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RIGHT TO SAFETY – THE RELEVANCE OF EUROPEAN LAW

**Notes preparatory to the intervention¹ of Scott Crosby at the AGE conference,
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Application of right to safety to EU law

European Community involvement in health, safety and ecological policies is rooted in primary law. Together with consumer and civilian protection instruments, these policies are part of the Community legal order.

Article 152 EC Treaty sets out the basic philosophy; ‘a high level of human health protection shall be ensured in the definition and implementation of all community policies and activities’. The aim is that health protection should be promoted throughout a range of community policies, examples of which are numerous but which include trade, marine life and pollution, and agriculture. In addition, Article 95 EC Treaty provides that Commission proposals ‘concerning health, safety, environmental protection and consumer protection’ will take as a base, as high level of protection. Article 130 EC Treaty lists the objectives of environmental policy which are also related to health issues, for example quality of drinking water and air.

Do these norms amount to a right to safety?

Health and social service provision are predominantly the concern of national, and in some case, regional governments, with little responsibility residing at European level. There has been a reaction to this void from the European Court of Justice, but only to a limited extent. It seems that the emphasis on EU legislation has been on health and safety in the workplace, as opposed to outside of it. This is despite European initiatives such as the Community Action Programme for Public Health launched in 2002. Recently, however, environmental and safety policy has come to be viewed as the joint responsibility of member states and the Community.

Although commentators may argue that European citizens do not have a community wide right to environmental and civilian protection per se, the right to safety exists under the guise of numerous individual legislative instruments, each of which deals with a specific issue. Below is a non exhaustive list of such legislation. Although the focus of this paper is on Civil Protection and the ability of the Community to respond to natural disasters such as earthquakes and hurricanes, the following demonstrate that any claims that safety is not a fundamental right of EU citizens, is misconceived. Currently, EU legislation does confer, to varying degrees, a right to safety through, inter alia, the following instruments:

¹ The intervention, based on these notes, was of about 15 minutes duration and was delivered in Italian

² Unrevised : these are preliminary notes and may not be taken as legal advice.

Nuclear Energy

- Euratom Treaty
- Euratom Supply Agency
- Council Decision 2006/970/Euratom of 18 December 2006 concerning the Seventh Framework Programme of the European Atomic Energy

Transport

- Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licenses (Recast)
- Directive 2004/54/EC of the European Parliament and of the Council of 29 April 2004 on minimum safety requirements for tunnels in the trans-European road network
- Drivers' Social Legislation, including the regulation (limitation) of driving hours

Consumer Protection

- Community Directive on General Product Safety 1992/59 imposes on the producer, and to a lesser extent the supplier, the duty to market only safe products in the Community - Article 9 specifically provides for a Community wide procedure for preventing the circulation of hazardous products in the internal market
- Various directives in the field of tobacco control
- EU Food law

Threats to Health

- European Centre for Disease Prevention and Control
- Early warning and response system for the prevention and control of communicable diseases
- Informing the general public in the event of a radiological emergency

Humanitarian Aid

- Council Regulation 1257/96 on Community Humanitarian Aid
- Disaster and Crisis Response in Non-EU Countries

Water Protection

- Framework Directive in the field of Water Policy – 2000/60/EC is one of the most important pieces of legislation in the area of water protection and management, the EU oversees the management of inland surface waters, groundwater, transitional waters and coastal waters to ensure pollution is prevented or kept to a minimum. It is also responsible for the promotion of sustainable water use, the protection of the aquatic environment and mitigating the effects of floods and droughts.

- Strategy for the Marine Environment
- Protection of groundwater against Pollution

European Convention on Human Rights and Fundamental Freedoms (ECHR)

- Article 2 of the ECHR guarantees the right to life and the EU is required to comply with European human rights law
- Directive 2008/1/EC
- This gives individuals the right to contest authorisations to industry where emissions are above safe levels and pollute the air, the soil and the ground water

Resolution of the European Parliament of 19 June 2008

- This refers to forest fires, drought and floods (this Resolution makes no reference to earthquakes, but it does refer to the specific needs of the Mediterranean Region and in Article 19 calls for legislation to fill the gaps)

Civil Protection

This is the most significant area of EU policy and activity as regards civilian rights to safety. It has been the subject of much development in the last few years. The European Union has initiated actions in the field of civil protection aimed at supporting and supplementing efforts at national, regional and local level with regard to disaster prevention.

The Community **Civil Protection Mechanism** was established in 2001 by Council Decision 2001/792 to facilitate the mobilisation of support and assistance from member states in the event of disaster. It covers all member states, the Candidate Countries and the EEA countries.

The Tsunami of 2004 instigated a review of civil protection systems and has resulted in a series of Commission Communications intending to develop a more effective response system to any type of future disaster. By Decision 2004/777 the Commission gave its response to calls from the Council and European Parliament to improve the mechanism, and on 26 January 2006 the Commission adopted a new set of proposals intending to strengthen the system and widen the scope of Community action. The most recent binding modules of civil protection legislation therefore address disaster management and in particular its prevention, preparedness and response. The two Council decisions are complimented by the Regulation put into place in 2001:

- The Community Civil Protection Mechanism - Council Decision 2007/779/EC, Euratom (recast)
- The Civil Protection Financial Instrument - Council Decision 2007/162/EC, Euratom

The latter legislation compliments the Civil Protection Mechanism and is based on a Council Regulation establishing a rapid response and preparedness instrument for major emergencies on 20 April 2005. The Commission proposed a major increase in the future financing for European civil protection actions, with annual amounts ranging from 16 million Euros in 2007 to 30 million Euros in 2013. Renamed the Civil Protection Financial Instrument, this legislation was adopted on 5 March 2007 and acknowledges the importance of immediate financial assistance as a tangible expression of European solidarity in the event of major emergencies.

The question remains as to what extent it actually works. The apparatus by which the mechanism operates can be broken down as follows.

The Monitoring and Information Centre – known as the heart of the Mechanism - this Commission unit operates 24/7 receiving alerts and requests for assistance direct from a disaster stricken country. Upon receipt of such a request the MIC immediately informs the national civil protection authorities, liaising closely with local authorities to coordinate a response with UN field agents. These agents will normally have been appointed by the MIC and travel to the scene along with assessment experts utilised to identify the needs of civilians.

The MIC also deals with disasters outside the Union, usually sending an EU assessment and coordination team made up of two or three people from member states with sufficient expertise in dealing with emergencies. Its role is to facilitate a smooth exchange of information, distribution of work and appropriate cooperation with UN and other partners present on the ground.

The Civil Protection Mechanism is also responsible for the running of the Common Emergency and Information System, a detailed training programme for member state delegates and a number of Civil Protection Modules. It works closely with the military forces of member states. The EU's military resources are an asset in terms of delivering a response to a crisis in the quickest time possible and can be utilised as a compliment to the other elements of aid; money, expertise and manpower. The EU is also committed to determining levels of humanitarian response and relief by the needs of victims alone, disregarding political considerations

A working example of EU response to natural disasters forms the basis of the 2005 Communication from the Commission to the European Parliament, European Social Committee and Committee of the Regions. The paper illustrates the wealth of resources at the Union's disposal, both internal and external, to address crisis and humanitarian suffering, in this case the Tsunami strike in South Asia. It claims that the diversity of the Union's capabilities is one of its greatest strengths and reinforces the need to have programmes in the field of research, information, liberty, and security. The list of legislation given above proves its use, and is a contributor to the rapid response of the EU. The EU was the largest collective donor to the Tsunami relief fund, pledging around \$1.5 billion.

Other recent examples of the Mechanism in use include floods in Central Europe (2002) and France (2003), the earthquakes in Algeria (2003), Iran (2003) and Morocco (2004) and the explosion in Asuncion (2004). In 2005 Romania and Bulgaria called upon the Mechanism for assistance in dealing with the aftermath of

flooding. The Mechanism also dealt with the coordination of EU civil protection assistance to the hurricane-struck areas in the United States. The involvement of the EC African Peace Facility since 2004 also highlights the capability and motivation of the Commission to a cause once it is on their political and ecological radar.

The Mechanism is under constant review and developments are in the pipeline for the next few years, including;

- Commission Communication of Reinforcing the Union's Disaster Response Capacity – COM(2008) 130
- Commission Communication on Strengthening Early Warning Systems in Europe
- The Treaty of Lisbon provides that the Union and the member states act jointly in a spirit of solidarity if a member state is the subject of a terrorist attack or **the victim of a man made or natural disaster**. Solidarity in the area of energy is also emphasised. It also puts forward new provisions on civil protection, humanitarian aid and public health with the aim of boosting the Union's ability to respond to European threats.

The European Commission is serious about the threatening presence of both natural and man made disasters. Recent announcements have confirmed that the EU Budgetary Authority has set aside four million Euros in the Commission's budget for 2008 with the intention of preparing action on an EU rapid response capability programme, designed to respond immediately to critical needs arising from major disasters. Through the programme, a dedicated civil protection module will be established that member states will make available for interventions needed to protect civilians from emergency. In conjunction with the Monitoring and Information Centre the module will ensure rapid crisis response through ensuring that key resources and essential equipment are on standby.

Proposals are currently being invited by the Commission for civil protection projects within the above framework with successful candidates being notified by early 2009. Parties who successfully tender will secure an initial payment of 40% of the project's budgetary funding to ensure the facilities and resources to aid civil protection are provided for without delay.

Does the Civil Protection Mechanism equate to a defining legal text outlining a fundamental right to safety?

The Mechanism provides a framework and justification for Community involvement in any type of disaster affecting civilians. It focuses entirely on activities at Community level, not member states. Crucially therefore the main legislation affording civil protection does not impose any obligations on member state authorities to prepare for and respond to disasters within their own countries. It is this void in the legislation that needs to be filled in order to protect the fundamental right to safety.

This leaves an inconsistent operating system across the Union. The effectiveness of domestic civil protection programmes varies from state to state, some of which leave

populations in a potentially precarious situation. It is on behalf of these citizens that a call might to be made, initially perhaps to the Commission, to level to devise a regulatory system outlining protection frameworks across the whole of the Community.

In order to lobby the EU to adopt an instrument which confers the necessity to appropriately deal with potential human and man made disasters a number of preliminary issues need to be considered.

1. Legal Instrument

The ECJ has insisted, through a number of judgments, that directives relating to health, safety and environmental quality must be implemented in member states by means of binding, transparent and precise legal rules with equating sanctions. It adheres to the policy that when a member state implements Community rules, fundamental rights become binding.

The Civil Protection Mechanism originated in Commission proposals that once adopted have been ratified by Council Decisions. Any specific text conferring a standard protection of the right to safety across member states could therefore follow the same development process, as we know that the Council has recognised the humanitarian need for assistance.

Alternatively the originator of new legislation could be the European Parliament which has the power to pass a resolution as a prelude to enacting appropriate legislation.

2. Legal Basis

The Environmental chapter of the EC Treaty probably contains sufficient powers. If not then Article 308 EC always remains available.

3. Subsidiarity

In order for Community intervention to be justified, there needs to be a **community dimension** to issues of disaster relief and civil protection.

This could be demonstrated by reference to the trans-frontier nature of

- Funding – following human disaster, relief would no doubt come from, at least to a certain degree, central European funds;
- Pollution – Radiation/ uncontaminated food sources
- Displacement and evacuation of persons
- Climate change consequences – fire, floods and drought
- The fact that many EU member states are exposed to seismic risk

4. Enforcement and Sanctions for Infringement

Any EU regime would have to foresee effective sanctions for infringements. There is a controversy as to how competence should be shared between the EU and the

member States in respect of sanctions, especially criminal sanctions, but none as to the fact that without sanctions there is no effective law.

Right to Safety under the Auspices of the Council of Europe

The Council of Europe in Strasbourg (with 47 member states) is also a potential actor.

Final remarks

Despite all of the evidential instruments enacted by the EU which relate, in some way or another, to the right to safety for its civilians, a defining legal text on civil protection is lacking. The Civil Protection Mechanism is clearly the founding text which both the Commission and Council have had their hand in, and upon which they rely in support of the argument that safety against human or natural disaster is manifested in European legislation.

It remains the case however that a strategy for imposing common rules on all member states in affording their citizens with such protection does not exist, nor is there sufficient dialogue on the possibility of it emerging. The logic of having an instrument which would ensure a reasonable standard of safety across the Community is striking, not only in humanitarian terms but on economic grounds. Therefore one should seriously consider the merits of instigating an approach, whether it is to the EC or Commission or the Council of Europe, setting forth the relevance of European law to right to safety.

With reference to the AGE conferences any approach would also have to stress that earthquakes do not seem to be contemplated by the measures already existing, a lacuna that needs to be removed.

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