implemented four common spaces: economics; freedom, security and justice; research and education; and external security. Civil protection co-operation with Russia falls under the common space of external security. The Road Map for the Common Space of External Security cites "strengthened dialogue and co-operation on the international scene" as one of its objectives alongside "co-operation in civil protection".[204] The Road Map states that the object is to "strengthen EU-Russia dialogue and co-operation to promote common ability to respond to disaster and emergencies, including in specific crisis management situations" through the exchange of expert information, co-ordination of capabilities, continued discussion on concrete areas of co-operation such as civil protection and assistance in response to natural disasters, sharing of lessons learned from terrorist attacks, and the facilitation of mutual assistance in search and rescue operations.[205]

iii. Ukraine

The EU and the Ukraine have explicitly endeavoured to co-operate closely in the sphere of civil protection. The MIC and the Ministry of Ukraine of Emergencies and Affairs of Popular Protection have concluded an administrative agreement providing for information exchange during emergencies, including of operational contact details, and for joint communication exercises.[206]

iv. Former Yugoslav Republic of Macedonia

The participation of the Former Yugoslav Republic of Macedonia in the Community Mechanism will be possible once a Memorandum of Understanding is signed. This is expected by the end of 2009.

v. Canada, Iceland, Norway, Turkey

Through its common foreign and security policy, the EU has, based on Article 37 Lisbon TEU (ex Article 24 TEU), concluded agreements with Canada, Iceland, Norway, Turkey and Romania (before its accession), establishing a framework for the participation of these countries in EU civilian crisis management operations. Those operations can also include civil protection. However, these agreements regulate the participation of third countries in operations outside the EU territory. They do not provide for any mutual assistance of the contracting parties in disaster relief operations within the EU.

In addition to the above bilateral agreements with third states, it should be noted that the Member States themselves have entered into bilateral agreements with third states in the context of disaster assistance. Details of these agreements are discussed in the reports of the national Red Cross Societies.

It should be recalled that the legitimacy of any international agreement the Member States make outside the context of the EU is generally dependent upon whether the agreement was concluded

204. *Road Map pp 40, 44.* **205.** *ibid.* **206.** *At the time of writing, the text of this agreement could not be located; however, information about the EU-Ukraine co-operation is available at:* http://ec.europa.eu/europeaid/where/neighbourhood/country-cooperation/ukraine/ukraine_en.htm *and a discussion of the signing can be found in the 2009 Progress Report Ukraine published by the Commission on 23/04/09. As it has the status of an 'administrative' agreement; it is unclear whether the text is available to the public.*

before or after the entry into force of the TEC in 1958. Where the agreement was concluded prior to 1958 and is with a third country, the agreement will not be affected by the Lisbon Treaty. Agreements between Member States are permissible as long as: (1) the agreement is compliant with existing Community law, and (2) the agreement does not impede EU co-operation or policy making.

Furthermore, where there is a conflict between international agreements and primary EC law (e.g., the Treaties, directives and regulations), primary EC law has priority unless the rights of a third country are affected VI.

Analysis of Law in the European Union
pertaining to Cross-Border Disaster Relief

Chapter 5: Conclusion

Chapter 5

Conclusion

This report has demonstrated the ways in which EU legislation relates to the subject matter of the IDRL Guidelines. The fact that the European Community is founded on the idea of a common market with free movement of goods, services, persons and capital means that people and items originating from EU Member States can freely travel across EU territory without being subject to the constraints that apply in the case of third country nationals. Furthermore, as discussed in Part II.d, EU legislation discussed in this report could be binding on private actors, such as National Red Cross Societies or non-governmental organisations, if their operations concern the subject matter touched upon by the legislation. It may also create rights that may be asserted by private individuals or bodies against the State or individuals.

In several areas, EU law corresponds, at least partially, to the proposed principles in the Guidelines:

- The EU CPM and the MIC provide a framework for co-operation that includes mechanisms for prevention, notification and response that correspond to Parts II and III of the Guidelines calling for early warning procedures and procedures for the initiation and termination of relief and notification (Part III.a infra).
- Section 16 of the IDRL Guidelines concerning expedited or free visa and work permit procedures is not relevant for EU citizens under the general provisions for free movement of persons and workers. EU legislation allows Member States to exempt relief personnel from non-EU Member States from the visa requirement in the event of a disaster or accident (Part III.b.i infra).
- The overall framework for free movement of people under the TEC allows EU citizens to reside in any EU Member State with the same private rights available to the nationals of that state. This is similar to the way that Section 20 of the IDRL Guidelines envisions that Affected States should allow assisting organisations and their actors temporary domestic legal status (Part III.b.ii infra).
- EU legislation provides for the recognition of professional qualifications for several professions, including doctors, architects and engineers, who have obtained their qualifications in other EU Member States, and in some cases, from outside the EU. It also requires that Member States permit the temporary provision of services (regulated under the relevant EU legislation) by a person established in another Member State. However, the procedures applicable to such recognition are can be time-consuming without exception for emergency situations. Section 16 of the IDRL Guidelines is aimed at this type of measure (Part III.b.ii infra).
- Customs and VAT legislation at the EC level goes some way to satisfy the standards in sections 17, 18 and 21 of the Guidelines relating to exemption from customs duties and VAT of goods coming from both within and outside of the EU that are intended for relief and those goods intended to meet the needs of disaster relief agencies during their activity in the affected state. Certain other goods are also exempt, including medical, surgical and laboratory equipment that is intended for temporary import into the EU customs territory (Part III.b.iii infra).
- Section 17 of the IDRL Guidelines contemplates the exemption from or simplification of customs and taxation procedures applicable to goods, including food. EU food law is concerned primarily with food quality standards for purposes of marketing and sale to consumers that are applicable to any food items produced within or entering the EU from

third countries. However, under customs and taxation rules, food is considered a 'good' that would receive favourable treatment if shipped as disaster relief aid (Part III.b.iv infra).

- Section 17 of the IDRL Guidelines also considers rules relating to the importation of medicines. Like food law, EU pharmaceuticals law imposes obligations relating to manufacture and quality that must be ensured in products manufactured inside and outside of the EU. Under customs and taxation rules, pharmaceuticals would be treated as a 'good' for customs relief purposes if intended as aid in a disaster situation (Part III.b.v infra).
- Section 17 of the IDRL Guidelines may also apply to the importation of certain controlled substances to aid in disaster relief. The EU has limited competence to legislate in the area of controlled substances; competence is mostly left to the Member States who are members of the three UN Conventions on drugs, psychotropic substances and illegal trafficking in narcotics. These Conventions allow an exception to the prohibition of use of certain controlled substances for medical purposes, which would be applicable in times of disaster (Part III.b.v and Part IV.b infra).
- EU legislation concerning the entry into EU territory of animals from within the EU goes some way to fulfilling the aim of Section 18 of the IDRL Guidelines relating to the importation of special goods by providing a mechanism for the free circulation of pet animals (e.g. sniffer dogs) in the Community without lengthy border controls. Although there is no specific regime applicable to sniffer dogs, if the dogs satisfy the requirements of the pets regulation and are 'Community' animals, they can move freely between the Member States (Part III.b.vi infra).
- Speedy passage of land, marine and air vehicles is the subject of Section 19 of the IDRL Guidelines and is met to some extent by the EU's common transport policy. Air, land and sea vehicles registered within the Community are allowed access to the EU territory based on principles of mutual recognition and non-discrimination. There is also some discussion of the availability of emergency measures in relation to air transport and exemptions from authorisation procedures for the carriage of disaster relief materials by road (Part III.b.vii infra).
- Section 18 of the IDRL Guidelines discusses reduced barriers to access to telecommunications and information technology. EC legislation regulating electronic communications provides a framework for access and authorisation that is aimed at strengthening competition through the Union in this sector. The EC Authorisation Directive makes provision for conditional authorisation to ensure communication between emergency services and authorities during times of disaster (Part III.b.viii).
- Section 23 of the IDRL Guidelines relating to extended hours is partially satisfied in this regard by EC legislation on working time that allows for discretionary derogations from the maximum working week time for essential services (Part III.b.x infra).

Considering the above, it is clear that EU legislation as it currently stands, already meets the objectives of the IDRL Guidelines in many respects. However, there are several gaps, specifically in relation to people and things originating from non-EU Member States. While some of the legislation above considers this issue (i.e., customs and VAT rules and some legislation regarding entry visas) most legislation either does not provide for expedited procedures in the event of a disaster, or does not mention the case of disaster at all. Moreover, there does not appear to be any legislation relevant to the following areas in the event of a disaster:

- Importation of medicines in disaster situations by methods other than road carriage;
- Safety and security of disaster relief personnel and organisations;
- Temporary recognition of foreign registration plates;

- Extended hours provisions expressly related to disaster scenarios;
- Provisions regarding criteria for assisting humanitarian organisations seeking eligibility for legal facilities;
- Provisions under the air, rail and sea transport policy regarding expedited or exempted authorisation procedures and provisions relating to access by third country operators;
- Exemptions relating to the amount of cash individuals can bring into the EU in times of public emergency or disaster;
- Expedited procedures or exemptions relating to sniffer dogs coming from third countries and seeking entry into the EU; and
- Provisions relating to the IDRL Guidelines quality standards.

However, one must consider the character of the IDRL Guidelines. The Guidelines include provisions affecting several areas of law, from general civil protection and transport, to customs and immigration law. As discussed in the introduction to this Report, EU competence to legislate in each of these areas differs, as do the legal bases and associated decision-making procedures. While several of the considerations of the IDRL Guidelines were found in various EU legislative policies, they were spread across several documents and areas of competence. There is not one unified document under EU law that provides for all of the measures contained in the IDRL Guidelines. While the CPM provides a general framework for co-operation, it does not include any of the operational rules that necessarily come into play during a relief operation. This is because such rules are beyond the scope of the Mechanism and fall into other areas of EC competence. It should also be recalled that EU legislation comprises an entire legal system encompassing many areas of law, each developing at a different pace according to the applicable competencies. Even within specific areas, such as the internal market, competence to act and the legal basis for action may differ so that some areas have become more advanced than others and consist of higher levels of regulation by the EU.

These factors partly explain the lack of integration of disaster considerations into all the areas of law where action as been taken. Aside from the basic CPM legislation, all of the operational legislation discussed in this Report has been primarily aimed at other objectives, most notably the functioning of the internal market and freedom of movement. It is not drafted with the issues associated with disaster response in mind. Therefore, disaster relief considerations are not integrated into all areas of Community policy in the way that environmental protection requirements have been integrated under Article 6 TEC. Consequently, provisions relevant to international assistance in disaster have been scattered among various pieces of legislation obviously relevant to disaster, such as customs law and immigration rules, but often omitted from other legislation that is still applicable to disasters requiring international assistance, such as rules on animal quarantine or rules concerning goods or people coming from non-EU Member States. Even where provisions of the IDRL Guidelines are covered by EC legislation, they most often do not specifically relate to disaster scenarios or make it clear that there should be exceptions or expedited procedures in case of disaster.

Annex I

Consulted Parties

The following people were consulted in connection with this Study:

1. Mr Hans Das, Deputy Head of Unit, Civil Protection, DG Environment, European Commission
2. Ms Esmé Dobson, Civil Protection, DG Environment, European Commission
3. Mr Tim Gordon, UK CSDR/RGR/TOR Policy Advisor, HMRC Customs & International Directorate
4. Professor Margot Horspool, Professorial Fellow, British Institute of International and Comparative Law
5. Ms Hélène Klein, DG Health and Consumers, European Commission
6. Mr Günther Ettl, DG Energy and Transport, European Commission
7. Mr Brendan Hughes, European Legal Database on Drugs, European Monitoring Centre for Drugs and Drug Addiction
8. European Food and Veterinary Office, DG Health and Consumers, European Commission

Additionally, the report was reviewed and commented on by:

1. Mr Hans Das, Deputy Head of Unit, Civil Protection, DG Environment, European Commission
2. Ms Esmé Dobson, Civil Protection, DG Environment, European Commission

Annex II

Table of Legislation

Title	Relevant Body	Legal Force
Entry into EU Territory		
Council Regulation 539/2001/EC listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement	European Community	In force
Convention on Temporary Admission (Istanbul Convention)	UN Office for the Coordination of Humanitarian Affairs (OCHA)	In force since 27 November 1993
Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.	European Union	In force
Workers and Professional Qualifications		
Regulation 1612/68/EEC of the Council on freedom of movement for workers within the Community	Regulation 1612/68/EEC of the Council on freedom of movement for workers within the Community	Regulation 1612/68/EEC of the Council on freedom of movement for workers within the Community
Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications	Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications	Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications
Customs		
Council Regulation 918/83/EEC setting up a Community system of reliefs from customs duty	European (Economic) Community	In force
Commission Regulation 2454/93/EEC laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code	European (Economic) Community	In force

Title	Relevant Body	Legal Force
Council Directive 83/181/EEC determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods`	European (Economic) Community	In force
Council Directive 2006/112/EC on the common system of value added tax	European Community	In force
Council Regulation 150/2003/EC suspending import duties on certain weapons and military equipment	European Community	In force
Recommendation of the Customs Co-operation Council to Expedite the Forwarding of Relief Consignments in the Event of Disasters	Customs Co-operation Council	It is not binding; however, it has been partially integrated into the Kyoto Convention of 1974 (and its revised version of 2000).
Convention on Temporary Admission (Istanbul Convention)	UN Office for the Coordination of Humanitarian Affairs (OCHA)	In force since 27 November 1993
Food		
Regulation 178/2002/EC laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety	European Community	In force
Regulation 852/2004/EC on the hygiene of foodstuffs	European Community	In force
Regulation 853/2004/EC laying down specific hygiene rules on the hygiene of foodstuffs	European Community	In force
Regulation 854/2004/EC laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption	European Community	In force
Regulation 882/2004/EC on the procedures applicable to Member State official controls to ensure the verification of compliance with food and feed law, and animal health and welfare rules	European Community	In force
Directive 97/78/EC	European Community	In force
Directive 2002/99/EC on the prevention of the introduction of animal diseases into the EU	European Community	In force
Directive 93/119/EC which on protection requirements at the time of slaughter	European Community	In force

Title	Relevant Body	Legal Force
Medicines		
Directive 2001/83/EC on the Community code relating to medicinal products for human use	European Community	In force
Directive 2003/94/EC laying down the principles and guidelines of good manufacturing practice in respect of medicinal products for human use and investigational medicinal products for human use	European Community	In force
Regulation 726/2004/EC establishes a centralised Community authorisation procedure	European Community	In force
Council Decision 2005/387/JHA on the information exchange, risk-assessment and control of new psychoactive substances	European Union	In force
Council Joint Action 96/750/JHA adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking	European Union	In force
Council Joint Action 96/698/JHA on cooperation between customs authorities and business organisations in combating drug trafficking	European Union	In force
Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking	European Union	In force
Regulation 111/2005/EC laying down rules for the monitoring of trade in drug precursors between the Community and third countries	European Community	In force
Regulation 273/2004/EC on drug precursors	European Community	In force
Commission Regulation (EC) No 1277/2005 of 27 July 2005 laying down implementing rules for Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and for Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors Text with EEA relevance	European Community	In force
Single Convention on Narcotic Drugs (1961)	United Nations	In force since 8 August 1975
Convention on Psychotropic Substances (1971)	United Nations	In force since 16 August 1976
Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	United Nations	In force since 11 November 1990

Title	Relevant Body	Legal Force
Animals		
Regulation 998/2003/EC of the European Parliament and of the Council on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC	European Community	In force
Commission Decision 2003/803/EC establishing a model passport for the intra-Community movements of dogs, cats and ferrets	European Community	In force
Council Directive 91/496/EEC laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC	European (Economic) Community	Entry into force varies according to article (see Article 30)
Council Decision 2004/203/EC establishing a model health certificate for non-commercial movements from third countries of dogs, cats and ferrets	European Community	In force
Transport		
Council Regulation 2411/98/EC on the recognition in intra-Community traffic of the distinguishing sign of the Member State in which motor vehicles and their trailers are registered	European Community	In force
1968 Vienna Convention on Road Traffic	United Nations	In force since 21 May 1977
1971 European Agreement Supplementing the Convention on Road Traffic	United Nations	In force since 7 June 1979
Directive 91/439/EEC on driving licenses	European Community	In force
Directive 2006/126/EC on driving licenses (Recast)	European Community	Partially in force since 19 January 2009; fully in force in 2013.
Regulation 881/92/EC on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States	European Community	In force
Regulation 3118/93/EEC laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State	European Community	In force

Title	Relevant Body	Legal Force
Council Directive 96/26/EC on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations	European Community	In force
Regulation 1008/2008/EC establishing common rules for the operation of air services in the Community (Recast)	European Community	In force
Council Directive 91/670/EEC on the mutual acceptance of licences for persons working in civil aviation	European Community	In force
Regulation 216/2008/EC on common rules in the field of civil aviation and establishing a European Aviation Safety Agency	European Community	In force
Council Directive 95/18/EC on the licensing of railway undertakings	European Community	In force
Council Directive 2001/13/EC amending Council Directive 95/18/EC on the licensing of railway undertakings	European Community	In force
Council Directive 2007/59/EC on the certification of train drivers operating locomotives and trains on the railway system in the Community	European Community	In force
Council Directive 87/540/EEC on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation	European Community	In force
Council Regulation 3921/91/EEC laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State	European Economic Community	In force
Council Regulation 1356/96/EC on common rules applicable to the transport of goods or passengers by inland waterway between Member States with a view to establishing freedom to provide such transport services	European Community	In force
Telecommunications		
Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigation and Relief Operations	UN OCHA	In force since 8 January 2005
Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive)	European Community	In force
Directive 2002/20/EC on the authorisation of electronic communications networks and services (Authorisation Directive)	European Community	In force

Title	Relevant Body	Legal Force
Currency		
Directive 88/361/EEC for the implementation of Article 67 of the Treaty	European Community	In force
Agreement of 16 March 2006 between the European Central Bank (ECB) and the national central banks (NCBs) of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union (EMU)	Multilateral	In force
Regulation 1889/2005/EC on controls of cash entering or leaving the Community	European Community	In force
Extended Hours		
Directive 2003/88/EC concerning certain aspects of the organisation of working time	European Community	In force
Public Procurement		
Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts	European Community	In force
Privileges and Immunities		
Protocol (No 36) on the privileges and immunities of the European Communities (1965)	European Community	In force
Convention on the Privileges and Immunities of the United Nations	United Nations	In force; 157 parties currently
Convention on the Privileges and Immunities of the Specialized Agencies	United Nations	In force; 116 parties currently
Nuclear Safety		
Council Decision 87/600/Euratom on Community arrangements for the early exchange of information in the event of a radiological emergency	Euratom	In force
Directive 89/618/Euratom on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency	Euratom	In force
Convention on Early Notification of a Nuclear Accident	International Atomic Energy Agency	In force since 1986
Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency	International Atomic Energy Agency	In force since 1986

Title	Relevant Body	Legal Force
Marine Pollution		
The Convention of 1974 and 1992 on the protection of the marine environment of the Baltic Sea area (Helsinki Convention)	Governing Body: Helsinki Baltic Marine Environment Protection Commission	In force between Denmark, Estonia, European Community, Finland, Germany, Latvia, Lithuania, Poland, Russia, Sweden and the European Economic Community
The Convention of 1976 for the protection of the Mediterranean Sea against pollution (Barcelona Convention)	UN Environmental Programme	16 Mediterranean countries and the EC – can't find specifications!
The Agreement of 1983 for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (Bonn Agreement)		In force between Belgium, Denmark, France, Germany, the Netherlands, Norway, Sweden, the United Kingdom and the European Economic Community
The cooperation Agreement signed in 1990 for the protection of the coasts and waters of the North-East Atlantic against pollution (Lisbon Agreement)	Regional	Not yet in force
Decision 2850/2000/EC setting up a Community framework for cooperation n the field of accidental or deliberate marine pollution	European Community	No longer in force as of 31 December 2006
Regulation 1406/2002/EC establishing a European Maritime Safety Agency	European Community	
Pandemic Influenza		
Regulation 851/2004 establishing a European Centre for disease prevention and control	European Community	In force
Decision 2119/98/EC setting up a network for the epidemiological surveillance and control of communicable diseases in the Community	European Community	In force
WHO global influenza preparedness plan: The role of WHO and recommendations for national measures before and during pandemics	World Health Organisation	Non-binding Guidelines

Title	Relevant Body	Legal Force
Victims of Terrorism		
Convention on the Stepping Up of Cross-Border Cooperation, Particularly in Combating Terrorism, Cross-Border Crime and Illegal Migration ('Prüm Treaty')	Regional EU Agreement	In force since 2005
Council Directive 2004/80/EC relating to compensation to crime victims	European Union	In force
Industrial Accidents		
1992 Convention on the Transboundary Effects of Industrial Accidents	UN Economic Commission for Europe	In force since 19 April 2000
Council Decision 98/685/EC concerning the conclusion of the Convention on the Transbounary Effects of Industrial Accidents	European Community	In force
NGOs		
European Convention on the Recognition of Legal Personality of International Non-Governmental Organizations	Council of Europe	In force since 1 January 1991
General Co-operation		
EUR-OPA Major Hazards Agreement (Partial Agreement on the Prevention of, Protection Against, and Organization of Relief in Major Natural and Technological Disasters)	Council of Europe	Set up in 1987 and includes a unilateral accession mechanism; currently 25 members
Cooperation Agreement on the Forecast, Prevention and Mitigation of Natural and Technological Disasters	Central European Initiative	In force between the governments of Austria, Croatia, Hungary, Italy, Poland and Slovenia since 1996
Euro-Med Civil Protection Bridge	European Union	This is a programme, rather than an agreement, aimed at strengthening civil protection capacities in the Mediterranean region; originally launched in 2003 and currently in a programme scheduled to last until 2011

Title	Relevant Body	Legal Force
Northern Dimension	European Union	Environmental programme seeking to strengthen the dialogue between the EU, Norway, Iceland and the Russian Federation (1999)
Council of the Baltic Sea States	European Union	Over-arching purpose is regional inter-governmental co-operation; members are the European Commission and the 11 Baltic Sea states; since 1992
Barents Euro-Arctic Council	European Union	Similar programme involving Norway, Finland, Russia and Sweden (1993)

Annex 3

Bilateral Agreements between EU Member States

Bilateral Agreement	EU-States	Signed	UNTS	e.p. personnel	e.p. goods and equipment	e.p. special goods	Speedy transport	temp. domestic legal status	Tax/VAT ex.	Costs borne/ waiver of damages
Treaty on mutual assistance in the event of disasters or serious accidents	Austria, Czech Republic	12/14/1998	37267	waives visas and work permits	facilitation of entry and exit/ list required	narcotics and psychotropic substances	granted, also aircraft		exemption from duties, taxes, charges	req. state/ waiver of damages
Agreement concerning mutual assistance in the event of disasters or serious accidents	Austria, Germany	11/19/1992	29224	waives visas, residence and work permits	no prohibition or restriction/ certificate required	narcotic drugs	granted, also aircraft		exemption from duties, taxes, charges	assisting state/ waiver of damages
Agreement on mutual assistance in the event of disasters or serious accidents	Austria, Hungary	12/14/1998		waives visas, residence and work permits	no prohibition or restriction/ list required	narcotics and psychotropic substances, telecom. systems	granted, also aircraft		exemp from duties, taxes, charges	assisting state/ waiver of damages
Agreement on the facilitation of air ambulance flights in frontier regions for urgent transport of injured or serious ill persons	Austria, Italy	2/21/1989	28267	no travel documents required	exempt from all duties (incl. fuel)	no customs documents req. for aircraft, fuel, medical equipment				assisting state/ waiver of damages
Treaty concerning cooperation and mutual assistance in the event of disasters	Austria, Slovak Republic	6/11/1997	35260	waives visas, residence and work permits	facilitation of entry and exit/ list required	narcotics and psychotropic substances, telecom. systems	granted, also aircraft		exemption from duties, taxes, charges	assisting state/ waiver of damages
Abkommen ueber die gegenseitige Hilfeleistungen bei Katastrophen oder schweren Ungluecksfaellen	Austria, Slovenia	6/28/1996		no information available	no information available	no information available	no information available	not av.	no information available	no info

Bilateral Agreement	EU-States	Signed	UNTS	e.p. personnel	e.p. goods and equipment	e.p. special goods	Speedy transport	temp. domestic legal status	Tax/VAT ex.	Costs borne/ waiver of damages
Agreement on collaboration within the field of emergency prevention, preparedness and response	Estonia, Sweden	1/30/2002	39278	minimises entry/exit formalities, charges and duties						requesting state/ liability of req. state for damages
Agreement on co-operation and mutual assistance in cases of accidents	Finland, Estonia	6/26/1995	33393	quick and uncomplicated formalities guaranteed	exempt from all duties, taxes, other payments					requesting state/ mutual waiver of damage claims
Agreement on Cooperation in maritime and aeronautical rescue services	Finland, Sweden	11/17/1993	31064							every state bears own expenses
Convention on mutual assistance in the event of disasters or serious accidents	France, Belgium	4/21/1981	24347	limits formalities involved in border crossing, no travel doc.no res.permit	temporary admission, no import taxes	narcotic drugs				requesting state, ass. State provides food and lodging/ mutual waiver of damage claims
Agreement on the modalities of Franco-Hellenic cooperation with regard to major natural hazards	France, Greece	5/11/1989	26941							
Convention on the prediction and prevention of major hazards and on mutual assistance in the event of natural or man-made disasters	France, Italy	9/16/1992	33532	free access to any site, certifiifcate required	reduces frontier crossing formalities to minimum, no import/export documents, exemption of customs duties	narcotic drugs	granted for special transports, exemption from charges for motorway and tunnel fees			assisting state/ requesting state liable for damages
Convention on mutual assistance between French and Spanish fire and emergency services	France, Spain	2/8/1973	13576	reduces formalities to absolute minimum	reduces formalities to absolute minimum		overflight permits			requesting/ waiving of damages

Bilateral Agreement	EU-States	Signed	UNTS	e.p. personnel	e.p. goods and equipment	e.p. special goods	Speedy transport	temp. domestic legal status	Tax/VAT ex.	Costs borne/ waiver of damages
Agreement on mutual assistance in the event of disasters, including serious accidents (with protocol)	Germany, Netherlands	6/7/1988	34861	exempt from passport requirements	no import/ export documents, exempt from import/ export taxes	narcotic drugs	overflight permits			assisting state/ food and lodging, medical care from req. state, half cost of aircraft by req. party/ waiving of damages
Convention on mutual assistance in the event of disasters or serious accidents	Germany, Belgium	11/6/1980	23197	limit frontier crossing procedures to absolute minimum, certificate req.	temporary admission, facilitated crossing, exempt from import taxes	narcotic drugs	overflight permits, landing permits			assisting state/ food and lodging, medical care from req. state, half cost of aircraft by req. party/ waiving of damages
Agreement on mutual assistance in the event of disasters or serious accidents	Germany, Czech Republic	9/19/2000		no travel doc. required, no residence permit, no work permit, data protection	no restrictions, duties, fees, charges	narcotics, psychotropic substances	no permit for vehicles required, overflight permits, landing permits			assisting state, mutual waiver of damages
Agreement on mutual assistance in the event of disasters or serious accidents	Germany, Denmark	5/16/1985	26375							
Convention on mutual assistance in the event of disasters or serious accidents	Germany, France	2/3/1977	19561	limit frontier crossing procedures to absolute minimum, certificate req.	facilitation of entry and exit/ list required, exempt from tariffs, taxes	narcotics, psychotropic substances	overflight permits, landing permits			assisting party
Agreement concerning mutual assistance in the event of disasters or serious accidents	Germany, Hungary	6/9/1997								

Bilateral Agreement	EU-States	Signed	UNTS	e.p. personnel	e.p. goods and equipment	e.p. special goods	Speedy transport	temp. domestic legal status	Tax/VAT ex.	Costs borne/ waiver of damages
Agreement concerning mutual assistance in the event of disasters or serious accidents	Germany, Lithuania	4/15/1994	35491	limit frontier crossing procedures to absolute minimum, certificate req.	exempt from all customs duties, charges		overflight permits, landing permits			assisting state may offer assistance free of charge. Req. state reimburses costs./ mutual waiving of damages
Agreement concerning mutual assistance in the event of disasters or serious accidents	Germany, Luxembourg	3/2/1978								
Agreement concerning mutual assistance in the event of disasters or serious accidents	Germany, Poland	4/10/1997	37091	certificate for temp. border crossing required	facilitation of entry and exit/ list required	narcotics, psychotropic substances	overflight permits, landing permits			assisting state, food, lodging, half aircraft costs, medical treatment
Framework Agreement between on mutual assistance in the event of disasters	Latvia, Estonia	6/4/2001	40377	simplified regimen	exempt from duties, customs, taxes, fees					requesting state/ mutual waiver of damages
Agreement on the mutual support in the event of natural disasters and other large-scale accidents	Latvia, Lithuania	5/31/2001	40379							
Agreement on collaboration within the field of emergency prevention, preparedness and response	Latvia, Sweden	6/17/2002	41019	minimises entry/exit formalities, charges and duties, certificate required	no charges/ duties					requesting party/ liability of requesting party for damages caused
Convention on mutual assistance in combating disasters and accidents	Netherlands, Belgium	3/14/1989	26466	limits formalities involved in border crossing, no travel doc.	no import/ export documents	narcotic drugs	overflight permits		no import/ export taxes	ass.state/ costs for lodging food etc. req. state/ waiver of dam.

Bilateral Agreement	EU-States	Signed	UNTS	e.p. personnel	e.p. goods and equipment	e.p. special goods	Speedy transport	temp. domestic legal status	Tax/VAT ex.	Costs borne/ waiver of damages
Treaty on friendly co-operation and Baltic good-neighbourhood	Poland, Estonia	7/2/1992								
Treaty on friendship and cooperation	Poland, Greece	6/12/1996								
Treaty on friendship and cooperation	Poland, Latvia	7/1/1992								
Treaty on friendly relations and good-neighbourly cooperation	Poland, Lithuania	1994								
Treaty on civil protection and security	Spain, France	10/11/2001	39485	refers to Schengen, certificate required						mutual waiver of payment. Refuel of aircraft, food and lodging by ass. party/ waiver of damages
Protocol on technical cooperation and mutual assistance in the field of civil defence	Spain, Portugal	8/23/1993	30218	reduces formalities to absolute minimum	no customs facilities		overflight permits			mutual waiver of payment/ waiver of damages
Agreement on mutual assistance between Portuguese and Spanish fire and emergency services	Spain, Portugal	3/31/1980	18837	reduces formalities to absolute minimum			overflight permits			

The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battle-field, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality

In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service

It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity

There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality

The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

Analysis of Law in the European Union pertaining to Cross-Border Disaster Relief

A publication from the International Federation of Red Cross and Red Crescent Societies (IFRC)

For more information, please contact: idrl@ifrc.org

The International Federation of Red Cross and Red Crescent Societies promotes the humanitarian activities of National Societies among vulnerable people.

By coordinating international disaster relief and encouraging development support it seeks to prevent and alleviate human suffering.

The International Federation, the National Societies and the International Committee of the Red Cross together constitute the International Red Cross and Red Crescent Movement.

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