TC **T**RANS**C**RISIS

Enhancing the EU's Transboundary
Crisis Management Capacities

TransCrisis lessons:
Summary of key research findings
and policy recommendations

Contents

Introduction

The financial crisis is widely said to have exposed shortcomings in the EU's capacities to address transboundary threats. National and EU regulatory regimes were left exposed, member states engaged in ill-coordinated actions, and the eventual responses raised questions about the redistributional consequences of European integration. Subsequently, the refugee crisis also highlighted shortcomings in transboundary crisis management, especially as member state positions diverged radically and solidarity was in short supply.

One traditional part of the EU's *raison d'être* has been the coordination of member states in the face of cross-boundary challenges (see Boin and Lodge 2015: 19). It might even be said that crises and the perception of member state 'boundary loss' have been central drivers in encouraging the growing importance of European governance. However, since the financial crisis, there are growing questions whether the EU is well-equipped to deal with the kind of major societal challenges that transboundary crises represent. Indeed, the EU has been criticised for being the source of rather than the solution to transboundary crises.

TransCrisis research was motivated by the interest in exploring the presence and limits of transboundary crisis capacities across EU institutions and across EU-member state relations. TransCrisis research occurred at a time of growing perception of vulnerability and uncertainty, whether it was due to global crises (the financial and refugee crises), geopolitical changes or an increasing perception that the traditional tools of managing crises had become themselves potential sources of crisis. This 'new normal' has also been characterised by a distinct political context, namely one of renationalised electoral politics, highly dispersed administrative systems and tensions between addressing short- and long-term policy goals. In particular, TransCrisis research was guided by one overarching question:

How can political leaders in the EU multi-level governance system exercise legitimate and effective crisis leadership in the face of transboundary threats?

TransCrisis research understood leadership on the one hand in terms of leadership exercised by individual actors (e.g., senior politicians or senior officials in key institutions). On the other hand, TransCrisis studied leadership in the context of organisations (e.g., the role of coordination to enable organisations to lead).

The document summarises the research findings under a set of questions in order to focus attention on central underlying questions that informed TransCrisis research. Its intention is to provide succinct research briefings that concentrate on key findings. The answers highlight the range of research that was conducted across the different TransCrisis themes and work packages. They also inform the development of wider discussions about the future of EU governance in general, and the governance of transboundary crises in particular.

What is a transboundary crisis in the European Union?

Key points
- Transboundary crises focus attention on the boundary-crossing characteristics of a particular crisis and on the presence of organisational, legal and professional boundaries that make crisis management problematic
- Transboundary crisis management in the European Union is not solely about civil protection, but also about the consequences of market liberalisation and integration and the actions of member states that undermine constitutional commitments towards liberal democracy
- Crisis-related provisions and understandings have become increasingly widespread across policy domains

Conventional definitions of crisis point to three central elements: threat, urgency and uncertainty. These three essential characteristics highlight why the crisis phenomenon requires special attention: they are associated with situations where likelihood of event and impact are difficult to assess, they are defined by perceptions that important systems are under threat, and they are also characterised by a sense that immediate action is required in order to deal with costly short- but also long-term consequences.

The notion of *transboundary* crisis reflects on a specific type of crisis; these are crises that not just cross jurisdictional boundaries (such as pollution following industrial incidents) but also affect other kinds of boundaries, whether they are organisational, legal or professional. Very few crises, therefore, can be characterised as not having transboundary crisis characteristics: they do cross political jurisdictions (national, sub-national, local), they involve different organisations, they affect different legal frameworks and are processed by actors with different disciplinary or professional backgrounds. Furthermore, it is not just the impact of a crisis that crosses boundaries, it is also the impact of crisis management activities (or the lack thereof) that has a transboundary impact. In such transboundary contexts, developing understandings of what constitutes a state of crisis, what technologies are used to detect and address crisis, and what kind of decision-making and coordination mechanisms exist is critically important, but also highly contentious. Transboundary crises represent, by their very nature, a fundamental challenge to the crisis management arrangements in whatever governance context.

What, then, are transboundary crises in the context of the EU? And what have been developments in the legal and organisational context of the EU towards transboundary crises over the past three decades?

TransCrisis research's starting point was that transboundary crises required further investigation, especially as the financial crisis had suggested that the EU and its member states were poorly

prepared for such systemic crises. TransCrisis research highlights that it is essential to consider the variety of transboundary crises that affect the European Union:

a) 'traditional' transboundary crises that are associated with *civil protection* mechanisms in times of major incidents, such as (usually man-made) natural or industrial disasters, security incidents and other kinds of breakdowns in critical infrastructures. This also relates to the management of crises external to the EU, including diplomatic and other geopolitical incidents.

b) transboundary crises resulting from *integrating market*s: crisis regimes have emerged to address the (potential) side-effects of an integrating and liberalised Single Market. The banking crisis has highlighted the problems of seeking to deal with a systemic crisis with European, if not global effects, on the basis of mostly national regulatory frameworks. Similar issues have arisen in energy infrastructures: in integrated markets, the effects of a breakdown cannot be contained within the boundaries of a member state and therefore require some form of European-wide governance mechanisms. At the same time, as TransCrisis research suggests, the lack of engagement with European regimes can also be a source of transboundary crisis; for example, in terms of 'home bias' in national supervision.

c) transboundary crises arising from the *intentional political action*s of member states undermining the norms of the European Union as a union of member states committed to liberal democratic constitutional conventions. The rise of 'illiberal democracy' challenges this understanding of the character of the European Union, creates a new cleavage across member states and thereby constitutes not just a transboundary crisis for the European Union (as its very nature has become contested). Backsliding represents a transboundary crisis given its extent among different member states, and it is a transboundary crisis as tools of addressing backsliding remain deeply contested.

This diversity of transboundary crises draws attention to the fact that any debate about crisis management in the European Union cannot just be contained within one policy domain, but has to acknowledge the variety of transboundary crises and the presence of crisis-related regimes in different sectors. It also has to acknowledge the interdependence across these different areas. This interdependence and variety of transboundary crises in the context of the EU has to be borne in mind in a context in which there have been considerable developments towards making the EU a 'crisis manager', especially in the role of civil protection.

In this 'traditional' civil protection area, the EU's cooperation in civil protection goes back to 1985 following a ministerial meeting in Rome which agreed on investigating a Community role for improving member state's collective responses to natural disasters. In 2001, a Civil Protection Mechanism was created to strengthen participation in civil protection cooperation which includes four central Commission-operated instruments: a) a 24/7 monitoring and coordination centre staffed by Commission officials, labelled the European Response Coordination Centre (ERCC) in 2013, b) a Common Emergency Communication and Information System (CECIS) for reporting

and coordination purposes, c) a variety of cross-border training initiatives and d) a set of stand-by resources at the national level that are available for cross-border deployment on request of the Commission following an official request by member state. These stand-by resources were reorganised after 2008 and have taken the form of multi-national 'modules' (Council 2014). In 2007, the Civil Protection Mechanism was revised and a financial instrument adopted by the Council in that same year. These reforms represented a major move towards EU-level funding and operations in the level of civil protection cooperation.

The Council, in turn, has created a set of crisis situation-related protocols and procedures for decision-making. The Integrated Political Crisis Response (IPCR) arrangements establish what it means to be on a 'crisis footing', namely allowing member state ambassadors (COREPER II) to support member state decision-making.. The guidance requires representatives to assemble in Brussels within two hours. These arrangements have been 'stress tested' nearly annually, involving scenarios such as a Hurricane Katrina-like event in the Mediterranean involving large scale civilian fatalities and the collapse of energy supplies, as well as a hostage situation involving diplomats in the Baltic Sea.

These developments need to be seen in the context of changes in the Treaty base. The Lisbon Treaty contained several new provisions, for example, civil protection (Art 91), health security (Art 220) and humanitarian aid (Art 214). It also included a 'Solidarity Clause' that obliges member states to collectively prepare for crises, support each other in times of crisis and when requested, and to coordinate within the framework of the EU (Art 222). This Solidarity Clause was to involve both Union and member state resources in a context where the Union is to 'mobilise all instruments at its disposal'. In short, the significance of this Solidarity Clause is the emphasis on joint action, on the ability to draw on resources and instruments, and the commitment to assist a member state collectively. At the same time, the Treaty also includes a more defence-oriented 'mutual assistance clause' (Art 47.2, otherwise known as 'mutual defence clause, which draws on commitments as part of the 1954 Western European Union). This clause was invoked, for the first time, by France after the Paris terrorist attacks. It requires member states to assist each other in more bilateral ways without reliance on the EU infrastructure (in contrast to invoking the 'civilian' Art 222).[1]

At the same time, mechanisms exist to deal with other types of transboundary crisis. As discussed below, Art 7 TEU is supposed to address member states found to be consistently 'backsliding' on constitutional commitments towards liberal democracy. The envisaged maximum penalty, suspension of voting rights, however, requires unanimity among member states. In policy domains of the Single Market, TransCrisis also found a rise in crisis-related regulatory provisions, often featuring the 'crisis'-word itself. Most prominently, the rise of the 'banking union' in the Eurozone, involving a Single Supervisory Mechanism and the Single Resolution Board, established explicit crisis management regimes. Similarly, debates existed in energy transmission how best to

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[1] See http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572799/EPRS_BRI(2015)572799_EN.pdf

ensure that crises could be mitigated through developing shared understandings of risk preparedness and crisis cooperation. Here, crisis management regimes emerged not just in the context of rather broad directives, but outside of EU institutions, involving transmission operators and multilateral governmental agreements, as well as EU regulatory provisions. TransCrisis also explored policy innovation in the context of crisis, namely the Youth Guarantee for addressing youth unemployment in member states severely affected by the financial crisis. This Youth Guarantee was not just labelled the first 'social right' in the EU (in granting young unemployed the opportunity to access training), but also devoted specific financial resources to this problem.

In conclusion, therefore, it is important to consider the interaction between these different areas of transboundary crisis. The rise of formal powers in traditional domains of civil protection needs to be considered in the context of crisis responses in other policy domains as well as member state actions that might undermine the supposed solidarity underpinning these Treaty provisions. Transboundary crises management also raises questions about the appropriate jurisdictional boundaries of transboundary crisis management. Indeed, at the heart of transboundary crisis management lie questions about the appropriate boundaries of European co-operation and underlying member state solidarity.

Read more
Understanding Transboundary Crisis Management: A Theoretical Framework,
http://www.transcrisis.eu/wp-content/uploads/2015/08/TransCrisis-D2.1-Analytical-Framework.pdf
The European Union's capacities for managing crises, http://www.transcrisis.eu/wp-content/uploads/2017/10/D4.2-Crisis-Management-Capacity-in-the-European-Commission-European-Council-and-the-Council-of-the-European-Union-Final-Report-for-sub-WP4.1.pdf
European Government of Crisis, http://www.transcrisis.eu/wp-content/uploads/2017/10/D4.2-Crisis-Management-Capacity-in-the-European-Commission-European-Council-and-the-Council-of-the-European-Union-Final-Report-for-sub-WP4.1.pdf
Mapping Backsliding in the European Union, http://www.transcrisis.eu/wp-content/uploads/2016/08/D6.1-Mapping-Backsliding-and-Report-on-Workshop.pdf

What are the critical tasks for transboundary crisis management?

Key points
- Seven critical tasks of transboundary crisis management can be distinguished
- Understanding of the seven critical tasks advances knowledge *of* and *in* crisis management
- Distinguishing distinct tasks supports empirical analysis, theory development and offers scope for recommendations for practice

Based on existing research and the analysis of historical cases, TransCrisis established a set of seven critical or strategic tasks or capacities that any effective transboundary crisis management activity needs to engage with. These tasks also reflect on critical theoretical contributions on crisis management drawn from diverse fields, such as organisational psychology, international relations and public administration. These seven critical or strategic tasks require certain resources and therefore also administrative capacities:

- *Detection*: resources are required to recognise emerging threats in a timely manner; such activities include threat monitoring, horizon scanning and early warning systems.
- *Sense-making*: resources and capacities are needed to create situational awareness on the basis of the analysis of available information, so as to enable a basis for decision-making.
- *Decision-making*: capacities and procedures are required to identify strategic decisions and to allocate responsibilities for making such decisions.
- *Coordination*: procedures and mechanisms are required to ensure collaboration in crisis responses and to ensure consistency.
- *Meaning-making:* the formulation of key messages to assure publics.
- *Communication*: the dissemination of information to affected constituencies in order to explain and justify responses.
- *Accountability*: the giving and holding to account over the measures taking during a crisis.

This list of seven critical tasks for transboundary crisis management offers insights for both the academic study of crisis management as well as for the world of practice. For the world of practice, TransCrisis developed a survey tool to support assessments as to the capacity of organisations and policy sectors to manage crisis. For the academic study of transboundary crisis management, these seven tasks offer a convenient heuristic to focus on particular aspects of crisis management activities, to explore the capacities and activities across these seven tasks within and across organisations, as well as to link these tasks to wider theoretical questions about the way in which organisations learn, manage information, and respond to signals from their environment.

Table 1 highlights TransCrisis research findings across these seven tasks, pointing to both identified capacities, and also diagnosed limitations. This table operates at a highly abstract level.

Key tasks need not be located with one organisation alone, nor should they be seen to reside at one level of government alone. The central challenge for EU transboundary crisis management is therefore (a) is the managing of organisational and jurisdictional boundaries in times of uncertainty over the nature of threats, and (b) ambiguity about the actual cooperation among a usually highly dispersed set of political and administrative actors.

Table 1 Critical Transboundary Crisis Management tasks: diagnosed capacities and risks

	Diagnosed capacities	Diagnosed risks
Detection	Significant growth in detection tools across policy sectors	Limits regarding the quality of information; absence of what constitutes a 'crisis' in some domains
Sense-making	Rise of capacities across the EU to develop analytical capacity to assess information	Limits due to fundamental disagreement over policy principles
Decision-making	Rise of decision-making venues to address crises	Fundamental conflicts over policy issues prevent action; confusion over allocation of responsibilities
Coordination	Rise of procedures and rule books to support consistent responses to crises; role of agencies supporting coordination among dispersed actors	Limited confidence in whether procedures will be followed in times of heightened political pressure at member state level
Meaning-making	Enhanced coordination and clearer allocation of responsibilities enable meaning-making	Dependent on shared understanding policy problem; EU has become part of the problem
Communication	In some domains, centralised authority supports central message to audiences	Dependent on shared understanding policy problem; EU has become part of the problem
Accountability	EP has witnessed growing oversight account-holding powers	Limited enactment by EP, need to consider alternative account-giving and -holding in other venues, and include wider engagement activities

How do political leaders make meaning out of a crisis?

Key points
- Political leaders were broadly consistent in their narrative regarding the financial crisis
- Political leaders' meaning-making overlapped more closely with public discourse expressed in op-eds than citizens' views
- Regardless of gender, the more representative their views, the more legitimate leaders appeared to their constituents.

TransCrisis investigated the 'meaning-making' by political leaders during the Euro-Crisis. Meaning-making, the formulation and justification of certain crisis measures in order to communicate them to the public, is a particularly tricky aspect in any crisis: the pressure for urgent responses pushes decision-makers (or 'leaders') to discuss potential solutions rather than devote resources towards explaining the causes of crises and potential solutions; this involves the need for any explanation to accommodate existing expertise, public discourse and an understanding of citizens' preferences (van Esch and Swinkels 2015).

TransCrisis advanced thinking about these meaning-making efforts of political and administrative leaders during times of crisis. Building on the work by Entmann (1993), the research focused on the beliefs and values of individual leaders (studied through speech acts) and on dominant policy ideas and discourses as well as citizens' perceptions of Europe. Utilising specifically developed software tools, this enabled TransCrisis to understand the meaning-making efforts of political crisis leaders.

The research involved a number of central questions: a) what kind of interpretation of the financial crisis was developed, b) how did political leaders seek to explain its causes and solutions, c) how did political leaders' efforts at meaning making reflect the views from their constituents and public discourse, d) how is the legitimacy of leaders being perceived and e) do we see any effects of citizens' gender in how well their views are represented or how legitimate they consider their leaders to be?

Meaning-making during the Euro-crisis was studied across nine EU member states from 2009-2015: Denmark, France, Germany, Hungary, Ireland, Italy, the Netherlands, Spain and the United Kingdom. It involved 167 speeches by 30 different leaders and the analysis of 172 op-eds in 30 newspapers. It also involved a one-off large-scale survey of citizens from the same nine member states, conducted in 2017. 4573 respondents enabled TransCrisis to assess their views of the Euro Crisis and the legitimacy of their leaders.

TransCrisis research established novel insights. Leaders defined the Euro crisis predominantly in terms of a sovereign debt crisis. The view that the Euro crisis was part of a broader economic crisis was only of secondary importance. The same pattern applied when focusing on public debates, as illustrated in the media coverage: the crisis was predominately framed in terms of a crisis in public finances. The main difference, however, was that leaders' speeches associated the crisis with structural reforms and the measures taken by the ECB, the public debate focused more on fiscal support measures. The Euro crisis was portrayed as a crisis of government finances and economic

growth, while citizens associated the crisis first and foremost with questions of employment and growth. For citizens, the state of public finances ranked second.

The analysis also suggested that political leaders were relatively consistent in their crisis narrative. The issue of sound government finances remained their primary concern, followed by questions of structural reform and economic growth. However, there are also some shifts, especially after 2010. During the initial years, the main focus was on the financial crisis, whereas over time, attention shifts more to questions of EU-level regulation, fiscal support, the ECB's crisis interventions and the need for structural reform. The emphasis on the ECB's interventions and the need for reforms continued to rise, and questions regarding the state of financial markets reemerged overtime.

In many ways, there was significant overlap between public debate (as expressed in op-eds) and leaders' speeches: there was considerable overlap in the dominance of causes that were associated with the Euro crisis. When focusing on the causes of the crisis, the analysis of the leaders' speeches highlighted continued references to problems in the banking sector and with public finances (especially with reference to Greece), as well as macro-economic imbalances. The same causes were prominent in the public discourse of the op-eds. Nevertheless, there was also one major difference: fiscal discipline was viewed as a solution by political leaders, whereas in the public debate, it was viewed as a cause. Over time, however, op-eds resembled more closely the views expressed in leaders' speeches, discussing the state of need for structural reform. Questions about fiscal support became less important, instead more attention was paid to the ECB's interventions. In comparison, more disagreement between leaders and citizens, most of all over questions as to whether structural reform would benefit or worsen the economic crisis. Moreover, the views of the general public revealed a stronger emphasis on blaming national member state policies for the financial crisis, the bail out of the bans and the financial crisis more generally.

By means of quantitative analysis, the relation between the congruence between leaders' narratives and those of the citizens and in the public debate was established. Different measures offered somewhat different results, but in general the former Dutch prime minister, Jan Peter Balkenende, followed by Gordon Brown and Brian Cowan come out as the least representative. The most representative was Victor Orban, but also the former Italian prime minister Matteo Renzi, former Spanish prime minister Zapatero and Angela Merkel appear as highly representative. In terms of the economic paradigm underlying their meaning making, overall the Keynesian paradigm was more widespread than the ordo-liberal paradigm. However, the findings suggest that the citizens adhere more to the Keynesian paradigm than the leaders.

Turning to questions of how survey respondents regarded their public leaders also offered interesting findings. The results of the survey show that in terms of different dimensions of legitimacy, the German chancellor Angela Merkel is perceived as the most legitimate leader by the German people, followed closely by the Dutch PM Mark Rutte and Irish Taoiseach Enda Kenny. The analysis also shows that gender is not a significant determinant of people's perception of the legitimacy of their leader. In addition, survey respondents were offered the choice of 'emoticons' to establish levels of satisfaction: Orban and Merkel scored highly in line with the overlap diagnosed in their crisis narrative. However, in the case of former Danish prime minister Rasmussen, there was overall satisfaction *despite* his crisis narrative not overlapping with the opinions of the survey respondents. Most significant, however, the findings show that the more representative leaders' meaning making, the more legitimate they appeared to their constituents. Oddly enough, leaders' legitimacy in the eyes of the citizens was more correlated with the congruence between political leaders and the media than the congruence between political leaders and their citizens' own perspectives. Whether politicians were regarded as legitimate appeared to be more a result of emotional response to a particular politician than party affiliation. These results need to be treated with caution, as the survey of citizens was executed in early 2017.

Read more

Studying Political Leaders in the Financial Crisis, https://www.transcrisis.eu/wp-content/uploads/2017/07/Deliverable-3.2.pdf

Making Meaning of the Eurocrisis, http://www.transcrisis.eu/wp-content/uploads/2017/10/Deliverable-3.3-Final-Report-for-WP3-Making-Meaning-of-the-Euro-crisis.pdf

What capacities do the Council and the European Commission have to deal with transboundary crises?

Key points
- Considerable capacities for transboundary crisis management exist and have been expanding in the Commission and the Council
- Capacities are particularly concentrated in the areas of detection and sense-making as well as co-ordination
- Capacities are mostly sector-based with only limited attention to cross-sectoral issues

Studying administrative capacities is notoriously difficult. Ideally, it involves the assessment of organisational, legal, financial and information resources at the disposal of any one organisation. In a first step towards such a comprehensive analysis, TransCrisis focused its analysis on the creation of an inventory of 'crisis capacities'. Using the list of seven critical tasks noted above, TransCrisis developed an inventory of capacities. By examining websites of different DGs and the Council, the research involved the careful analysis of activities being reported on. In particular, the focus was on seven major areas, namely transport, health, cyber, energy, terrorism, civil protection and migration. This web-based census of capacities resulted in an inventory of over 200 mapped capacities. There are two essential findings that emerge from this exercise:

a) there is considerable breadth in capacities across different policy domains, although they do focus on detection;

b) there has been a considerable growth in capacities over time; especially periods of crisis seem to support the rapid growth in capacities.

Figure 1 illustrates an analysis of five different sectors that have particular relevance for the study of transboundary crises. Figure 1 illustrates that there are significant capacities across all tasks identified as critical for effective transboundary crisis management. At the same time, some variation is also evident: the Commission has far more capacities in terms of detection, sense-making and coordination than it has in other tasks, for example, when it comes to decision-making.

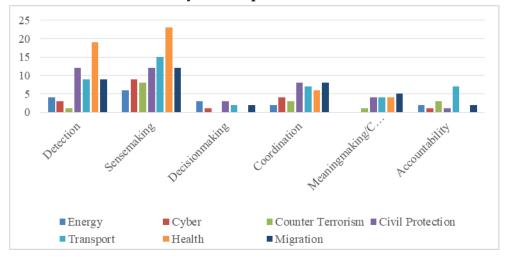**Figure1: Distribution of transboundary crisis capacities in seven domains**

Figure 2 illustrates the other key finding of our inventory work, namely the rapid rise of certain crisis management tasks over the past two decades. This figure concentrates on the most prominent tasks overall, namely detection and sense-making. Figure 3 highlights the different aspects that have been identified as being part of the detection and sense-making capacities. In particular, this involves tasks such as alerts, situational awareness, threat analysis, information exchange and data management. There were hardly any policy domains that are without monitoring or early warning tools: few anticipated threats were without their designated detection system. At the same time, recent years have also witnessed a consolidation effect in that 'systems of systems' have been established.

Figure 2: Development of early warning and sense-making systems in the European Union
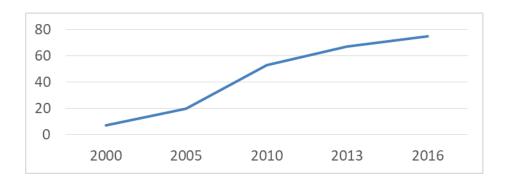

Figure 3: Distribution of detection and sense-making capacities

Sectors that have experienced crises were particularly prominent in terms of the presence of detection capacities. For example, since the Icelandic ash cloud in 2010, Eurocontrol's Pilot-in-Flight Reports System has collected real-time information about ash cloud positions and concentrations. The *Erika* and *Prestige* oil spills were the reason for the initiation of the European Maritime Security Agency's oil spill detection system. Similarly, early detection systems feature prominently in the area of public health (epidemics) and industrial incidents and chemical attacks.

The growth in detection and sense-making tools in comparison to other tools is due to their highly technical nature: systems can be established relatively easy without member state approval, while, at the same time, they are not politically controversial given that they offer the promise of enhanced effectiveness through better information.

In contrast, as illustrated by Figure 1, decision-making, identified in this research as the presence of crisis rooms, appeared to be less developed. Crisis rooms appear in those areas where the EU has clear legal competence to act, such as in areas of animal health. The lack of the direct ability to decide is paralleled by the extensive capacities found in the Commission and Council when it comes to coordination-related capacities. Coordination was particularly oriented towards working with other EU-level organisations, but also included arrangements involving member state authorities. There was a clear distinction between those coordination capacities that dealt with preparing for a crisis, and those coordination devices that were relevant for actual crisis management.

There are also important differences between those capacities devoted to detection and sense-making on the one hand, and those capacities dealing with co-ordination and decision-making on the other. In the case of the former, capacities deal with specified threats, whereas the latter deal with much more broadly defined phenomena. Again, such a finding might not be surprising as such, but identifying these patterns is important for developing a better understanding of the actual crisis management infrastructure among EU-level institutions.

Overall, capacities were largely concentrated with the Commission, the major exception being the Integrated Political Crisis Response (IPCR) mechanism which is administered by the General Secretariat of the Council. Indeed, most capacities were also sector-oriented: there was little capacity development to deal with cross-sectoral issues. Indeed, over recent years, attention towards cross-sectoral capacities appears to have stalled.

Counting capacities offers a first insight to explore in greater depth the emergence and actual utilisation of certain tasks and capacities. Furthermore, the limited number of accountability-related capacities, for example, should not necessarily be regarded as an indicator for limited effectiveness or legitimacy. TransCrisis research focused on the way in which new detection systems were justified: the initial patterns suggested that justifications were based on pragmatic, moral and cognitive strategies (using Suchman's [1995] typology). However, over time, pragmatic justification has become predominant; in other words, arguments are made to suggest that further

detection capacities are beneficial in terms of efficiency and effectiveness. This growing dominance can, in part, be explained by the lack of 'weight' that moral appeals to the greater good hold in times of austerity and growing reluctance towards further European integration. Similarly, rather surprisingly, past crises have been rarely used to justify the introduction of new detection capacities.

Read more

Crisis Management Capacity in the European Commission, European Council and the Council of the European Union, http://www.transcrisis.eu/wp-content/uploads/2017/10/D4.2-Crisis-Management-Capacity-in-the-European-Commission-European-Council-and-the-Council-of-the-European-Union-Final-Report-for-sub-WP4.1.pdf

What role do EU agencies play in times of crisis?

Key points
- despite the presence of legal mandates, the specificities of particular crises required agencies to use discretion in developing their activities and expanding their scope
- management board members generally regard their agencies as crisis 'ready', however, this is not the case among those agencies associated with an identifiable risk profile
- EU agencies' leadership role during crisis is particularly prominent in coordination activities.

There has been considerable interest in the growth of EU agencies as well as their structure and activities. However, little is known about what these agencies actually *do* in terms of being involved during times of transboundary crises. EU agencies were established, after all, to deal with the challenge of managing cross-border risks (Eberlein and Grande 2005; Rittberger and Wonka 2011). In some cases, EU agencies were established in response to crises, see for example, the rise of different organisations in the wake of the financial crisis (the European Banking Authority, the Single Resolution Board, the European Insurance and Occupational Pensions Authority). The same applies to the European Maritime Safety Agency (EMSA), created after the Prestige oil spill disaster, the European Aviation Safety Agency (EASA), created after the 2010 volcanic ash cloud crisis. In other cases, EU agencies have no crisis remit, and therefore are not associated with comprehensive set of risk management provisions.

During times of crisis that affected different member states, EU institutions have been seen to take on coordination roles. It is exactly in the context of co-ordination that EU agencies play a potential role in transboundary crisis situations. Given their organisation and expertise, these agencies are ideally placed to contribute to managing crises: they are specialised and their mandate enables them to develop a policy narrative that enables them to establish themselves as coordinator among different actors across levels of government. In some cases, EU agencies faced crises where they were expected to act, in other cases, they were mandated to act by member states. Indeed, agencies emerge as a technical mechanism that can contribute by coordinating those actors responsible for crisis management at the front-line (see also Helms 2015: 2)

TransCrisis research explored the role of EU agencies in crisis management from two perspectives, looking at agency leadership and at the role of agencies in actual crisis cases.

First, TransCrisis surveyed agencies' management board members with regard to crisis management capacities of their agencies. The survey received 162 responses from 27 of the 30 agencies that were surveyed (a 19.7 per cent response rate). Overall, the survey revealed that management board members consider their agency's risk management capacities to be sufficient;

however, when purely focusing on those agencies with an explicit risk profile, then a different result emerges: board member appear more inclined to suggest that their agencies are insufficiently equipped to deal with transboundary crisis.

When it comes to times of crisis, the respondents identified the European Commission, national regulatory agencies and national governments as critical partners for their agencies. 82 per cent of respondents considered the European Commission the most important actor. The European Parliament (EP) was seen as less critical. Respondents also argued that business associations were more important than civil society organisations, neither of these two was, however, regarded as important as the EU institutions.

Second, TransCrisis focused on four crisis cases and in particular on the role of EU agencies during these transboundary crises:

1. the 2012 banking crisis and in particular the role of the European Banking Authority (EBA)
2. the 2011 *E.Coli* outbreak and the role of the European Food Safety Agency (EFSA)
3. the 2014 Ebola outbreak in sub-Saharan Africa and the role of the European Centre for Disease Control (ECDC)
4. the (ongoing) 2015 refugee crisis in the Mediterranean and the role of Frontex.

These cases therefore include two politico-economic crises (banking and refugees), two related to public health (*E.Coli* and Ebola), two in highly integrated policy sectors (food and borders) and two with, at the time, limited EU authority (public health and financial regulation. There were also differences in that some agencies were mostly engaged in the trafficking of information, others more in actual operations (Frontex). These differences are critical in informing prior expectations as to the agencies' role as they reflect potential cleavages that should be expected to emerge in times of crisis. TransCrisis established that even where agencies did have crisis management provisions in place, the specificities of a particular crisis meant that these agencies had to innovate and expand their scope for action.

In the case of the *banking crisis*, the European Banking Authority (EBA) was established, in 2011, to develop standards for the European banking system. During the crisis, the agency was required to perform a range of functions that had been stipulated in its mandate and that related to the Single Market (i.e., not just the Eurozone). It was tasked with developing mechanisms for the detection of risks and for tackling them. In particular, in the second half of 2011, the EBA performed stress tests to assess the sovereign risk in the European banking system. The EBA was thereby centrally involved in sense-making activities and also critical in establishing core standards for the banking sector, such as the recommendation, in December 2011, that EU banks needed to increase capital ratios. Ultimately, it was the national authorities that were in charge of approving individual bank's recapitalisation plans, but the EBA played a coordination role. In sum, therefore, the EBA played two central coordination roles based on its emerging expertise as a young institution: first, it coordinated national supervisory authority in the implementation of EBA recommendations;

second, it supported the coordination among member states, European authorities, the IMF and the ECB in the structural adjustment programmes affecting a series of member states (e.g., Bulgaria, Cyprus, Greece, Ireland, Portugal and Spain).

In the *Ebola* case, the European Centre for Disease Control (ECDC) had no formal crisis management competencies or regulatory powers. It nevertheless played a critical role in the EU's response. The crisis was characterised by uncertainty over the potential of an outbreak occurring in Europe as well as by an initially highly fragmented response, involving the WHO, European authorities and member states. The ECDC had to balance its role as an assessor of health risks relating to the EU population with demands for expertise outside of the EU. Despite disagreement over the mandate, the ECDC quickly established itself as an important actor in the overall crisis management response on request of global public health actors. The ECDC's formal role was performed in coordination with national authorities so as to assess and prepare for the risk of an outbreak. This also included a review of the preparedness procedures following the infection of a nurse in the Madrid Carlos III hospital. This review was disseminated by the ECDC. In view of the escalating crisis, and in agreement with international parties (the US CDC and the WHO), the ECDC deployed experts in sub-Saharan Africa to support public health and clinical teams. ECDC also played an important role in inter-institutional coordination. The EC's Humanitarian Office (ECHO), DG SANTE and the External Action Service held Ebola-related meetings; ECHO created an Ebola task force. The ECDC participated in these settings and supplied information. These coordination activities were seen as successful by interviewees; the key challenge being the implementation of recommendations in non-EU states.

The *E.Coli* case emerged in the context of an outbreak of a novel strain in Germany in 2011, but affected also other European states (as well as Canada and the USA; however affected individuals had been in Germany and France). The particular challenge in this case was the identification of the particular strain and its origin. In particular, this particular crisis involved criticism of the initially slow response by German authorities and also the initial identification of cucumbers from Spain as likely sources of the outbreak. Subsequently, locally grown bean sprouts grown from imported Egyptian seed were identified as source of the outbreak. The European Food Safety Authority (EFSA) played a critical role in this crisis, in particular in communicating expertise and advice. It was also involved in investigating the source of the outbreak, despite the presumption that this was a matter of national competence. This was the first time that EFSA was centrally involved in identifying the origin of the pathogen and the distribution channels.

The r*efugee* crisis posed Frontex with the problem that it lacked organisational and financial resources to deal with the sudden increase of refugees and the diversity of entry routes into the EU. Frontex also had to operate in a highly politicised environment with very high public attention. It was involved in the coordination of two major surveillance operations: Operation Triton in Italy and Operation Poseidon Sea in Greece. One central tension was between its mission to 'protect' EU borders and the moral obligation to save lives at sea. Moreover, Frontex was unable to comply with its mandate due to its dependence on Commission guidance and member state

resources. Within these constraints, Frontex launched the so-called RABIT mechanism in the Aegean in December 2015 following a request by the Greek government. This mechanism provided rapid operational assistance to a requesting member state facing agent and exceptional migratory pressure on its external borders. Furthermore, Frontex coordinated the deployment of personnel and equipment with member states and affected host countries. This involved collaboration with the European Asylum Support Office (EASO), Europe and EUROJUST, but also with actors devoted to the protection of human rights. Given this experience, the original legislation establishing Frontex was replaced by a new Regulation of 14 September 2016. This legal basis increased Frontex' resources and granted the agency greater operational flexibility, such as by pooling assets for Frontex' use during crises.

What do these examples tell us about transboundary management capacity? In some cases, EU agencies appeared well-equipped, in other cases, they were under-resourced. EU agencies did respond to the demands made by other EU institutions and member states, even where there was no clear mandate to do so. Agencies built on their specialised and technical expertise and succeeded to expand their activities considerably (such as ECDC). In short, agencies do play crisis leadership roles, building on formal provisions and informal practices, especially when it comes to questions of coordination, whether this is in terms of exchanging information, channeling resources and assets, or promoting wider networks that respond during crises. More generally, the crisis examples highlight three central features:

a) the **importance of the legal framework** and the existence of standard operating procedures. As noted, some agencies succeeded in developing their mandate, the cases identified the need for agencies to have crisis -related provisions that enable them to respond to transboundary crisis, in terms of procedures that allocate responsibilities, and in terms of allocation resources.

b) the **centrality of the relationship with the Commission and the member states**. During crisis, tensions between different organisational interests are always close to the surface. In the research, Commission endorsement of agency action provided for critical support for the agencies. At the same time, member state representation in EU agencies is critical: on the one hand, it provides for important national representation, on the other hand, it can stand in the way of developing problem-solving rather than lowest common denominator decision-making.

c) the **degree of polarisation of the crisis**. The examples show that agencies can act more autonomously in those areas where there is a shared understanding of the task at hand (such as in agreement over the need to identify the strain of the E.coli outbreak and its origin). No such agreement existed in the case of the refugee crisis, making an agency's positioning and operation highly problematic.

Read more

Agency leadership and agencies in crisis management, http://www.transcrisis.eu/wp-content/uploads/2017/09/D4.5_Papers-based-on-analysis-of-a-dataset-of-European-agencies-heads-and-board-members-on-the-survey-of-agency-heads-and-board-members-and-on-three-case-studies.pdf

Does the European Parliament hold crisis management to account?

Key points
- The European Parliament has expanded its account-holding powers in the context of crisis-related legislation
- High salience issues are associated with extended account-holding provisions
- The European Parliament exercises its formal powers only to a limited extent

It might be seen as unusual to associate the European Parliament (EP) with crisis management. However, parliaments can play an important role in shaping debates, in acting as conditional or informal agenda-setters, and in holding decision-makers to account. TransCrisis research concentrated on accountability in the context of the European Parliament with relation to financial legislation related to the economic crisis.

TransCrisis research suggests that the European Parliament did play some role in different crisis regimes – for example, in shaping decisions as co-legislators on invasive alien species. Focusing specifically on economic and financial affairs, however, reveals a different picture. This is arguably an area of core state power, and it can be assumed that member states are reluctant to cede influence to the EP (Genschel and Jachtenfuchs 2016).

The role of the EP was indeed more limited. Even in crisis legislation where the EP enjoyed 'ordinary' (co-decision) powers, its role was reduced to agreeing to increase the discretion of executive bodies rather than being centrally involved in the execution of that legal authority to act. For example, in the strengthened excessive deficit procedure of the so-called Six Pack (a set of six Regulations to reform the Stability and Growth Pact by introducing greater macroeconomic surveillance across all EU member states), the EP can neither determine the area of national competence to be controlled by the EU nor can it determine the requirements and conditions under which these regulations might be enforced.

However, formal powers in terms of input only go so far. Holding to account is an important power in itself. As the EP has suffered a relative loss in substantive influence in the decision-making over files, it can make a powerful case for additional account-holding (oversight) powers. For example, the EP gained formal account-holding powers by the introduction of the economic dialogue in the Six Pack and the Two Pack (two Regulations introducing coordination and surveillance of budgetary processes among Eurozone members), despite of the initial reluctance by the Council. This economic dialogue allows the EP to invite the President of the Council, the Commission and the President of the Eurogroup to report on and explain their decisions in the

context of the reinforced Stability and Growth Pact and the European Semester. The EP can also invite representatives from individual member states that have been found in breach of EU rules.

Some intriguing results stand out from TransCrisis research. One is that the EP has gained more account-holding powers in those areas related to 'crisis legislation' than in other areas - both in absolute and relative terms. In other words, the EP has been compensated for its perceived loss in substantial influence by means of additional accountability or oversight powers. In addition, the research also suggests that accountability provisions are more extensive among package deals where the EP has been given *de facto* veto powers, even though it is not a formal co-legislator in this area. Furthermore, the higher the salience of the issue, the more likely it is that the EP has more extensive levels of accountability provisions in relative and absolute terms. This finding confirms other studies that establish that salience is associated with higher levels of accountability provisions: the more important issues appear to politicians (i.e. the more salient they are), the more likely it is that they wish to keep a closer eye on implementation. However, relative levels of accountability are lower when legislation includes more 'recitals'.

The EP succeeded in gaining these additional oversight powers by deploying a range of negotiating tactics: (1) it exerted public and normative pressure on institutions suggesting that deepening integration (as part of the crisis responses) required increased representation, (2) it created issue linkages with other files under negotiation at the time (using veto powers on one file to exert influence on other files for which its formal consent was not needed) and (3) it threatened delaying tactics to demand additional powers by exploiting different time horizons between the EP and the Council.

Despite these formal powers, the actual performance of these accountability powers was rather limited. TransCrisis research notes that only a fraction of member states qualifying for a hearing (i.e., those in breach of the reinforced Stability and Growth Pact) appeared before the EP's economic and monetary committee (ECON). In 2016, for example, three hearings actually took place, although ten countries were 'eligible'. Since its creation in 2012, the ECON committee has held 15 meetings with national finance ministers. This low number can be explained both by a low acceptance rate by national ministers and/or the rather limited resources and interest of the EP to hold more hearings. There is therefore scope for a more active use of the economic dialogue with member states in order to advance a more democratically (parliamentary) accountable European Union.

More generally, these findings reflect a wider trend in inter-institutional relations in the EU in areas traditionally associated with core state powers: there may be a trend towards increasing the EP's account-holding and oversight role in areas where it is less able to participate directly in the actual substance of the legislation. This also means that if issues that are currently being decided upon outside the EU's legal framework will be brought into the scope of the EU Treaties, then the EP might be able to claim some of its lost formal powers. As noted, this requires that these issues are salient and/or are negotiated as package deals. At the same time, given the limited EP account-

holding in this area, this also means that any extension in *de jure* accountability does not necessarily mean that there will be an increase in *de facto* accountability.

Read more

Losing out on substance but winning procedurally? The European Parliament and accountability in crisis legislation, https://www.transcrisis.eu/wp-content/uploads/2017/08/D4.3-Policy-paper-on-the-informal-agenda-setting-power-of-the-European-Parliament-with-particular-focus-on-agenda-setting-power-in-situations-of-crisis.pdf

What are the boundaries in EU-member state relations in transboundary crises?

Key points
- Crisis management regimes highlight the importance of understanding the multi-level character of addressing transboundary crises
- Different regime constellations and governance arrangements exist across policy domains
- Paying attention to administrative capacities at the national and local level is critical for effective and legitimate transboundary crisis management

What characteristics do crisis management regimes take? What are the arrangements between the EU and member states to develop effective transboundary crisis management systems? TransCrisis focused in particular on four policy domains to explore in more detail the evolution of crisis management regimes. These domains were all affected in one way or another by the financial crisis and crisis-related provisions were introduced in recent years. These domains were banking regulation, youth unemployment, electricity transmission networks and invasive alien species.

First of all, what is a crisis management regime? TransCrisis research utilised established work on regulation to consider three essential components: a) standard-setting (the kind of rules and principles that are being developed by a particular set of organisations and actors), b) information gathering (the activities involved in establishing 'what is going in') and c) behaviour modification (measures to alter conduct so as to return a situation to 'normal'). Such a framework points not just to the essential characteristics affecting crisis management, it also allows for a differentiated focus on the different organisations that are involved in different aspects of crisis management. Table 2 combines the initial seven tasks to such a crisis management regime perspective.

Table 2: Combing key tasks of transboundary management to regime perspective

	Information-gathering	Standard-setting	Behaviour-modification
Detection	Capacity to recognise emerging and actual risks and threats	Capacity to understand stakeholder objectives in creating common standards	Capacity to recognise effectiveness of behaviour modification strategies
Sense-making	Capacity to collect and systematically analyse information	Capacity to ensure that objectives are shared and understood	Capacity to understand nature/cause of degree of effectiveness of compliance
Decision-making	Capacity to choose information gathering approach (i.e. risk-based strategies)	Capacity to make decisions and establish decision-making rules	Capacity to choose behaviour-modification approach

Co-ordination	Capacity to bring together different information-gathering organisations and systems	Capacity to bring together different stakeholders to agree on objectives of regime	Capacity to bring into harmony different organisations involved
Meaning-making	Capacity to explain nature of emerging risks/crises	Capacity to create narrative to explain desirability of the stated objectives of the regime	Capacity to create narrative to justify choice of intervention
Communication	Capacity to communicate in order to support information-gathering by state and non-state actors	Capacity to communicate the objectives of the regime	Capacity to communicate to stakeholders the effectiveness of the intervention
Accountability	Capacity to give account for information-gathering strategies	Capacity to give account about the objectives of the regime	Capacity to give account for behaviour-modification strategies

The four domains are characterised by distinct crisis management regime characteristics. They not only relate to provisions that deal with risk management so as to reduce the probability of a crisis, but they also contain provisions for managing actual crisis. In particular, across all four domains, there were tensions between integrating and liberalised markets and national political and administrative boundary control over certain aspects of the policy.

Most prominently, in the banking sector, this involved the 'banking union' affecting banks in the Eurozone. In particular, it involved the existence of a Single Supervisory Mechanism with its distinct supervision regime involving 'joint supervisory teams' under the authority of the ECB for system-relevant banks, and a more national regime (under the oversight of the ECB) dealing with less significant banks. Crisis mechanisms exist not just on the side of supervision. In terms of 'crisis' in the sense of bank failure, the national resolution authorities under the umbrella of the Single Resolution Board would deal with the resolution of banks where necessary.

In the case of electricity transmission networks, there was considerable debate as to how best to develop crisis management regimes in the wake of concerns about lack of capacity to deal with crisis in certain EU regions and the potential lack of 'solidarity' in maintaining interconnected markets. In western Europe in particular, capacity (and therefore crisis) management was operated by a transmission operator self-governance arrangement (Coreso) and companies themselves were engaged in EU provisions and industry codes (ENTSO-E) with the advice of economic regulators (ACER).

Youth unemployment had witnessed some moderate developments before the financial crisis, but rising unemployment numbers in some countries led to a joint French-German initiative (supported by DG Employment) to create a Youth Guarantee, namely the supposed 'right' for young people to receive quality training or education to advance their employability. The crisis management system here partly relied on the indicator sets developed as part of the European

Semester (which however were largely decoupled from actual political decision-making) and on national, if not regional implementation which offered considerable variation.

Finally, in the case of invasive alien species, recent years not only brought about a common list of species that were of Union concern and that could be used to restrict trade among member states (so as to reduce the threat of invasions), but it also required member states to develop capacities to mitigate the threat of invasive alien species in their jurisdictions. However, the implementation of this Regulation proved problematic in view of limited administrative capacities at the local level and legal ambiguities in terms of incorporating the Regulation into the context of existing domestic laws.

More generally, this research highlighted critical questions for the study of transboundary crisis management in the context of the European Union. It emphasises central aspects about the context of the emergence of these crisis management regimes. TransCrisis research noted that the emergence of particular regime characteristics (such as the extent of a 'European' regime) was in part related to the anticipated costs of a crisis (such as banking), but the legal prescriptiveness was neither related to the anticipated extent of a crisis, the degree of politicisation and issue salience in a particular domain nor to particular interest group constellations. Similarly, organised expertise varied – with established professional communities shaping the invasive alien species domain, for example, whereas in the area of banking resolution, no extensive professional expertise existed prior to the emergence of the actual EU- and national-level resolution systems. In other words, there was no one single explanation for the 'boundary-expansion' of EU-level crisis management regimes.

TransCrisis research also highlighted the importance of national administrative capacities, partly in terms of conventional coordination questions, such as the exchange of information. When focusing on information gathering, there were across the four different domains concerns about the quality and timeliness of information and the degree to which information was actually valuable in informing debates about crisis. There were also concerns about updating regimes in areas where member states neither had the motivation nor the capacity to inform the European-wide regime. Similarly, there were also questions about the appropriate ways in which member states were supposed to follow particular crisis management regimes. No formal way of evaluating the quality of national administration and its compliance existed.

Furthermore, there was therefore ambiguity as to whether the existing transboundary crisis management regimes were 'fit for purpose', in terms of ensuring that member states would stick to their commitments, in terms of whether organisations would be cooperating in ways envisaged by the frameworks, in terms of whether the regimes were ready for systemic threats (rather than isolated one-off ones) and in terms of the actual national capacity to deal with transboundary crises, in general and in the particular context of the EU transboundary crisis regime.

In conclusion, therefore, exploring the dynamics of transboundary crisis management regimes offers valuable ground for exploring explanations for changing 'boundaries' (in terms of levels of competence) and instruments for managing crisis. It also highlights the central importance of coordinating highly dispersed administrative and non-state actors. Finally, it introduces a further dimension to the study of transboundary crisis management: market integration and liberalisation are a source of transboundary crisis management, and seeking to address such questions clash with fundamental questions of core state power.

Read more

European Government of Crisis, https://www.transcrisis.eu/wp-content/uploads/2017/08/D5.1-European-Government-of-Crisis.pdf

How did the European Union respond to the migration crisis?

Key points
- although the pressures for migration have been long established, political leaders have been reluctant to engage with the topic
- the responses of the EU went through different patterns that highlighted a lack of consensus on how to define the problem and what kind of solutions would be appropriate
- there has been significant extension of information exchange and border control activities across member states

The refugee and migration crisis represent a unique transboundary crisis for the European Union. Since 19 April 2015, the news of over 800 fatalities due to a shipwreck in the Mediterranean the unparalleled rise in migration from outside the EU has fundamentally affected national politics in certain member states. The crisis has highlighted limits of member state solidarity (such as in the allocation of refugees). The refugee crisis not just impacted on the activities of an EU agency (Frontex, see above), but it also led to the return of border controls in the Schengen zone.

The rise of migration does not come as a surprise: the causes for mass migration have been long established. There are, accordingly, a range of factors, economic, societal, political and technology-driven factors that shape the context in which migration takes place. As a result, the idea that individuals move towards economically more prosperous and more peaceful locations is well-known. In view of these well-established factors, the 'surprise' by member states about migration flows suggests either a distinct failure to learn about the sources of migration, or the deliberate turning of a 'Nelson's eye' in that these issues were regarded as politically too problematic to be addressed. More immediately, the causes for the rapid increase in migration numbers in 2015 was blamed on the war in Syria, instability in Libya, and the rise of terrorist organisations in North Africa and the Middle East. More generally, the migration crisis highlights the crisis in EU transboundary crisis management on issues where member state governments fundamentally disagree on policy definitions and solutions.

In the context of the EU, migration has been widely defined as an economic phenomenon: individuals move in order to exploit greater economic opportunities. Migration is seen to be economically beneficial if managed, whereas irregular migration is seen as problematic and requiring control. It is in this economic understanding of migration that the human rights of migrants are to be respected.

Over the past few years, a number of responses to migration can be distinguished. Shifts in patterns can be particularly explored in the context of understandings regarding 'irregular

migration'. Accordingly, the initial stance by member states was to condemn 'irregular migration' (defined as migrants who have no authorisation to enter another state on a permanent basis; in other words 'irregular migration' is a product of actual public policies). Once, however, the human tragedy became evident, member states moved to a somewhat more mixed approach before turning, once again, to a restrictive policy of enforced external border control and a stricter enforcement of deportation. This included agreements with third countries to control the influx of migrants to the EU.

More specially, four different 'scenarios' or responses can be distinguished since 2011 (the fall of the Gaddafi regime in Libya). Until then, the 2008 Italian-Libyan Treaty had established an obstacle for migration flows across the Mediterranean.

a) The 'conventional response' (2011-13): this response was defined by the management of irregular migration through agreements with governments of the states of transit and the return of irregular migrants to their country. Since the creation of Frontex in 2004, member states could be supported in the control of their external borders. These operations involved the EU's southern borders in particular. To support Frontex and the idea of 'well-managed migration', two further mechanisms were created; the European Asylum Support Service and the EU Border Surveillance System. This 'conventional response' was continued regardless of the growing number of migrants and well-documented tragedies.

b) The 'Mare Nostrum' response (2013-2014): In October 2013, the then Italian prime minister, Enrico Letta, announced the operation 'Mare Nostrum'. The aim was to deal with the rescue of people in distress, the fight against people smugglers, and the control of national borders. This was the first time that the humanitarian dimension of irregular migration entered the public policy arena. This Italian response was 'tolerated' by other member states that maintained their commitment to the existing conventional approach. They insisted that the protection of the external borders of the EU was central responsibility of the affected member state and that the management of irregular migration also required cooperation with third countries. While the effect of 'Mare Nostrum' was ambivalent (the refugee flows overwhelmed the administrative capacities) and Italian opinion largely blamed the EU for failing to support Italy, the EU did not respond to this initiative, although increasingly attention was paid towards humanitarian issues.

c) The 'EU-turn' (11/2014 - 9/2015): In November 2014, the EU agreed to some burden-sharing with Italy, especially in relation to rescue operations at sea and the subsequent reception of migrants. There was a continued commitment to the idea that irregular migrants should be returned to their country. The Frontex' Triton operation had a less humanitarian focus than the earlier Mare Nostrum operation. Increasingly, the EU was concerned about the humanitarian tragedy, but also increasing attention being paid to people smuggling (although little evidence existed about well-organised smuggling). This period in the EU's approach to the migration crisis represented a comprehensive approach, involving discussions about relocating migrants away from

frontline states. This provoked opposition from certain member states: there was disagreement about the nature of migration and about what management strategy to pursue.

d) The 'fencing in' response (since 10/2015): in view of competing approaches towards migration, especially conflict over the re-allocation of migrants according to quotas (and patchy implementation), there was a growing emphasis among member states enhancing information exchange (partly driven by concerns about terrorism) and towards establishing agreements with third countries to contain migration flows. This included the activation of the Integrated Political Crisis Response (ICPR) in October 2015. During this time, the Schengen Agreement was partly suspended in order to introduce border controls. There was conflict between the Commission and Italy and Greece over the two member states' reluctance to request the deployment of the rapid border intervention teams (RABIT). Understaffed hotspots were created in select locations in Greece and Italy and the attention shifted, once again, towards people smuggling. Finally, a major part of this period was the agreement with third countries, especially the cooperation between the EU and Turkey. These agreements also included commitments towards addressing the root causes of migration.

These four different responses highlight tensions in the EU's transboundary crisis management towards irregular migration. One problem is the need to engage with the long-established causes of migration. The other problem is the actual response pattern: from an initial commitment towards the conventional approach, an increasing acknowledgement of the humanitarian dimension, the fragmentation of member state responses and the reluctance to display solidarity, to a return to a policy that sought to fence in the EU. More broadly, continuing conflict over responses to migration directly relate to conflicts over how to address questions of backsliding (see below).

Read more

Interinstitutional co-operation and crisis management in the area of immigration,
http://www.transcrisis.eu/wp-content/uploads/2016/06/WP5.2-D5.2.1.pdf

Is backsliding a transboundary crisis for the European Union?

Key points
- Backsliding represents a transboundary crisis for the EU as it challenges the normative core of the European Union and as there are limited instruments to address member state backsliding
- Backsliding has been a wide-spread phenomenon across member states; however, the patterns in Hungary and Poland suggest a different quality of backsliding than in other member states
- Backsliding is not just a response to the financial crisis

Over the course of the past few years, the notion that liberal democracy is under threat has become increasingly prominent. Whether it is about the study of regime collapse, or the fluctuating fortunes of constitutional liberal democracy, there has been renewed attention towards questions of the vulnerability of liberal democracy to 'backsliding', defined as the intentional undermining or subversion of mechanisms that lead to a reduction in the constitutional norms associated with liberal democracy. For the European Union, backsliding represents a particular challenge as its 'normative power' is based on its commitment to liberal democracy. It is a key aspect of member state solidarity. If this solidarity is challenged by a lack of commitment towards liberal democracy, then the very understanding of what the EU stands for is challenged, if not undermined.

Backsliding cannot be addressed through mechanisms such as legal infringement proceedings. The EU Treaty does contain provisions that include, at its most extreme, the suspension of voting rights should member states be seen to be in sustained breach of their commitments towards constitutional liberal democracy. At the time of completing TransCrisis research, questions about Art 7 had become increasingly prominent in the context of Poland's proposed reforms to the judiciary. In many ways, however, the EU is pursuing the follower rather than the leader: events in Poland represented the second 'wave' of backsliding in the wake of far more extensive changes that had been witnessed in Hungary.
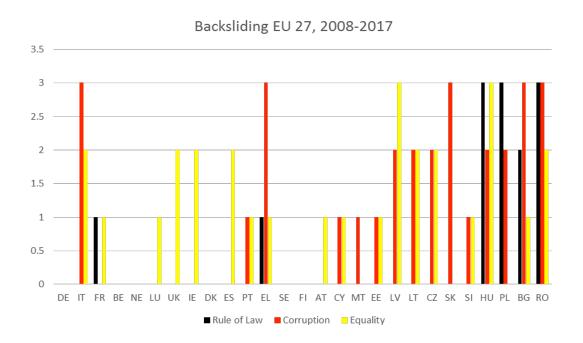
TransCrisis research sought to establish whether backsliding was an extensive phenomenon in the European Union and whether, if such a trend was established, backsliding had increased since the financial crisis. First of all, despite the extensive literature in comparative politics on the consolidation and de-institutionalisation of liberal democracy, the research required a clear definition of 'backsliding': it was defined by the weakening of democratisation and the weakening or undermining of the norms associated with liberal democracy. So-called 'hard backsliding' was defined as a violation of the EU rules relating to the rule of law and EU norms. 'Soft backsliding', in contrast, is defined by the violation of EU norms in the context of breaking ordinary EU rules, such as those relating to directives on age discrimination.

The research involved the creation of a backsliding index that was based on a number of 'good governance' indicators, including the rule of law, corruption as well as various equality related indicators, based on age, gender and ethnicity. The *rule of law* is an essential characteristic of liberal democracy as it constrains the scope of the 'tyranny of the majority'. In the context of the EU, the rule of law is widely associated with the so-called Copenhagen criteria. Indicators relating to *corruption* focused on perception indices, as well as analysing reports and interventions directly targeting corruption watchdogs. Finally, *equality*-related indictors focused in particular on questions of equality-related approaches towards gender, disability and ethnicity. Equality in its different aspects is a fundamental principle of the EU. TransCrisis research focused in particular on policy and institutional measures affecting equality-based policy domains.

The research involved the analysis of publicly available documentation from a range of sources. Of course, there can be disagreement on single indicators and different sources. However, by choosing a range of indicators and from a range of sources, the results allow for a good indication of broad trends occurring across member states.

Figure 4 summarises the research findings. TransCrisis research distinguished between 'moderate' (in small capitals) and 'severe' backsliding (in capitals). In the latter case, this was constituted by the presence of more than one indicator in the different categories showing a reverse. Figure 4 offers a number of sobering results. One is that backsliding is not reserved to a small number of member states, but can be traced to a large number of member states, and not just in one area. It is also noticeable that since the financial crisis, it is particular in the area of 'equality' that there has been widespread backsliding across member states which might be related to the rise of an 'austerity'-related agenda.

Figure 4 Overview of EU member state backsliding

These research findings require careful discussion. They highlight that the backsliding phenomena is not just reserved to a small group of member states or concentrated in one particular part of the European Union. However, certain patterns do stand out. Backsliding, especially in the area of corruption and rule of law, is most prominent those countries that joined the (then) European Community in the 1980s and those member states that joined as part of enlargement to eastern- and central Europe as well as Italy. Backsliding is also prominent among the net beneficiaries of the EU budget (which makes questions about linking the future EU budget to 'quality of democracy' highly relevant).

It is also the case that the extent to which the economic crisis has affected government institutions cannot explain whether one member state has witnessed particular types of backsliding than others. It is the extent of backsliding in some member states – particularly Hungary and Poland – that constitutes a transboundary crisis for the European Union in that domestic political leaders explicitly advocate the rise of 'illiberal democracy' as a contrasting option for constitutional development.

The research highlights the lack of tools available to the European Union. Legal infringement proceedings might be useful in some cases and require fancy legal footwork. Reliance on the condemnation by other international organisations offers some alternative source of criticism. However, the main tool, Art 7, has also proven to be ineffective: not only does it require unanimity among member states, but triggering arguably provokes the affected member state even further. There are also questions about party group status in the European Parliament; again opinions are divided whether parties in government that engage in extensive backsliding should be suspended or not. For some, this risks further decoupling between parties committed to liberal democracy and those associated with 'illiberal' parties; for others, non-action is merely a sign of a lack of interest in normative questions regarding liberal democracy by political party groups in the EP.

Read more

Backsliding in the area of constitutional safeguards and independent institutions, corruption control, and general equality and minorities, http://www.transcrisis.eu/wp-content/uploads/2017/05/D6.2-Backsliding-in-area-of-constitutional-safeguards-and-independent-institutions-corruption-control-and-general-equality-and-minorities-1.pdf

Diagnosing deficits and enhancing capacities in European transboundary crisis management

Key points

- Crisis understandings in the European Union are contested: not just in terms of what constitutes a crisis, but also who should be managing a transboundary crisis and how.
- TransCrisis research establishes four central deficits in EU transboundary crisis management.
- TransCrisis proposes four strategies to enhance capacity to deal with transboundary crises, each with its own advantages and pathologies.

In light of these findings across different research themes, what common threads can be established? What are shared deficits in transboundary crisis management? What ways of enhancing capacities should be considered that would also address questions of legitimacy?

Answering such questions is far from easy. After all, the context of the 'new normal' (as noted above) is not conducive to deliberative debate about the future of EU transboundary crisis management. Indeed, the challenge is how to develop long-term decisions when one member state government or the other will always be in national election mode. There are also tensions between the kind of approaches favoured by market liberalisation, namely long-term consistency achieved through 'depoliticisation', and the need to support short-term highly political decision-making in times of crisis. Finally, there remain questions about what kinds of transboundary crisis arrangement are perceived as legitimate in the eyes of the European citizen. Opinion polls suggest that there remains, overall, broad support for the European Union and solving certain transboundary problems at that level. However, transboundary crisis management involves redistributive consequences with clear winners and losers. Member states are most ambivalent about losing political and administrative boundary-control over questions with such extensive welfare implications, whether it involves rolling electricity black-outs, youth unemployment or nationally important industries (such as the Danish fur industry in the case of invasive alien species).

Various cleavages among member states also stand in the way of agreement on the basic contours of transboundary crisis management: whether it is about internal EU migration, external 'irregular migration', economic and supervisory arrangements, these cases highlight the underlying divisions among member states and, at times, within policy domains about what constitutes an actual transboundary *crisis* and what instruments and mechanisms should be executed. Effective governance of transboundary crises therefore requires legitimacy and resources. At the governance level, TransCrisis has also established four deficits or tensions:

- A *central authority deficit*: this diagnosed deficit relates both to a lack of overall leadership and a lack of administrative capacity at the EU-level. For example, as the financial crisis highlighted, the EU lacked, at the time, a system to deal with a systemic crisis in the banking sector. One might argue that the 'banking union' sought to address to some extent the diagnosed deficits, however, the jury remains out as to whether these provisions will carry enough weight during the next crisis. In the absence of central authority, the well-known organisational turf-battles over jurisdiction and information are likely to affect crisis management activities.

- A *prescriptiveness deficit*: there was a diagnosed lack of consistency in terms of reporting and compliance requirements placed on member states. Transboundary crises over the past few years have given rise to criticism regarding the discretionary ways in which member states have responded to crises and also about the lack of detailed guidance that would enable information exchange and other forms of coordination.

- A *flexibility deficit*: there was also concern that the centralisation of authority and the adoption of 'one-size-fits –all' frameworks sat uneasily with crises that were felt unevenly across member states and where differences in administrative capacities and institutions also required greater flexibility rather than an emphasis on strict rule adherence.

- A *subsidiarity deficit*: there was criticism about a lack of appreciation of crisis management capacities that reside outside the framework of EU institutions, whether these exist as part of bi- and multi-lateral arrangements or industry co-governance mechanisms.

It is, of course, not possible to address these four deficits at the same time. They point to fundamental differences as to what constitutes effective and legitimate transboundary crisis management as well as to debates about EU governance more generally (such as criticism of 'too much EU leadership' or 'too much member state gridlock'). Any discussion about appropriate transboundary crisis management therefore needs to focus on questions of 'where' and 'how' in terms of appropriate level of organisation and the appropriate level of prescriptiveness. The 'where' question relates to questions of multi-level governance, the 'how' question responds to concerns about the degree of prescriptive or more discretionary policy tools. To address the challenges arising from the diagnosed four capacity deficits, four responses can be distinguished:

- *Reliance on ad hoc responses*: this would allow for bespoke responses to particular crisis, but runs the risk of complexification und and untimely responses. In addition, it would involve limited crisis preparation, in terms of information and procedures for crisis management.

- *Strengthened EU-level capacities*: this would establish responsibilities and would enhance political leadership at the EU level. However, it would also lead to criticism of 'too much centralisation', would increase problems in terms of information management, especially in terms of receiving robust and meaningful information from national and sub-national government, and it would

raise complex governance problems in that 'one-size-fits-all' approaches will clash with considerable national diversity in administrative structures.

- *Strengthened EU-national multi-level governance*: this would involve greater 'network' building in that EU- and national-level administrations developed greater consistency between member states. Such multi-level approaches are highly demanding and require considerable central oversight to ensure consistency and the absence of 'home bias'.

- *Strengthened consistency among member states*: in this case, there would be an acknowledgement of member state diversity, but this diversity would be managed by greater procedural 'Europeanisation' in order to allow for consistency in goals, but not necessarily means. However, in this case, great effort would need to be made to monitor information and member state reporting, as well as to deal with potential infringements and backsliding.

The purpose of TransCrisis is not to advocate one set of proposals over another. Rather, it highlights the importance of considering diverse options, to consider the advantages, and potential pathologies of different ways of governing transboundary crisis. TransCrisis therefore calls for:

- A mixed approach towards transboundary crisis management in the EU that acknowledges differences in transboundary crises and also that different modes of managing crises exist and offer distinct advantages and disadvantages.

- An enhanced effort to address questions of 'who' takes leadership in a crises and 'how'.

- A stronger interest in addressing questions of administrative capacities as part of the essential pre-requisites for effective responses to transboundary crises. This might require the creation of distinct ex-ante challenge functions at the EU level that assess member state capacities to deal with transboundary crises. In other words, this would entail distinct 'stress testing' of national and local systems dealing with transboundary crises.

- The development of a truly transboundary crisis management capacity at the European level that goes beyond the merely sectoral level.

Read more

Dealing with Transboundary Crises in the European Union: Options for enhancing effective and legitimate transboundary crisis management capacities, TransCrisis White Paper, https://www.transcrisis.eu/wp-content/uploads/2018/02/TransCrisis-White-Paper.pdf

Enhancing the EU's Transboundary Crisis Management Capacity: Recommendations for Practice, https://www.transcrisis.eu/wp-content/uploads/2018/02/D7.3-policy-recommendations.pdf

Future Research Recommendations, https://www.transcrisis.eu/wp-content/uploads/2018/02/D7.4-Future-Research-Recommendations.pdf

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