



# Analysis of Law in the EU and a Selection of Member States pertaining to Cross-Border Disaster Relief

Synthesis Report and Recommendations

With support from



International Federation  
of Red Cross and Red Crescent Societies

# strategy2020

**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 strengthen recovery from disasters and crises
2. Enable healthy and safe living
3. Promote social inclusion and a culture of non-violence and peace

## About this report

This report was commissioned by the IFRC 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 IFRC 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.

This project is supported by the Civil Protection Financial Instrument of the European Community. However, sole responsibility for its contents resides with the authors. The European Commission is not responsible for any use that may be made of the information herein.

## About the IDRL Programme

The IFRC "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 National 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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For more information about the British Institute of International and Comparative law, please visit <http://www.biicl.org>.

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## Table of Abbreviations

CPM	Civil Protection Mechanism
EADRCC	Euro-Atlantic Disaster Response Coordination Centre
EU	European Union
IDRL	International Disaster Response Laws, Rules and Principles
IFRC	International Federation of Red Cross and Red Crescent Societies
INSARAG	International Search and Rescue Advisory Group
MIC	Monitoring and Information Centre
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
OCHA	Office for the Coordination of Humanitarian Affairs
PROCIV	Council Working Group on Civil Protection
VAT	Value-Added Tax

## Table of Associated Reports

- British Institute of International and Comparative Law, Analysis of Law in the European Union pertaining to Cross-Border Disaster Relief (IFRC, 2010)
- Austrian Red Cross, Analysis of Law in the European Union pertaining to Cross-Border Disaster Relief, Country Report: Austria (2010)
- British Red Cross, Analysis of Law in the United Kingdom pertaining to Cross-Border Disaster Relief (2010)
- Bulgarian Red Cross, Normative Requirements for Receipt, Origination and Transit of Disaster Relief through the Territory of the Republic of Bulgaria (2010)
- French Red Cross, Analysis of Law in the EU pertaining to Cross-Border Disaster Relief, Country Report by the French Red Cross (2010)
- German Red Cross, Analysis of law in the EU pertaining to Cross-Border Disaster Relief, Country Report by the German Red Cross (2010)
- The Netherlands Red Cross, Legal Aspects of International Disaster Response in Dutch Emergencies and Crisis Situations (2010)

**Note:** All associated reports are available at [www.ifrc.org/idrl](http://www.ifrc.org/idrl).

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

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# Chapter 1: Introduction

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# Chapter 1

## Introduction

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 the international response to natural and technological disasters as well as the operational experiences with regulatory problems in recent disasters.

After several years of research and global consultations with governments and other stakeholders to evaluate common problem areas and best practice, the IFRC led negotiations for the development of the “Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” (IDRL Guidelines).<sup>1</sup> The IDRL Guidelines address some of the problems most commonly encountered in the context of cross-border disaster relief globally, such as customs and immigration rules that delay or prevent relief equipment, goods and personnel from entering the affected state.

In November 2007, the state parties to the 1949 Geneva Conventions unanimously adopted the IDRL Guidelines at the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent. In addition to joining the consensus on the IDRL Guidelines, the EU Member states<sup>2</sup> and their National Red Cross Societies<sup>3</sup> signed specific pledges in support of the IDRL 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 that the progress in implementing the IDRL Guidelines since 2007 has been encouraging, but still requires work before the Guidelines can achieve their intended impact.<sup>4</sup>

This study was coordinated by the IFRC and is funded in substantial part by the European Commission through the Civil Protection Financial Instrument. 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 within Europe. Its scope is limited strictly to the provision of disaster assistance within the EU. It does not address security-related assistance, such as cooperation in the suppression of terrorist acts or other crime.

The current state of law and policy in both the EU and the Member states has been discerned through a study of EU legislation, national laws, codes,

1. IFRC, “Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” (2008), available at: <http://www.ifrc.org/idrl>. 2. Pledges on IDRL: Section 3.1 – Strengthening the legal framework for international response to disasters, Government, EU Joint Pledge, Pledge #95. 3. *ibid*, National

Societies, Pledge #56. 4. IFRC, “The Right Aid at the Right Time : Progress Report on the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” (November 2009), available at: [http://www.ifrc.org/Docs/pubs/idrl/IDRL-Progress-Report\\_en.pdf](http://www.ifrc.org/Docs/pubs/idrl/IDRL-Progress-Report_en.pdf).

policies and practice, and obligations arising under bilateral and multilateral agreements. This synthesis report summarizes the results of a comprehensive desk study of the EU-level framework prepared by the British Institute of International and Comparative Law, commissioned by the IFRC and individual case studies prepared by the National Red Cross Societies of Austria, Bulgaria, France, Germany, the Netherlands and the United Kingdom. This report also draws on the findings of a regional workshop held on 5 October 2010 which brought together 70 representatives from 16 Community Civil Protection Mechanism participating states and 21 National Red Cross Societies to assess preliminary recommendations.

This report:

1. Identifies areas of law that states and assisting organisations should consider, both before and during the provision of cross-border disaster relief.
2. Highlights potential barriers to the effective delivery of international assistance in the EU;
3. Suggests possible steps that European and national authorities could take so as to address the problem areas identified.



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Analysis of Law in the European Union  
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# Chapter 2: Context of the Study

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## Chapter 2

### Context of the Study

#### 2.a Past Disaster Experience and Likely Disaster Scenarios

As noted in the recently adopted Communication from the European Commission on “a Community approach on the prevention of natural and man-made disasters,”

[b]etween 1990 and 2007, the European Union witnessed a marked increase in the number and severity of both natural and man-made disasters, with a particularly significant increase in the former. The loss of human life, the destruction of economic and social infrastructure and the degradation of already fragile ecosystems is expected to worsen as climate change increases the frequency and magnitude of extreme meteorological events, such as heat waves, storms and heavy rains.<sup>5</sup>

Across the EU as a whole, floods, droughts and storms comprise the most frequently occurring natural disasters. Among these, flooding was the most common disaster event among member states as well as the most damaging in financial terms. There has also recently been a particularly stark increase in the occurrence of storms. Half of all weather-related damage was attributable to storms, with winter storms being the most common and the most destructive. The Kyrill storm, in January 2007, is just one example. The number of wildfires has also increased significantly over the past decade, particularly in Southern Europe. An estimated 18,085 people in Europe are affected by wildfires every year. The wildfires in Greece in August 2007 lasted for 6 days and were particularly severe.

As noted above, the increased frequency and magnitude of extreme weather events have been attributed to the impact of climate change, and they are considered likely to continue to rise.

While the above-mentioned hazards are fairly widespread in Europe, others are more localised. For example, within Europe the Global Seismic Hazard Assessment Program identified only Southeast Europe as having a relatively high earthquake risk. Elsewhere in Europe, the likelihood of a geophysical disaster is much lower, although the occurrence of such events remains extremely difficult to predict accurately.

5. *Communication (2009)82, 23 February 2009.*

The national reports summarized here follow these same trends. In each of the examined member states, the most common disasters are weather-related, specifically flooding, forest fires, extreme winter weather, windstorms, heat waves and, in some cases, earthquakes. The Austrian national report indicated that Austria has been repeatedly affected by storms and that the likelihood of flooding, storms, landslides and avalanches is high. The situation is similar in France and Germany. Bulgaria has repeatedly suffered from droughts resulting in forest fires that have developed quickly and spread over a significant area. The Netherlands and the UK have been affected by emergencies to a lesser extent than the other states evaluated, however, the UK has recently experienced flooding and extreme winter weather.

## 2.b Arrangements for Assistance

Several of the member states studied have not yet needed to seek external assistance, as national resources have been sufficient to cope with the demands. Others have found that it is not logistically or economically feasible to seek assistance from outside the EU. Should a member state determine that it requires international assistance, it has several options at its disposal, including the following:

### Informal Arrangements

Some member states, in particular France and Germany, make extensive use of informal means of cooperation. For example, France has entered into a number of informal cross-border cooperation agreements, which are restricted geographically to the border zone.<sup>6</sup> These are seen to work well for localized emergencies. Germany also has informal local arrangements for assistance in place between German municipalities and their direct neighbours across the border.<sup>7</sup>

### Bilateral or Multilateral Arrangements

Many EU member states have entered into bilateral and multilateral agreements with neighbouring countries specifically for cooperation in disaster response. With the exception of the UK, the national reports indicated that assistance sought from other states has generally been requested through such arrangements. Existing bilateral agreements among the examined states included not only state-to-state agreements but also localized agreements between individual regions within them and those of another state, as is the case in Germany, where the Länder are permitted to conclude agreements with foreign countries with the consent of the federal government.<sup>8</sup>

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6. France, p. 42. 7. Germany, pp. 7, 26. 8. Germany, p. 7.

Some of these agreements relate to general cooperation, for example, the agreement between France and Portugal regarding the prevention and fight against forest fires,<sup>9</sup> whereas others more specifically address the types of concerns raised by the IDRL Guidelines. For example, the agreement between Bulgaria and Germany in the field of transport aims to facilitate vital civilian cross-border transport during a period of crisis.<sup>10</sup> Bulgaria is also party to several agreements with non-EU states that facilitate procedures for obtaining a visa for the escort of humanitarian goods.<sup>11</sup> The Netherlands has agreements for disaster assistance with Belgium, Germany and Luxembourg. There are also a significant number of agreements between border towns on the Dutch-German and Dutch-Belgian borders and between Dutch provinces and adjacent foreign provinces.<sup>12</sup>

The existence of bilateral agreements represents a positive step in addressing the issues considered in the IDRL Guidelines. However, there is potential for confusion and inconsistencies among the provisions of these agreements, both in terms of agreements entered into within each state (i.e. it may have different obligations or arrangements with different neighbours under each treaty) and also as to varying arrangements across states (i.e. there is not a uniform approach to negotiation of such treaties by EU member states). A more standardised approach may be of benefit to member states.

### EU Civil Protection Mechanism

Member states may request assistance through the EU Civil Protection Mechanism (CPM), managed from the new Directorate-General for International Cooperation, Humanitarian Aid and Crisis Response. The CPM currently includes 31 countries (the EU 27 plus Liechtenstein, Iceland, Norway and Croatia). It is based on two primary pieces of legislation covering disaster prevention, preparedness and response<sup>13</sup> and provides for various methods of cooperation and action, including the creation of a 24-hour Monitoring and Information Centre (MIC), training programmes, workshops, seminars and practical exercises. The main function of the CPM is to act as a framework for cooperation which the member states can utilise in times of disaster. EU activity itself is modest, mainly due to limits on the competence of the EU and its institutions. In an early stage of the development of the CPM, a Council Resolution (hereinafter “the Council Resolution of 8 July 1991”) was adopted that laid out a number of rules related to the regulation of state-to-state assistance within the EU.<sup>14</sup> However, the resolution was non binding and its provisions were not incorporated in later binding legislation on the CPM.

9. France, p. 22. 10. Bulgaria, p. 14. 11. Bulgaria, p. 15. 12. Netherlands, p. 18. 13. 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. 14. Council Resolution on improving the mutual aid between member states in the event of a natural or technological disaster of 8 July 1991.

### **NATO Euro-Atlantic Disaster Response Coordination Centre**

Member states may participate in NATO's framework for disaster response, the Euro-Atlantic Disaster Response Coordination Centre (EADRCC). The EADRCC operates as a coordinating body and is intended to complement any ongoing United Nations relief operations. The main responsibilities of the EADRCC are: to coordinate disaster response in the territory of the Euro-Atlantic Partnership Council; to act as an information-sharing clearance house; and to liaise closely with the UN Office for the Coordination of Humanitarian Affairs (OCHA), the EU and any other organisations involved in international disaster response.

## **2.c Overview of Disaster Management within National Legal Systems**

In each of the member states examined, authority is distributed between various entities. In five of the six member states, civil protection falls under the responsibility of the Ministry of the Interior. The exception is the UK, where civil protection is the responsibility of a department reporting directly to the Prime Minister. In addition to central government, federal states, devolved administrations, regions and municipalities each have a varying degree of responsibility for disaster response. Some member states are also responsible for directing or assisting the response to disasters occurring in their overseas territories. The varying level of governance greatly affects the way in which disaster response is arranged. In each of the member states assessed, the focus is on the idea of subsidiarity: disaster is best managed at the local level. Therefore, local authorities such as municipalities or provinces have their own disaster response plans in place that can be supported by higher authority, i.e., centralised government, if needed.

This arrangement affects the national legal frameworks as well. The member states employ a framework reflecting the focus on local response. Generally, one or two main pieces of legislation govern the issue nationally and then rules, regulations and plans are developed at the local or regional level. The exceptions are Austria and Germany, where separate disaster relief legislation applies in each federal state, and, to a certain extent, the UK, where certain responsibilities have been devolved. In the UK, there is also the potential to address legal issues arising in the context of a disaster through the use of emergency regulations under the relevant civil protection legislation. Legal frameworks are often supplemented by policy and operational guidance. For example, the Netherlands has recently given a high level of attention to IDRL issues in its new *Manual for Incoming Foreign Assistance*, which outlines in detail the operational procedures in case of incoming assistance in the Netherlands.

## **2.d Role of the National Societies and Other Voluntary Organisations**

### **National Societies**

Pursuant to both national and international law, National Red Cross Societies have a unique status as “auxiliaries to the public authorities in the

humanitarian field.”<sup>15</sup> At the origins of the International Red Cross and Red Crescent Movement in the 19<sup>th</sup> century, this “auxiliary status” was linked to National Societies’ assistance with emergency medical services for their national militaries. Over time, however, the status has evolved to a more general role of assisting the authorities with humanitarian assistance in situations of crisis, including natural and man-made disasters. At the same time, as recognized by national “Red Cross laws” and international instruments, National Societies are expected to abide by the Fundamental Principles of the Movement, including the Principle of Independence.<sup>16</sup>

The national reports indicate that, in practice, the National Societies involved have a variety of roles in national disaster response arrangements. Generally, the role of the National Society in responding to disasters is specifically recognised by the state concerned. The National Society performs a supporting role to the central government and is often a member of ministerial committees responsible for making decisions and coordination during disasters. There are, however, several variations. For example, in Austria, each federal state recognises the role of the National Society in different ways.<sup>17</sup> For example, the involvement of the National Society in the state of Styria is governed on the basis of individual regulations by the state government, whereas in Burgenland and Upper Austria, the Red Cross is recognised in law as a civil protection organisation by the state governments. This may be contrasted with the situation in Carinthia, where the role of the National Society is unregulated. In other cases, for example, Vienna, the state law will make reference to the involvement of voluntary relief organisations, which includes the National Society.

The Bulgarian Red Cross plays a substantial role in civil protection. Since 2007, it has assumed the functions of the country’s foreign aid agency and is additionally responsible for the receipt, storage, distribution and control of humanitarian aid given to Bulgaria as external assistance.<sup>18</sup> According to the Bulgarian Red Cross Act, the National Society is to develop the National Programme for Protection in Case of Disasters and annual plans for its implementation.

The German Red Cross is also recognized as an assisting partner in the disaster relief legislation of almost all Länder.<sup>19</sup> As in Austria, there are similar, though differing, legal arrangements for participation and cooperation of the National Society in the disaster relief legislation of the Länder. In some Länder, the National Society is obligated to assist in disaster relief, but it is usually the case that it will have to notify the Länder of its willingness to assist in a formal letter of intent that must be confirmed before cooperation begins.

In addition to their role in support national disaster response, National Societies also form part of the International Red Cross and Red Crescent Movement. They are therefore entitled to call on assistance from other components of the Movement in response operations (and are also committed to offer their help

<sup>15</sup>. See Resolution 2, 30th International Conference of the Red Cross and Red Crescent (2007). <sup>16</sup>. Statutes of the International Red Cross and Red

Crescent Movement (as amended 2006). <sup>17</sup>. Austria, pp. 18-9. <sup>18</sup>. Bulgaria, p. 24. <sup>19</sup>. Germany, p. 20-2.

in case of disasters in other countries, where feasible). These international operations are regulated by specific international instruments (including the Principles and Rules of Red Cross and Red Crescent Disaster Relief, which has been endorsed by the state parties to the Geneva Conventions at the International Conference of the Red Cross and Red Crescent). Pursuant to the Movement's rules, National Societies in affected states are entitled to seek and accept offers of support from the other components of the Movement. They also play a key role, in conjunction with the IFRC, in coordinating that assistance. This role should be borne in mind by authorities when approaching the issue of international assistance.

### Other Voluntary Organisations

Many other voluntary organisations may be involved in providing disaster relief besides the National Red Cross Society. Civil society organizations (such as church groups and non-governmental organizations (NGOs)) may play a significant role in the provision and distribution of assistance in an emergency. However, there is no framework legislation at the EU level dealing with the role of other voluntary organisations in the context of international assistance. Moreover, the role of foreign voluntary organizations in disaster response is also largely unaddressed in the existing laws and policies of the member states.

## 2.f Current Initiatives at the EU Level

The European Commission has recently established a working group on Host Nation Support (HNS).<sup>20</sup> Moreover, this issue was considered in a September 2010 seminar hosted by the Belgian Presidency of the Council of the EU, aimed at improving the capacity of states participating in the CPM to receive and organize foreign assistance in their territory. The Council's working group on civil protection (PROCIV) has proposed a set of draft conclusions on HNS that invite the member states to, inter alia, identify any legal issues that may constitute obstacles to the objective of facilitating international assistance with a view toward making any modifications that may be appropriate in order to achieve that objective.<sup>21</sup>

The European Commission has proposed forming a European Voluntary Humanitarian Aid Corps. The initiative is currently in its early stages, including research into possible options for such a corps and a public consultation, with a legislative proposal expected in 2012.<sup>22</sup>

<sup>20</sup>. For more discussion on this, please consult the Minutes from the IDRL Workshop in Brussels on 5 October 2010, available at: <http://www.ifrc.org/idrl>. <sup>21</sup>. Council of the European Union, Draft Council conclusions on Host Nation

Support, DS 1684/1/10, 14 October 2010 (revised version). <sup>22</sup>. For more information on EVHAC, please see: [http://ec.europa.eu/commission\\_2010-2014/georgieva/themes/voluntary\\_humanitarian\\_en.htm](http://ec.europa.eu/commission_2010-2014/georgieva/themes/voluntary_humanitarian_en.htm).



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# Chapter 3: Regulation of the Entry and Operation of International Assistance

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## Chapter 3

### Regulation of the Entry and Operation of International Assistance

The national and EU studies evaluated a wide range of issues that may prevent or hinder the effective delivery of international disaster assistance, including technical rules generally applicable outside the context of disaster situations. Part V of the IDRL Guidelines identifies the most common among these administrative and legal barriers and encourages affected states to take measures to reduce or eliminate them. These include legislation on entry into the affected state, customs law, taxation, and transport rules.

The EU is based on the principle of free movement, which should facilitate the entry of assistance between member states. However, where assistance originates from a non-EU member state, some of the applicable rules and procedures are unclear and barriers to delivery of assistance may arise. While the EU framework may provide for discretionary exemptions with regard to the treatment of third countries, for the most part, external relations in this area are left to the national authorities of the member states. Several of the member states have also entered into bilateral or multilateral agreements regarding disaster assistance with neighbouring states (Part 2.b above). Many of these agreements consider the issues discussed below, and a number of them have been agreed with non-EU states.

The following sections consider some of the main issues raised by the IDRL Guidelines, as reflected in the EU and country reports.

#### 3.a Past Disaster Experience and Likely Disaster Scenarios

##### **IDRL Guidelines**

Part IV of the IDRL Guidelines recommends that affected states should be prepared to grant special legal facilities to foreign humanitarian organizations, as well as their relief personnel, goods and equipment when their assistance is needed to respond to a disaster. This should be based on eligibility criteria consistent with internationally agreed quality standards.

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.

The EU's existing CPM legislation does not address how the cross-border assistance of humanitarian organizations (such as National Red Cross Societies or NGOs) should be facilitated or regulated. It is exclusively focused on

state-to-state assistance. Likewise, with the exception of partial exceptions related to customs and tax as described below, this issue is generally absent from member state laws. Moreover, few of the member states examined have a clearly identified focal point for handling issues that might arise related to foreign non-governmental assistance providers.

In general, the laws of the member states examined allow for the recognition of the legal personality of foreign companies and non-profit entities based on their registration/incorporation in their home countries. This would allow them legally to enter into contracts, open bank accounts, and take other legal steps in the name of their organization. In Germany, such recognition would be automatic for organizations based in other EU states.<sup>23</sup> However, in Austria and Bulgaria, a verification process would be required, even in the case of EU organizations, which could lead to delays.<sup>24</sup> It is noteworthy that a convention exists within the framework of the Council of Europe on the “Recognition of the Legal Personality of International Non-Governmental Organisations,” which has 11 parties, including several of the states examined.

### 3.b Form and Content of Requests

#### **IDRL Guidelines**

Part III Section 10 of the IDRL Guidelines suggests that affected states should decide in a timely manner whether to request international assistance. Where a state does make such a request, the content of the request should be as specific as possible, and include any relevant information about domestic laws and regulations relevant to the entry and operation of disaster relief.

In any disaster situation, there is the potential that well-meaning individuals, organisations and governments may send aid to an affected state that is unsuitable or unnecessary. For example, this was the case during the UK flooding in 2007 when hovercraft were sent to the affected area at the initiative of another member state before the UK Cabinet Office was able to respond to the offer, causing confusion as to their origin. This is one good reason for states to develop procedures for handling international offers of assistance, even if they consider that they will be unlikely to need it.

One way to reduce the risk of unwanted assistance is for the affected state to draft any request for international assistance it makes so as to clearly explain the situation and specify the required assistance. A standardized format for

<sup>23</sup>. Germany, pp. 34-35. <sup>24</sup>. Austria, pp. 45-46, Bulgaria, p. 40.

requests is employed within the context of the CPM, which includes basic information relating to the cause or type of disaster, the relevant contact person in the requesting state, and a table indicating the type of assistance needed. It also contains a brief summary of the event and any additional relevant information, such as activities already undertaken by the requesting state. The inclusion of this type of information allows the affected state to detail the type of assistance it requires so that the assisting state can ascertain what should be sent as aid.

The national studies demonstrated that a standardized form is not addressed in the domestic legislation of the examined countries. The French report indicated that this issue is dealt with in bilateral and multilateral reciprocal assistance agreements, which generally specify that requests should include information specific to the disaster itself, what relief is required, and which tasks will be assigned to foreign assisting teams.<sup>25</sup> In the Netherlands, the format is prescribed in the national Handbook on Incoming Assistance.<sup>26</sup> The UK deals with this issue on a case by case basis, although guidance on this matter has recently been issued.<sup>27</sup> In contrast, German bilateral agreements govern the decision of whether or not to request assistance, rather than dealing with the format of the request.<sup>28</sup>

This apparent lack of consistency may be due to the fact that several of the states studied have not had to request assistance outside their own national frameworks or beyond the EU or NATO systems.

***Where they do not already exist, member states should consider developing specific procedures or policies for requesting and responding to offers of assistance from abroad. Such a policy could, for example, specify clearly which public authorities are responsible for determining the need for foreign response, and which are responsible for making requests and responding to offers.***

### 3.c Entry into EU Territory

#### **IDRL Guidelines**

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

The Schengen Area has been established under a common framework of conditions for entry into the EU at its external borders. Once a non-EU national has been granted entry by one member state, he or she will be allowed access into

<sup>25</sup>. France, p. 26. <sup>26</sup>. Netherlands, p. 33. <sup>27</sup>. United Kingdom, p. 48. <sup>28</sup>. Germany, p. 28.

the territory of the other participating Schengen states. Bulgaria is not yet a fully-fledged member of the Schengen area.<sup>29</sup> Border controls between Bulgaria and the Schengen area are to be maintained until the EU Council decides that the conditions for abolishing internal border controls have been met. However, from the date of their accession to the EU in 2007, the Schengen framework in relation to the area of police and judicial cooperation and of external border control applies. The UK has chosen to maintain border controls with other EU countries and is therefore outside the Schengen area.

Common arrangements for visas into the Schengen Area have been developed at EU level and are mandatory for those member states that participate in the Schengen arrangements.<sup>30</sup> These arrangements include a discretionary exemption from the visa requirement for helpers in the event of a disaster. In other words, member states are allowed to waive visas regulations in these circumstances, but are not required to do so.

However, not all of the member states studied have chosen to implement the discretionary exemption. Several of the national reports indicated that arrangements for entry have been established only through the bilateral agreements that provide for formalities that vary according to the partner country. For example, Germany has entered into bilateral arrangements that exempt assisting personnel from the obligation to have a passport.<sup>31</sup>

Where neither the discretionary exemption nor bilateral or multilateral arrangements apply, it appears that special procedures in national law are employed on an ad hoc basis. For example, relief workers may be admitted without a visa at the discretion of the Netherlands Immigration Department and Military Police, but this is not guaranteed.<sup>32</sup> In the UK, the situation has not formally been considered, and it is likely that it would be dealt with on a case by case basis.<sup>33</sup>

While the EU provides a mechanism for facilitating entry for relief personnel coming from outside the EU, it is clear that practice in the member states is by no means uniform or certain. Adopting criteria that vary according to where the relief originates can pose administrative barriers that may interfere with the delivery of assistance. Of potential greater significance is the situation where these circumstances are not considered by national authorities to any extent or at all.

**Member states should apply the discretionary exemptions relating to visas for non-EU disaster relief providers in Council Regulation 539/2001/EC. The EU and its institutions should support member states in applying such discretionary exemptions.**

29. This is also currently the case for Cyprus and Romania. 30. 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. 31. Germany, p. 36. 32. Netherlands, p. 36. 33. United Kingdom, p. 52.

### 3.d Recognition of Professional Qualifications

#### **IDRL Guidelines**

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 from approved humanitarian organisations and foreign states.

Personnel sent to assist member states in the aftermath of a disaster may possess specific skills and qualifications that are regulated in the affected state. Regulated professions include doctors, nurses, paramedics and engineers. For professionals with foreign qualifications, permission to practice is dependent on a process of recognition.

For qualifications obtained within the EU, existing EU law<sup>34</sup> calls for a so-called “automatic” system of recognition when services are provided on a temporary basis. However, states are still allowed to take up to one month for processing the request. EU law allows member states to recognize degrees from non-EU states but imposes no maximum time for processing requests.

The member states’ implementation of this EU legislation is inconsistent, despite its mandatory nature. It seems that all of the member states studied have implemented the main provisions on recognition, but not all of them have included the procedure for the temporary provision of services. As an example, the Austrian study indicated that the procedure for the recognition of paramedics’ qualifications normally takes up to four months once all of the necessary documents have been provided by the applicant and the requisite fees have been paid.

Some member states provide for recognition through bilateral agreements or through specific national procedures outside the context of EU legislation. For example, in Austria, there must be a specific legal basis for exempting professionals from the normal requirements.<sup>35</sup> In Germany, exemptions are granted as the situation demands.<sup>36</sup>

The procedure for recognition of qualifications obtained outside the EU is even less clear. The EU legislation discussed above briefly notes that member states are not prohibited from recognizing qualifications obtained outside the EU. However, this is a matter for each member state to decide under its national rules. The reports indicated that in most member states, unless a specific bilateral or multilateral agreement applies, the procedures associated with recognition might significantly impede the ability of a qualified individual to enter a member state and render his or her services during a disaster.

<sup>34</sup>. Directive 2005/36/EC on the recognition of professional qualifications. <sup>35</sup>. Austria, p. 36. <sup>36</sup>. Germany, p. 37.

There would be an unacceptable risk to public health if member states exercised no controls over in-coming medical personnel, even in emergency settings. However, it should be possible to exercise such control according to a much more accelerated time-scale.

**Member states should consider whether legislation or policy should be developed regarding the expedited recognition of qualifications for professionals from the EU and from third states in emergency situations.**

**They should consider also whether expedited procedures for the registration related to the recognition of foreign professional qualifications in emergencies – in particular for doctors, nurses and paramedics of both EU and non-EU member states – should be included in existing EU legislation on this topic.**

### 3.e 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 imported by approved humanitarian organizations and foreign states.

Part V Section 18 of the IDRL Guidelines discusses the reduction of barriers to the importation of special goods and equipment.

Personnel sent to assist member states in the aftermath of a disaster may possess specific skills and qualifications that are regulated in the affected state. Regulated professions include doctors, nurses, paramedics and engineers. For professionals with foreign qualifications, permission to practice is dependent on a process of recognition.

Both the EU customs and VAT regulations are based on the requirement that any relief that is imported into EU territory must be sent by state organisations or other charitable organisations that are approved by the competent authorities in the receiving member state. This demonstrates the importance of ensuring not only that the aid itself be of good quality, but also that the importing organisations are reputable. Approval is linked to the organisation in question complying with relevant accounting standards and offering ‘guarantees’ as to their suitability.<sup>37</sup> This is one method of minimising the risk of misappropriation of aid, and in ensuring that international assistance is appropriate and offered by a reputable source.

<sup>37</sup> See, 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, and Regulation 918/83/EEC setting up a Community system of reliefs from customs duty.

### i. Customs

EU customs rules have been more inclusive of provisions relating to disaster assistance than any other policy area.<sup>38</sup> Mandatory legislation regarding both the temporary admission procedure and normal admission procedure includes exemptions for disaster materials under varying conditions. In some circumstances, this includes special equipment such as medical, surgical and laboratory equipment. For example, goods that are intended for distribution free of charge to victims of a disaster in the member states are to be admitted free of import duties. These exemptions are mandatory and have been given effect in national law by the countries studied.

It should be noted, however, that in order to apply a specific exemption status to goods brought into the EU, approval from the European Commission is required prior to entry. Although such goods may be granted entry pending approval by the Commission, the Commission prefers that member states obtain approval first. This process has been known to take up to six months. Moreover, existing customs duty exemptions do not apply to any materials imported for rebuilding after a disaster.

In addition to EU customs rules, some member states provide for exemptions in bilateral or multilateral agreements. For example, the German report noted that some bilateral agreements waive the requirement of import documents and entry or export fees for disaster materials.<sup>39</sup> Other provisions may apply under national law, such as that in the Netherlands, which provides that relief goods and materials may be transported immediately to the relevant coordination centre, prior to dealing with any applicable formalities.<sup>40</sup>

### ii. Value-Added and Other Related Taxes

The system for Community-harmonised value-added tax (VAT) is similar to the customs regime, and is also mandatory for the member states.<sup>41</sup> Goods imported for the benefit of disaster victims are exempt from import VAT if they are intended for distribution free of charge. There is no equivalently broad exemption from VAT in EU law for in-country purchases of goods or services by disaster responders. However, certain transactions, such as hospital and medical care, the supply of human organs, blood and milk and the supply of transport services for sick or injured people, are exempted. Although it is not specified, it seems likely that these exemptions would apply in the context of a disaster. These rules apply in all of the member states examined.

In addition to enacting EU rules, some member states apply additional exemptions. For example, Austrian national law provides for reciprocity in terms of VAT relief on deliveries of relief items to 22 foreign countries, 17 of which are non-EU member states.<sup>42</sup> The deliveries may be made not only to the state, but

<sup>38.</sup> Commission Regulation 2454/93/EEC laying down provisions for the implementation of Council Regulation (EEC) 2913/92 establishing the Community Customs Code; Council Regulation 918/83/EEC setting up a Community system of reliefs from customs duty. <sup>39.</sup> Germany, p. 38. <sup>40.</sup> Netherlands,

p. 38. <sup>41.</sup> Council Directive 2006/112/EC on the common system of value added tax; 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. <sup>42.</sup> Austria, p. 51.

to Austrian charitable organisations. Bulgarian national law applies an exemption for the supply of goods and services within the framework of humanitarian activity carried out by the Bulgarian Red Cross and other non-profit legal entities pursuing public health benefit activities. However, such organisations must be registered in Bulgaria and therefore foreign non-profit organisations cannot benefit from this exemption.<sup>43</sup> In Germany, although an organisation must be recognised as being non-profit, German law does not differentiate between German and foreign organizations. Moreover, a foreign organisation may apply in advance for recognition as a non-profit organisation in order to benefit from tax relief.<sup>44</sup> In the UK, certain organisations and groups are entitled to VAT exemptions on goods if they fall under a specified category in the legislation, such as a charity registered by UK law or an organisation concerned with the relief of distress generally, such as the British Red Cross or the Salvation Army.<sup>45</sup> In these circumstances, relief will only be granted for goods that have been donated.

In addition to taxation applied on goods that are imported into the EU, taxes may also apply to in-country purchases. The IDRL Guidelines consider the need to provide exemptions from in-country taxation for assisting states and humanitarian organisations. Internal taxation is a matter for the national authorities, rather than the EU. The German report indicates that recognised non-profit organisations are exempt from corporate and trade tax, and are privileged with regard to VAT.<sup>46</sup> This presumably includes taxation on in-country purchases. The Dutch report, however, notes that VAT and taxes are owed on consumer goods by international relief actors/relief workers.<sup>47</sup>

**Member states should consider amending existing EU-level legislation to provide for:**

- **Removal of the requirement in Regulation 918/83/EEC for prior Commission approval for any VAT exemption provided by a Member state for disaster relief shipments;**
- **Removal of the carve-out from customs duties exemptions under Regulation 918/83/EEC related to goods and equipment imported for rebuilding after a disaster;**
- **Extension of the VAT exemptions for certain transactions in Council Directive 2006/112/EC to include in-country purchases of goods and services by international disaster relief providers when necessary for disaster relief operations.**

43. Bulgaria, p. 46. 44. Germany, p. 38. 45. United Kingdom, p. 55. 46. Germany, p. 39. If certain addi-

tional criteria is fulfilled, no real estate tax has to be paid. 47. Netherlands, p. 43.

### 3.f Food and Medicines

In addition to customs rules relating to import, it should be noted that the EU regulates the quality and safety of food and medicine that is produced and imported into the EU. As is the case regarding regulated professionals, it is important to ensure that aid in the form of food and medicine is of a quality acceptable to the affected state. Before it can be imported into the member states, it must satisfy several general and specific pieces of legislation at the EU level.

#### Food

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.<sup>48</sup> Relief organisations purchasing food and distributing it as aid free of charge are thus likely to be responsible for ensuring that any food they purchase and distribute satisfies the requirements of EU food law. There is a vast body of EU food law aimed mainly at the production and distribution of food outside the context of an emergency. This legislation does not include any exceptions that would allow for flexibility regarding standards during a crisis situation. This legislation is mandatory and must be implemented by the member states.

#### Medicine

EU regulation of pharmaceuticals is extensive.<sup>49</sup> It 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. However, relief organisations will be expected to ensure that any medicines they purchase and distribute satisfy the requirements of EU law. As is the case with food law, there are no exceptions applicable in the context of a disaster that would allow for a relaxation of standards to facilitate entry. This legislation is mandatory and must be implemented by the member states.

#### Narcotics

In addition to pharmaceutical medicines discussed above, it may be the case that relief organisations may wish to import controlled substances for medical purposes, such as methadone, morphine, opium, codeine and tranquilisers. They would thereby run the risk of being construed as drug traffickers if they

<sup>48</sup> The main food legislation is 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; however, several other pieces of legislation may also apply. See, EU Report, pp. 29-32. <sup>49</sup> EU legislation on medicinal products ranges from general to very specific requirements. 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 (as amended by Directive 2004/24/EC and Directive 2004/27/EC) and 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. For other applicable legislation, please see the EU Report, pp. 32-5.

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 and 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). The UN Single Convention on Narcotic Drugs contains an exception for medical purposes in Article 4 to the general obligation not to export, import or distribute illicit drugs. While the EU is not itself a party to the relevant international agreements on controlled substances, all 27 member states are parties. The German report has indicated that any import or export of narcotics must be specially permitted by the Federal Institute for Medicinal Products unless German or foreign medics are transporting drugs in the scope of cross-border assistance services. This applies to transport of medicinal products in vehicles as well.<sup>50</sup>

***Member states should consider whether to amend certain existing EU legislation to create optional exceptions in EU regulation concerning standards for food and medication, so as to allow member states sufficient flexibility in emergency situations to apply different procedures (e.g. for prior approvals and or labelling) to emergency food and medical assistance from trusted providers, provided that this can be done in a manner consistent with public safety.***

### 3.g Rescue 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. While not singled out, rescue animals may be considered within the scope of this provision.

Foreign rescue animals are subjected to various documentary requirements and veterinary tests, depending on whether or not the animal originates from another EU member state. EU legislation provides that the non-commercial free movement of pet animals between member states can be achieved if the animal is in possession of a passport that certifies that it has received the requisite vaccinations.<sup>51</sup> Animals from outside the EU must satisfy additional criteria depending on their country of origin. Typically, they are required to have an official veterinarian certificate issued by the relevant authority in their home state. The EU legislation does not include any exception or simplified form of the procedures applicable to third country animals that would expedite assistance in case of disaster.

<sup>50</sup>. Germany, p. 44. <sup>51</sup>. Regulation 998/2003/EC on the animal health requirements appli-

cable to the non-commercial movement of pet animals. <sup>52</sup>. Netherlands, p. 39.

The national reports indicated that the EU rules are given effect in national law. However, some reports noted that other rules may apply to rescue animals. For example, the Netherlands study stated that the decision whether to import a rescue dog in an emergency will be made on an ad hoc basis by the Food and Consumer Product Safety Authority.<sup>52</sup> The French report indicated that it is atypical for French authorities to request rescue animals from outside the state due to its strict measures for quality control.<sup>53</sup> The United Kingdom participates in a transitional regime that allows the UK to retain extra precautions for dogs and cats from certain countries and in relation to specified diseases.<sup>54</sup>

**Member states should consider whether amendment to existing EU-level legislation or policy is necessary to allow for expedited procedures for the entry of non-EU rescue animals in a disaster context.**

### 3.h Transporting Relief

#### IDRL Guidelines

Part V Section 19 presents several recommendations relating to transport, including speedy passage of land, marine and air vehicles operated by approved humanitarian organisations and foreign states.

Part V Section 16(c) of the IDRL Guidelines recommends expedited procedures for the recognition of driving licenses of foreign relief workers from approved humanitarian organisations and foreign states.

It is important that the vehicles by which assistance and personnel are transported be permitted to reach quickly and efficiently their intended destination during and in the immediate aftermath of a disaster. Rules relating to the licensing of drivers or the registration of vehicles may prevent assistance from reaching its target destination in sufficient time to have a positive impact. It is therefore essential that vehicles be granted speedy transit to the affected areas or distribution hubs.

Within the EU framework, transport is an area of shared competence. There are several rules at EU level governing transport by road and air. Rules also exist in relation to transport by rail, sea and inland waterways, details of which may be found in the national and EU reports. EU transport policy is aimed at the elimination of borders between member states and the free movement of goods and people. Therefore, vehicles carrying goods and coming from other member states can freely enter and travel in other member states, usually providing that they have a Community authorisation and the appropriate license. Once an authorisation is granted, it is valid in the EU for five years. No such benefit

<sup>53</sup>. France, p. 30. <sup>54</sup>. United Kingdom, p. 65.

is enjoyed by third country carriers. Law applicable in those circumstances and any special procedures related to the transport of relief from non-EU member states are developed by the individual member states, typically through bilateral or multilateral agreements.

### Road Transport

The EU legislation concerning the international carriage of goods by road includes a mandatory exemption to the authorisation requirement for carriage of medicinal products, appliances, equipment and other articles required for medical care in emergency relief, in particular for natural disasters.<sup>55</sup> However, as stated above, this legislation is only applicable to journeys carried out within the territory of the EU.

In Germany, the German Federation is entitled to request that the relevant department take any measures necessary to transport relief goods. The Federation determines who is to benefit from the measures, whether it is a German organisation or a foreign assisting organisation.<sup>56</sup> In the UK, legislation regarding the temporary use of vehicles provides for an exemption from the licensing requirement for relief vehicles, as well vehicles carrying goods for medical or surgical care in emergency relief, and in particular for natural disasters.<sup>57</sup> Where the transported goods are pharmaceuticals or narcotics, special conditions apply.<sup>58</sup>

The law in several of the member states studied exempts emergency vehicles from tolls or other local road rules. Austria, for example, exempts emergency vehicles and vehicles used in peacekeeping under the framework of international law from the obligation to pay tolls.<sup>59</sup> Austria also does not apply normal rules regarding travel time for heavy goods vehicles to journeys made solely for the purposes of relief in disaster situations.<sup>60</sup> The UK similarly exempts emergency vehicles from tolls and the London congestion charge.<sup>61</sup>

### Air

Aside from the legislation concerning operators licensing discussed below, there is no specific EU regulation of flights applicable in the context of a disaster. There is consequently no system for prioritizing approved disaster aid flights in terms of flight paths and landing rights. Among the states examined for this study, only the Austrian report indicated that it has agreements in place that provide for flight in and out of Austrian territory without the need for permission, as well as landing and departure, in a disaster context.<sup>62</sup>

<sup>55.</sup> 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. <sup>56.</sup> Germany, p. 42. <sup>57.</sup> United Kingdom, p. 64. <sup>58.</sup> See, e.g., Austria, p. 48 and Germany, p. 44. <sup>59.</sup> Austria, pp. 48-9. <sup>60.</sup> Austria,

p. 43. <sup>61.</sup> United Kingdom, p. 61. <sup>62.</sup> Austria, p. 48. The Austrian report also indicated that “humanitarian flights” may be exempted from the obligation to pay safety fees. In addition, so-called “emergency flights” can be dispatched preferentially by flight safety authorities.

The member states studied are all state parties to the Convention on International Civil Aviation (1947), also known as the Chicago Convention. The Convention provides in Article 5 that all civil aircraft not engaged in scheduled international air travel have the right, subject to the observance of the terms of the Convention, to make flights into or in transit non-stop across a state party's territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the state flown over to require landing. Such aircraft also have the privilege to take on or disembark passengers or cargo, subject to any regulations or conditions imposed by the territorial state. Annex 9 of the Convention provides Standards and Recommended Practices relating to the facilitation of formalities for clearance of aircraft and commercial traffic through customs, immigration, public health and agriculture authorities in the context of relief operations.

### Operators' Licensing

At the EU level, there is also a regime for the recognition of operators' licenses for road, air and rail vehicles that have been issued in other member states. Once issued, a license will be valid across the EU. There are not any special procedures for recognition in an emergency situation. This system does not apply to non-EU operators who will have to deal with the individual member states, rather than the EU. There is also a system for the recognition of diplomas, certificates or other evidence of formal qualification in relation to haulage by road and by inland waterway.<sup>63</sup> This legislation only applies to qualifications obtained in the EU and includes similar procedures to that discussed above in Part 3.d above in relation to regulated professions. This legislation applies directly in all member states.

**Member states should ensure that they have fully implemented existing mandatory EU legislation regarding the carriage by road of certain disaster relief items in order to give effect to provisions that might contribute to the effective delivery of international assistance.**

**In particular, member states should consider whether there is a need to develop specific instruments or policies regarding simplified procedures for the entry of disaster relief-bearing vehicles from non-EU member states.**

**Member states should also assess whether specific rules are required in their national laws related to permissions for overflight and landing of relief flights and exemptions for such flights from applicable taxes and charges.**

<sup>63</sup>. Directive 96/26/EC on the mutual recognition of diplomas, certificates and other evidence of formal qualifications of road haulage and road passenger operators; 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.

### 3.i 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.

EU legislation on the working week time provides for discretionary options for member states regarding derogations from the maximum working week of 48 hours for managing executives or individuals with decision-making powers.<sup>64</sup> As the legislation is mainly concerned with general health and safety issues, nothing in the legislation specifies exemptions in time of disaster or requires government offices to remain open in such circumstances.

Nevertheless, nearly all of the member states evaluated have law or policy that will allow government and other offices to remain open beyond normal operating hours in the event of a disaster. For example, in France, a system called *Astreintes* goes into effect which essentially means that administration personnel are on call during a disaster.<sup>65</sup> Bulgarian legislation allows for extended working hours during disasters, which applies to state institutions and other organisations, in order to facilitate the receipt and processing of international relief.<sup>66</sup>

### 3.j 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 EU provides a regulatory framework for electronic communications mainly aimed at strengthening competition through facilitated market access. It does not, however, regulate the specific issue of waiver or expedition of licensing procedures for use of telecommunications and information technology equipment in the context of a disaster. The member states therefore have the competence to regulate these matters at the national level. In addition to the EU

<sup>64</sup>. Directive 2003/88/EC concerning certain aspects of the organisation of working time. <sup>65</sup>. This information was provided to the authors of the report as a

follow up to the French national study. <sup>66</sup>. Bulgaria, p. 53.

regime, these issues are regulated by international agreements, such as the Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations. The Tampere Convention establishes a framework for facilitating the use of telecommunications resources in the event of a disaster by requiring states party 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. Only three of the member states evaluated have ratified the Convention.

***The member states should consider whether and how to establish clearer protocols for the express granting of usage rights for frequencies, bandwidth etc., for approved foreign disaster responders. Member states may wish to consider whether to become a party to the Tampere Convention or to give effect to some or all of its provisions in national law.***

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# Chapter 4: Quality Control and Accountability

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## Chapter 4

### Quality Control and Accountability

In addition to the considerations discussed in Chapter 3 of this Report, the IDRL Guidelines highlight other important issues that can impact upon the effectiveness of the provision of international relief. In particular, they refer to the need to enforce quality standards in order to ensure that international relief is in fact helping rather than creating more problems. It is essential that any international assistance offered to a member state affected by an emergency is of suitable quality, appropriate to the needs of the situation, and from a reliable source. The receiving state must be confident that the assistance can be used without generating further problems or hindering assistance efforts. Such concerns may be partly addressed by requiring that the aid be provided by another state or by approved humanitarian organisations. It is also addressed by requiring quality standards to be satisfied. For example, the provisions relating to customs and VAT noted above in Part 3.e require that goods intended for relief must be sent by approved state or charitable organisations.

Many of the types of regulation of technical issues discussed in Chapter 3 are intended to preclude unsuitable goods and unqualified personnel entering a disaster area. Thus when considering any amendment or exemption to such provisions, it is also essential to consider any potential impact on the quality of the goods received and the suitability of the personnel rendering assistance. Exemptions designed to facilitate the efficient delivery of aid should not be introduced if to do so may undermine genuine concerns regarding security and health and safety within the EU and its member states.

#### 4.a Quality Control

##### **IDRL Guidelines**

Part I, Section 4 of the IDRL Guidelines sets out minimum standards of coordination, quality and accountability that international assistance providers should be expected to meet.

The IDRL Guidelines are concerned not only with facilitating entry of aid and relief personnel to the affected state, but also with ensuring that the assistance meets a certain standard of quality. For example, the restrictions discussed in Chapter 3 regarding the recognition of professional qualifications and the entry of food and medicines into the EU are concerned with maintaining quality. Such concerns should certainly not be abandoned altogether in the interest of speedy access in a disaster context.

Quality issues in disaster relief have been addressed in numerous international documents, such as the International Search and Rescue Advisory

Group (INSARAG) Guidelines, the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief and the Sphere Charter and Minimum Standards in Disaster Response, which provide for minimum standards in a variety of areas applicable to humanitarian action, such as internal governance, food security or health services.<sup>67</sup> These documents, and the IDRL Guidelines, aim to ensure that a minimum standard of quality is met by any assistance offered to an affected state during a crisis. These standards are, however, non-binding in nature and are applied by participating states and organisations on a voluntary basis.

The EU does not regulate the quality of assistance and aid provisions specifically in the context of emergencies. CPM modules are essentially ready-made packs of personnel and supplies, which are composed based on an agreed quality standard, but mostly concern certain types of machinery or equipment used for disaster response. EU-level regulation relating to quality standards is found only in the context of legislation that is generally applicable, such as that considered above regarding food production and distribution standards. Moreover, there is no exception to these rules that would allow for some flexibility in emergency situations. Because this is an issue likely to be within the responsibility of the affected member state, the EU and its institutions may wish to consider a future communication highlighting the relevance of these standards at the domestic level so as to encourage their use in national frameworks. The EU has recently amended the rules implementing the CPM to include four new types of civil protection modules<sup>68</sup> and is conducting an ongoing review of the modules to improve interoperability of the modules.

Outside the context of the National Societies, which provide their own quality assurances for disaster relief,<sup>69</sup> this issue has received mixed attention at the state level. The Austrian report notes that while there is no specific national legislation on the subject of quality controls for disaster assistance, it is nevertheless important to consider the issue in the legislative framework for disaster response.<sup>70</sup> In Germany, quality standards are sometimes included in bilateral agreements, specifically in relation to the provision of adequately trained personnel.<sup>71</sup> The Quality Promotion Emergency Management Act in the Netherlands prescribes disaster management planning by government agencies and ensures the quality of emergency response through supervision, reporting and evaluation.<sup>72</sup>

***Increased flexibility in accepting aid should not impact upon the need for aid to meet appropriate minimum quality standards. Member states should consider the issue of the quality and suitability of international assistance and the potential***

67. For example, see the Sphere Handbook, available at: [http://www.humanitarianinfo.org/srilanka\\_hpsl/Files/Reference/Reference%20Papers/LKG0017\\_Sphere%20Handbook.pdf](http://www.humanitarianinfo.org/srilanka_hpsl/Files/Reference/Reference%20Papers/LKG0017_Sphere%20Handbook.pdf) (currently under revision); PVO Standards, available at: <http://www.gdrc.org/ngo/pvo-stand.html>; NGO Food Aid Code, available at: <http://www.dochas.ie/Pages/Resources/Viewer.aspx?id=324>; and the ICRC Code of Conduct, available at: <http://www.icrc.org/web/eng/siteeng0>.

nsf/htmlall/code-of-conduct-290296. 68. Commission Decision 2010/481/EU amending Decision 2004/277/EC, Euratom as regards rules for the implementation of Council Decision 2007/779/EC, Euratom establishing a Community civil protection mechanism. 69. See, e.g., Bulgaria, p. 40 and France, p. 58. 70. Austria, pp. 5, 12. 71. Germany, p. 50. 72. Netherlands, p. 15.

**application of internationally accepted quality standards. Member states may wish to incorporate such standards into their own legal or policy framework, while bearing in mind the voluntary nature of existing international documents (such as the Sphere Minimum Standards).**

#### 4.b Diversion, Misappropriation and Fraud

##### IDRL Guidelines

Part I of the IDRL Guidelines discusses issues of accountability in terms of the affected state and the assisting state. In particular, the Guidelines suggest in Section 6 that states and assisting humanitarian organizations should cooperate to prevent unlawful diversion, misappropriation, or fraud concerning disaster relief or initial recovery goods, equipment or resources.

In the chaos following a major disaster, the risks of unlawful diversion, misappropriation or fraud concerning disaster relief are frequently high, as demonstrated by recent research by the Overseas Development Institute<sup>80</sup> and Transparency International.<sup>74</sup> This issue is not regulated at the EU level. Moreover, very few of the member states examined provide for any law specifically relating to fraud or misappropriation of funds or resources in connection with disaster assistance. In Germany, specific principles require the Länder and municipalities, as responsible authorities, to ensure the correct diversion of relief goods and funds.<sup>75</sup> The legal framework in the Netherlands specifically provides that the supreme commander carries responsibility for the actions of Dutch and international relief workers.<sup>76</sup>

Where no specific rules apply, the most relevant legal framework is that governing the intended purpose of funds in connection with charities. Aside from that, assisting actors and states will be subject to normal rules of criminal and civil liability, for example laws on corruption, fraud and bribery, or breach of statutory or public duty. This may be further demonstrated by provisions in the law discussed above in Part 3.e on customs on VAT requiring that relief only be granted to organisations that apply certain accounting standards and are adequately supervised.

**Member states should consider whether there is a need for specific regulatory frameworks related to diversion, misappropriation or fraud in relation to foreign disaster relief and funds.**

<sup>73</sup> The Overseas Development Institute has published a number of studies relating to this issue: <http://www.odi.org.uk/work/projects/details.asp?id=364&title=corruption-emergency-relief#resources>. <sup>74</sup> Transparency

International, 'Corruption in Humanitarian Aid' (2006), available at: <http://www.transparencia.org.es/TI-%20Ayuda%20Humanitaria%20y%20Corrupci%C3%B3n.pdf>. <sup>75</sup> Germany, p. 48-9. <sup>76</sup> Netherlands, p. 30.

## 4.c Responsibility for Costs

### IDRL Guidelines

Part V Section 24 of the IDRL Guidelines recommends that the costs of providing international disaster relief or initial recovery assistance should normally be borne by the assisting state or organisation. However, where the affected state is going to be asked to reimburse certain costs, this should be on the basis of prior agreement.

The issue of responsibility for costs incurred in relation to receipt of international disaster assistance is two-fold. First, there is the international aspect, namely whether the sending state or organisation or the affected state is to meet the costs of the aid provided. Second, there is an internal aspect, where there is a need to identify which actor within the affected state is responsible for the costs of disaster relief. For example, there may be differing views as to whether the central government or the authorities in the affected region(s) should bear the costs of international assistance.

In order to avoid any confusion regarding the international aspect, the IDRL Guidelines recommend that the costs of providing international relief should normally be borne by the assisting state unless there has been a prior agreement otherwise. In the context of the EU MIC, legislation provides that the affected state is responsible for the costs of assistance unless otherwise agreed.<sup>77</sup> The Lisbon Treaty includes a “solidarity clause” (art. 222) which commits EU member states to help each other in case of disasters. It is not immediately clear from its text whether it should be considered to have an impact on the question of whether the assisting or the affected state should pay for such assistance.

In the member states, this issue is dealt with in a variety of ways. France has prepared for these issues quite specifically in bilateral agreements and allocates cost according to type, although when it calls on private means of assistance, France will bear the cost.<sup>78</sup> Germany makes arrangements for cost in its bilateral agreements to the effect that, unless otherwise agreed, assistance will not be refunded to the assisting actor. This also applies when assistance is rendered by a private humanitarian organisation.<sup>79</sup> Rules for liability in the Netherlands stem from legislation and custom.<sup>80</sup> The central government will reimburse other states unless other arrangements have been made in a treaty or in the context of the EU or NATO. All other assisting organisations are expected to bear their own costs, including humanitarian organisations. In contrast, the UK, Austria and Bulgaria do not have any formal arrangements in place.

<sup>77</sup>. Article 35, Commission Decision 2004/277/EC laying down rules for the implementation of Council Decision 2001/792/EC, Euratom establishing a Community mechanism to facilitate

reinforced cooperation in civil protection assistance interventions. <sup>78</sup>. France, p. 38. <sup>79</sup>. Germany, p. 46. <sup>80</sup>. Netherlands, p. 44.

It is suggested that arrangements as to internal allocation of costs in a disaster should also be in place, if possible in advance of the occurrence of a disaster. Otherwise regional authorities and federal states may be reluctant to accept offers of assistance due to concerns regarding capacity to pay the associated costs. Responsibility for costs may be tied to the authority to request or accept international assistance. The issue of internal responsibility for costs has been considered in some of the states studied. For example, the German report notes that as a rule, the Länder and municipalities bear the costs for all activities within their responsibility.<sup>81</sup> In the Netherlands, the central government will reimburse the provinces and municipalities.

***It should be clarified whether the Lisbon Treaty implies any changes as to which state bears the costs of assistance. If it does not (and for any non-EU aid), member states should ensure that their procedures for offering and requesting outside assistance always include clear expectations about who will bear responsibility for the costs. They should also make clear in internal regulation which department or unit within the state might be responsible for meeting any costs from accepting foreign relief.***

#### 4.d Liability for Sub-Standard Aid, Negligence, etc.

Affected states and assisting organisations should consider the potential for liability resulting from the provision of sub-standard assistance. This is the corollary of the need for the state and assisting organisations to ensure the quality and suitability of assistance when determining whether and what assistance to offer and accept. The risk of liability is generally lower where safeguards are in place to ensure that minimum standards of quality are satisfied. The failure of the state and / or the assisting organisation to comply with such obligations may expose the state, government officials, the assisting organisation or individual relief personnel to legal action for breach of civil tort law (e.g. negligence), criminal law (e.g. fraud, corruption, assault), product liability law (e.g. provision of food not meeting health standards), human rights obligations (e.g. discrimination in the distribution of aid) or employment law (e.g. failure to comply with occupational health and safety regulations). Liability may also be incurred (or precluded) pursuant to national rules on volunteers in an emergency situation, the so-called ‘Good Samaritan’ laws.

Potential liability may lead to claims for compensation against the affected state (for allowing the aid to be delivered) or the assisting state or organisation, or against relief personnel individually. In some circumstances, individual criminal responsibility under the laws of the affected state may also be a possibility.

Certain actors are entitled to privileges and immunities either under international law or national law (or both), in particular state officials of assisting states and certain staff of international organisations. However, as a general rule, privileges and immunities do not extend to civil protection officers and

<sup>81</sup>. Germany, p. 46.

the staff of assisting organisations and to the organisation itself. In the absence of specific bilateral or multilateral agreements, civil protection personnel may be liable under the national law of the affected state for the provision of sub-standard assistance. It is therefore important that affected states and assisting states and organisations are aware of any relevant legal frameworks for liability and ensure that the assistance provided meets the required minimum standards.

***Member states should consider situations in which the provision of assistance, including the provision of assistance that does not comply with the relevant international standards, could result in claims against the affected state or assisting states or organisations or their personnel.***

***Member states should consider whether there should be any exemptions in national law regarding liability for international relief providers and if so, the nature and scope of such exemptions.***

***Member states and organisations offering assistance should endeavour to comply with the applicable legal framework wherever possible, including meeting any requirements as to quality standards.***

***When negotiating the terms of the provision of assistance, whether on an ad hoc basis or in a bilateral or multilateral agreement, member states should consider potential liability and make appropriate arrangements (for example, agreeing not to make claims arising from the provision of aid).***



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# Chapter 5: Other Considerations

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## Chapter 5

### Other Considerations

#### 5.a Public Procurement

While this issue was not discussed in most of the national level studies, it should be pointed out that the EU regulates the procedures for the award of public works contracts, public supplies contracts and public services contracts by state, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or bodies governed by public law.<sup>82</sup> The law requires that all public contracts be publicized and negotiated according to specific procedures aimed at transparency.

In exceptional cases, however, a contracting authority may be able to utilize the negotiation procedure, which allows them to award contracts without the publication of a tender notice and its attendant procedural requirements. This is possible for reasons of extreme urgency resulting from unforeseeable events. This exception is only applicable in the immediate aftermath of an emergency, which is estimated at one month only. Moreover, according to several opinions issued by the Advocate General of the European Community Court of Justice, the exception does not apply to ongoing or recurring emergencies, such as annual forest fires.

***The EU should consider affirming the existing exemption from public procurement rules in emergency situations also applies to recurring and ongoing emergencies, if necessary, through legislative amendment.***

#### 5.b Data Protection and Privacy

During an emergency, responders may need to collect and share information of a personal nature. It is important to consider whether a framework for the protection of personal data is in place in the affected state and how it is to be applied in an emergency. The EU Data Protection Directive<sup>83</sup> applies to data processed by automated means and data that is intended to be part of a non-automated filing system, i.e., paper files. It is aimed at protecting the rights of persons with respect to the processing of personal data by establishing guidelines relating to quality of the data and legitimacy of the data processing. It does not apply to data processing in the course of an activity falling outside the scope of EU law, such as public security, defence or state security. The Directive is mandatory and must be implemented by the member states. By way of example, UK legislation protects the rights of persons with respect to the processing of personal data by establishing guidelines relating to quality of

<sup>82</sup>. Directive 2004/17/EC coordinating the procurement of procedures of entities operating in the water, energy, transport and postal services sectors; Directive 2004/18/EC on the coordination of procedures for the award of public works contracts,

public supply contracts and public service contracts. <sup>83</sup>. Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

the data and legitimacy of the data processing.<sup>84</sup> The UK has in the past encountered difficulties in emergency situations with the efficient and prompt sharing of relevant information between the relevant authorities and those involved in disaster response. As a result, the UK has recently introduced specific non-statutory guidance for emergency planners and responders on data protection and information-sharing during an emergency, designed to inform responders, including those in the voluntary sector, on relevant key issues.<sup>85</sup>

**Member states may wish to adopt specific policies or guidance regarding the use of personal data in an emergency.**

**The EU may wish to examine existing exclusions to Data Protection Directive and any other relevant instruments to determine whether such exclusions adequately address emergency situations or whether additional exclusions are required.**

### 5.c Language, Dissemination and Coordination

The French and German national reports indicated that there have been some problems regarding communication barriers due to linguistic differences at the national borders.<sup>86</sup> This is particularly an issue where it is necessary to provide interpreters immediately following the occurrence of a disaster. Arrangements for interpretation services may be included in a bilateral agreement, as is the case between Saarland in Germany and Moselle in France. However, the process of locating suitably qualified and experienced interpreters may lead to a delay in the provision of relief. Both reports suggested that a solution to this problem may lie in the standardization of methods and mutual knowledge of relief systems through training and exercises. For example, the Netherlands was the host of the recent EU exercise *Floodex*, which focused on issues surrounding incoming assistance in the context of a flood. As the French report asserts, efficient cooperation is based on a solid knowledge of the assisting actor's working methods and means. Mutual knowledge of each other's assistance systems, or efforts towards standardization, may help reduce any problems created by language barriers.

Moreover, coordination would further benefit from an up to date, centralized resource for the disaster laws in each member state, such as the Vade-Mecum of Civil Protection in the European Union, drafted in 1999. Such a resource would assist assisting states and organizations in complying with any relevant law and policy in their efforts to provide assistance to an affected member states. Creating a centralized database of this kind requires contributions of information by member states, as well as centralized management of the data and dissemination where appropriate.

Member states may also improve the provision of international assistance by ensuring that information concerning relevant national laws and processes

<sup>84</sup>. United Kingdom, p. 70. <sup>85</sup>. The Guidance is available at: <http://www.cabinetoffice.gov.uk/>

[media/132709/dataprotection.pdf](http://www.cabinetoffice.gov.uk/media/132709/dataprotection.pdf). <sup>86</sup>. France, 39; Germany, 58-9.

that would be applicable in an emergency context is collated and available for distribution to potential assisting actors in the event of an emergency. This may include preparation of an emergency response manual made available to all emergency assisters (such as that prepared by the Netherlands)<sup>87</sup> or be linked to the responsibilities of the national focal point (see Part 2.c above).

International assistance would further benefit from member state support of the IDRL Guidelines through dissemination at the international and national level. For example, member states should ensure all relevant government authorities and voluntary organisations are informed of IDRL Guidelines and related national legislation and procedures, including the need to coordinate the receipt of international assistance.

***The EU institutions and the member states should engage in practical exercises that highlight assistance coming not only from other EU member states but also assistance from third countries operating outside the context of existing bilateral and multilateral agreements. Such exercises may assist in ascertaining possible problems and in identifying appropriate solutions in advance of a disaster occurring.***

***The Commission's Civil Protection Unit and member states should update and disseminate the CPM's compilation of member state disaster laws with a view to including information about rules and procedures relating to the issues raised in the IDRL Guidelines.***

***Member states should consider how best to facilitate the provision of information on the relevant national laws and procedures to foreign emergency responder and encourage support for the Guidelines through dissemination at both the international and national levels.***

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<sup>87</sup>. Netherlands, 14.

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# Chapter 6: General Conclusions and Recommendations

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## Chapter 6

### General Conclusions and Recommendations

#### 6.a General Conclusions

1. Some EU member states are already considered to be prone to disasters. Moreover, it is predicted that climate change will lead to a greater incidence of large-scale natural disasters in the region. Thus, there is now a new possibility of large disasters, even in states that have rarely experienced them in the past.
2. Within the EU, cross-border disaster assistance benefits from the region's enhanced flexibility of movement of people and goods across borders. Moreover, there are a number of European mechanisms that seek to coordinate assistance to member states, including the EU Civil Protection Mechanism, the NATO Euro-Atlantic Disaster Response Coordination Centre, and bilateral agreements.
3. The creation and refinement of the Community Civil Protection Mechanism has plainly improved communication and coordination; however, the legislation underpinning the Mechanism has not addressed directly the regulatory aspect of disaster cooperation at the EU or national level.
4. Other areas of existing EU law address a number of the issues raised in the IDRL Guidelines (such as customs duty exemptions for disaster relief goods). However, other issues are not comprehensively addressed (e.g. recognition of professional qualifications for the temporary provision of services). With some exceptions, those remaining questions are also not addressed in the laws of the member states taken as case studies for this report. In other words, there are some regulatory gaps.
5. Several of the member states studied for this report have never (or hardly ever) sought non-EU international assistance and have not considered the possibility to any great extent. Hence, receipt of cross-border assistance from outside the EU is not, as a general rule, considered in national disaster response laws and policies. This could prove problematic in the event of an exceptional catastrophe for which assistance from within state or the EU may not be sufficient or readily available.
6. Disaster-affected states often receive offers of international assistance from a variety of sources, including both public and private sources. It is important that the relevant authorities have the capacity to deal effectively and efficiently with all offers to ensure they receive only the assistance required by the situation. These issues do not appear to be fully covered by existing EU or member state legislation.
7. With the exception of the UK, the member states studied, have entered into specific bilateral or regional agreements with neighbouring states concerning the provision of cross-border assistance. These agreements address some of the issues raised by the IDRL Guidelines insofar as assistance from those states is concerned. However, they are not standardized and the potential of overlapping and inconsistent rules remains.

8. The member states have different legislative and regulatory frameworks, and have addressed the issues raised by the IDRL Guidelines to varying degrees. Therefore, the recommendations set out in the next section will not necessarily apply to each member state equally or in the same manner.
9. The member states studied have few, if any, provisions in their existing law and policy regarding outside assistance from the Red Cross and Red Crescent Movement and from other voluntary organizations. These issues are also not addressed in their bilateral agreements or at the EU level. This is a large gap, in light of the significant value these organizations can add.
10. While international assistance must be capable of being delivered quickly and efficiently, it is also important to ensure that aid received is of an acceptable quality and appropriate to the situation. Exemptions or expedited procedures should not be introduced where to do so would create unacceptable risks to the security or health and safety within the EU and its member states.
11. A number of steps can be taken to improve preparedness for these kinds of issues fairly informally, such as through manuals, plans and guidance documents. However, there are also some issues – both at the member state and the EU level – that may require amendments to existing legislation.

## 6.b Recommendations

### National level

1. EU member states, including those that have not yet had to rely on international disaster assistance, should consider the possibility of requiring such assistance in the future (in light of changing disaster patterns).
2. Member states should assess the degree to which their national legal, policy and institutional frameworks are currently prepared to address the issues raised in the IDRL Guidelines. They are encouraged to call upon their National Red Cross Societies, as their auxiliaries in the humanitarian field, for support in this analysis, consistent with Resolution 4 of the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent of 2007.
3. In particular, member states should consider whether there is a need to develop or amend existing legislation or policies in order to address:
  - a. Requesting and responding to offers of assistance from abroad, including:
    - i. Specifying which department is responsible for assessing need and making decisions on outside aid;
    - ii. Ensuring clarity as to the expectations of any assisting state as to reimbursement of costs for the provision of assistance (bearing in mind the relevant provisions of the existing CPM legislation);

- iii. Ensuring clarity as to what internal department or level of government may be responsible for the costs of foreign assistance, if accepted;
- b. Nominating an appropriate focal point for facilitating the work of international assistance providers;
- c. Facilitating assistance from foreign National Red Cross Societies and other voluntary organizations in line with the IDRL Guidelines, including:
  - i. A procedure for pre-qualification, if possible, for legal facilities in case of disaster;
  - ii. Recognition of the role of the National Red Cross Society as a key actor in the initiation of foreign disaster assistance from the Red Cross and Red Crescent Movement.
- d. Visa exemptions (in line with the discretionary exception under Regulation 539/2001/EC) for foreign relief personnel from states or organizations outside the EU whose assistance has been accepted or, at the least, expedited procedures for processing visa applications;
- e. Expedited systems for the recognition of foreign medical qualifications of personnel from states or organizations whose assistance has been accepted, including:
  - i. A system for expedited recognition of medical qualifications obtained outside the EU;
  - ii. Particularly swift procedures for qualifications received in EU countries (consistent with Directive 2005/36/EC, but with a much shorter processing period);
  - iii. Recognition of first aid qualifications (if necessary under existing law);
- f. Simplified procedures for the entry of disaster relief-bearing vehicles from non-EU member states (as required, for example by Annex of Regulation 881/92/EEC);
- g. Clear procedures for providing overflight and landing rights to relief flights and waiving any associated taxes or charges;
- h. Protocols for the express granting of usage rights for frequencies, bandwidth, etc. for the communications needs of approved foreign disaster responders;
- i. Safeguards as to the quality of foreign assistance, in line with accepted international humanitarian quality standards (such as the Sphere Minimum Standards);
- j. Safeguards against diversion or misappropriation of relief funds and materials to be applied in a sufficiently flexible manner so as to avoid slowing the entry and delivery of aid;
- k. Limited liability protections (e.g. against claims of simple negligence) for foreign disaster assistance providers who are working closely with domestic authorities;
- l. Exceptions, as appropriate, from data and privacy protection regimes with respect to the needs of international relief operations;

- m. Facilitating transit of relief across its territory or airspace to another disaster-affected country.
4. Member states (in particular those with federal systems) should endeavour to establish some uniformity across internal regions and provinces with respect to how international assistance is facilitated and regulated.
5. Member states may wish to assess their existing bilateral agreements in light of the IDRL Guidelines, to ensure that they are covering key issues and to reduce any contradictions with existing EU law.
6. Member states should ensure the provision of key information on the relevant national laws and procedures to foreign emergency responders (for example, through a summary document made available online).
7. Member states and National Red Cross Societies should disseminate the IDRL Guidelines, any EU level guidelines on Host Nation Support, and relevant national laws and policies to all relevant national authorities and voluntary organisations.

#### EU level

1. EU institutions and member states should capitalize on the recent discussions about “Host Nation Support” to develop processes and share information about best practices relative to the regulation of international disaster assistance.
2. As an initial step, this should include the development of non-binding guidelines for member states about how best to address common operational and legal issues in receiving international disaster assistance. These guidelines should:
  - a. Draw on the IDRL Guidelines, the findings and recommendations of the current study, the Council Resolution of 8 July 1991, and other similar initiatives and guidance;
  - b. Address not only issues related to state-to-state assistance (both from within and from outside the EU) but also those relevant to international assistance by National Red Cross Societies and other civil society organizations;
  - c. Address not only issues related to relief personnel, but also those related to relief goods, equipment and operations;
  - d. Address not only potential entry barriers but also quality and security concerns relevant to international assistance.
3. As a second step, and having due regard to their respective competencies, the EU institutions and the member states should consider whether and how the existing EU legal framework relevant to cross-border disaster assistance should be strengthened. In particular, they should consider whether there is a need for amendments to existing legislation, for example, to provide:
  - a. Clarification as to whether the solidarity clause of the Lisbon Treaty (art. 222) has any impact on the provisions as to who bears the costs of state-to-state assistance, as currently set out in Council Decision

- 2004/277/EC and/or any existing bilateral disaster cooperation agreements;
- b. Clarification of the existing emergency exemption from public procurement rules contained in Directive 2004/18/EC, so that it is also considered to apply to “recurring” emergencies;
  - c. The addition of discretionary exceptions in EU regulations concerning standards for food and medications, e.g. Regulation 178/2002/EC on the requirements of food law or Directive 2001/83/EC on medicinal products for human use, to allow member states a sufficient degree of flexibility in emergency situations to apply somewhat different procedures (e.g. for prior approvals and or labelling) to emergency assistance from trusted providers, so long as this can be done in a manner consistent with public safety;
  - d. The addition of a discretionary exemption from required procedures for the entry of non-EU rescue animals under Regulation 998/2003/EC to allow increased flexibility to member states (subject to appropriate ongoing safeguards to ensure public health and safety);
  - e. Removal of the requirement in Regulation 918/83/EEC for prior Commission approval for any VAT exemption provided by a Member state for disaster relief shipments;
  - f. Removal of the carve-out from customs duties exemptions under Regulation 918/83/EEC related to goods and equipment imported for rebuilding after a disaster;
  - g. Extension of the VAT exemptions for certain transactions in Council Directive 2006/112/EC to include in-country purchases of goods and services by international disaster relief providers when necessary for disaster relief operations;
  - h. Introducing certain exceptions into Directive 95/46/EC on data protection, to ensure that information may be quickly shared as necessary in an emergency situation; and
  - i. Expressly providing for an even more expedited procedure for the recognition of foreign medical qualifications under Directive 2005/36/EC.
4. The EU Institutions and member states should engage in practical exercises that test and raise awareness of existing procedures for facilitating and regulating foreign assistance – including from outside the EU, as appropriate.
  5. With the cooperation of member states, ECHO should update its Vademecum of Civil Protection in the EU with a view to including information about member states’ rules and procedures related to the issues raised in the IDRL Guidelines.
  6. The EU institutions should consider supporting additional research concerning topics related to the IDRL Guidelines. This may include examining the protections provided to civil protection officers under national and international law, in particular as regards liability, and a more comprehensive review of relevant bilateral agreements.



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

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## **Humanity**

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, 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 EU and a Selection of Member States pertaining to Cross-Border Disaster Relief

## Synthesis Report and Recommendations

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

For more information, please contact:  
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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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