



ÖSTERREICHISCHES  
ROTES KREUZ

*Aus Liebe zum Menschen.*

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

**Country Report: Austria**

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#### **DISCLAIMER**

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# Introduction

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Experiences over recent decades have shown that disaster relief is increasingly an interregional and international issue.

Several different factors are contributing to this development, for example the growing number and strength of relief organisations operating at an international level; the increasing frequency and intensity of disasters due above all to climate change and armed conflicts; economic globalisation, through which even disasters in developing countries are increasingly directly or indirectly affecting the personal, humanitarian and economic interests of other countries, and finally the fact that it is now for political reasons easier for most of the communities, regions or states affected to request international assistance.

The above applies both to natural disasters such as tsunamis or volcanic eruptions and to disasters caused or intensified by human actions, in particular disasters which can be considered as the result of man-made global warming. Not only are such disasters likely to occur with ever increasing frequency in the future, they may also hit areas and countries - for example Austria – which have previously been largely unaffected. This is another aspect which makes smooth, well-coordinated international cooperation on disaster relief all the more important.

Experiences over recent years and decades have also shown very clearly that the continuing lack of a standard legal framework unfortunately often limits the effectiveness and efficiency of international disaster relief. Speed in such situations is usually critical; assistance – for example the rescue of those buried in earthquake debris – is often only useful if given within hours or days of the disaster. In this context, administrative hurdles and obstacles such as customs and visa formalities combined with recipient state authorities completely unable to cope are often detrimental to many disaster victims.

Similar points can be made about the quality of assistance. Again and again, international relief organisations and actors fail to act for the maximum benefit of the disaster victims. There often appears to be an equal focus on other criteria such as media effect, donations marketing or even concrete economic, political or other ideological interests. This, too, can lead to major problems in the event of disasters, even to the loss of human life.

It is therefore clear that a statutory basis for disaster relief is required in addition to the organisational basis which has already been established in many areas: a suitable legal framework must be in place when disasters occur to allow disaster relief from outside as rapidly, efficiently and effectively as possible. This is the only way to minimise damage to health and the loss of life amongst those affected by the disaster – naturally whilst upholding the sovereign power of the recipient nation.

These are some of the main reasons why the International Federation of Red Cross and Red Crescent Societies (IFRC)<sup>1</sup> launched the IDRL<sup>2</sup> project in 2002, the project which also triggered this EU project and this study.

The Geneva Convention signatories represented at the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent in Geneva in late November 2007 and their national Red Cross and Red Crescent Societies adopted the Guidelines für the domestic facilitation and regulation of international disaster relief and initial recovery assistance (also known as “IDRL Guidelines”). All parties have worked together on drafting these (non-binding) guidelines for the legal regulation of international disaster response.

The purpose of this report is to analyse the extent to which the recommendations and provisions contained in the IDRL Guidelines have already been implemented under Austrian law and to examine the areas in which adjustments or changes may still be required.

Together with country reports for the other EU Red Cross Societies participating in the project, this report should form the basis for an overall EU report on disaster relief law currently applicable in the EU and for any EU-wide recommendations.

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<sup>1</sup> in German: Internationale Föderation der Rotkreuz- und Rothalbmondgesellschaften

<sup>2</sup> International Disaster Response Laws, Rules and Principles

# Methodology

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This report was drafted by the Austrian Red Cross using an International Federation of Red Cross and Red Crescent Societies questionnaire based on the IDRL Guidelines. For the sake of clarity and ease of comparison, this report largely follows the structure of the questionnaire.

The questions relevant to the project were answered on the basis of literature and Internet research, an analysis of the disaster relief laws of the various Austrian federal states and information from the competent staff at the Austrian ministries concerned. These last were interviewed by the author either in person or by e-mail.

We would like to thank the Austrian ministries involved and the staff who represented them for their help and cooperation.

# Austria: Country Profile and Possible Disaster Scenarios

Austria is a landlocked country in Central Europe. In the West it borders on Switzerland, Germany and Liechtenstein, in the North on Germany and the Czech Republic, in the East on Slovakia and Hungary and in the South on Italy and Slovenia.

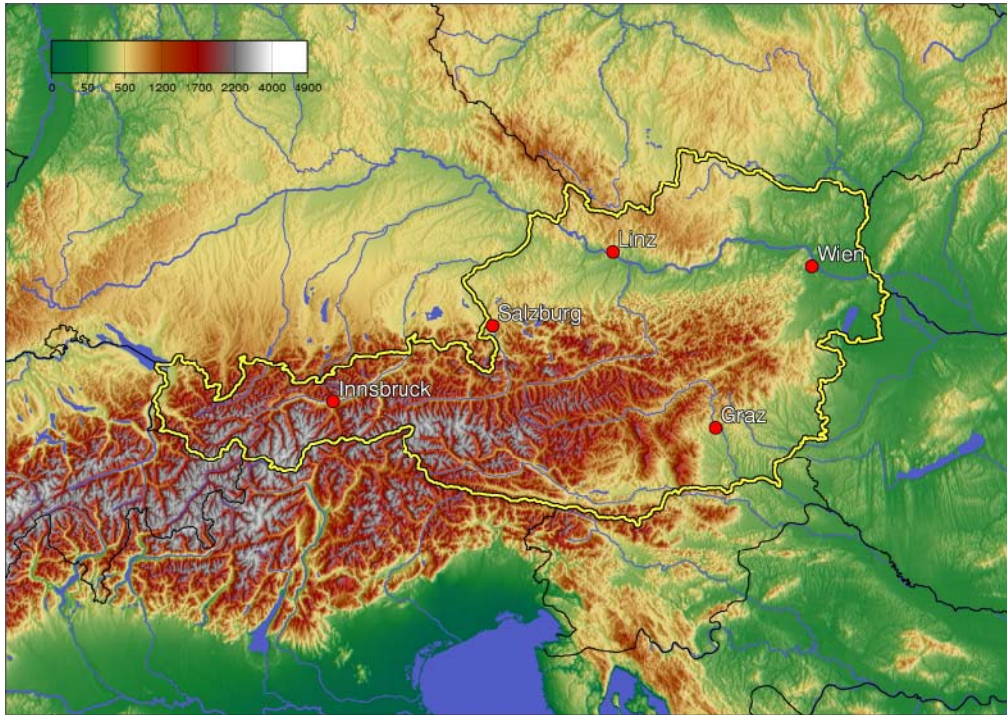
Austria covers a surface area of approximately 84,000 km<sup>2</sup>. 43% of the national territory is forested. Around 60% of the national territory is covered by mountains up to 3.798m high. The population is approximately 8.2 million. The greatest and most densely populated plains are mainly situated along the river Danube and the Eastern and the South-eastern parts of the country.

The federal capital of Vienna has the greatest number of inhabitants with a current population of around 1.7 million people. This is followed by the regional capitals of Graz (around 300,000), Linz (around 190,000) and Salzburg (around 150,000).



(<http://www.mapsofworld.com/austria/austria-political-map.html#>, 06.04.2010)

Austria is a country with many rivers. The biggest river is the Danube which flows across the country from West to East and finally drains into the Black Sea together with numerous tributary streams. Large lakes can be found in the West (Lake Constance), in Salzkammergut (border region Upper Austria – Salzburg, e.g. Attersee, Traunsee), in the South (Carinthia, e.g. Wörthersee) and in the East (Burgenland, Lake Neusiedl).



([http://www.mygeo.info/landkarten/oesterreich/Oesterreich\\_Topographie\\_Staedte.png](http://www.mygeo.info/landkarten/oesterreich/Oesterreich_Topographie_Staedte.png), 06.04.2010)

Austria is characterised by a Central European transitional climate. This generally means cold winters, warm summers and throughout the year rather moderate rainfall on average. In the alpine regions in the West, an alpine climate prevails with harsher winters than in the rest of the country.

The areas with the greatest amount of rainfall can be found in particular along the alpine main ridges and in the Alpine foothills, in the Tyrol Unterland, the Außerfern and the Bregenzerwald. Here 3,000mm of rain falls every year. The national rainfall average is 900mm.

In the past, Austria, just like its neighbouring countries, has been repeatedly affected by storms and extraordinary weather phenomena. Many experts attribute this rise in such phenomena to increasing climate change among other things. However, this is still contentious in many respects and has not been thoroughly researched.



In particular, the following rank among the worst natural disasters of the last few years according to records<sup>3</sup>:

- Heat waves (July 2003, July 2007)
- Mud slides / avalanche slides (February 1999, March 2000)
- Flooding (August 1991, July 1997, May 1999, August 2002, July 2005, March 2006)
- Storms (November 2002, February 2008)

As part of a workshop with national representatives from the relevant authorities and NGOs for examination of the present study, the participants as a group exercise had to determine the probability of disasters and the extent of damage caused by the latter in Austria.

They came to the conclusion that natural disasters were of particular relevance over the last few years. In concrete terms, disasters caused by flooding, storms, thunderstorms, landslides, low temperatures and in connection with this avalanches all cause the greatest damage. The likelihood of their occurrence in Austria is high.

Should a technical disaster occur in Austria, the probability of occurrence is greatest for industrial accidents or infrastructural accidents. In terms of statistics, these also cause the greatest amount of damage.

During the last few years, the greatest technical disasters occurred in the following areas according to the EM-DAT<sup>4</sup> data:

- Transport (e.g. Kaprun disaster in November 2000)
- Industrial accidents (July 1998)

Around 60% of the electrical energy produced in Austria can be attributed to hydropower, the rest is generated above all by caloric power plants. Due to the Federal Constitutional Act for a Non-Nuclear Austria from 1978, Austria has no nuclear power stations.

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<sup>3</sup> Data from the EM-DAT: The OFDA/CRED International Disaster Database, [www.emdat.be](http://www.emdat.be) – Université catholique de Louvain – Brussels – Belgium, Updated 30.03.2010

<sup>4</sup> Data from the EM-DAT: The OFDA/CRED International Disaster Database, [www.emdat.be](http://www.emdat.be) – Université catholique de Louvain – Brussels – Belgium, Updated 30.03.2010

As measured by the number of employees, the metropolitan area of Vienna is the most significant industrial site in Austria, with the crude oil processing OMV being the biggest business on the Eastern outskirts of Vienna. In the metropolitan area of the provincial capital of Linz, a significant steel industry company can be found called Voestalpine.

Due to its position in a temperate climate zone and the high standards in commerce and industry, Austria is in the fortunate position that comparably few victims and little damage are recorded due to disasters. However, any victim and damage incurred is too much, therefore precaution for the event of a disaster among other things is essential from a legal perspective. Not least, well organised disaster preparedness and relief are generally conducive to containing material damage and personal injury.

# Austrian disaster relief law

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Austria is a federal country consisting of nine autonomous federal states: Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna.

Under Article 15 of the *Bundes-Verfassungsgesetz* [Austrian Federal Constitutional Act] (B-VG)<sup>5</sup>, the federal states have full authority and responsibility for legislation and implementation in all matters not specifically assigned to the national government in the Austrian constitution.

Disaster relief is not explicitly mentioned in the Austrian constitution and the individual federal states consequently have responsibility for disaster relief legislation and its implementation. Every single Austrian federal state has therefore passed its own disaster relief act.

As disasters can, however, cross federal state or indeed national borders or require international action, the national government has powers to coordinate disaster relief. It exercises these powers under the general definitions “*Aufrechterhaltung der öffentlichen Ruhe, Ordnung und Sicherheit*” [“Protection of Public Law, Order and Security”] and “*Äußere Angelegenheiten*” [“Foreign Affairs”], two areas for which it does have responsibility according to Article 10 of the *Bundes-Verfassungsgesetz*. Under the *Bundesministeriengesetz* [Austrian Federal Ministries Act], responsibility for the exercise of this coordination function lies with the Austrian Federal Ministry of the Interior [*Bundesministerium für Inneres*], which has set up the *Bundeswarnzentrale* [Austrian Federal Alarm Centre] as a disaster relief contact point.

The national government in Austria thus has no regulatory or implementing powers for disaster relief, nor can it issue orders on disaster relief to the regional authorities. The national government’s coordination role is thus in essence that of a service provider for the federal states.

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<sup>5</sup> BGBl.[Austrian Federal Law Gazette] 1/1930 as amended in BGBl. I 47/2009

# Brief analysis of the Austrian legal system

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The overview below shows that Austrian disaster relief legislation as it currently stands both meets domestic Austrian requirements and allows for assistance for other states.

This is largely because Austrian law includes no general restrictions, for example on the import/export of goods, the entry and exit of personnel etc., and permits such as visas can also if necessary be granted rapidly and without statutory waiting periods.

Disaster relief is also facilitated by the *Bundesgesetz über das internationale Privatrecht* [Austrian International Private Law Act] (IPR Act)<sup>6</sup>, which grants relief organisations in Austria the same legal capacity as the applicable law at their head office. Regulations governing specific areas such as customs and transport take full account of the problems of disaster relief and this facilitates its implementation.

Improvements would nevertheless be advisable, as the current legal basis for disaster relief does not appear to provide sufficient regulations, either explicit or implicit, in particular governing procedures in the case of disaster relief in Austria provided by foreign relief providers. This applies to the prerequisites for and preparation of such assistance, to any quality criteria governing its implementation and to the question of who is to coordinate cross-regional action and, if necessary, monitor relief in a disaster situation.

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<sup>6</sup> BGBl. 304/1978 as amended in BGBl. I 58/2004

# Conclusions and Austrian legislative requirements

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There are considerable differences in wording between the various different federal state laws on disaster relief. Differences also exist in terms of actual content, for example concerning the position of the Austrian Red Cross.

Although these legal differences have not yet proved an obstacle to disaster management – largely because international relief has not been required in Austria – the harmonisation of laws governing assistance from abroad would nevertheless appear useful, as it would facilitate and expedite any necessary future support from abroad.

In concrete terms, this could be done through the conclusion of an agreement between the national and federal state governments in accordance with Article 15a of the *Bundes-Verfassungsgesetz*. Such an agreement should as far as possible be based on the “*Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*” passed at the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent in November 2007 (Resolution No. 4).

# Austrian disaster relief law in detail

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## Specific governmental focal point

1. Is a specific governmental focal point identified in law for:

a. requesting international disaster relief?

b. liaising with international aid providers (including non-state actors)?

Austria is a federal country consisting of nine autonomous federal states: *Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna*. The federal states have full authority and responsibility for legislation and implementation in all matters the Austrian constitution does not specifically assign to the national government. Disaster relief is not mentioned in the Austrian constitution and is thus the responsibility of the federal states. In practice, however, the coordinated intervention of national authorities is needed if a disaster crosses the borders of several federal states or indeed the borders of the Federal Republic of Austria. Such intervention is possible as the national government has responsibility for the maintenance of peace, public order and security and for foreign affairs (Art. 10 (1) Items 2 and 7 *B-VG*).

Under the *Bundesministeriengesetz* 1986, *BGBI.* [Austrian Federal Law Gazette] No. 76/86, as amended in *BGBI.* I No. 4/2008 Appendix to §2 lit.E, Item 1, the Federal Ministry of the Interior is responsible for the coordination of disaster relief. It may establish all national and international contacts necessary for this purpose and is supported by the “*Staatliches Krisen- und Katastrophenschutzmanagement*” [National Crisis Management and Civil Protection Unit] (SKKM), a body which it runs.

2. What powers is the focal point accorded in law?

The focal point only has coordination powers but has no decision-making power.

3. Can it establish rules or procedures related to international assistance?

If the term “procedures” is taken in the strict legal sense of the word, it is up to the *Bundeswarnzentrale* to devise its operation methods in line with general administrative law, which also means in particular that it may if necessary contact all the relevant authorities. If, however, the term “procedures” is understood as the actual provision of assistance in the disaster zone, the disaster relief regulations set out in the applicable federal state legislation have priority as do the security, customs and health regulations listed below and the exceptions to these in the event of a disaster.

4. Can it intervene with other ministries, provincial and local authorities, etc. to raise issues of international assistance?

This is possible in principle, however only in accordance with the coordination powers granted to the Federal Ministry of the Interior under the *Bundesministeriengesetz*.

5. Can it intervene with private actors who could have an impact on the regulation of international relief (e.g., medical associations with authority of licensing)?

This is also possible in accordance with its coordination powers.

## Coordination of relief and information exchange

### 1. Is the above focal point charged with coordination of international and domestic relief?

The principle of subsidiarity applies: the body affected should first try to help itself; the State or the competent authority is only to intervene if the first cannot cope. The first body responsible in the federal states of Burgenland, Upper Austria, Tyrol und Vorarlberg is the municipality or, for disasters which cross the municipal boundaries, the competent district administrative authority.

In the federal states of Carinthia, Lower Austria, Salzburg and Styria, the local district administrative authority intervenes immediately; in the federal state of Vienna, the town council acts as district administrative authority.

The federal state government is responsible for coordination within the federal state in all cases (in Vienna, the council is also the federal state government). National situations are dealt with by the SKKM.

### 2. Are there adequate procedures for ensuring coordination of international efforts with those at the national, provincial and municipal levels?

The same points apply here as those above concerning procedural regulations for international relief. There are no regulations which would prevent authorities contacting each other in the case of disaster. Indeed, § 4 (3) of the *Allgemeines Verwaltungsverfahrensgesetz* [Austrian Administrative Procedure Act] (AVG)<sup>7</sup> includes provisions for cases in which there are several competent local authorities: “In the case of imminent danger, each of the (competent local) authorities must take the necessary official measures in their jurisdiction and immediately inform the other authorities.”

This has so far prevented any failure to implement relief measures due to conflicts of competence. There are however no binding legal regulations on the question of coordination of disaster management efforts above the level of federal states. The federal states could - as the competent legislators - enact appropriate coordination

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<sup>7</sup> BGBl. 51/1991 as amended in BGBl. I 20/2009



rules (either within the DM laws or in the form of administrative regulations) for their respective territories. As far as we know this is not the case in most federal states. In case of disasters most federal states and their NGO DM auxiliaries (like Austrian Red Cross and its regional branches) rely on mostly informal coordination mechanisms and the internal DM regulations of the NGO DM auxiliaries (e.g. the internal DM regulation of the Austrian Red Cross).

The actual procedure for coordinating international assistance and domestic Austrian relief is nevertheless not explicitly defined in law. There may be a need for further regulation here.

Bilateral agreements on disaster relief are in place between Austria and:

- Germany (in effect since 1 October 1992),
- Jordan (in effect since 1 May 2005),
- Croatia (in effect since 1 August 2006),
- Liechtenstein (in effect since 1 January 1996),
- Switzerland (in effect since 1 March 2003),
- Slovakia (in effect since 1 January 1998),
- Slovenia (in effect since 1 July 1998)
- Czech Republic (in effect since 1 November 2000) and
- Hungary (in effect since 1 July 1998).

The provisions contained in these agreements governing communication between the competent authorities and coordination comply with the general statutory provisions on jurisdiction in Austrian law.

3. Are there adequate procedures for ensuring information flow and consolidated approaches to situation reports and needs assessments from the various levels of government?

As contact between Austrian authorities and the exchange of information between these bodies is not subject to any statutory restrictions, there are no limitations on the flow of information or on information processing (see also section 2 above)

4. Are there rules about the types of information international relief providers must provide? Are they reasonable? How are they enforceable?

There are no such rules. Regulations may be required.

## Role of the National Red Cross Society in disaster management

1. Is the National Society's (NS) role in DM/health emergencies spelled out in its foundational law?

Yes, in the *Rotkreuzgesetz* [Red Cross Act], the “*Bundesgesetz über die Anerkennung des Österreichischen Roten Kreuzes und den Schutz des Zeichens des Roten Kreuzes*” [“Federal Act on the Recognition of the Austrian Red Cross and the Protection of the Red Cross Emblem”], *BGBI.* I No. 33/2008, § 2 (1) and (2). This cites, among other things, the resolutions of the International Conference of the Red Cross and Red Crescent when discussing the role of the Austrian Red Cross. The role of the National Societies in the field of disaster relief has already been discussed at many such conferences and strengthened in a number of resolutions. The Austrian Red Cross Act clearly defines the role of the Austrian Red Cross as “auxiliary to the public authorities in the humanitarian field” which also includes Disaster Management.

2. Is the NS expressly mentioned in the DM/health emergency law?

Disaster relief and health emergencies are regulated under the laws of the Austrian federal states. The disaster relief law of the federal state of *Salzburg* explicitly provides for the involvement of the Austrian Red Cross.

The involvement of the Red Cross in the federal state of *Styria* is governed on the basis of individual regulations by the federal state government.

The laws of the federal states of *Lower Austria*, *Tyrol* and *Vorarlberg* regulate the involvement of volunteers in disaster relief and thus indirectly cover the Red Cross.

In *Burgenland* and *Upper Austria*, the Red Cross is recognised under law as an *Organisation des Katastrophenschutzes* [Civil Protection Organisation] by the government of the federal state.

Disaster relief law in *Carinthia* does not contain any such provisions, leaving the issue of the role of voluntary organisations open.

Disaster relief in *Vienna* is the responsibility of the fire brigade and the city emergency services. Vienna's disaster relief law does nevertheless provide for the involvement of "voluntary relief organisations" in disaster planning and the Red Cross is thus indirectly covered.

In accordance with the relative provisions pertaining to Austrian Law and Austrian Federal State Law, disaster relief services include:

- Fire services (Fire service associations and public fire services)
- Emergency rescue services (as a collective term for the Austrian Red Cross and all other established emergency services in Austria)
- The *Sicherheitsexekutive* [security forces] consisting of security authorities and *Wachkörper* (assistance with disaster relief in line with the general *Sicherheits- und Ordnungsdienst* [security service] and *die erste allgemeine Hilfeleistungspflicht* [first general initial emergency aid obligation of the police])
- Federal Armed Forces (assistance in line with supportive deployment on account of constitutional civil violence)

### 3. Is it made part of a high-level planning/operational committee?

The Austrian Red Cross is part of the SKKM.

4. Is its role on similar committees at the provincial/local level provided for?

Disaster planning is covered by legislation in the various federal states (except in *Carinthia*). Such plans can be drafted by the federal state or indeed also by the district administrative authorities (*Styria*) or the municipalities (*Styria, Vorarlberg, Vienna*) for their jurisdiction. As *Vienna* is both a city and a federal state, its emergency plan also covers the region and is passed by the municipality of Vienna. The guidelines and the laws of the federal states vary widely from one region to another. In general, the issue of whether to consult relief organisations is left to the discretion of the authority in question. The “relief and rescue organisations” in *Burgenland* and the “voluntary organisations active in this area” in *Vienna* are to be involved in disaster planning; this indirectly includes the Red Cross.

5. Are the specific activities of the NS described in the DM policy/plan?

According to the new “SKKM Strategy 2020”, which recently entered into force, the Austrian Red Cross is included in all activities of the SKKM as it is a member.

The strategy paper gives the Austrian Red Cross *Bundesrettungskommando* [“National Rescue Operations Unit”] responsibility for the national management of emergency response and relief as part of the SKKM’s coordination role.

6. Is the NS implicated in coordination mechanisms for international relief?

Yes, as a member of the SKKM.

## External early warning

1. Does the law or policy specify a procedure for informing other governments/UN about disasters, including emerging hazards likely to cause disasters?

Responsibility lies with the *Bundeswarnzentrale* at the Federal Ministry of the Interior. The general rules of administrative procedure apply.

Three regulations apply in Austria to alerting other governments in the event of a disaster:

1. Within the EU and the EEC, 2007/779/EC, EURATOM: Council decision of 8 November 2007 establishing a Community Civil Protection Mechanism (recast).

This decision sets out the “establishment and management of a Monitoring and Information Centre (MIC), which is accessible and able to react immediately 24 hours a day and serving the Member States and the Commission for the purposes of the Mechanism” (Art. 2 Item 5), and “the establishment and management of a Common Emergency Communication and Information System (CECIS) to enable communication and sharing of information between the MIC and the contact points of the Member States” (Art. 2 Item. 6).

Contributions “to the development of detection and early warning systems for disasters which may affect the territory of the Member States” are also provided for, as is the interlinkage of these systems and their linkage to MIC and the CECIS (Art. 2 Item 7). MIC and CECIS are to be set up by the Commission (Art. 5). These bodies and systems shall be available to operate in every “major emergency”, defined as “any situation which has or may have an adverse impact on people, the environment or property and which may result in a call for assistance under the Mechanism” (Art. 3 par. 1).

The decision provides for two mechanisms:

“In the event of a major emergency within the Community, or of an imminent threat thereof, which causes or is capable of causing transboundary effects, the

Member State in which the emergency has occurred shall, without delay, notify the Commission and those Member States which may be affected by the emergency.” (Art. 6 par. 1)

“Where a major emergency occurs within the Community, a Member State may request assistance through the MIC or directly from the other Member States” (Art. 7 par. 1). There is thus no obligation to inform the Commission or any other Member States if there is no reason to fear transboundary effects.

The government of the Austrian state in which the disaster occurs is responsible for judging whether or not it is a major emergency, if no other authority is responsible (see below, § 84e of the *Gewerbeordnung* [Austrian Trade Act]). The said government may undertake notification itself, but can also simply contact the *Bundeswarnzentrale* which also has responsibility.

2. Austria is a signatory to the *Convention on the Transboundary Effects of Industrial Accidents* (BGBl. II, No. 19/2000), under which the parties to Article 10 par. 1 undertake to “provide for the establishment and operation of compatible and efficient industrial accident notification systems at appropriate levels” with the aim of “obtaining and transmitting industrial accident notifications containing information needed to counteract transboundary effects.”
3. As the provision quoted above cannot be directly applied (see also Art. 3 par. 4 of the Convention), § 84e of the *Gewerbeordnung* 1994 as last amended applies (last amended in Bundesgesetz [Federal Act] BGBl. I No. 68/2008):

“The *Bundeswarnzentrale* at the Federal Ministry of the Interior shall notify other EU Member States and signatories to the Helsinki Convention of major emergencies which occur in Austria and may have transboundary effects, and has a duty to take receipt of or pass on requests for international relief. The authority shall inform the *Bundeswarnzentrale* immediately of any major emergencies and shall assess the probability and scale of transboundary effects. The *Bundeswarnzentrale* must initiate the notification of rescue and emergency services of any states which might be affected irrespective of bilateral agreements between individual federal states.”

“Authority” is defined as the first competent authority i.e. the lowest level in the administrative and political hierarchy. Responsibilities are set out in § 381 of the *Gewerbeordnung*. This assigns the various areas of the economy to different federal ministries depending on the type of operation and product.

2. If there is a definition of disaster in the law, is it sufficiently broad to support early warning across a broad range of events?

The definitions of “major emergency” in the Council Decision 2007/779 EC, EURATOM, of “industrial accident” in Article 1 lit. a of the Convention cited above and of “major accident” in § 84e of the *Gewerbeordnung* 1994 cited above apply.

The individual federal states’ disaster relief legislation also has its own definitions.

*Burgenland*: An event caused by natural, technical or other processes and which injures, endangers or kills large numbers of people or which leads to wide-scale damage to property.

*Carinthia*: No definition of the term “disaster” in law.

*Lower Austria*: A disaster is when a natural or other phenomenon has caused or is about to cause major damage to people or property.

*Upper Austria*: Every occurrence which has or is in imminent danger of being produced by natural, technical or other processes which is liable to cause major damage to people, property or the environment and for the prevention or management of which coordinated measures are required.

*Salzburg*: A disaster is an occurrence produced by natural or technical events, the consequences of which pose a major risk to people or property.

*Styria*: A disaster is an event which damages or poses a major and widespread risk to human life or health or to property and the prevention or management of which risk

requires the coordinated involvement of disaster relief organisations, in particular civil protection agencies.

*Tyrol:* Disasters are events produced by natural or technical processes or by people which endanger or damage human life or health, the environment or the property of or provision of essential supplies to the population.

*Vorarlberg:* An event produced by natural or technical processes which endangers, injures, kills or damages people or property on a major scale.

*Vienna:* A disaster is every event which has already occurred or is imminent and the natural, technical or other consequences of which are liable to cause major damage to people or property and which cannot be managed by the local emergency services alone.

3. *Are there specific provisions about contacting the WHO within 24 hours in case of disease outbreaks?*

This is the case. The provisions of the International Health Regulations (IHR) apply. The Austrian Chancellor has published a statement regarding the adoption of international health regulations (2005), *BGBI.* III No. 98/2008.

In Austria, the Federal Ministry of Health [Bundesministerium für Gesundheit] is the point of contact for reporting health threats pursuant to the provisions of the IHR from the WHO. In addition, the Federal Ministry of Health is also the point of contact for reports concerning health threats in line with the European Union's Early Warning System (e.g. EWS). The Federal Ministry of Health thereby receives information from WHO, the EU Commission, ECDC and other European Union member countries and passes this on according to the situation inter alia to other ministries and/or the federal state public health authorities. Likewise, data will also be forwarded from Austria to these international or transnational partners. Information concerning diseases, accidents involving radioactive chemicals and radioactive materials including intentional or unintentional release, accidents or incidents is communicated. The various systems are in place for these purposes.



4. Are there specific provisions about contacting the IAEA in case of radiological disasters?

Austria is a party to the Convention on Early Notification of a Nuclear Accident<sup>8</sup> (in effect in Austria since 20 March 1988). The duty of notification in Articles 1 and 2 of the Convention applies:

*Art. 1 Scope of application:*

*(1) This Convention shall apply in the event of any accident involving facilities or activities of a State Party or of persons or legal entities under its jurisdiction or control, referred to in paragraph 2 below, from which a release of radioactive material occurs or is likely to occur and which has resulted or may result in an international transboundary release that could be of radiological safety significance for another State.*

*(2) The facilities and activities referred to in paragraph 1 are the following:*

- a) any nuclear reactor wherever located;*
- b) any nuclear fuel cycle facility;*
- c) any radioactive waste management facility;*
- d) the transport and storage of nuclear fuels or radioactive wastes;*
- e) the manufacture, use, storage, disposal and transport of radioisotopes for agricultural, industrial, medical and related scientific and research purposes;*  
*and*
- f) the use of radioisotopes for power generation in space objects.*

*Art. 2 Notification and information:*

*In the event of an accident specified in Article 1 (hereinafter referred to as a nuclear accident), the State Party referred to in that article shall:*

- a) forthwith notify, directly or through the International Atomic Energy Agency (hereinafter referred to as the Agency), those States which are or may be physically affected as specified in Article 1 and the Agency of the nuclear accident, its nature, the time of its occurrence and its exact location where appropriate; and*

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<sup>8</sup> BGBl. 186/1988

*b) promptly provide the States referred to in sub-paragraph (a), directly or through the Agency, and the Agency with such available information relevant to minimising the radiological consequences in those States, as specified in Article 5.*

5. Is there a clear description of what would trigger such a communication? How is the communication made? Is there a timeline specified?

The trigger for such communication is outlined in Article 1 of the Convention.

The timeline for such communication is defined in Article 2 (see above).

6. Are specific ministries/departments made responsible for (1) determining the need for a communication, and (2) making the communication specified? Are so many departments involved that delays are probable?

If no special law (*lex specialis*) assigns responsibility to a specific national ministry (for example in the case of the *Gewerbeordnung*), communication is to be made by the *Bundeswarnzentrale* at the request of the federal state government of the area in which the disaster occurs. If several authorities have jurisdiction, each acts individually. Delays are therefore not likely in such a case.

## Requests for assistance

1. What are the criteria for requesting international assistance?

Legislation does not define any specific criteria. The decision is therefore generally the responsibility of the relevant authorities in each federal state. As far as can be established, no such request has been made over the past decades as national resources have always sufficed.

In the light of potential increases in the number and severity of disasters in future due to human influence on nature, greater regulation would appear to be necessary in this area even for Austria.

In the different bi- or multilateral disaster relief agreements, responsibility is defined at the central (*Bundesministerien* - Federal Ministries) and regional level (*Landesregierungen* - Federal state Governments).

2. Does the law/policy/plan establish a timeline for making such requests?

This is not the case.

3. Are there provisions about the acceptance of foreign offers?

No. This is also currently left to the discretion of the competent Austrian authority.

4. Does the law/policy/plan specify the level of detail to be included in such requests?

There are not currently any specific regulations on this matter. A possible need for greater regulation should also be examined here.

5. Is there a requirement for a prior official declaration of emergency/disaster before making an official request?

This is not necessary from a legal perspective but would generally happen in practice.

6. Are there specific provisions about contacting OCHA/ERC for help? How about the general humanitarian community? Are non-state actors (like the RC/RC and NGOs) addressed?

Communication with UNOCHA/ERC is governed by internal Federal Ministry of the Interior regulations. There are no specific provisions for communication with non-governmental relief organisations. As the Austrian Red Cross and other key non-governmental relief organisations are represented in the SKKM, they are informed directly.

7. Are there specific provisions about contacting an appropriate local regional body (e.g. CDERA, EU Civ Pro, ASEAN)?

There are no statutory provisions but there are internal regulations on how to proceed if the occasion arises.

As represented by the Federal Ministry of the Interior (BM.I), Austria is part of the information and assistance programmes:

- at a bilateral level with neighbouring states
- of the European Union
- of NATO/PfP<sup>9</sup> and
- of the United Nations.

The Federal Ministry of the Interior (and thus in practice Department II/4) therefore coordinates Austria's contribution to international disaster relief either

- at the request of a member state of one of the aforementioned international organisations
- in cooperation with all ministries, federal states, their emergency services and
- using national civil protection resources;

such an approach means for example that there is no need for the expensive ring-fencing or duplication of resources solely for international use.

As such requests for assistance are often received almost simultaneously through several different channels, Department II/4 acts largely on a "first come, first served" basis when deciding/assessing whether active assistance can be provided.

This means that the organisation (EU, NATO, UN) which first sends/transfers the request is immediately contacted for the purposes of clarifying how to proceed and agreeing on relief measures.

Irrespective of this procedure, the Federal Ministry of the Interior also involves the other "actors" at an international level – as far as feasible and useful – in order to ensure as great as possible a level of transparency and harmonisation.

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<sup>9</sup> Partnership for Peace

As regards the procedure for assistance provision itself, as soon as requests for assistance are received by the *Bundeswarnzentrale* in the *Einsatz- und Krisenkoordinationscenter* [Disaster Response and Coordination Centre] (EKC) of the Federal Ministry of the Interior, Department II/4 informs all ministries, states and emergency services concerned once the division department responsible has carried out an initial assessment of the situation.

It should be noted that the type and scale of the disaster has no effect on the set procedures for notification and preparation of Austrian assistance (no specific procedures, for example for a tsunami in Indonesia or an earthquake in Italy): the process developed for sending initial information, assessing possible assistance and finally preparation and provision of relief are largely identical in all cases.

The bodies involved therefore inform Department II/4 of any possible assistance. Following an internal department assessment and decision and consultation with the organisations affected, Department II/4 sends a coordinated Austrian offer of assistance to the state or body that originated or transmitted the request for assistance.

As also mentioned above, Department II/4 also:

- organises the operational processing of assistance and preparation for its provision,
- deals with transport and border issues and tolls and customs matters,
- subsequently keeps in constant contact with the aforementioned contact points for the emergency services, NATO, UN and the country affected,
- informs the media,
- prepares a report for the Federal Government in the form of a presentation to the cabinet and
- lastly, manages the financing of assistance.

8. Are there specific provisions about contacting the IAEA in case of the need for help with a radiological emergency?

The Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency (IAEA Convention, *BGBI* No. 87/1990 of 9 February 1990) was approved

by the IAEA on 26 September 1986 and became effective in Austria on 22 December 1989.

Article 2 of the Convention states that a party to the Convention can request the assistance or any other party either directly or through the IAEA following a nuclear or radiological accident.

The parties must also as far as they can determine the experts, equipment and materials which could be provided by other parties for assistance in the case of a nuclear accident or radiological emergency.

Permanently manned contact points are to be maintained in the party states to allow requests for assistance to be made; in Austria, the *Bundeswarnzentrale* in the EKC of the Federal Ministry of the Interior acts as a contact point under the above Convention. It is manned and available 24 hours a day.

The IAEA has drafted an “Assistance Action Plan” as part of the “Response Assistance Network” (RANET) to facilitate the assessment and notification of the need for the aforementioned experts, equipment and materials which other states could provide. The national authorities of the party states (in Austria the Federal Ministry of Agriculture, Forestry, Environment and Water Management [*Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft*]) have an obligation to implement this action plan accordingly.

The IAEA has also drafted a form for the assessment of “NATIONAL ASSISTANCE CAPABILITIES” (NAC), which provides a basis for assessing and registering national resources in the following categories:

- Aerial survey
- Assessment and advice
- Internal dose assessment
- Radiation monitoring
- Medical support
- Bioassay
- Environmental measurements
- Public health protection

- Histopathology
- Source search/recovery
- Biodosimetry and
- Dose reconstruction

It should be noted that this registration does **not** include or require any further information on the source of the resources (organisation, authority etc.) or the exact range or strength of the team.

In addition to it, the registration does **not** constitute an actual obligation to permanent provision/reserve of resources, indeed the IAEA Response Assistance Network also operates on a voluntary basis and “case by case” decisions.

9. Are there specific provisions about contacting the OPCW in case of the need for help with a chemical weapon attack?

According to the Federal Ministry of the Interior, this is not the case.

10. In any past relief operations, have there been problems with initiation of international assistance? If so, what kind?

This is not the case as international assistance has never been requested.

11. Is information easily available to international actors on relevant domestic laws pertinent to international relief?

The information can be requested from the Federal Ministry of the Interior or the relevant regional government. All Austrian legislation is also available online on the Internet platform <http://www.ris.bka.gv.at>. It would, however, appear that all texts are only available in German.

12. Are there any rules that would prohibit domestic actors (like National Societies) to seek foreign help for their relief efforts in the absence of a declared emergency?

In principle, no.

However, in the case of assistance by foreign teams, there may be problems with the recognition of qualifications (paramedics or doctors) or the use of equipment purchased and registered or standardised abroad (e.g. drinking water treatment plants etc).

In areas where the provision of assistance is a state responsibility despite being implemented by emergency services in a relatively independent way– such as in the case of the fire services –, in the case of an emergency operation these services will act on behalf and under the authority of the competent authorities. Requests for assistance to foreign bodies are therefore incumbent on the state authorities.

## Privileges and immunities

1. Does the law provide specific procedures for recognizing the international privileges and immunities of diplomatic and consular officials? How are those categories defined and limited? Do the P&I match those of the Vienna Conventions?

The Vienna Conventions on Diplomatic and Consular Relations apply in Austria as part of domestic law.

2. Does the law provide specific procedures for recognizing the international privileges and immunities of international organisations and relevant regional organisations? Do the P&I match those of the UN Conventions? How is the term defined? Which organisations have been recognized?

The privileges and immunities of an international organisation are set out in its foundation charter. The International Federation of Red Cross and Red Crescent Societies has to date not been recognised in Austria as an international organisation.



3. Does the DM law provide liability protections for foreign governmental relief personnel in disaster relief?

Under international law, a foreign state and its officials enjoy immunity if acting *iure imperii*, in other words in matters over which it has sovereignty, but not when acting *iure gestionis*, i.e. in other business. Intervention as part of disaster relief occurs *iure gestionis* and there is thus no immunity under general international law. As far as can be established, Austria has to date no agreements on exceptions to this rule.

Foreign state aid providers requested by Austria would possibly have to be regarded as employed by the competent Austrian authorities. Furthermore, the Austrian authorities or their legal entities (federation, federal state and community) would generally be responsible and accountable for the actions of these foreign aid providers.

## Registration

1. Does the law or policy set out any particular system for the registration of international disaster relief organisations?

This is currently not the case. There may be need for greater regulation.

2. Does the law or policy state how such organisations be made eligible for legal facilities relevant to their relief and recovery work?

This is currently not the case. There may be need for greater regulation.

## Entry of personnel

### 1. Do the immigration or DM law have any specific provisions about visas for international disaster relief personnel?

The Austrian *Fremdenpolizeigesetz-Durchführungsverordnung* [Law Implementing the Aliens Act], *BGBI.* II No. 188/2005 states in § 5 par. 2:

“Nationals of non-EU states are exempted from visa obligations for the length of the transit if they are part of the flight crew or attendants of an emergency or rescue flight or are otherwise active as helpers in the event of disasters or accidents...” This provision follows the largely identical provision of Art. 4 par.1 lit.c of Council Regulation (EC) No. 539/2001 of 15 March 2001.

This provision only applies to transit visas.

### 2. Do they set up a special kind of visa?

No. Were entry visas required, they would be issued as travel visas valid for three months (*Fremdenpolizeigesetz/FPG/BGBI.* I No. 100/2005, last amended in *BGBI.* I No. 29/2009, § 20 par. 1 Item 5 and par.5).

### 3. Do they allow for expedited grant or waiver of visas?

No specific period is specified for the granting of visas and they can therefore be provided immediately in an emergency.

### 4. Do they call for waiver of visa fees?

Visas granted in Austria are governed by § 14 *Tarifpost* [fee item] 8 par. 2 Item 3 of the *Gebührengesetz* [Austrian Fees and Duties Act] 1957, *BGBI.* No. 267/1957, last amended in *BGBI.* I No. 34/2009 according to which visas which serve humanitarian or other purposes of major public interest are not subject to visa fees.

Visas granted abroad are governed by § 2 par. 1 Item 1 of the *Konsulargebührengesetz* [Austrian Consular Fees Act] 1992, *BGBI.* No. 100/1992, last amended in *BGBI.* I No. 6/2009. This states that official actions for which a fee would in individual cases would be highly detrimental to the Austrian public interest are not subject to consular fees.

5. Do they indicate the duration of the appropriate visa?

The usual length of a visa is three months (see above). Exceptions to this are, however, possible.

6. Do they allow for the visa to be renewed from within the country?

Visa can be granted in Austria by the border points authorised by the Minister of the Interior [*Bundesminister für Inneres*] (§ 5 par. 2 FPG); any visa extensions are then the responsibility of the local *Fremdenpolizeibehörde* [immigration authority] in the place the person is staying (§ 6 par. 2 FPG).

7. What kind of documentation is required to benefit from any special procedures?

8. Which ministries/departments are involved in the special processes? Have the special provisions been used successfully in the past?

These questions are not applicable as there are not set special procedures for the award of visas.

9. If there are no special visa provisions for relief workers, what existing visa types would they likely use and what are their limitations?

Travel visa valid for three months (see above).

10. Would a work permit be required for such workers on immigration law? If so,

- Is this issue addressed specifically for relief personnel?
- How long would it generally require to obtain one?
- What are the durations of available work permits and how are they renewed?

No work permit is needed if the relief work does not involve an employment relationship with an Austrian employer.

11. Is registration of a foreign humanitarian organisation related to its capacity to obtain visas for its personnel?

As visas are granted *ad personam*, the registration of a foreign relief organisation does not affect the award of visas.

12. Has the government previously permitted foreign relief personnel to operate without visas and/or work permits? If so, were there any legal consequences for those personnel or their sending organisations?

This situation has not yet arisen.

## Recognition of professional qualifications

1. Is the recognition of medical qualifications (esp. for doctors, nurses and paramedics) regulated at the national, provincial or local levels?

The national government is responsible for granting medical personnel authorisation to practise and the criteria and procedures are defined in national law. Specific information can be found on the homepage of the Ministry of Health [Bundesministerium für Gesundheit] ([http:// www.bmg.gv.at](http://www.bmg.gv.at), key words “Fachbereiche” and “Gesundheitsberufe”, and at <http://bmg.gv.at/cms/site/standard.html?channel=CH0941&doc=CMS1203514667340>).

2. Do prevailing laws have specific provisions for emergency review of foreign qualifications?

This is not the case.

3. Have exceptions been made in normal procedures in past disaster operations and if so, how?

This situation has not yet arisen.

Exceptions require a legal basis. Such a basis was recently created for paramedics from some neighbouring European countries so that additional support could be provided for the ambulance services during EURO 2008 (see § 26a *Sanitätsergesetz* [Austrian Act on Ambulance Service Members]). Unfortunately, these provisions do not apply to disaster situations.

## Customs

1. Does the DM law make any provisions about customs?

Austrian customs law contains provisions for disaster situations (see below).

2. Does the customs law have any provisions about simplified paperwork requirements for emergencies?

See below under “Accelerated customs clearance for goods and equipment”.

3. Does the customs law have any provisions about waivers of duties, tariffs and fees (including storage fees pending clearance)?

A distinction must be drawn between

Relief supplies and supplies to cover the needs of the disaster relief teams.

Relief supplies and supplies to cover the needs of the disaster relief teams:

Relief supplies and supplies to cover the needs of the disaster relief teams are exempt from import duties (customs) as defined in Art. 79-85 of the Council Regulation on Exemption from Customs Duty (Council Regulation (EEC) No. 918/83 of 28 March 1983 setting up a Community system of exemption from customs duty) and from import VAT and consumer taxes if imported from non-EU states into the Community.

#### *Article 79*

(1) Subject to Articles 80 to 85, goods imported by State organisations or other charitable or philanthropic organisations approved by the competent authorities shall be admitted free of import duties where they are intended:

- a) for distribution free of charge to victims of disasters affecting the territory of one or more Member States; or;
- b) to be made available free of charge to the victims of such disasters, while remaining the property of the organisations in question.

(2) Goods imported for free circulation by disaster-relief agencies in order to meet their needs during the period of their activity shall also be granted the exemption referred to in paragraph 1, under the same conditions.

#### *Article 80*

No exemption shall be granted for materials and equipment intended for rebuilding disaster areas.

#### *Article 81*

Granting of the exemption shall be subject to a decision by the Commission, acting at the request of the Member State or States concerned in accordance with an emergency procedure entailing the consultation of the other Member States. This decision shall, where necessary, lay down the scope and the conditions of the exemption.

Pending notification of the Commission's decision, Member States affected by a disaster may authorize the suspension of any import duties chargeable on goods imported for the purposes described in Article 79, subject to an undertaking by the importing organisation to pay such duties if exemption is not granted.

#### *Article 82*

Exemption shall be granted only to organisations the accounting procedures of which enable the competent authorities to supervise their operations and which offer all the guarantees considered necessary.

#### *Article 83*

(1) The organisations benefiting from the exemption may not lend, hire out or transfer, whether for consideration or free of charge, the goods referred to in Article 79 (1) under conditions other than those laid down in that Article without prior notification thereof to the competent authorities.

(2) Should goods be lent, hired out or transferred to an organisation itself entitled to benefit from exemption pursuant to Article 79, the exemption shall continue to be granted, provided the latter uses the goods for purposes which confer the right to such exemption.

In other cases, loan, hiring out or transfer shall be subject to prior payment of import duties at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

#### *Article 84*

(1) The goods referred to in Article 79 (1) (b), after they cease to be used by disaster victims, may not be lent, hired out or transferred, whether for a consideration or free of charge, unless the competent authorities are notified in advance.

(2) Should goods be lent, hired out or transferred to an organisation itself entitled to benefit from exemption pursuant to Article 79 or, if appropriate, to an organisation entitled to benefit from exemption pursuant to Article 65 (1) (a), the exemption shall continue to be granted, provided such organisations use them for purposes which confer the right to such exemption.

In other cases, loan, hiring out or transfer shall be subject to prior payment of import duties at the rate applying on the date of the loan, hiring out or transfer, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

### *Article 85*

(1) Organisations referred to in Article 79 which cease to fulfil the conditions giving entitlement to exemption, or which are proposing to use the goods admitted duty-free for purposes other than those provided for by that Article, shall inform the competent authorities of this.

(2) In the case of goods remaining in the possession of organisations which cease to fulfil the conditions giving entitlement to exemption, when these are transferred to an organisation itself entitled to benefit from exemption pursuant to Article 79 or, if appropriate, to an organisation entitled to benefit from exemption pursuant to Article 61 (1) (a), exemption shall continue to be granted, provided the organisation uses the goods in question for purposes which confer the right to such exemption. In other cases, the goods shall be liable to the relevant import duties at the rate applying on the date on which those conditions cease to be fulfilled, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

(3) Goods used by the organisation benefiting from the exemption for purposes other than those provided for in Article 79 shall be liable to the relevant import duties at the rate applying on the date on which they are put to another use, on the basis of the type of goods and the customs value ascertained or accepted on that date by the competent authorities.

#### Notes to the above:

Goods of all kinds intended to be given or made available free of charge to victims of disasters are exempt from duty. The disaster must affect the territory of at least one EU Member State.

This exemption from duty also applies to goods which are imported by disaster relief teams to cover their own needs while they carry out relief work.

Material and equipment destined for the reconstruction of disaster areas are not duty-free (Art. 79 and 80 Customs Duty Exemption Regulation).

#### Persons/Bodies covered:

The duty-free provisions apply to state and other approved charitable or philanthropic organisations:



- State organisations are public authorities (national, regional and local).
- Approved organisations are for example Caritas, the Red Cross and SOS Children's Villages (Art. 79 Customs Duty Exemption Regulation). Organisations shall, however, only be granted exemption from duty provided their accounting procedures enable their operations to be monitored and they offer all the guarantees considered necessary (Art. 82 Customs Duty Exemption Regulation).

Exemption may only be granted subject to a decision by the Commission, acting at the request of the Member State or States concerned (Art. 81 Customs Duty Exemption Regulation).

The organisation must provide a written undertaking to pay import duties subsequently if the EU Commission does not grant exemption.

The goods provided to the victims may not, after they cease to be used by the said victims, be lent, hired out or transferred, whether for a consideration or free of charge, without prior notification of the customs authorities. Should this nevertheless be done, import duties are to be paid at the rates applicable at the time of the loan, hiring out or transfer.

The same applies if the organisation no longer qualifies for exemption from duty or is planning to use the goods for purposes other than those which are duty-free (Art. 84, 85 Customs Duty Exemption Regulation).

Exemption shall continue to be granted if the organisation entitled to exemption from duty lends, hires out or transfers the goods, for a consideration or free of charge, to another organisation exempt from import duty provided the latter uses the goods for purposes which confer the right to such exemption.

## Reduction of import, transit or export restrictions in disaster settings

### 1. Does the customs law have any provisions about priority clearance for relief goods and equipment?

Relief supplies and supplies to cover the needs of the disaster relief teams:

A customs declaration must be submitted for relief supplies and supplies to cover the needs of the disaster relief teams if the goods are to remain in Austria and are being registered for exemption from duty. This customs declaration can be made orally (a list of the goods suffices) or in writing. In the list of goods or customs declaration, the beneficiary organisation must give an undertaking to pay the import duty if the European Commission does not grant exemption.

### 2. Pre-clearance procedures for relief goods and equipment or reduction of inspection requirements?

Experience has shown that such items can be cleared rapidly in the event of disasters.

### 3. Re-exportation of equipment and unused goods?

Relief supplies and supplies to cover the needs of the disaster relief teams:

A list of relief supplies and supplies to cover the needs of the disaster relief agencies which are not used must be given upon export (oral customs declaration).

The oral customs declaration is to be made at the exit customs checkpoint on leaving the EU (last customs checkpoint before the goods leave the Community customs area).

## Other dispositions for unused humanitarian goods

1. Does the DM or telecommunications law provide exceptions to import/export restrictions? Does it allow for speedy licensing or waiver of license requirements in disasters?

Exemption from import and export duties and authorisation of telecommunications devices:

§ 82 par. 2 *Telekommunikationsgesetz* [Austrian Telecommunications Act] (TKG 2003) states that services for authorities and organisations entrusted with rescue work or the maintenance of peace, public order and security are not liable to pay for installation or operation authorisation for radio systems for use in the fulfilment of these duties.

2. Does food safety law provide for any special procedures in disaster settings regarding food imports?

This is not the case.

3. Does existing law regulating medications have special rules to facilitate and monitor the import/export of medications for disaster relief?

§ 7 (1a) of the *Arzneiwareneinfuhrgesetz* [Austrian Act on the Import of Medicinal Products] states that blood products for direct transfusion (this definitely includes the erythrocyte concentrates which are extremely important in disaster situations) which come from paid blood donors may only be imported into Austria if there is an urgent need for them due to a serious emergency.

4. Does the motor vehicle law provide any special provisions for the importation and registration of foreign vehicles for relief and recovery work?

Heavy goods vehicles with trailers may not travel on Saturdays between the hours of 15:00 and 24:00 or on Sundays or public holidays between the hours of 00:00 and

22:00 if the maximum gross vehicle weight of the heavy goods vehicle or trailer exceeds 3.5 t. This ban also applies to all heavy goods vehicles and articulated lorries with a maximum gross vehicle weight of over 7.5 t (see § 42 par. 1 and 2 of the *Straßenverkehrsordnung* [Austrian Road Traffic Act] - StVO).

In addition to this weekend ban on travel, there is also a ban on night journeys between the hours of 22:00 and 5:00 for heavy goods vehicles with a maximum gross vehicle weight of over 7.5 t (see § 42 par. 6 StVO).

Exceptions to the ban on night journeys include journeys by low-noise heavy goods vehicles (see § 42 par. 6 lit. c StVO), but heavy goods vehicles with a maximum gross vehicle weight of over 7.5t may not travel over 60km/h between the hours of 22:00 and 5:00. However, authorities are to implement specific regulations allowing a higher maximum speed for areas, roads or sections of road provided this does not expose the population to greater noise pollution (see § 42 par. 8 StVO).

As in recent years, the Austrian Minister of Transport, Innovation and Technology [*Bundesministerin für Verkehr, Innovation und Technologie* ] has passed a so-called “travel ban calendar” to facilitate holiday travel. This travel ban includes also other restrictions on heavy goods vehicles above and beyond the ban on weekend and public holiday journeys. Journeys by the relief vehicles of approved organisations are however exempt from the provisions of the travel ban calendar.

Journeys made solely for the purposes of relief in disaster situations are exempt from the ban on weekend and public holiday travel according to § 42 (3) of the *Straßenverkehrsordnung*.

5. Does the animal quarantine law have any exceptional provisions for rescue dogs?

This is not the case.

6. Are any of the foregoing facilities made specifically applicable to the National Society in the country through the RC/RC or other law?

The aforementioned facilities are available to the Austrian Red Cross under general legislation. One important facility has however not yet been mentioned which relates to *data protection in the event of a disaster*. Art.2 § 48a of the *Datenschutzgesetz* [Austrian Data Protection Act] 2000, *BGBI.* I No. 165/1999, last amended in *BGBI.* I No. 2/2000 applies in such a situation. The provision relevant to the Red Cross reads as follows:

“§ 48a (1): In the event of a disaster, public sector controllers shall have the right to use data insofar as this is necessary to assist persons directly affected by the disaster, to find/identify the missing and the dead and to notify relatives. Relief organisations are also authorised to use data for this purpose (par.6) in accordance with their duties and legal powers.

(6) A relief organisation for the purposes of this provision is a recognised and approved charitable organisation, the statutes of which state its aim as the assistance of people in need and which can be expected to provide significant help in the event of a disaster.”

## **Domestic legal status of foreign relief organisations**

The responses to all questions posed in this section can be found in §10 of the IPR Act (*Bundesgesetz über das internationale Privatrecht*, *BGBI.* No. 304/1978), which reads as follows:

“The law governing a legal person or any other association of persons or pool of assets which may be endowed with rights or subject to obligations is the law of the state in which the legal entity has its actual headquarters.” Registration in Austria is not necessary for the exercise of these rights.

Consequently, foreign relief organisations which have legal capacity in their home country also have legal capacity under Austrian law. This means that they have the power to conclude contracts and hold or acquire property in Austria. The establishment of a separate legal entity under Austrian law is therefore not a statutory necessity.

Problems and delays could however arise should it be difficult to prove the relief organisation has legal capacity in the country in which it is based. In a disaster situation, this could well pose problems and result at least in delays. A system of advance registration (including checks on legal capacity and the fulfilment of any other requirements which could be difficult to carry out in a disaster situation) would therefore merit consideration. An alternative option would of course be to make provision in Austrian law for foreign relief organisations in Austria to obtain legal capacity simply and rapidly in emergency situations.

## Private sector and individual assistance from abroad

1. Do national laws, policies or plans specifically provide for means to facilitate and regulate foreign assistance from private sector or individual sources?

This is not currently the case.

2. Is there a distinction between private sector donations and for-profit interventions (e.g., selling satellite services) in the provision of legal facilities (e.g., reducing licensing requirements)?

This is not currently the case.

## Insurance

1. Does existing law say anything specific about the availability of vehicle insurance for relief organisations?

Neither the registration nor insurance of vehicles used in relief work is subject to special provisions or procedures. Some rescue services do, however, have “fleet insurance policies” because of the number of vehicles they have. Enquiries about such policies should be made to the insurer in question.

2. If not, would their foreign status preclude them from obtaining such insurance on the domestic market?

There are no restrictions on the use of vehicles in Austria which are registered and covered by third party insurance abroad. This applies to vehicles from states which are party to the Convention on Road Traffic<sup>10</sup>.

In principle, foreign vehicles temporarily used in Austria for disaster relief work therefore do not require registration or third party insurance in Austria. One exception is, however, foreign vehicles used by Austrian drivers. In this case, Austrian registration and third party insurance are required if the vehicle is in use for over a month.

Foreign vehicles may also be used by foreign drivers for up to one year without registration or Austrian third party insurance.

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<sup>10</sup> BGBl. 289/1982 as amended in BGBl. I 2/2008

## Currency exchange

1. Does existing law allow humanitarian organisations to freely bring currencies in and out of the country for operations?

§§ 17b and 17c of the Customs Act Implementation Act (ZollR-DG) is to be referred to regarding the bringing in of foreign currencies. § 17b par. 3 quotes the EC ordinance 1889/2005 – applicable for the outer customs border - according to which cash over € 10,000.00 and equivalent means of payment are always to be declared when brought in and when taken out, which also applies without exceptions to aid organisations. Otherwise, the sanction of the § 48b Tax Offences Act is applicable.

2. Does it allow them access to reasonable and/or preferential exchange rates?

There are currently no preferential exchange rates for aid organisations.

## Transport

1. Does existing law have special provisions for overflight, landing and departure rights/fees for aircraft bearing relief goods?

The regulations that apply to foreign aircraft flying in, out or over countries are always to be adhered to, and are also to be applied with no difference to disaster relief and rescue operations.

Accordingly, permission is to be obtained for foreign state-operated vehicles (in disaster relief operations these are mostly foreign military aircraft), in accordance with the *Grenzüberflugsverordnung* [Transborder Flight Ordinance]. Foreign civil aircraft may fly into Austrian airspace without special permission if they fulfill the minimum standards required by the Convention on International Civil Aviation and the necessary insurance cover has been taken out. Furthermore, a flight plan is to be



submitted for both civil and state-operated aircraft, before each transborder flight, in accordance with the applicable aviation regulations.

Especially in order to alleviate the permission and flight-plan requirements for foreign aircraft in disaster relief and rescue operations, special conditions relating to this were agreed in the disaster relief and search and rescue operation conventions concluded with many neighboring countries.

These special conditions always allow flight in and out without the need for permission; the respective flight safety authorities must only be given the information about the flight that is absolutely necessary for the safety of aviation. Furthermore, general permission for landing or departure outside approved approach and take-off areas is also regulated.

In the rule, no flight safety fees are stipulated for disaster relief and rescue flights, because these flights are released from the air traffic control fees for routes and also because landings and take-offs in these operations do not usually take place at approved airfields and thus no flight control fees are payable for approaches or departures.

Separate conditions apply to the bringing in of relief items, medicines etc. on board the aircraft.

2. Does the law provide exceptions for carriage and other requirements for trucks bearing relief goods? Does the law provide for waiver of tolls for relief vehicles?

According to § 5 par. 1 of the Bundesstraßen-Mautgesetz [Federal Road Tolls Act] 2002 (BStMG), vehicles to which spotlights or warning lights with blue light are attached visibly in accordance with § 20 par. 1 lit. d and par. 5 of the *Kraftfahrgesetz* [Motor Vehicles Act] 1967<sup>11</sup> are not required to pay tolls (toll sticker, toll dependent on distance travelled).

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<sup>11</sup> BGBl. No. 267/1967 as amended in BGBl. I 94/2009

Motor vehicles with a flashing blue light in accordance with § 2 par. 1 clause 25 of the StVO 1960, BGBl. No. 159 (emergency vehicles) are also exempted from route tolls, although the entitlement to declaration as an emergency vehicle is tested at the respective incident command on a random basis by the ASFINAG<sup>12</sup>, after the event.

Furthermore, according to the BStMG, vehicles that are used in the carrying out of peacekeeping measures in the framework of an international organisation, the Organisation for Security and Cooperation in Europe or the European Union, based upon a resolution in the framework of the common foreign and defense policy, are permanently exempted from the obligation to pay tolls.

No permanent exemption from the obligation to pay tolls exists for humanitarian relief aid transport in emergencies. The ASFINAG can, however, temporarily exempt vehicles from the obligation to pay tolls for such journeys in accordance with § 5 par. 2 BStMG. This is regulated by the tolling regulations, depending on the specific events.

In order to be able to carry out a journey of this kind with a motor vehicle with maximum permitted total weight of not more than 3.5 t, without being obliged to pay a time-based toll, the application for exemption in accordance with Appendix 3a of the tolling regulations that can be called at [www.asfinag.at](http://www.asfinag.at) must be filled out, correctly signed and sent by e-mail ([schicht-brenner@asfinag.at](mailto:schicht-brenner@asfinag.at)) or fax (+43/50108-39030) at least 24 hours before the use of the toll road network. The applicant receives confirmation, which is to be taken along on the toll-exempt journey and shown as proof of entitlement upon request. These rules apply, without exception, only in cases where cause exists in the terms of § 5 par. 2 BStMG and the specific cause is announced in the tolling regulations.

In order to be able to carry out the transportation of humanitarian aid in an emergency with a motor vehicle with a maximum permitted weight of more than 3.5 t, without obligation to pay tolls, the conditions set out in Part B, Chapter 3.3.2 of the tolling regulations must be adhered to.

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<sup>12</sup> Autobahnen- und Schnellstraßen-Finanzierungs-Aktiengesellschaft (Highway Financing Corporation)

3. Does the law provide for speedy clearance of relief vessels? Does it provide for waiver or reduction of port, demurrage or docking fees?

The special waiving of fees for ships carrying relief items that exercise transport rights on the Austrian Danube, e.g. transit, third-country transport or cabotage, is obsolete as such an exemption from fees is already stipulated for transport services in the principle of freedom of navigation according to the Belgrade Convention.

Although there is no provision in administrative law for the waiving of fees for harbor services used by ships carrying relief items, e.g. in the Navigation Act, particularly as no large-scale loading or unloading of relief items has taken place to date, but would in the individual cases undoubtedly be negotiable with public harbors, in which local authorities and/or their subsidiaries do after all have a majority holding.

4. Does the law provide for speedy granting of visas for transport operating personnel?

Because no minimum processing period is specified for the granting of visas, such a condition would be superfluous.

## Taxation

1. Does existing law provide for exemptions from VAT, income tax, corporate tax and other tax for humanitarian organisations and personnel providing disaster relief?

Value Added Tax:

The Ordinance of the Federal Minister of Finance BGBl. No. 787/1992 in the version BGBl. No. 850/1993 provides for exemption of value-added tax on deliveries of relief items to foreign countries if certain conditions are fulfilled.

§1. In order to achieve treatment corresponding with the principles of reciprocity, it is stipulated that non-gratuitous and gratuitous deliveries of relief items (own consumption), in accordance with the conditions of the declaration named in § 3, in the framework of national or international aid programs in emergency situations, with

place of destination in states named in § 5, are exempted from the obligation to pay sales tax (non-taxable transactions). This special regulation only applies to deliveries of relief items if it can be proven to the tax authority that they are brought appropriately into the benefitting state (precautionary obligation to provide supporting documents). Non-gratuitous delivery must be made to a public body or to a body, association of individuals or estate that pursues aims that serve the public good, or are charitable or churchly (§§ 34 to 47 of the Federal Fiscal Code, BAO<sup>13</sup>).

§ 2. Exemption from the obligation to pay sales tax does not apply to non-gratuitous deliveries if the purchaser is entitled to the deduction of input tax and sales tax exemption can be brought about for the process by means of the deduction of input tax.

§ 3. Exemption from obligation to pay sales tax can only be granted if a written declaration stating that the recipient of the delivery will not be charged any sales tax is given to the tax authority responsible for the levying of the sales tax, before the delivery is made; also to be stated in the declaration are the type and quantity of the relief items to be exempted from tax in accordance with this ordinance and the exact name and address of the purchaser of the non-gratuitous delivery (§ 1 last sentence).

§ 4. According to this ordinance, the turnovers are not to be exempted from the obligation to pay sales tax, if the tax advantage does not serve the purposes of the relief action.

§ 5. Reciprocity in the sense of § 1 exists in relation to the following states:

Albania, Armenia, Azerbaijan, Bosnia Herzegovina, Estonia, Georgia, Kazakhstan, Kirgizstan, Croatia, Latvia, Moldavia, Rumania, Russian Federation, Slovakia, Slovenia, Tadzhikistan, Czech Republic, Turkey, Turkmenistan, Ukraine, Uzbekistan and Belarus.

This applies above all to deliveries and donations of food and clothes to Austrian charitable organisations, which use the items they have received for humanitarian purposes in the named states. For the import and export of medical products which

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<sup>13</sup> BGBl: 194/1961 as amended in BGBl. I 52/2009

are covered by the *Suchtmittelgesetz* [Narcotic Drugs Act], the provisions of the *Suchtmittelgesetz* and the regulations adopted pursuant to it will normally apply.

## Accountability of the affected state government

1. Are specific procedures/institutions in place to guard against diversion, misappropriation or fraud concerning foreign disaster relief and recovery goods/funds?

No special regulations exist; the general conditions of criminal law apply.

2. Are the rules clear about use of such goods/funds in a manner consistent with the expressed intent of donors?

Legal regulations of this kind do not currently exist. In extreme cases of the misuse of donations, §§ 133 or 146ff of the Criminal Code (StGB)<sup>14</sup> may be applied on the grounds of embezzlement or fraud.

Various systems of voluntary commitment do, however, exist among the Austrian relief organisations such as the Donation Seal of Quality or the voluntary donation commitment of the Austrian Red Cross, which are based upon a resolution of the Governing Board.

All the systems of voluntary commitment mentioned include, among others, a commitment to adhere to the will of the donors insofar as this is possible.

3. Are there established rules concerning the audit and reporting with regard to the use of foreign aid?

The general rules apply.

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<sup>14</sup> BGBl. 60/1974 as amended in BGBl. I 98/2009

4. Is there clear legal authority for a particular ministry/department to receive and disburse international donations made to the government?

Each federal ministry and each Austrian federal state has legal authority to receive and disburse funds in the framework of its constitutional responsibility.

5. Are there provisions for maintaining donated funds in interest-bearing accounts?

There are no special rules concerning the investment of donated funds, but such funds – if it were not possible to use them straight away – would have to be added to those for disaster funds, with corresponding interpretation of the legal conditions. § 2 of the Disaster Fund Act provides for the useful investment of the finances of the disaster fund.

## Accountability of assisting actors

1. Does national law provide for any minimum standards in disaster relief/recovery?

There are no rules specifically for foreign providers of aid. Of course, all rules applying state-internally to the provision of aid, such as those relating to foodstuffs, medicines and health etc., are always to be adhered to.

## Security

1. Are any domestic institutions specifically charged with ensuring the safety of relief personnel, premises, transport, equipment and goods?

No. The security services are responsible.

## Freedom of access

1. Do national law/policies or plans provide that approved international disaster relief providers will have freedom of access to disaster-affected persons?

Because no general restrictions of access are provided for, rules relating to freedom of access are superfluous. Blocking of entry into particularly dangerous areas is possible in exceptional cases for security reasons.

2. Are there any rules (e.g. in immigration or penal law) that would interfere with the ability of aid providers to assist affected migrants (e.g. undocumented workers) or any other group?

Fortunately the latest revision of the Austrian Aliens' Police Act, which entered into force at the beginning of 2010, stipulates that humanitarian aid (free of charge) for irregular migrants is no longer a criminal offence. As a consequence at the moment there are basically no regulations or rules that would interfere with disaster relief for migrants or other specific groups. Of course irregular migrants still run the risk of coming to the attention of the authorities for various reasons on different occasions. This could also happen within the framework of disaster relief operations and could lead to detention and in the worst case to forced deportation of the irregular migrants.

3. Are there any rules that would impede humanitarian organisations from distributing their own relief according to humanitarian principles (e.g., rules that all relief must be handed over to governmental authorities)?

This is not the case.

## Extended hours

1. Do national laws, policies or plans provide for extended opening hours for key governmental offices/service (such as customs inspection, immigration, dock and airport management) necessary for international relief?

This stems from § 48a (5) of the *Beamtendienstrechtsgesetz* [Public Service Act] (BDG)<sup>15</sup> and §20 (1) of the *Vertragsbedienstetengesetz* [Act on Contract Staff] (VBG)<sup>16</sup>.

BDG, upper limits of working hours:

*§ 48a. The daily working hours must not exceed 13 hours. ...*

*(5) In the case of the occurrence of unusual events or non-foreseeable circumstances, arrangements differing from par. 1 are permitted if they appear to be necessary in the interest of protecting the health and lives of people, the maintenance of public order and safety or for the prevention of disproportionately great financial loss, in order to avert or remove the threat.*

VBG, working hours:

*§ 20. (1) §§ 47a to 50d BDG 1979... are to be applied to the working hours of contract staff...*

It follows from this that even contract staff can, in the event of a disaster, be deployed beyond the normal working hours.

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<sup>15</sup> BGBl. 333/1979 as amended in BGBl. I 77/2009

<sup>16</sup> BGBl. 86/1948 as amended in BGBl. I 77/2009



## Other facilities for international aid providers

1. Do national laws, policies or plans provide for extended opening hours for key governmental offices/service (such as customs inspection, immigration, dock and airport management) necessary for international relief?

If the mentioned facilities belong to the state, the state can grant *ad hoc* discounts or price reductions. If they are privately owned, such preferential treatment must be negotiated.

## Termination

1. Does the law or policy provide a period of notification to international actors prior to terminating their disaster-related legal facilities?

This is not the case.

2. Is there any provision about considering the impact of termination on beneficiaries?

This is not the case.

## When relief originates from the country towards other countries

1. Does the law provide for reduction of any restrictions on the exit for relief personnel (e.g. exit visas, sanctions regimes)?

Austrian law does not include any general restrictions on leaving the country. Restrictions only exist in special cases such as in the case of ongoing criminal proceedings.

2. Reduction of export restrictions, duties or fees on relief goods and equipment (esp. telecoms, food, medicines)?

The statements relating to customs exemption in general are referred to.

In the EU no export duty is payable for relief items.

Apart from the embargoes which also exist here, military and dual-use items may come into consideration among the items to be exported. In the case of a disaster, the Federal Ministry of Economics, Family and Youth is very likely to grant export approval for such items without excessive bureaucracy, if they are actually required as relief items.

3. Reduction of inspection requirements for outgoing goods and equipment?

Relief items and items for the aid units' own requirements:

It is stipulated that an oral customs declaration (list of articles) be submitted for relief items and items for the aid units' own requirements.

According to experience, swift clearance is made possible in cases of crisis.

4. Reduction of any departure restrictions for relief flights, trucks, ships?

Austrian law contains no general restrictions of this kind except for those which are necessary for technical or safety reasons, e.g. where vehicles are not roadworthy. Exemptions from such restrictions are extremely unlikely.

Leniency could, however, be exercised in individual cases that appear harmless, in the event of a disaster.

## When relief transits across the territory toward another country

1. Does the law provide for reduction of any restrictions on the transit for relief personnel (e.g. exit visas, sanctions regimes)?

Austrian law does not provide for exit visas, neither do general exceptions exist to the obligation to have passports visaed. In urgent cases, however, it is possible for visas to be issued immediately without a waiting period.

2. Reduction of import/export restrictions, duties or fees on relief goods and equipment (esp. telecoms, food, medicines)?

Relief items and items for the aid units' own requirements:

In the EU no export duty is payable for relief items.

For the import and export of medical products which are covered by the *Suchtmittelgesetz [Narcotic Drugs Act]*, the provisions of the *Suchtmittelgesetz* and the regulations adopted pursuant to it will normally apply.

The statements regarding customs exemptions in general are referred to.

There is wide-ranging liberalisation in the importing of goods, apart for steel goods and some textile goods from a few countries (e.g. Belarus, North Korea). These goods can be virtually ruled out for consideration as relief items. Consequently, there exist no exemption conditions that would be of interest for the Red Cross or other aid organisations. Not included in the liberalisation are existing restrictions or bans against embargo countries, though the importing of relief items from Burma/Myanmar or Iran currently seems hardly conceivable in any case.

Apart from the embargoes which also exist here, military and dual-use items may come into consideration among the items to be exported. In the case of a disaster, the Federal Ministry of Economics, Family and Youth will certainly grant export

approval for such items without excessive bureaucracy, if they are actually required as relief items.

3. Reduction of inspection requirements for transiting goods and equipment?

Simplifications of the transit of goods through Austria (e.g. in the customs declaration and in the obligation to provide security) can be agreed in the short term, in the EU framework and with Switzerland.

According to experience, swift clearance is made possible in cases of crisis.

## Exceptions to disaster facilities

1. Where national law provides for the limitation of legal facilities in the IDRL Guidelines on the grounds of national security, health or public morals – are those exceptions narrowly tailored?

This cannot be answered at present, because Austrian law currently includes only a few special privileges for disaster relief from abroad.

In general, however, it can be remarked that as such disaster relief measures cannot be seen as a threat to security or as in any other way harmful. It is conceivable, however, that supposed aid measures might be used to disguise illegal activities, such as e.g. the smuggling of drugs disguised as part of aid deliveries. In such cases, of course, the controlling bodies would have to intervene. Criminal “aid workers” would also be refused entry into the country.

# List of abbreviations

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ASEAN	Association of Southeast Asian Nations
ASFINAG	Highway Financing Corporation
AVG	Austrian Administrative Procedure Act
BAO	Federal Fiscal Code
BDG	Public Service Act
BGBI	Austrian Federal Law Gazette
BStMG	Federal Road Tolls Act
B-VG	Austrian Federal Constitutional Act
CDERA	Caribbean Disaster Emergency Response Agency
CECIS	Common Emergency Communication and Information System
DM	Disaster Management
EC	European Community
ECDS	European Centre for Disease Prevention and Control
EEC	European Economic Community
EKC	Disaster Response and Coordination Centre
EU	European Union
EURATOM	European Atomic Energy Community
EURO 2008	European Soccer Championship 2008
EWRS	Early Warning and Response System
FPG	Immigration Authority Act
IAEA	International Atomic Energy Agency
IDRL	International Disaster Relief Law
IFRC	International Federation of Red Cross and Red Crescent Societies
IHR	International Health Regulations
IPR	International Private Law
MIC	Monitoring and Information Centre
NAC	National Assistance Capabilities
NATO	North Atlantic Treaty Organisation
NS	National Society
OPCW	Organisation for the Prohibition of Chemical Weapons
PfP	Partnership for Peace
P&I	Privileges and Immunities
RANET	Response Assistance Networks
SKKM	National Crisis Management and Civil Protection Unit
StGB	Criminal Code
StVO	Austrian Road Traffic Act
TKG	Austrian Telecommunications Act
UN	United Nations
UNOCHA/ERC	United Nations Office for the Coordination of Humanitarian Affairs
VBG	Act on Government Contract Staff
VO	Ordinance
ZollR-DG	Customs Act Implementation Act