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UNTANGLING FAMILY BONDS: NATURAL DISASTERS AND EU EMERGENCY LAW

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1. Introduction

Perhaps instinctively, natural disasters form part of our ‘emergencies’ imaginary. Earthquakes, floods, forest fires, severe storms and other extreme weather events leading to natural disasters are often accompanied by declarations of ‘states of emergency’ or of ‘public calamity’ at the domestic level of the Member States. In September 2024 alone, Portugal declared a ‘state of public calamity’ following the wildfires that ravaged the north of the country,¹ Poland declared a ‘state of natural disaster’ in areas severally affected by floods,² and a state of emergency was declared in Bratislava in the aftermath of storm Boris.³ In a typology that contrasts *sudden* emergencies to *structural* crises,⁴ however, natural disasters often fall between the conceptual cracks as phenomena that can no longer be conceptualised as exceptional nor be seen as endemic to the EU. Importantly, they are often amiss from studies examining the legal dimension of ‘disasters’, ‘crises’, ‘threats’ or ‘global emergencies’ under European Union (EU) law.⁵

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¹ ‘Portugal declares a state of calamity as wildfires rage out of control’ (NPR, 19 September 2024) <<https://www.npr.org/2024/09/19/g-s1-23693/portugal-wildfires-rage-out-of-control>> accessed 17 October 2025.

² ‘Poland declares state of natural disaster in areas of flooding’ (Euronews, 17 September 2024) <<https://www.euronews.com/my-europe/2024/09/17/poland-declares-state-of-natural-disaster-in-areas-of-flooding>> accessed 17 October 2025.

³ ‘Storm Boris sweeps through eastern and central Europe’ (Le Monde, 14 September 2024) <https://www.lemonde.fr/en/europe/article/2024/09/14/storm-boris-sweeps-through-eastern-and-central-europe_6726050_143.html> accessed 17 October 2025.

⁴ Bruno de Witte, ‘Guest Editorial: EU emergency law and its impact on the EU legal order’ (2022) 59 Common Market Law Review 3-18.

⁵ These contributions include Antoniadis, Schutze and Spaventa’s edited volume on *The European Union and global emergencies: a law and policy analysis* (Hart Publishing, 2011) and Govaere and Poli’s edited work on *The EU management of global emergencies: legal framework for combating threats and crises* (Brill, 2014). More recent contributions advance detailed appraisals of the EU’s legal regime for chemical, biological or radio nuclear (CBRN) events (Andreas de Guttry, Micaela Frulli, Federico Casolari, and Ludovica Poli (eds), *International Law and Chemical, Biological, Radio-Nuclear (CBRN) Events: Towards an All-Hazards Approach* (Brill, 2022). Works devoted to the legal dimension of natural disasters are, however, more ubiquitous in international law. See Rosemary Lyster and Robert R. M. Verchick (eds), *Research Handbook on Climate Disaster Law: Barriers and*

This paper, developed in the context of a broader debate concerning the framing of emergencies and crises in the EU,⁶ critically reflects on the place of natural disasters in EU law, in general, and in EU emergency law, in specific. The paper examines the relevance accorded to natural disasters in EU primary and secondary law, and in the case law of the Court of Justice of the European Union (CJEU), to determine the extent to which the EU's response to natural disasters is framed through emergency powers. In part, the paper challenges the conceptualisation of natural disasters as exceptional or extra-ordinary events triggering the operation of an emerging regime of EU emergency law.⁷ The argument underlying this paper is that the increase in the frequency, intensity and complexity of natural disasters calls for a reimagination of the constitutional design of EU disaster law,⁸ in lieu of its re-conceptualisation through the lenses of EU crisis or emergency law. By mapping out the points of affinity and estrangement between EU emergency powers and EU disaster rules, the paper untangles natural disasters from the perhaps more familiar language of emergencies and crises to accord it a place of its own within the just-as-emerging field of EU disaster law. As such, this paper is perhaps less about what EU emergency law *is* and more about what it is *not*.

Section 2 begins by briefly sketching out the main family traits of EU emergency provisions, relying on recent scholarly debates. Section 3 then turns its attention to natural disasters. It starts by mapping out the legal framework applicable to EU disaster prevention and response, both within and beyond the Union (3.1). It then examines how natural disasters have been conceptualised in EU primary and secondary law, and related case law of the Court of Justice, arguing that a strong conceptual ambiguity and judicial deference mark the approach to natural disasters in EU law. This section contends that notwithstanding the partial overlap between disaster and emergency legal bases, the former cover not only abrupt or exceptional

Opportunities (Edward Elgar 2018); Alexandra Birchler, *Climate Change, Resulting Natural Disasters and the Legal Responsibility of States: An International Law Perspective* (Intersentia 2020).

⁶ Notably a workshop on the topic 'EU crises and emergencies: what is in a name?' organised at the University of Maastricht under the auspices of the Jean Monnet Centre of Excellence (JMCE) EmergEU (16 and 17 June 2025). A similar debate is fostered in the context of the JMCE EUMERGENCIAS at UCLouvain Saint Louis Brussels, which the author also integrates.

⁷ Understood as the set of 'rules of primary and secondary EU law that serve to address *sudden* threats to the core values and structures of the Union and its Member States'. de Witte (n 4), at 4.

⁸ Understood as 'the legal framework governing disaster prevention, preparedness and response at EU level'. Marco Gestri, 'EU Disaster Response Law: Principles and Instruments' in Andrea de Guttry, Marco Gestri, and Gabriella Venturini (eds), *International Disaster Response Law* (T.M.C. Asser Press 2012) 105–128.

events but also recurring, cyclical disasters. As such, notwithstanding the relevance of emergency powers in the response to select natural disasters, these should primarily be addressed through permanent structures and shared competences in lieu of (or in addition to) emergency powers, to avoid banalising the extraordinary or rendering the exceptional permanent (3.2). Section 4 brings together the previous sections findings to identify the elements of affinity and estrangement between EU emergency rules and the legal regime applicable to natural disasters and reflects on the promises and pitfalls of conceiving natural disasters as emergencies under EU law. Section 5, in turn, offers some concluding remarks.

2. Family Traits: The Shared Properties of Emergencies in EU Law

As a growing number of scholars has recurrently noted, it is doubtful that we can truly speak of a coherent regime of EU emergency law. This, it is argued, renders the EU both ill-equipped to deal with emergency or crisis situations, and vulnerable to abuses of power when such emergencies occur.⁹ The existing scholarly reflections on the design of a legal regime for emergencies at the EU level have posited that this framework should encompass all ‘rules of primary and secondary EU law that serve to address *sudden* threats to the core values and structures of the Union and its Member States’, advancing a typology that contrasts *sudden* emergencies to *structural* or slow-burning crises; the latter falling, in principle, outside the scope of EU emergency law.¹⁰ Pursuant to this view, emergency law corresponds to a narrower subset of crisis-relevant rules, and should be disentangled from the broader crisis discourse.¹¹ In the same vein, a distinction is made between risk regulation, crisis management and

⁹ Julia Fernández Arribas, *Regulating European Emergency Powers: Towards a State of Emergency of the European Union* (Policy Paper No 295, Institut Jacques Delors, January 2024). On the perils of abuse of emergency powers at the domestic level of the Member States see, most recently, Niel Graaf, ‘Editorial: Wilders, Schmitt and the Abuse of Emergency Powers’ (2024) 53(1) *Netherlands Journal of Legal Philosophy* 3-7.

¹⁰ de Witte (n 4), at 4; Guido Bellenghi, ‘Neither Normalcy nor Crisis: The Quest for a Definition of Emergency under EU Constitutional Law’ (2025) *European Journal of Risk Regulation* 1-20, at 5-6; Mark Rhinard, Neill Nugent, and William E. Paterson (eds), *Crises and Challenges for the European Union* (Bloomsbury Academic 2023), at 6.

¹¹ This said, the terms ‘emergency’ and ‘crisis’ are still used largely interchangeably, as attested by the recent institutional report on the EU law dimension of emergencies of the International Federation of European Law (FIDE). Krzysztof Pacuła (ed), *EU Emergency Law* (Vol 1, XXXI FIDE Congress, Katowice 2025, University of Silesia Press 2025) (‘FIDE 2025’), at 81.

emergency powers, wherein the latter (as a narrower subset) come into play when the former prove insufficient.¹²

Yet, even if we endorse the proposition that emergency law should be a term reserved for a narrower subset of crisis-relevant rules that apply to emergency situations, the emergency law ‘galaxy’ or ‘family’ may still be relatively vast. It has been rightly suggested that this family includes not only rules that empower the Union to act in case of emergencies or that constrain such action, but also rules that call for cooperation between EU institutions and the Member States in situations of emergency, that allow Member States to temporarily derogate from EU law obligations in cases of emergency, or that impose on Member States concrete obligations of mutual assistance in the face of such events.¹³ At the level of EU primary law, this kinship has been deemed to include a diverse set of Treaty provisions—notably Article 42(7) TEU and Articles 66, 78(3), 107(2)(b) and (3)(b), 122(1) and (2), 143, 144, 213, 222, and 347 TFEU¹⁴—which might be complemented by rules of EU secondary law found in instruments such as the Internal Market Emergency and Resilience Act (IMERA),¹⁵ or the Regulation on crisis and force majeure in the field of migration and asylum.¹⁶

Importantly, if we endorse the definition above, delimiting this galaxy or family also presupposes that a more-or-less objective definition of ‘emergency’ is possible under EU law.¹⁷ The material list-like approach to defining all possible emergencies being generally ill-advised as a method of lawmaking, a ‘functional-structural’ approach has been advanced, shifting the focus from the event triggering the emergency (e.g. a health pandemic) to the characteristics of the event itself (e.g., its gravity, duration, or

¹² Claudia Cinnirella, “Emergency Powers” of the European Union: An Inquiry on the Supranational Model’ (2025) 10(3) *European Papers* 525–553, at 526.

¹³ Although scholarly attention has so far focused primarily on rules that empower the Union to act instead of those which allow Member States to act or to support each other in case of emergencies. de Witte (n 4), at 5; Fernández Arribas (n 9), at 3.

¹⁴ Bellenghi (n 10), at 7 and note 44.

¹⁵ Regulation (EU) 2024/2747 of the European Parliament and of the Council of 9 October 2024 establishing a framework of measures related to an internal market emergency and to the resilience of the internal market and amending Council Regulation (EC) No 2679/98 (‘IMERA’) OJ L, 2024/2747 (8.11.2024).

¹⁶ Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 OJ L, 2024/1359 (22.5.2024).

¹⁷ Bellenghi (n 10), at 5; cfr Jonathan White, ‘Emergency Europe’ (2015) 63(2) *Political Studies* 300; Jonathan White, *Politics of Last Resort: Governing by Emergency in the European Union* (OUP 2020).

impact).¹⁸ This model would follow the practice of some Member States of defining emergencies by reference to their ‘exceptionality, seriousness, suddenness, and urgency’.¹⁹ The Portuguese constitution, for instance, allows for the declaration of a state of emergency in cases of ‘imminent or actual aggression by foreign forces, grave threat to or disturbance of the democratic constitutional order or public calamity’,²⁰ and for the declaration of a state of public calamity in case of ‘grave accident or catastrophe’.²¹

At the EU level, both primary and secondary law give credence to some of these conceptual understandings. EU ‘emergency provisions’ are populated by gravity thresholds: Articles 66, 143 and 347 TFEU all refer to ‘serious difficulties’ or ‘serious tensions’ concerning capital movements, the balance of payments or the maintenance of law and order, respectively; Articles 78(3) and 144 TFEU refer to the ‘sudden’ inflow of people or a ‘sudden’ crisis in the balance of payments; and Article 213 TFEU allows for the granting of ‘urgent’ financial assistance to third country nationals. Secondary law echoes this sentiment. The mentioned IMERA, for instance, defines ‘crisis’ as ‘an exceptional, unexpected and sudden, natural or man-made event of extraordinary nature and scale’,²² implying that such events are best understood by reference to their unpredictable nature and large-scale impact. The same holds true for the recent institutional report on EU emergency law of the International Federation of European Law (FIDE), which notes that:

It appears to be generally understood that an emergency – as a concept – comprises elements linked to the *urgency* or *suddenness* of the situation, the *concreteness of the threat* and the inherent *risks* it represents, as well as its *scale* and *gravity*.²³

On the one hand, this functional model releases us from the constraints of a material definition of emergency. On the other hand, it invites in the indeterminacy of the ‘grave’, the ‘exceptional’, the ‘serious’ and the ‘urgent’, all of which are open to political

¹⁸ Bellenghi (n 10), at 8.

¹⁹ *ibid.*

²⁰ Article 19(2) Constitution of the Portuguese Republic.

²¹ ‘Situação de Calamidade’ (Diário da República, Lexionário) <<https://diariodarepublica.pt/dr/lexionario/termo/situacao-calamidade>> accessed 17 October 2025 (emphasis added); Articles 138-140 Constitution of the Portuguese Republic. In the same sense, the Polish Constitution distinguishes between a state of emergency, a state of natural disaster and martial law. Art 232 Constitution of the Republic of Poland.

²² Art 3(1) IMERA.

²³ FIDE 2025 (n 11), at 83-84 (emphasis added).

construction and lenient judicial review. Granted, (EU) law is indeterminate by nature;²⁴ but recent experience has shown that in times of crisis or emergency the determination of what is urgent or important has often been relegated to the Council and the European Council (as attested by the latter's role in the wake of the Covid19 or the financial crisis), at times at the expenses of parliamentary oversight and judicial control.²⁵ Similar concerns may permeate other relevance thresholds ascribed to emergencies, such as the requirement that they impact 'core values and structures' of the Union.²⁶ In addition, it has been argued that emergencies cannot be defined *in abstracto* but instead 'according to the circumstances of the different sectorial legal regimes in which [they are] included'²⁷ which would both accord the concept with greater precision and, simultaneously, contribute to further fragmentation.

Which brings us to natural disasters and where they might fit in this conceptual construction and the broader emergency law family. Indeterminacy aside, the essence of emergencies has been distilled into some key family traits or features: emergencies are temporary, exceptional, unpredictable and often large-scale events.²⁸ The measures adopted in response to such events must, in turn, be equally temporary, proportionate, immediate and limited in time. This, I argue, does not bode well with the increasing frequency of extreme weather events and the concomitant increase in natural disasters. Building on this brief overview of the notion of emergency, the next section maps out the EU legal framework with respect to natural disasters (3.1.) and how natural disasters have been conceptualised in EU primary and secondary law, as well as the case law of the Court of Justice (3.2.) to identify the points of affinity and estrangement between emergencies and natural disasters and answer the question of which, if any, natural disasters belong to the family of EU emergency law.

²⁴ An idea otherwise developed by Takis Tridimas, 'Indeterminacy and Legal Uncertainty in EU Law' in Joana Mendes (ed), *EU Executive Discretion and the Limits of the Law* (Oxford University Press 2019) 40–63.

²⁵ See Vincent Delhomme and Tamara Hervey (2022) 'The European Union's response to the Covid-19 crisis and (the legitimacy of) the Union's legal order' 41 *Yearbook of European Law* 48, at 77–80; Nicolai von Ondarza, 'The European Parliament's Involvement in the EU Response to the Corona Pandemic: A Spectator in Times of Crisis' (*SWP Comment 2020/C 45*, 05 October 2020) <<https://www.swp-berlin.org/10.18449/2020C45/>> accessed 17 October 2025. Claudia Cinnirella has nevertheless rightly noted that the fact that 'within the Union, power is shared across multiple centres of authority, and within the Council, among different member states', reduces considerably the 'risk of centralized or despotic control'. Cinnirella (n 12), at 545.

²⁶ de Witte (n 4), at 4.

²⁷ FIDE 2025 (n 11), at 84.

²⁸ *ibid*, at 86-87.

3. Family Affinities: Emergencies and Natural Disasters in EU Law

3.1. *What Do We Talk About When We Talk About Natural Disasters in EU Law?*

Natural disasters are far from an uncommon feature in the EU Treaties. The Treaty of Lisbon, in particular, elevated the pursuit of common policies and actions aimed at assisting ‘populations, countries and regions confronting natural or man-made disaster’ into an express external objective of the EU (article 21(2)(g) TEU). The TFEU, in turn, makes five distinct references to natural disasters.

First, provided certain circumstances are met,²⁹ Article 107(2)(b) TFEU expressly recognises that State aid conferred in response to natural disasters *shall* be compatible with the internal market. Article 107(3)(b) TFEU, in turn, establishes that aid disbursed to redress a ‘serious disturbance in the economy of a Member State’—including one resulting from a (natural) disaster—*may* be deemed compatible with the internal market. State aid measures adopted in response to the economic consequences of the covid19 pandemic, for instance, relied on this third paragraph as a justificatory basis.³⁰

Second, the adoption of measures addressing natural disasters may also be based on article 122 TFEU. This article allows the Council to adopt measures in response to ‘severe difficulties in the supply of certain products, notably in the area of energy’ (paragraph 1) or, importantly, to agree to the *ad hoc* disbursement of funds to a Member State experiencing (or likely to experience) ‘severe difficulties cause by natural disasters or exceptional occurrences beyond its control’ (paragraph 2). Reliance on the different prongs of this article has been somewhat opaque: key crisis instruments such as the European Union Recovery Instrument (EURI) and the instrument for temporary support to mitigate unemployment risks in an emergency (SURE)—both of which were adopted in the aftermath of the covid19 pandemic—as well as the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument adopted in 2025, have all been based on the combined force of both paragraphs of Art 122 TFEU, without distinction.³¹ By contrast,

²⁹ See below, notes 109-112 and accompanying text.

³⁰ Phedon Nicolaidis, ‘Application of Article 107(2)(b) TFEU to Covid-19 Measures: State Aid to Make Good the Damage Caused by an Exceptional Occurrence’ (2020) 11(5-6) *Journal of European Competition Law & Practice* 238–243.

³¹ It should be noted that, at the time of writing, the Council’s reliance on art 122 TFEU in the adoption of SURE is being challenged by the Parliament for sidelining the latter’s participation in the adoption of emergency measures. See case C-560/25 *Parliament v Council* (action brought on 20 August 2025)

earlier measures were anchored somewhat haphazardly on either one or the other headings. For instance, notwithstanding Article 122(2) TFEU express reference to natural disasters, this provision has been mostly used to provide credit lines to Member States in the context of the financial crisis.³² Rules on the provision of emergency support within the Union ‘in the event of an ongoing or potential natural or man-made disaster’³³ were instead based on Article 122(1) TFEU.³⁴ Reliance on Article 122(1) TFEU has also witnessed for some a ‘paradigm shift’ in the aftermath of the health and energy crises emerging from the pandemic and Russia’s invasion of Ukraine, shouldering the development of EU economic policy rather than its face-value emergency action.³⁵

Third, the Union’s competence with respect to natural disasters is grounded on two independent legal bases which govern the EU’s mandate with respect to disasters occurring within the Union (through the civil protection powers listed in Article 196 TFEU) and beyond the EU (through the humanitarian aid mandate of Article 214 TFEU). Under the first of these legal bases, the Union shall ‘encourage cooperation’ between the Member States and ‘support and complement Member States’ action at national, regional and local level ... in responding to natural or manmade disasters within the Union’. Under the second provision, the Union is granted a mandate to adopt *ad hoc* measures of assistance and relief to peoples in third countries ‘who are victims of natural or man-made disasters’ and which ‘complement and reinforce’ the

<<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62025CN0560>> See also, Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis OJ L 433I (22.12.2020); Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak OJ L 159 (20.5.2020); Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument OJ L 2025/1106 (28.5.2025).

³² Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (EFSM) OJ L 118 (12.5.2010).

³³ Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union (ESI) OJ L 70 (16.3.2016), art 1. It should be noted that, although broadly applicable to natural and manmade disasters, this instrument emerged as a response to the refugee crisis. See Alberto Miglio, ‘The Regulation on the Provision of Emergency Support Within the Union: Humanitarian Assistance and Financial Solidarity in the Refugee Crisis’ (2016) 1 *European Papers* 1171–1182.

³⁴ Alongside measures governing the supply of crisis-relevant medical countermeasures in the event of a health pandemic. See Council Regulation (EU) 2022/2372 of 24 October 2022 on a framework of measures for ensuring the supply of crisis-relevant medical countermeasures in the event of a public health emergency at Union level OJ L 314 (6.12.2022).

³⁵ Merijn Chamon, ‘The non-emergency economic policy competence in Article 122(1) TFEU’ (2024) 61(6) *Common Market Law Review* 1501–1526, at 1510 ff; Merijn Chamon, ‘The Rise of Article 122 TFEU: On Crisis Measures and the Paradigm Change’ (2023) *Verfassungsblog* <<https://verfassungsblog.de/the-rise-of-article-122-tfeu/>> accessed 17 October 2025.

assistance provided by the Member States. In addition, Article 213 TFEU, albeit broader, allows for ‘urgent financial assistance’ to be accorded to third countries, including in the aftermath of natural disasters. This outward mandate is further complemented by the EU’s longer-term development cooperation policy (Article 208 TFEU) which, although centred on the eradication of poverty, also pursues the Union’s broader external relation objectives, including the improvement of third-countries resilience to natural disasters.³⁶

Fourth, the well-known solidarity clause of Article 222 TFEU creates an obligation of mutual assistance addressed to both EU institutions and the Member States where a Member State is the victim of a terrorist attack or a natural or manmade disaster. Framed through the language of emergency, this provision may arguably also support the adoption of preventive measures.³⁷ While this Article, and the broader idea of a European solidarity that it evokes, have been subject to considerable academic scrutiny, this clause has never been invoked by Member States in relation to natural or manmade disasters.³⁸

Finally, Article 175(3) TFEU and Article 212(2) TFEU on EU structural funds and financial cooperation with (non-developing) third countries, respectively, while not expressly referring to natural disasters, have served as the legal bases for the adoption of instruments such as the Regional Emergency Support to Reconstruction (RESTORE) Regulation,³⁹ and to amend the European Solidarity Fund (EUSF).⁴⁰ The latter is a key EU law tool allowing for the provision of assistance to EU Member States and candidate countries in the aftermath of a ‘major natural disaster’, which now also

³⁶ See Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission, ‘The New European Consensus on Development: ‘Our World, Our Dignity, Our Future’ OJ C 210 (30.6.2017), para 11.

³⁷ Cinnirella (n 12), at 540.

³⁸ Perhaps most relevant in a discussion about ‘emergencies’ or ‘crises’ see Susanna Villani, ‘Reflections on the Legal Content of Solidarity in EU Law Under the Lens of the Covid-19 Pandemic’ in Eva Kassoti and Narin Idriz (eds), *The Principle of Solidarity: International and EU Law Perspectives* (T.M.C. Asser Press 2023) 281–309. See also, Peter Hilpold, ‘Filling a Buzzword with Life: The Implementation of the Solidarity Clause in Article 222 TFEU’ (2015) 42(3) *Legal Issues of Economic Integration* 209–232.

³⁹ Regulation (EU) 2024/3236 of the European Parliament and of the Council of 19 December 2024 amending Regulations (EU) 2021/1057 and (EU) 2021/1058 as regards Regional Emergency Support to Reconstruction (RESTORE) OJ L, 2024/3236 (23.12.2024).

⁴⁰ Initially adopted under arts 159(3) and 308 of the Treaty establishing the European Community (now arts 175 and 352 TFEU).

foresees, since 2020, assistance in the aftermath of a ‘major public health emergency’.⁴¹

EU secondary law relevant to natural disasters has also developed significantly in the last decades, on the shoulders of this constitutional framework. Key instruments include the mentioned EUSF, adopted prior to the Lisbon Treaty,⁴² the flagship EU Civil Protection Mechanism⁴³ (EUCPM) and related rescEU facility⁴⁴ (a reserve of firefighting aircraft, medicine, shelter, transport and logistic assets to be deployed in the prevention and response to natural disasters), as well as the abovementioned emergency support instrument (ESI). More recently (and obliquely), the EU Nature Restoration Directive⁴⁵ and the Critical Entities Resilience (CER) Directive,⁴⁶ both refer to the impact of natural disasters on Member States’ climate adaptation obligations and the safety of critical infrastructures. The same applies to the 2024 Regulation on crisis and force majeure in the field of migration and asylum or the 2024 IMERA which, however, refer to natural disasters to a very limited degree.⁴⁷ These

⁴¹ Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund OJ L 311, 14.11.2002 (‘EUSF’).

⁴² Prior to the Treaty of Lisbon, legal instruments governing the cooperation in the field of civil protection, such as the EUSF, were adopted on the basis of the flexibility clause of art 308 EC (now art 352 TFEU). See also Council Decision 2001/792/EC of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions OJ L 297 (15.11.2001) (no longer in force).

⁴³ Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism OJ L 347, 20.12.2013 (‘EUCPM’), adopted on the basis of art 196 TFEU.

⁴⁴ Commission Implementing Decision (EU) 2019/1310 of 31 July 2019 laying down rules on the operation of the European Civil Protection Pool and rescEU C/2019/5614, OJ L 204 (2.8.2019). Most recently amended and updated in April 2025 as Commission Implementing Decision (EU) 2025/704 of 10 April 2025 laying down rules for the implementation of Decision No 1313/2013/EU of the European Parliament and of the Council on a Union Civil Protection Mechanism and repealing Commission Implementing Decisions 2014/762/EU and (EU) 2019/1310 OJ L, 2025/704 (15.4.2025).

⁴⁵ Which requires Member States to adopt national nature restoration plans that ‘prevent or mitigate the effects of natural disasters’. Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 OJ L, 2024/1991, 29.7.2024 (‘Nature Restoration Law’), art 15(3)(t)(ii).

⁴⁶ The preamble of which notes that ‘there is an increased physical risk due to natural disasters and climate change, which intensifies the frequency and scale of extreme weather events and brings long-term changes in average climate conditions that can reduce the capacity, efficiency and lifespan of certain infrastructure types if climate adaptation measures are not in place.’ Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC, OJ L 333, 27.12.2022, preamble, para 3. At the international level, see the Organisation for Economic Co-operation and Development (OECD) report, *Good Governance for Critical Infrastructure Resilience* (OECD Publishing 2019) <<https://doi.org/10.1787/02foe5a0-en>>

⁴⁷ The first instrument refers to natural disasters (and health pandemics) as examples of *force majeure* which would allow Member States to derogate from the obligations of solidarity foreseen in the Regulation. IMERA, in turn, simply links the increase in natural disasters to subsidiarity, notably ‘the need for the Union to take a coordinated approach and be better prepared’. Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force

instruments are then complemented by sectoral legislation addressing concrete natural hazards such as the EU Floods Directive,⁴⁸ or connected policy instruments such as the EU Forest Strategy for 2030⁴⁹ or the EU Biodiversity Strategy for 2030.⁵⁰ Politically, the EU's ability to withstand the consequences of natural disasters has also been recently streamlined into a series of communications and strategies, notably the European Preparedness Union Strategy and its offsprings.⁵¹

Concerning the EU's action on the international stage as far as natural disasters are concerned, the Treaty of Lisbon paved the way for the creation of a European Solidarity Corps,⁵² and the 1996 Council Regulation on humanitarian aid⁵³ and 2007 Consensus on Humanitarian Aid⁵⁴ remain the driving instruments behind the EU's efforts to assist third-country nationals affected by natural disasters occurring outside of the EU. At the UN level, the EU has been an active participant in the ongoing drafting and negotiation of the first international convention on the protection of persons in the

majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 OJ L, 2024/1359 (22.5.2024), preamble, para 20 ('Migration Crisis Regulation'); IMERA, preamble, para 7.

⁴⁸ Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks OJ L 288 (6.11.2007).

⁴⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, 'New EU Forest Strategy for 2030' COM/2021/572 final. See, specifically, point 3.2.

⁵⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, 'EU Biodiversity Strategy for 2030 Bringing nature back into our lives' COM/2020/380 final.

⁵¹ Joint Communication to the European Parliament, the European Council, the Council, the European Economic Committee and the Committee of the Regions on the European Preparedness Union Strategy, JOIN(2025) 130 final (26.3.2025) ('Preparedness Union Strategy'). A few notable 'offspring' include the EU Stockpiling Strategy and the Medical Countermeasures Strategy, both launched on 9 July 2025. See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'EU stockpiling strategy: Boosting the EU's material preparedness for crises' COM(2025) 528 final; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Preparing the EU for the next health crisis: a Medical Countermeasures Strategy' COM(2025) 529 final. These instruments build on a broader body of policy that includes specific approaches to disaster prevention and response. See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Community approach on the prevention of natural and man-made disasters' COM(2009) 82 final (23.2.2009) and, more recently, the Communication from the Commission to the Council and the European Parliament on the evaluation of the Union Civil Protection Mechanism - Strengthening EU's emergency preparedness COM(2024) 212 final (29.5.2024).

⁵² Regulation (EU) 2021/888 of the European Parliament and of the Council of 20 May 2021 establishing the European Solidarity Corps Programme and repealing Regulations (EU) 2018/1475 and (EU) No 375/2014 OJ L 202 (08.06/2021).

⁵³ Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid OJ L 163, 2.7.1996 (last amended in 2019).

⁵⁴ Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission, 'The European Consensus on Humanitarian Aid' OJ C 25 (30.1.2008).

event of disasters, expected to be adopted by 2027.⁵⁵ This instrument would join a broader international disaster law (IDL) legal framework⁵⁶ which includes the Sendai Framework for Disaster Risk Reduction (2015-2030)⁵⁷ and more regional attempts at integration in the field of disaster prevention and response.⁵⁸ Internationally, the EU has positioned itself as a leading humanitarian aid donor, allocating €1.9 billion to humanitarian aid in 2025 alone.⁵⁹ Against this backdrop, the EU's disaster-management toolkit has been labelled as one of the most evolved forms of regional coordination in the response to natural and manmade disasters.⁶⁰

This legal arsenal notwithstanding, a key feature of international organisations' (the EU included) powers with respect to natural disasters is their largely supporting or complementary nature, on the one hand, and Member States' solidarity-based mutual assistance commitments, on the other hand. Disaster management is a State-driven affair—EU civil protection competence supports, not supplants, Member States' competence (Article 6(f) TFEU), and the EU's shared external humanitarian aid powers do not in principle affect Member States own competence (Article 4(4) TFEU). In turn, Member States' obligations to support one another in the face of increasing natural disasters are primarily based on a 'spirit of solidarity' and are strongly tempered by Member States' discretion as to *how* they will extend such solidarity to

⁵⁵ See UNGA Res 79/128 of 4 December 2024 on the conclusion of an international convention on the protection of persons in the event of disasters. This convention is based on the ILC, 'Draft articles on the protection of persons in the event of disasters' in 'Report of the International Law Commission: Sixty-Eight Session' (2 May–10 June and 4 July–12 August 2016) GAOR 71st Session Supp. 10 (A/71/10).

⁵⁶ Understood as 'the body of international laws, rules, and principles that govern the provision of international humanitarian assistance in the aftermath of disasters, including aspects related to disaster prevention, preparedness, relief, and post-disaster rehabilitation'. International Federation of Red Cross and Red Crescent Societies, *Background Document: Strengthening National and International Legal Preparedness for International Disaster Response* (2001). See also David Fisher, *The Future of International Disaster Response Law* (2012) 55 *German Yearbook of International Law* 87-118.

⁵⁷ United Nations Office for Disaster Risk Reduction (UNDRR), *Sendai Framework for Disaster Risk Reduction 2015–2030* (adopted 18 March 2015, Third UN World Conference on Disaster Risk Reduction, Sendai, Japan).

⁵⁸ Here, it is worth noting that, notwithstanding the EU's 'advanced' system of disaster response and management, the EU is far from alone in this respect. See Organization of American States, *Inter-American Convention to Facilitate Disaster Assistance* (16 October 1996); Association of Southeast Asian Nations, *ASEAN Agreement on Disaster Management and Emergency Response* (26 July 2005, in force since 24 December 2009). See also, International Federation of Red Cross and Red Crescent Societies, United Nations Office for the Coordination of Humanitarian Affairs and the Inter-Parliamentary Union, *Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (with commentary) (March 2013) <<http://archive.ipu.org/PDF/publications/act-en.pdf>> accessed 17 October 2025.

⁵⁹ European Commission, 'EU Allocates €1.9 Billion in Humanitarian Aid for 2025' (17 January 2025) <<https://www.aa.com.tr/en/europe/eu-allocates-196b-in-humanitarian-aid-for-2025/3453899>> accessed 17 October 2025.

⁶⁰ Gestri (n 8).

their counterparts in the face of disaster.⁶¹ Even if under the EUCPM the Member States have agreed to a set of obligations of prevention, cooperation and assistance, this instrument also makes clear that these obligations are of a largely voluntary nature.⁶² The recent European Preparedness Union Strategy, in turn, emphasises this where it notes that:

The Preparedness Union will bring added value to Member States actions, namely by complementing national efforts, enhancing coordination and efficiency and fostering a culture of preparedness and resilience while *fully respecting subsidiarity, national competences, and the specificities of Member States*. It supports Member States' obligation to act in a *spirit of solidarity* and help each other in all types of crises, in line with Art 222 TFEU.⁶³

In addition, while the rescEU amendment to the EUCPM (based on Article 196 TFEU) has allowed for the creation of a permanent EU-funded reserve of European resources earmarked for effective response to natural or manmade disasters,⁶⁴ the Court of Justice has also been clear in *Pringle* and later in *Anagnostakis* that other disaster-relevant Treaty legal bases, notably Article 122(2) TFEU, can only be used for the adoption of temporary instruments or to respond to temporary challenges but not to create structures of a 'general and permanent nature'.⁶⁵

This raises the question of whether the current constitutional design of EU competence, and Member States' obligations in relation to natural or manmade disasters, are apt to address an irreversible reality of ever-increasing extreme weather events. In step with scholars that have called for 'creative' solutions to overcome the constitutional limitations of EU disaster law,⁶⁶ the European Parliament's report on

⁶¹ See Declaration 37 on Article 222 of the Treaty on the Functioning of the European Union. See also the multiple references to 'a spirit of solidarity' in Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union OJ L 70 (16.3.2016), notably the preamble, paras 1, 6, 8 and 12.

⁶² See preamble para 5, art 1(3) and art 15(4) EUCPM.

⁶³ Preparedness Union Strategy (n 51), at 2 (emphasis added).

⁶⁴ A remarkable feat considering the constraints to EU competence in this field. See Holly Faulkner, W. John Hopkins, Silke Clausning, 'To the RescEU? Disaster Risk Management as a Driver for European Integration' (2024) 30(1) European Public Law 1-22.

⁶⁵ Case C-589/15 P *Alexios Anagnostakis v European Commission* ECLI:EU:C:2017:663, para 75; Case C-370/12 *Thomas Pringle v Ireland* ECLI:EU:C:2012:756, para 65.

⁶⁶ Federico Casolari, 'The EU Approach towards Disaster Management: A Critical Appraisal in the Light of the Action Put in Place to Face the COVID-19 Pandemic' (2023) 4(1) Yearbook of Int'l Disaster Law 51; Federico Ferri, 'Regional Perspective: Obligations under EU Law as Applicable to Naturally Occurring CBRN Events' in Andrea de Guttery, Micaela Frulli, Federico Casolari, and Ludovica Poli

Treaty change emerging from the Conference on the Future of Europe included not only a proposal for an EU ‘state of emergency clause’,⁶⁷ but also a proposal for the emancipation of EU civil protection powers to a shared competence.⁶⁸ This proposal follows a trend whereby EU competence on matters of environment, biodiversity and climate change would evolve from a shared to an exclusive competence, while EU powers to address and redress natural catastrophes would evolve from a coordinating role to a shared responsibility.⁶⁹

This call for emancipation of EU civil protection competence does not seem fundamentally out of place. If the principle of consistency between EU internal and external action is to be taken to heart (Article 21(3) TEU),⁷⁰ EU *shared* humanitarian aid competence should be matched with equivalent competence to address similar threats at the internal level of the Union.⁷¹ This divide becomes further blurred and constitutionally incongruous if one considers that (a) a considerable amount of EU external aid in situations of natural disasters is accorded on the basis of the EUCPM, an instrument based on an ‘internal’ legal basis (Article 196 TFEU) which is nevertheless regularly used to respond to natural disasters beyond the EU,⁷² and that (b) the general trend in international law, to which the EU has also lent its voice, has been to call for stronger and legally binding obligations of mutual assistance in case of natural disasters.⁷³

(eds), *International Law and Chemical, Biological, Radio-Nuclear (CBRN) Events: Towards an All-Hazards Approach* (Brill Nijhoff 2022) 308–327.

⁶⁷ Aptly discussed and critically examined in, for instance, Cinnirella (n 12), at 548–552; Guido Bellenghi, ‘The European Parliament’s Proposal for an EU State of Emergency Clause: A Comparative and Constitutional Analysis’ (2024) 20 *Croatian Yearbook of European Law and Policy* 1.

⁶⁸ European Parliament, ‘Proposals of the European Parliament for the Amendment of the Treaties’ (Resolution of 22 November 2023) P9 TA(2023)0427, Amendment 74. On the Parliament’s proposal for a state of emergency clause see Bellenghi (n 67).

⁶⁹ European Parliament, ‘Motion for a European Parliament Resolution on Proposals of the European Parliament for the Amendment of the Treaties’ (2022/2051(INL)), paras 12–13.

⁷⁰ Examining its application to the Union and its Member States’ commitment to observe and respect the rule of law see Christophe Hillion, ‘The EU External Action as Mandate to Uphold the Rule of Law’ (2023) 29(2) *Columbia Journal of European Law* 233–266.

⁷¹ Cf. arts 4(4) and 214 TFEU with arts 6(f) and 196 TFEU.

⁷² Based on art 196(1)(c) TFEU and arts 5(2), 13(3) and 28 EUCPM. See also Federico Casolari, ‘The External Dimension of the EU Disaster Response’ in Andrea de Guttry, Marco Gestri, and Gabriella Venturini (eds), *International Disaster Response Law* (T.M.C. Asser Press 2012) 129–154.

⁷³ Notably in the context of UN debates on the adoption of a convention on the protection of persons in the event of disasters. See European Union, ‘EU Statement – UN General Assembly 6th Committee Working Group – Protection of Persons in the Event of Disasters (Cluster 4)’ (8 October 2024) <https://www.eeas.europa.eu/delegations/un-new-york/eu-statement-%E2%80%93-un-general-assembly-6th-committee-working-group-%E2%80%93-protection-persons-event-disasters-1_en>

International trends notwithstanding, there seems to be a generalised consensus that we are not at the dawn of Treaty change. Which brings us to the question of whether (some) natural disasters share sufficient family traits with ‘crises’ or ‘emergencies’ to integrate a special regime of EU emergency law and thus alleviate some of the constitutional limitations identified with respect to EU disaster law. In other words, whether the concerns surrounding the perceived lack of EU competence with respect to civil protection might be partially misplaced, in so far as (some) natural disasters could trigger emergency rules that accord EU institutions with additional means to address disaster situations and possibly Member States with concrete disaster-relief obligations. The next section examines how natural disasters have been conceptualised in EU primary and secondary law, and in the case law of the Court of Justice, to determine to which extent they already integrate the emergency law family.

3.2. *The Shared Traits of Natural Disasters and Emergencies in EU Law*

From the outset, there are the formal overlaps. The constellation of rules forming the emergency law family includes at least three articles—Articles 107, 122 and 222 TFEU—that expressly refer to natural disasters. This would render *some*, if not all, natural disasters, good candidates for an emergency law regime.

Conceptually, however, the notion of ‘natural disaster’—much like that of ‘emergency’—is shrouded in a degree of ambiguity. On the one hand, we all seem to intuitively know a natural disaster when we see one: floods, tornados, severe storms, wildfires, or earthquakes all seem to naturally fit into our disaster imagery. On the other hand, EU primary law—much like national constitutions, even those which expressly recognise the doctrines of ‘public calamity’ or ‘state of natural disaster’⁷⁴—does not include a definition of natural disaster. Instead, a mix of material and ‘functional-structural’ definitions populate EU secondary law. The General Block Exemption Regulation, for instance, defines natural disasters as ‘earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wildfires

⁷⁴ In addition to the Portuguese constitution, this cast includes the Czech, Croat, German, Hungarian, Romanian and Spanish constitutions. See in this respect, Bellenghi (n 67), note 41 and accompanying text.

of natural origin’,⁷⁵ in line with the recent European Preparedness Union Strategy⁷⁶ and European Commission practice⁷⁷. Different EU secondary law instruments, in turn, adopt a more functional approach. The 2024 Regulation on crisis and force majeure in the field of migration and asylum, for instance, equates natural disasters to a ‘case-type’ of *force majeure*—understood as ‘abnormal and unforeseeable circumstances outside [the Member State’s] control, the consequences of which could not have been avoided in spite of the exercise of all due care’⁷⁸—and the 2024 IMERA likewise refers specifically to forest fires and earthquakes as ‘exceptional and sudden events of extraordinary nature and scale ... reasonably unexpected’.⁷⁹ Flagship instruments such as the EUCPM, in turn, define a ‘disaster’ (natural or otherwise) rather broadly as ‘any situation which has or may have a severe impact on people, the environment, or property, including cultural heritage’, and refers to the ‘unpredictable’ nature of natural disasters.⁸⁰ This definition is then reproduced in Council Decision 2014/415/EU on the arrangements for the implementation by the Union of the solidarity clause. This instrument distinguishes, however, between ‘disasters’ and ‘crisis’, the latter corresponding to ‘a disaster ... of such a wide-ranging impact or political significance that it requires timely policy coordination and response at Union political level’.⁸¹

This broad and often gravity-laden definition is largely in line with the definition of (natural) disasters found in international instruments which the EU has endorsed, such as the UN draft convention on the protection of persons in the event of disasters, which defines disasters as:

⁷⁵ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014 (‘General Block Exemption Regulation’), art 50.

⁷⁶ Preparedness Union Strategy (n 51) at 1 (referring to ‘floods [] droughts and forest fires, coastal erosion, heat and cold waves and storms’).

⁷⁷ See European Commission, Communication from the Commission. Guidelines for State aid in the agricultural and forestry sectors and in rural areas (2022/C 485/01), para 324 (noting that ‘[to] date, the Commission has accepted that earthquakes, avalanches, landslides and floods may constitute natural disasters [for the purposes of Article 107 TFEU]’).

⁷⁸ Preamble, para 20 Migration Crisis Regulation.

⁷⁹ Preamble, para 7 IMERA.

⁸⁰ Art 4(1) and preamble, para 39 EUCPM ‘While prevention and preparedness measures are essential to enhance the resilience of the Union in facing natural and man-made disasters, the occurrence, timing and magnitude of disasters are by nature unpredictable’.

⁸¹ Council Decision 2014/415/EU of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause OJ L 192/53 (1.7.2014), art 3(a) and (c).

a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society.⁸²

Gravity thresholds such as this allude to the fact that under EU disaster law (much like EU emergency law)⁸³ not all natural disasters are born equal—not all are relevant for the triggering of EU powers and EU law protection.

First, references to natural disasters in the EU Treaties are often coupled with references to ‘exceptional occurrences’. This is the case of Article 107(2)(b) TFEU, on State aid, and of Article 122(2) TFEU, on financial assistance in case of real or imminent ‘severe difficulties caused by natural disasters or exceptional occurrences beyond [a State’s] control’. This construction can arguably indicate either (a) the equivalence between these terms, (b) their opposition, or (c) the sole relevance, for EU law purposes, of natural disasters that are of an unforeseeable or extraordinary nature. Scholarship interpreting the conditions for the application of Article 107(2)(b) TFEU has focused on the definition of exceptional occurrences, referring to their ‘unforeseen’, ‘unpredictable’ and ‘extraordinary’ character, as well as their ‘large or significant’ impact, without specifically addressing natural disasters.⁸⁴

Second, EU secondary law often attaches express thresholds to the triggering of EU disaster assistance. Under the EUSF, for instance, financial assistance (in the form of grants) is only accorded to Member States or candidate countries affected by *major* natural disasters, understood as disasters with a total direct damage exceeding 0.6% of the State’s gross national income (GNI).⁸⁵ To be eligible for financial assistance, the natural disaster must also have ‘serious repercussions on living conditions, the natural environment or the economy in one or more regions or one or more countries’, as judged by the European Commission.⁸⁶ A similar threshold for assistance permeates the 2016 Council Regulation on the provision of emergency support within the Union (ESI), wherein ‘emergency support can only be provided where the exceptional scale and impact of the disaster is such that it gives rise to severe wide-ranging

⁸² Art 3(a) ILC draft articles on the protection of persons in the event of disasters (n 55).

⁸³ For an overview of the gravity thresholds required for the triggering of EU emergency powers (notably under arts 122(1) and (2), 143(2), 78(3) and 222 TFEU) see Cinnirella (n 12), at 543: noting that ‘EU emergency powers are subsidiary to those of the Member States, meaning that the Union becomes involved only when the Member States are unable to address an emergency effectively on their own’.

⁸⁴ Nicolaidis (n 30), at 239.

⁸⁵ Art 2(2) EUSF.

⁸⁶ Arts 2(2) and 4(2) EUSF.

humanitarian consequences in one or more Member States and only in exceptional circumstances where no other instrument available to Member States and to the Union is sufficient'.⁸⁷

Third, EU institutional practice is somewhat mixed in this respect. As far as State aid decisions by the Commission are concerned, decisional practice has ranged from dismissing the outbreak of bird flu as a 'natural disaster or an exceptional circumstance' under Art 107 TFEU and doing so with respect to the BSE epidemic and Covid19.⁸⁸ In this respect, the Commission distinguishes between recurring phenomena and exceptional occurrences. The latter 'must at least present the characteristics of an occurrence that, by its nature and its effect on the operators concerned, is clearly distinguished from usual conditions and is outside the framework of the normal conditions under which a market operates'.⁸⁹ With respect to natural disasters, specifically, the Commission has 'accepted that earthquakes, avalanches, landslides and floods may constitute natural disasters' for the purposes of Article 107(2)(b) TFEU.⁹⁰ In the agricultural and forestry sectors, it also allows for state aid to compensate for damages caused by 'adverse climatic event which can be assimilated to a natural disaster' under 107(3)(c) TFEU,⁹¹ whilst alluding to beneficiaries' obligation to take out 'insurance covering the statistically most frequent climatic risks' in the relevant Member State.⁹²

A certain ambiguity carries on to the Court's case law, where natural disasters such as volcanic eruptions, wildfires, or seasonal floods are treated differently. In this respect, two disclaimers are in order. First, that the considerations made in this paper are based on a preliminary sample of cases referring to natural disasters to varying degrees. Second, that as rightly noted by Sara Poli in one of the few analyses of Court's case law in situations of 'emergency', 'threat' or 'crisis', both the fact that the primary responsibility in situations of crisis or emergency lies with the affected Member State

⁸⁷ Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union OJ L 70 (16.3.2016), art 1(1).

⁸⁸ Nicolaides (n 30), at 240.

⁸⁹ Commission Decision of 10 December 2008 concerning State aid C 31/06 (ex N 621/05) granted by Italy on urgent measures to prevent avian influenza (2010/332/EC), para 60.

⁹⁰ European Commission, Communication from the Commission. Guidelines for State aid in the agricultural and forestry sectors and in rural areas (2022/C 485/01), para 324.

⁹¹ Understood as 'unfavourable weather conditions such as frost, storms and hail, ice, heavy or persistent rain or severe drought' which destroy 30% of the average agricultural production or 20% of the forestry potential. *ibid.*, para 33 (3).

⁹² *ibid.*, para 358.

and the constitutional design of EU competence in this respect have significantly limited Luxembourg's involvement in the review of EU or Member States' action in their aftermath.⁹³

This said, by their very nature, natural disasters can raise fundamentally different questions of EU law. A review of the Court's case law in this respect allows us to tentatively identify three categories of cases connected (to varying degrees) with natural disasters (including earthquakes, wildfires and seasonal floods) as well as manmade disasters (including the Chernobyl nuclear disaster and the Covid19 health pandemic):

- 1) Cases concerning the interpretation of EU (environmental) law obligations,
- 2) Public procurement cases involving civil protection work, and
- 3) State aid cases concerning measures adopted by the Member States in response to natural disasters or exceptional circumstances under Article 107 TFEU.

What is apparent from this concise body of case law is that, as far as disasters are concerned, the Court distinguishes natural disasters, on the one hand, from terrorist attacks or health pandemics, on the other; and 'structural' or cyclical occurrences (such as wildfires and seasonal flooding) from *other* natural disasters.

In the context of state aid cases, for instance, the Court has generally classified terrorist attacks and health pandemics as 'exceptional occurrences' within the meaning of Article 107(2)(b) or 107(3)(b) TFEU or as *force majeure* events relieving Member States or economic operators of their obligations under EU law. In cases such as *Olympiaki Aeroporia Ypiresies*, for instance, the Court confirmed the partial compatibility with EU law of Member States' decision to compensate selected airlines for the costs incurred with the closure of the international airspace following the 9/11 attacks on US soil.⁹⁴ In the Court's words:

⁹³ Sara Poli, 'Emergencies, Crises and Threats in the EU: What Role for the Court of Justice of the European Union?' in Inge Govaere and Sara Poli (eds), *EU Management of Global Emergencies: Legal Framework for Combating Threats and Crises* (Brill Nijhoff 2014) 195–217. For a more recent overview of the Court's emergency case law and its approach to 'emergency argumentation' see Guido Bellenghi, 'Emergency in the Legal Reasoning of the Court of Justice of the European Union', *Nordic Journal of European Law* (forthcoming).

⁹⁴ See Case T-268/06 *Olympiaki Aeroporia Ypiresies v Commission* ECLI:EU:T:2008:222. See also, Case T-525/21 *E. Breuninger GmbH & Co v Commission* ECLI:EU:T:2022:835 (lockdown decisions).

to ask an airline to reserve aircraft in order to cope with the consequences of an event such as the terrorist attacks of 11 September 2001 is tantamount to denying the exceptional nature of that occurrence. If a diligent operator is required to take precautions against the consequences of an event, that event cannot, by definition, be regarded as coming within the doctrine of *force majeure* ... nor, with much greater reason, within the meaning of ‘exceptional occurrences’ in Article 87(2)(b) EC [now 107(2)(b) TFEU].⁹⁵

A similar reasoning results from the Court’s rulings in the *Ryanair* saga against state aid granted by, for instance, Sweden and France, to selected airlines in the aftermath of the Covid19 pandemic.⁹⁶ Here, the Court repeatedly agreed with the Commission’s view that the Covid19 outbreak amounted to an exceptional, unforeseeable occurrence with a significant impact on economic operators.

The same does not hold true for other natural disasters, whose exceptional, unforeseeable, or extra-ordinary nature is less clear-cut. Thus, while in *McDonagh v Ryanair* the Court agreed that the eruption of the Eyjafjallajökull volcano in Iceland amounted to an ‘extraordinary circumstance’ as defined in the EU passenger rights’ Directive,⁹⁷ it concluded the reverse with respect to wildfires in Greece or seasonal flooding in Venice. In *Sogia Ellas* and in *Italgas*, the General Court agreed with the European Commission regarding the unacceptability of the aid granted by the Greek state to economic operators affected by the 2007 wildfires, or the aid granted by Italy to Venetian economic operators affected by seasonal flooding (‘acqua alta’), respectively.⁹⁸ In doing so, the Court did not question the Commission’s classification of the 2007 wildfires in Greece as an ‘economic risk which any undertakings may

⁹⁵ Case T-268/06 *Olympiaki Aeroporia Ypiresies v Commission* ECLI:EU:T:2008:222, para 66.

⁹⁶ Case C-320/21 P *Ryanair DAC v Commission* ECLI:EU:C:2023:712 (Sweden); Case C-209/21 P *Ryanair v Commission* ECLI:EU:C:2023:905 (Sweden); Case C-210/21 P *Ryanair v Commission* ECLI:EU:C:2023:908 (France).

⁹⁷ Case C-12/11 *McDonagh v Ryanair* ECLI:EU:C:2013:43, paras 26-34. Under Regulation 261/2004 ‘extraordinary circumstances’ are defined in line with the Montreal Convention as events ‘which could not have been avoided even if all reasonable measures had been taken’. Such events may result from ‘political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier’. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, OJ L 046 , 17/02/2004, preamble, para 14.

⁹⁸ Case T-347/20 *Sogia Ellas v Commission* ECLI:EU:T:2022:639; Joined Cases T-254/00, T-270/00, T-277/00 *Italgas v Commission* ECLI:EU:T:2008:537.

face’,⁹⁹ and considered that the Commission did not exceed its powers of appreciation when it dismissed the applicant’s claim that seasonal flooding in Venice amounted to a natural catastrophe.¹⁰⁰

This brings us to the Court’s attention to conferral and its deference towards Member States and EU institutions in cases involving natural disasters. As indicated above, both internationally (UN) and regionally (EU), the responsibility to protect persons in the event of disasters is still seen as primarily a matter for the affected state, who holds the right to request (and refuse) external assistance in the event of a disaster.¹⁰¹ This ontology of disasters reverberates in EU case law. The three categories of cases identified above—those concerning the interpretation of EU (environmental) law obligations, those on the relationship between EU public procurement rules and civil protection work, and state aid cases—reflect a considerable degree of deference towards Member States’ frontline competence on matters of civil protection and to the Commission’s role as enforcer of competition law and policy. This deference is visible at different levels.

First, the Court is careful not to conflate shared environmental competence (Article 4(2)(e) TFEU) with broader disaster law implications resulting from Member States’ breach of their EU environmental law obligations. Rulings such as *Commission v Portugal*,¹⁰² where the Court found that the Portuguese government failed to comply with its obligations under Article 4 of the Waste Water Directive for failing to ensure adequate monitoring and collection of waste water in 44 agglomerations, or *Commission v Spain*,¹⁰³ where the Court found the Spanish government responsible for the non-transposition of several provisions of the Water Framework Directive,¹⁰⁴ can be abstractly linked to the EU’s natural disaster acquis. Yet, neither of these cases makes express reference to the broader or more severe consequences of Member

⁹⁹ Case T-347/20 *Sogia Ellas v Commission* ECLI:EU:T:2022:639 (French), para 44. See also, Décision (UE) 2020/394 de la Commission du 7 octobre 2019 concernant les mesures SA.39119 (2016/C) (ex 2015/NN) (ex 2014/CP) mises en œuvre par la République hellénique sous la forme de bonifications d’intérêt et de garanties liées aux incendies de 2007 (C/2019/7094) JO L 76 (12.3.2020) para 118.

¹⁰⁰ Joined Cases T-254/00, T-270/00, T-277/00 *Italgas v Commission* ECLI:EU:T:2008:537, paras 340-341. While this argument resurfaced on appeal, it was also briefly dismissed by the CJEU. See Joined Cases C-71/09 P, C-73/09 P and C-76/09 P, *Comitato ‘Venezia vuole vivere’ and Others v Commission* ECLI:EU:C:2011:368, paras 173 and 177.

¹⁰¹ See arts 10–13 ILC draft articles on the protection of persons in the event of disasters.

¹⁰² Case C-398/14 *Commission v Portugal* ECLI:EU:C:2016:61.

¹⁰³ Case C-151/12 *Commission v Spain* ECLI:EU:C:2013:690.

¹⁰⁴ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy OJ L 327 (22.12.2000).

States' non-compliance with such instruments but instead to the environmental objectives of both measures. The ruling against Portugal, for instance, was cast against the overarching concern for Portugal's conduct likelihood to 'cause irreparable damage to the environment' as established by Article 1 of the Waste Water Directive, with no tangible connection between this irreparable harm and the occurrence of natural disasters. A minor exception to this concerns the Commission's arguments in *Commission v Ireland*, which linked Ireland's non-compliance with the EIA Directive to the ecologic disaster resulting from a landslide which caused 'the death of about 50 000 fish and lasting damage to the fish spawning beds'.¹⁰⁵

With respect to civil protection cases, the Court is also attentive to the fact that the Union's competence is but a supporting one in this respect. Most civil protection cases are, in fact, public procurement cases concerning the interpretation of the notion of 'non-profit organisation or association' under Article 10(h) of Directive 2014/24/EU on public procurement, which excludes from the Directive's scope 'civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations'. In this context, the Court distinguishes 'danger prevention services', as an autonomous concept of EU law, from civil protection and civil defence, the latter concerning, in the Court's view, situations of 'mass harm, such as, for example, an earthquake, a tsunami or even a war', while the former would apply to both 'collective and individual risks'.¹⁰⁶ Beyond their interest for the way in which the Court understands natural disasters as acts of collective 'mass harm', these cases are also important in how they clearly defer to Member States in cases of 'emergency'. The case law makes clear that both emergency vehicles and 'qualified ambulances' are excluded from EU public procurement procedures and therefore regulated at the discretion of the Member State. The same sentiment extends to the Court's reiteration that other rules of EU law, such as the Working Time Directive, apply differently with respect to 'certain specific activities in the civil protection services', with respect to which Member States retain a considerable margin of discretion.¹⁰⁷

The general deference to Member States is replaced with a considerable deference to the European Commission in the examination of the lawfulness or lack thereof of state

¹⁰⁵ Case C-215/06 *Commission v Ireland* ECLI:EU:C:2008:380, paras 89 and 93.

¹⁰⁶ Case C-465/17 *Falck Rettungsdienste GmbH* ECLI:EU:C:2019:234, paras 29–30. See also, Joined Cases C-213/21 and C-214/21 *Italy Emergenza Cooperativa Sociale* ECLI:EU:C:2022:532.

¹⁰⁷ Case C-428/09 *Union syndicale Solidaires Isère* ECLI:EU:C:2010:612, para 24 (where the Court nevertheless recalls that 'exceptions to the scope of Directive 89/391 must be interpreted restrictively').

aid accorded in the aftermath of natural disasters. Most cases concerning the interpretation of Article 107 TFEU are brought to the Court either by Member States seeking the annulment of a Commission decision deeming the aid granted by the Member State incompatible with the internal market, or by undertakings contesting aid granted by a Member State to competing economic operators. The Court's case law interpreting this Article, in turn, has made clear that exceptions to the general prohibition of state aid must be interpreted narrowly.¹⁰⁸ Specifically, the Court has noted that only where there is a direct link between the aid and the damage incurred by an undertaking as a direct result of a natural disaster will this aid be deemed compatible with the internal market.¹⁰⁹ In addition, the aid granted must be proportionate to the losses suffered by the undertaking and be based on 'as precise an assessment as possible' of the damage suffered.¹¹⁰ The Court places particular importance on Member States' cooperation with the European Commission in facilitating sufficient evidence and information to support the lawfulness of the aid.¹¹¹ Whilst the Commission's discretion under article 107(2)(b) is generally narrower and centred on the assessment of a quantifiable damage,¹¹² it in turn covers complex economic and social considerations under Article 107(3) TFEU, where measures seek to 'remedy a serious disturbance in the economy of a Member State'. As noted by the Court in *Greece v Commission*:

When applying Article 87(3) EC [now Article 107(3)(b) TFEU], the Commission has a wide discretion the exercise of which involves economic and social assessments which must be made in a Community context. The Court of Justice, when reviewing the legality of the exercise of that freedom, cannot substitute its own assessment for that of the competent authority but must confine itself to examining whether the latter assessment is vitiated by a manifest error or by a misuse of powers.¹¹³

¹⁰⁸ See for instance, Case T-347/20 *Sogia Ellas v Commission* ECLI:EU:T:2022:639, para 71; Case C-278/00 *Greece v Commission* ECLI:EU:C:2004:239, para 81; Case C-156/98 *Germany v Commission* ECLI:EU:C:2000:467, para 49.

¹⁰⁹ Case C-71/09 P *Comitato 'Venezia vuole vivere' and Others v Commission* ECLI:EU:C:2011:368, para 175. See also, Case C-73/03 *Spain v Commission* ECLI:EU:C:2004:711, para 37.

¹¹⁰ Case 525/21 *E. Breuninger GmbH & Co v Commission* ECLI:EU:T:2022:835, para 53; Case T-347/20 *Sogia Ellas v Commission* ECLI:EU:T:2022:639, para 74.

¹¹¹ See Case C-364/90 *Italy v Commission* ECLI:EU:C:1993:157, para 35.

¹¹² Nicolaidis (n 30), 238-239.

¹¹³ Case C-278/00 *Greece v Commission* ECLI:EU:C:2004:239, para 97.

On the one hand, this attention to the principle of conferral is a welcome reminder of the Court's role in protecting the integrity of the EU constitutional order. It is also very much in line with the political sentiment subjacent to the recent Preparedness Union Strategy. On the other hand, it also reflects the Court's endorsement of a contestable hierarchy between natural disasters that may work to the detriment of the protection of persons in their wake. What is apparent from the handful of cases examined in this paper is that the Court seems more willing to protect individuals affected by natural disasters where the ensuing economic costs can be absorbed by economic operators and do not represent a significant threat to, or potential distortion of, the internal market. Thus, in *McDonagh v Ryanair*, even though the Court conceded that the eruption of the Eyjafjallajökull volcano was unforeseeable, it still concluded that such event did not relieve Ryanair from its duty of care under the EU passenger rights Directive in so far as the economic costs of observing this duty could reasonably be absorbed by the airline.¹¹⁴ In the majority of cases, however, the Court focuses on a narrow interpretation of state aid rules guided not by considerations pertaining to crisis response or the protection of persons in the event of disasters, but instead by the preservation of competition conditions and an undistorted internal market.

3. The Promises and Pitfalls of Conceptualising Natural Disasters as Emergencies

The brief review of the conceptualisation of natural disasters in EU primary and secondary law, and in the case law of the Court of Justice, supports the conclusion that, under the auspices of EU law, *some* natural disasters allow Member States to derogate from EU (state aid) rules, confer upon EU institutions the power to provide exceptional financial assistance to affected Member States (Article 122 TFEU) or third-countries (Article 213 TFEU), or trigger obligations upon the Union and its Member States to 'act jointly in a spirit of solidarity' in their aftermath (Article 222 TFEU). Beyond such emergency provisions, natural disasters are addressed by the EU through measures that support, encourage, coordinate, 'complement and reinforce' Member States civil protection and humanitarian aid efforts (under Articles 196 and 214 TFEU), but do not fundamentally affect Member States primary responsibility to

¹¹⁴ Specifically, the Court found that the principles of proportionality, non-discrimination and fair balance of interests found in the Montreal Convention and reproduced in EU law were respected in so far as the financial burden imposed on the airline was proportionate to the aim of ensuring a high level of protection for passengers. Case C-12/11 *McDonagh v Ryanair* ECLI:EU:C:2013:43, paras 47-48.

prevent or respond to natural disasters. Much like in the domain of emergencies, solidarity remains a central concept to the EU's governance of natural disasters and to Member States obligations in this respect.¹¹⁵

What also becomes apparent from this brief review is that the EU's governance of natural disasters remains complementary (or secondary) to that of its Member States, not only by virtue of a formal distribution of competences but also by force of the definition of natural disasters within EU secondary law, institutional practice, and judicial interpretation. European Commission practice in the context of state aid has gradually crystallised to accept that 'earthquakes, avalanches, landslides and floods' amount to natural disasters and, on a comparable footing, so do 'weather conditions such as frost, storms and hail, ice, heavy or persistent rain or severe drought' which significantly compromise a Member State's agricultural or forest area.¹¹⁶ In turn, a number of instruments of secondary law restrict the definition of natural disasters to 'abnormal or unforeseeable' events beyond a Member State's control, or 'exceptional and extraordinary events of exceptional nature and scale'.¹¹⁷ Others reserve Union assistance to 'major' natural disasters or humanitarian catastrophes, further to the exhaustion of alternative means.¹¹⁸ In other words, it is assumed that for an extreme weather event to be a natural *disaster* it must by implication exceed the bounds of the ordinary and a Member State's coping capacity. By consequence, the weathering out of other natural hazards remains the responsibility of Member States. In turn, judicial interpretation of disaster rules, while invariably limited, likewise ascribes to differing degrees of natural disasters, often grounded on economic considerations rather than disaster-relief imperatives.

On the one hand, in terms of 'actorness', understood here as the EU's ability to operate as an effective disaster-relief agent, it would be incorrect to downplay the EU's growing role in the prevention, preparedness and response to natural disaster, notwithstanding the bounds of its formal competence in this respect. As aptly noted by Faulkner, Hopkins and Clausing, the systematic reforms to the EUCPM have gradually expanded

¹¹⁵ Concerning the reliance on solidarity in the context of EU emergency instruments see Regulation (EU) 2024/1359 on crisis and force majeure in the field of migration and asylum (n 16), where the term is invoked 89 times. See also supra n 38 and accompanying text.

¹¹⁶ European Commission, Communication from the Commission. Guidelines for State aid in the agricultural and forestry sectors and in rural areas (2022/C 485/01), para 33 (3).

¹¹⁷ See supra notes 78-79 and accompanying text.

¹¹⁸ See Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union OJ L 70 (16.3.2016), art 1(1).

the EU's ability to operate as a crisis management actor, and the 2025 reform is set to produce the same effect.¹¹⁹ On the other hand, there is a lingering structural gap in the design of the EU's governance of natural disasters: *some* natural disasters trigger emergency provisions and warrant EU financial assistance whilst most are approached through measures that support or encourage Member States in this respect. Between these two axes, the EU lacks the competence to harmonise Member States' disaster-management capacities and disaster-relief responsibilities.

Which brings us to the promises and pitfalls of conceptualising natural disasters as emergencies in EU law. Starting with the promises, conceptualising some if not all natural disasters as emergency situations bears the promise of a more centralised and perhaps more efficient response to extreme weather events across the EU. It also bodes well with EU secondary law and the CJEU case law tendency of ascribing gravity thresholds to different natural disasters, as examined in this paper. The allure of distinguishing between the slow-onset crisis of climate change and the sudden or abrupt emergency of a natural disaster also resonates well with the domestic practice of Member States that often resort to states of emergency, of public calamity or of natural disasters, in the wake of floods, earthquakes or other catastrophes.

The pitfalls of seeing natural disasters as emergencies, however, are of a more conceptual and fundamental order. If we consider that all natural disasters amount to emergencies, we run the risk of banalizing the urgent or, in extremis, of fostering permanent states of exception. If we instead consider that only unpredictable, unforeseeable, large-scale disasters (measured at the tune of say 0.6% of a country's GNI) merit this label or warrant EU assistance, then we run the risk of fostering an artificial hierarchy between natural disasters and reducing the scope of protection and intervention of EU law. This places financial assistance in the wake of such catastrophes at the mercy of political determinations and of Member States' discretion. It also diverts the attention from Treaty change—grounded on an emancipation of EU civil protection competence, the privileging of the community method and of greater disaster-management competences for the Commission—towards a growing politicisation of disasters, with implications for the (already)

¹¹⁹ Faulkner, Hopkins and Clausen (n 64); Proposal for a Regulation of the European Parliament and of the Council on the Union Civil Protection Mechanism and Union support for health emergency preparedness and response, COM/2025/548 final (16.7.2025).

limited scope of obligations of assistance on Member States and restrained scope of judicial review.

4. Concluding Remarks

It is commonly said that one does not choose one's family. Yet, in law, (legal) family building is a rather common analytical exercise: creating taxonomies and legal sub-regimes is both an endemic feature of the organisation of a legal system and a much-lamented symptom of its fragmentation. In this spirit, this paper reflected on whether EU rules on the prevention and response to natural disasters—in themselves part of the emerging field of EU disaster law—should be understood as an integral part of yet another emerging field, that of EU emergency law.

In addressing this question, this paper mapped out the EU legal framework applicable to natural disasters—including Article 21(2)(g) TEU and Articles 107(2)(b) and (3)(b), 122, 196, 214, 222, 175(3) and 212(2) TFEU—and examined how natural disasters have been conceptualised in EU primary and secondary law and in the case law of the Court of Justice. It concluded that, much like 'emergencies', natural disasters are often described by reference to their 'urgency', 'unforeseeability', or 'large scale' character or impact. Considerable ambiguity nevertheless prevails. Both in the decisional practice of the European Commission and in the case law of the Court of Justice, it is at times unclear why certain disasters are deemed more unpredictable than others or more or less worthy of EU law protection.

Overall, the EU's governance of natural disasters is built on two opposing prongs: one that considers a select catalogue of natural disasters as warranting derogations from EU law or increased institutional powers, and one that understand the EU's response to extreme weather events and natural disasters as the primary responsibility of the Member States. While these approaches may be seen as complementary and in line with the constitutional design of EU civil protection and humanitarian aid, they establish a system wherein EU assistance and intervention are simultaneously subsidiary to that of the Member States and unaccompanied by concrete or harmonised Member State obligations concerning the prevention and response to natural disasters. Ultimately, the constitutional design of EU powers in this respect reflects the difficulty of conceptually framing natural disasters along a spectrum that

opposes sudden emergencies to cyclical crises and touches upon Member States' frontline responsibility and individual capacities.

To the question of whether natural disasters should by default be understood as emergencies in EU law, this paper answered in the negative, not out of a conviction that natural disasters are not serious, devastating events with large-scale implication for the social and economic fabric of the Member States and, most likely, the 'core values and structures of the Union and its Member States'.¹²⁰ Quite to the opposite. The concern implicit to this paper pertains rather to the need to redress the near permanent and ever-increasing intensity of natural disasters with equally permanent structures and commitments by the Member States to disaster prevention, response and management.

For these and other reasons, notably the conceptual ambiguity of natural disasters and their more permanent and recurring nature, some natural disasters may be best understood as distant cousins or estranged siblings of emergencies as far as this legal family is concerned.

¹²⁰ de Witte (n 4).