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## Dealing with transboundary crises in the European Union: options for enhancing effective and legitimate transboundary crisis management capacities

**Discussion paper [or working paper, etc.]**

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# Dealing with Transboundary Crises in the European Union:

Options for enhancing effective and  
legitimate transboundary crisis  
management capacities

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TransCrisis White Paper



T R A N S C R I S I S

Enhancing the EU's Transboundary  
Crisis Management Capacities

The TransCrisis consortium involves the Centre for Analysis of Risk and Regulation (LSE), Crisisplan, University of Utrecht, Central European University, Institut Barcelona d'Estudis Internacionals (IBEI), University of Catania, University of Stockholm and ThinkTank Europa.

The lead authors of this document are Lydie Cabane and Martin Lodge (LSE) based on collaboration and contributions from all project partners.

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## Executive Summary

The European Union has experienced a series of transboundary crises that have tested its capacity and legitimacy. The financial and refugee crises have highlighted the **political and administrative limits to existing EU crisis management arrangements**. In particular, they have strained understandings of member state solidarity, and they have given rise to conflicts over the direction of future EU transboundary crisis management capacities within and across policy domains.

To develop enhanced transboundary crisis management capacity and legitimacy, it is essential to understand the different types of crises that have affected the European Union - ranging from 'traditional' emergencies, such as terrorist attacks or natural disasters, to the consequences of enhanced market liberalisation and integration, such as the banking crisis or the dramatic levels of youth unemployment, and the explicit rejection by member states of key liberal democratic constitutional commitments, namely 'backsliding'. In addition, the context of the new normal of re-nationalised electoral politics, the challenge of coordinating highly dispersed systems of multi-level governance, and the tension of dealing with (often incompatible) short- and long-term objectives also shape EU transboundary crisis management.

This White Paper identifies **four deficits in contemporary transboundary crisis management**: deficits in central authority, in prescriptiveness, in subsidiarity, and in flexibility. These deficits point to the contested nature of debates over future transboundary crisis management in the EU and its member states.

This White Paper identifies **four different approaches towards enhancing capacity and legitimacy**: i) a reliance on 'ad hoc' responses; ii) a strengthening of EU-level capacity; iii) a strengthening of multi-level governance; and iv) a strengthening of consistency of member state policies. Each of these approaches is associated with distinct advantages and pathologies.

**Capable and legitimate leadership is required** to acknowledge and realise the different approaches towards transboundary crisis management. Leadership is required to develop understanding and discussion about the consequences of different approaches and to thereby also shape the capacities to respond effectively to actual transboundary crisis management. In doing so, legitimacy will also be enhanced; after all, this is a time when the 'value added' of the EU has to be reconsidered and addressing transboundary crises is a fundamental part of such a conversation.

In order to enhance capacity and contribute to legitimate transboundary crisis management, [this White Paper](#) calls in particular for:

- clarification of who takes leadership, at which level of government, and how, regarding key tasks associated with transboundary crisis management;
- acknowledgment of the administrative capacity prerequisites in a multi-level governance system associated with different transboundary crisis management approaches;
- recognition of the inherent trade-offs involved in different approaches towards transboundary crisis management;
- development of a distinct transboundary crisis management capacity that considers cross-domain implications in addition to cross-jurisdictional concerns;
- creation of a challenge function at the EU level to assess member state capacity to prevent and manage transboundary crises.

## 1. Introduction: Transboundary crises as a key challenge for Europe

Addressing transboundary crises represents one of the key societal challenges facing Europe. The European Union (EU) and its member states have been affected by a range of transboundary crises whose cumulative effects amount to a **polycrisis**. The financial and the refugee crises continue to leave a strong imprint on the European Union and its member states. Disasters, emergencies as well as terrorism have triggered demands for stronger transboundary co-operation. Concerns about cyber-security and climate change-related disasters have further underlined this call for stronger co-operation.

Transboundary crises have revealed the interdependence across European societies and economies, as well as across political and administrative systems. Such crises have given rise to increased coordination and calls for solidarity among member states. However, **it is the same integration and interdependence that are seen as a source of transboundary crisis**. These transboundary crises have created considerable tensions among member states, have led to debates about the appropriate role of the EU in managing transboundary crises, and they have had considerable political and economic impact on member states.

The very idea that the EU is the solution to transboundary crisis challenges is more contested than ever. Since the turn of the millennium both the question of *where* (at what level) and *how* (new rules vs. more temporary ad hoc measures) crises ought to be dealt with have become more and more debated as integration and interdependence have increased. The combination of these factors suggest that **it is a time of crisis in the EU's transboundary crisis management**, even if the heights of the financial and refugee crises might be said to lie in the past (at least temporarily).

This White Paper represents a call for action and reflection to enhance the capacity to address transboundary crises in areas that are critical for citizens' economic and social well-being. Proactive consideration and development of transboundary crisis management capacities will also reduce the likelihood of future crises from overwhelming decision-makers. In other words, good transboundary crisis management is as much about establishing governance arrangements that prevent crises from occurring as it is about managing actual crises.

**Enhancing legitimate transboundary crisis management capacity is therefore central to any debate regarding the future governance of the EU.** The current time presents a pertinent moment to consider and develop options for the future of transboundary crisis management

in the European Union. Not only does the EU face an accumulation of transboundary crises (section 2), as well as a set of governance challenges that hamper the EU's ability to deal with crises (section 3). This White Paper describes the various types of crises in the EU multi-level governance system (section 4), and the various mechanisms to deal with transboundary crises in the EU (section 5). It diagnoses specific deficits in transboundary crisis management systems across EU institutions and governing mechanisms (section 6). It identifies approaches to enhance effective and legitimate transboundary crisis management (section 7) and then offers a set of specific recommendations (section 8).

This White Paper acknowledges the various institutional and legal contexts in which crises

take place and argues that no single recipe for developing legitimate transboundary crisis management capacity exists. Rather, **what the EU requires is to consider different strategies of enhancing transboundary management capacity and their distinct trade-offs**. What is therefore needed is capacity-building in transboundary crisis management instead of continuing a pattern in which decision-makers knee-jerk from one crisis to another or trialing the traditional, but potentially outdated recipes for tackling transboundary crises. Finally, this White Paper calls for a much **needed reflection on the capacity and legitimacy of transboundary crisis management in the EU** which at present is not just in a state of crisis, but also presents a source of crisis for the EU itself.

**Table 1: TransCrisis research project**

The research project '**Enhancing the EU's Transboundary Crisis Management Capacities**' (TransCrisis) has focused on:

- The financial crisis and the ways in which political leaders sought to define the financial crisis vis-à-vis their citizens;
- The growth of institutional capacities of European Commission DGs in exercising key tasks for transboundary crisis management, including the growth of detection and 'sense-making' activities;
- The role of EU-level agencies in transboundary crisis management, such as within the EU (in the case of food scandals) and outside the EU (Ebola);
- The multi-level transboundary crisis management arrangements in various sectors, ranging from the refugee crisis, to banking crisis management, electricity transmission networks, invasive alien species and youth unemployment;
- The transboundary crisis resulting from member state 'backsliding' on liberal-democratic constitutional commitments.



## 2. Background: Transboundary crises and the 'new normal'

Transboundary crises are at the heart of the 'new normal' confronting the European Union. The past few years have highlighted the changing nature of crises. Transboundary crisis management involving the EU and its member states is not only about dealing with distinct emergencies and disasters such as volcanic ash clouds or migration-related humanitarian crises. It is also about addressing the economic, environmental and social consequences of market integration, and protecting the normative foundations of the EU as guarantor to peace, prosperity and liberal democratic stability. The **growing sense of vulnerability to shocks** represents one part of the 'new normal' that has fundamentally affected the ways in which EU citizens and member state governments see the European Union.

This growing sense of vulnerability to shocks is accompanied by a **heightened concern about the EU's capacities to address transboundary crises**. The problems of handling transboundary crises became apparent during the financial and refugee crises, constitutional crises in a number of member states over questions of territory and constitutional rights, Brexit, terrorism, or shifting geopolitical attitudes towards multi-lateral institutions, to the on-going implications of the sovereign debt crisis. The financial crisis has also affected the

resources of member states to respond to subsequent crises. Most importantly, **it risks further undermining the legitimacy of the European Union** in the eyes of its citizens. Indeed, the very way that the EU and its member states handle transboundary crises has increasingly become contested, both in terms of the legitimacy of the EU system and in terms of its rules and performance in any given case.

The traditional view of European Union integration views crisis as an opportunity to enhance coordination among member states or to shift policy-making competence to the EU level. This view requires reconsideration. What qualifies as a crisis deserving an EU-level response is increasingly contested, especially when it comes to matters of high national political sensitivity and when policy choices involve redistributive decisions across member states. Some policy sectors are characterised by a shared understanding of what constitutes a 'crisis' (especially those areas where shared professional norms exist); in other domains, however, there are different, if not competing understandings of what constitutes a transboundary crisis, leading to disagreements as to whether a response at the EU-level is appropriate (such as in youth unemployment). In other policy domains, transboundary crises might be affected by a genuine lack of political consensus over means *and* ends.

What makes transboundary crises a particular challenge for the European Union? The standard definition of crisis involves the perception of *threat* to core values or essential systems, *urgency* and ambiguity or *uncertainty*. Crises can therefore be acute – involving, for example, the need to maintain the liquidity of banks, addressing the aftermath of a natural disaster, infrastructure failings, or terrorist attacks – or they might be of the ‘creeping’ kind – involving, for example, the incrementally advancing vulnerability of national social security and pension systems. **A focus on transboundary crises highlights the importance of different boundaries that affect effective and legitimate crisis management.**

Boundaries are not just about national and sub-national jurisdictions; they also relate to the dispersed nature of administration across member states (organisational boundaries).

Policy domains are characterised by considerable differences in terms of perceptions of policy problems and solutions among policy communities (professional boundaries). The presence of boundaries, therefore, gives rise to questions of organisational over- and underlap. It highlights challenges arising from cascading effects when boundaries are unable to insulate systems against crisis, and when there are failures in information exchange across organisational boundaries.

The distinct nature of transboundary crises within the context of the ‘new normal’ requires urgent attention by the European Union and its member states. There is little to suggest that transboundary crises will become less relevant to the EU and its member states in the future. Future crises will test transboundary crisis management arrangements. In the context of the EU, transboundary crises strain understandings of member state solidarity, they raise questions about the appropriate ways of governing these transboundary crises: **The (non-) effective management of one crisis has immediate effects on the legitimacy of the European Union and member state governments.**

### 3. Challenges to EU transboundary crisis management

This 'new normal' does not just refer to the types of crises that the European Union is likely to face over the coming years, but it also refers to the changing context of governing in an age of electoral volatility, re-nationalising politics and resource-depleted public administration at the level of most member states. Any attempt to develop more effective and legitimate capacity to deal with transboundary crises needs to recognise the significance of three broad trends that have contributed significantly to the perception of crisis in EU transboundary crisis management, namely:

- **The growing re-nationalisation of politics.**

Transboundary crisis management is inherently about the acknowledgement of interdependence and the recognition that many contemporary crises are not confined to national boundaries and that national administrative capacities are insufficient to deal with the consequences of these crises. Member states have lost boundary control over crisis management, as was made evident during the financial and refugee crises. At the same time, the aftermath of these crises has further encouraged a re-nationalisation of electoral politics. The highly visible dependency on decision-making at the transnational level, often associated with unpopular decisions and

perceptions of gridlock, has encouraged some political parties to campaign on platforms that are overtly hostile to EU integration and dispute the legitimacy of supranational policy-making. Such demands put pressure on 'pro'-EU parties and EU leadership to prove their efficiency and legitimacy. In some cases, this campaigning takes the form of demanding a different type of European Union. In other cases, this campaigning takes the form of an explicit rejection of the EU.

This tension between the need to address transboundary crises and the rising re-nationalisation of electoral politics raises questions regarding the appropriate level of decision-making and competence to act. The cross-party elite consensus that has long been the cornerstone of EU integration – whether in supranational or intergovernmental form – is increasingly challenged by Eurosceptic and populist parties that call for a re-nationalisation of public policies across Europe. More generally, the changing electoral context means that the traditional ways of justifying support for EU-level solutions are increasingly met with scepticism, if not outright rejection. The 'secret' of EU integration (technocratic and mostly consensual decision-making at EU level) is facing increasing hostility because of the politicisation of EU decision-making (in terms of increased salience, opinion polarisation and audience expansion) and because of the

changing nature of national electoral contests.<sup>1</sup> One particular example is Brexit, another the on-going conflict over political dynamics in Hungary and Poland. Even though some election results since 2017 might offer counter-examples, such as in France and the Netherlands, and opinion polls suggest that the European Union has re-gained legitimacy across member state populations, the call for new initiatives to sustain the European Union cannot deny these changes in national electoral politics, including party system diversification. Calling for transboundary crisis management does not appear to be a particularly widespread electoral asset. Yet, to ensure the continued legitimacy of the EU, it has to provide efficient and legitimate transboundary crisis management.

- **The challenge of coordinating highly dispersed systems of governing.**

The past three decades have brought about considerable power dispersion across systems of government, because of the multi-level governance of the European Union, or of administrative systems reforms promoting agencification and privatisation. These transformations have increased the challenges for collaboration and coordination at the national and EU level. An emphasis on self-

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<sup>1</sup> See P. de Wilde, A. Leupold and H. Schmietke (2016) 'Introduction: the differentiated politicisation of European governance', *West European Politics*, 39(1): 3-22.

governance has become increasingly problematic: in an age where transboundary crises call for cooperative and redistributive responses within and across member states, these are exactly the kind of issues in which co-operation among member states is least likely to flourish. Recent transboundary crises (e.g., terrorist incidents) have highlighted the problems in information exchange between different national authorities (within and across member states). Dispersion-related problems raise questions about the appropriate ways of improving coordination. One such way is to consider the level of prescriptiveness that is supposed to establish the ways of joint-working, information exchange and allocation of competence to act. A key question in terms of crisis management (independent of the question of whether it is best addressed at the EU or the member state level) is whether it warrants more elaborate rules and procedures, or whether a less prescriptive, flexible approach to crisis management is to be preferred.

- **The tension between short- and long-term objectives.**

Decision-making during crisis (in the EU and elsewhere) is usually characterised by late night summits, fire-fighting and short-term concerns, whether these are about preventing immediate negative consequences of a crisis (such as the collapse of a banking sector), tomorrow's media headlines or electoral fortunes. More generally, the logic of integrating markets through

supranational regulation has come increasingly into conflict with the logic of member state authority to decide on certain issues, such as questions of security of supply or fiscal redistribution in the case of single banking resolution. In an age where the EU and its member states intend to signal their legitimacy by dealing with economic hardship and business survival, questions of longer-term sustainability are at risk of being discounted, most of all in the face of pressure from well-resourced interests.

Critical examples are debates over approaches towards energy security or climate change. In these areas, objectives emphasising subsidiarity and security of supply might clash with the logic of transnational market liberalisation. An on-going fudging of conflicts might be a convenient political strategy, but leads to an inevitable degrading of capacities over time. Such constellations also question the ability of the EU to tackle long-term challenges beyond market liberalisation.

This example illustrates three further challenges for the enlarged EU. First, **how to make long-term decisions** when a number of member state governments are engaged in national electioneering: in a (at present) 28-member EU a national election takes place on a near bi-monthly basis, allowing for plenty of scope for contesting transboundary crisis

management in the name of electoral campaigning.

Second, there is **a tension between long-term consistency that favours integration of liberalised markets and short-term needs for flexibility**. The logic of market integration calls for rule-based consistency that is outside of the scope of national politics. Such a 'depoliticisation' dynamic conflicts with calls for immediate responses to security and welfare-related crises. The very nature of a crisis means that some political authority is called on to step in and manage or mitigate an urgent threat – the very opposite of depoliticised decision-making.

Third, and more generally, there are questions about **what kinds of transboundary crisis arrangements are legitimate in the eyes of the European citizen**. Transboundary crisis management involves redistributive consequences with clear winners and losers.

Such questions touch on issues associated with core state powers, such as security of supply. Given the intricate linkage between crisis management and welfare state functions, member states are also ambivalent about losing political and administrative boundary-control over critical questions with welfare implications for their citizens. Indeed, questions of legitimacy link to the limited, if not absent, visibility of EU transboundary crisis

management systems. This **lack of visibility** **aggravates the risk of EU transboundary crisis management becoming a useful blame magnet** for national political interests.

#### 4. Variety in transboundary crises in the EU multi-level governance system

Adopting effective and legitimate approaches towards crisis management requires an understanding of the variety of EU multi-level governance arrangements that are available. Four types of transboundary crisis management systems can be distinguished by considering the degree of EU authority and the 'site' of the crises:

- **Crises – in areas of EU competence affecting EU member states.** In these cases, crises can be processed within the context of the existing resources of the EU institutions, whether it is the presence of special units inside DGs, the existence of joint frameworks for decision-making, or the existence of networks created through the presence of EU agencies. These areas relate directly to actions that might be triggered by the Solidarity Clause (Art. 222) and involve the support of national administrations or EU agencies, such as Frontex; or some aspects of the regulatory arrangements in banking resolution mechanisms.
- **Crises – in areas of shared EU competence with member states.** In these cases, problems in dealing with crisis emerge from the action (or non-action) of member state administrations in view of more or less formalised requirements as part of EU

policy frameworks. Inconsistent or lack of member state action might be due to a lack of resources and capacities – for example, in being able to detect and report on potential problems in electricity transmission networks, report on food safety-related illnesses, or engage in agreed actions to eradicate or manage species identified as invasive and alien. In less formalised settings where member states have legal competence ('subsidiarity'), the lack of capacities to inform and change domestic (or local) policies in view of broader transboundary objectives is similarly problematic, but faces further problems in that no EU-level enforcement mechanisms exist beyond 'naming and shaming'.

- **Crises – in areas of limited EU competence.** These kinds of crises are those involving, for example, 'backsliding' by member states on normative commitments as part of EU membership. Backsliding affects the normative core of what it is to be an EU member state. Examples of 'backsliding' are meddling with the judiciary and the depletion of ethics watchdogs, sleaze busters and other bodies that are supposed to protect civil liberties. Backsliding is difficult to address within EU arrangements beyond the suspension of funding or the 'nuclear' option of suspending voting rights.

Similarly, territorial conflict within member states might be regarded as a transboundary

crisis according to this type: despite the long-standing convention that domestic territorial politics are a matter for national governments, the implications of on-going conflict are likely to have repercussions on the EU more generally, as illustrated in the context of the conflict over the status of Catalonia within Spain. The crisis for the European Union is that it has become a central object in domestic territorial conflicts and in member state backsliding, without having the motivation or capacity to address these challenges to its normative core. Indeed, attempts at doing so make the EU an interested party within a specific conflict rather than a potential neutral arbiter.

- **Crises within the competencies of the EU but affecting transboundary crises outside of the member states.** These kinds of crises relate to public health or natural disaster emergencies in third countries, or the calls to engage in geopolitical and commercial relationships affecting third countries. This White Paper focuses on crises internal to the EU, but in many ways, the external relations of the EU reflect similar patterns as the three other types of crises (i.e., extensive, mixed and limited) and it also involves overlap with other international organisations, such as NATO.



## 5. Debating the future of transboundary crisis management in the EU

Contributions to current debates about the future of the European Union offer visions of ‘more Europe’ according to more supranational or more intergovernmental flavours. Equally, debates about the desirability of ‘variable geometry’ and differentiated integration have some currency in the area of transboundary crisis management. However, given the uncertainty over the contours of *transboundary* crises and their cascading character, any form of differential governance arrangement across member states is likely to generate even more complexity by adding organisational and jurisdictional boundaries. The mechanisms created after the financial crisis to deal with banking crises are a good example of such complexification in multi-level governance.

Similarly, the case for a re-nationalisation of public policies and markets is put forward by those who regard the EU as merely interested in centralised harmonisation without meaningful citizen participation. However, such views ignore the presence of crises with transboundary characteristics (for example, when the causes of a crisis lie outside the boundaries of a member state).

Hence, this White Paper calls **to move beyond these broad debates and consider actual implementation** which, in turn, relates to

questions of capacity and legitimacy. Over the past two decades, a number of initiatives have aimed at improving transboundary coordination during times of crisis across a broad range of sectors, which are discussed in the rest of the White Paper. These initiatives address traditional security concerns, such as in the area of civil protection, as well as crises attributed to negative consequences of market integration (banking crisis, youth unemployment).

### Table 2: Banking crisis management in the EU

The financial crisis highlighted the problems associated with a lack of co-ordination in banking supervision in a single financial market. The creation of a *European Banking Authority* in 2011 to set crisis management standards constituted a first response. In response to the Eurozone sovereign debt crisis and large bail-outs, a *Bank Recovery and Resolution Directive* was adopted in 2014 to harmonise banking resolution in the EU and adopt a common ‘bail-in’ model. In the Eurozone, a *banking union* transferred resolution and supervision powers at the EU level to the ‘*Single Supervisory Mechanism*’ (attached to the ECB) and the ‘*Single Resolution Mechanism*’ (attached to both the Commission and an intergovernmental treaty).

At present, **the European Union has a range of transboundary crisis mechanisms and capacities**. These include Treaty provisions (the ‘Solidarity’ and ‘mutual assistance’ clauses (art 222 and Art 42(7) respectively). In addition, the EU has itself become a ‘crisis manager’ with

crisis rooms and frameworks having become a regular feature across DGs and EU agencies.<sup>2</sup>

Transboundary crisis management involves traditional domains associated with crisis, namely civil protection (with the Council ‘Integrated Political Crisis Response’, the ARGUS alert system or the European Civil Protection Mechanism including an Emergency Response Coordination Centre within the Commission) and other emergency related responses located across EU agencies (as within the European Centre for Disease Prevention and Control) and the Commission (such as the EEAS for external crises). These are important mechanisms, but their growth raises questions about how these mechanisms operate in practice and how they interact with each other, and with those mechanisms that have also emerged at the member state level.

In addition, EU transboundary crisis management also consists of frameworks to support the stability of systems during times of crisis within the context of the Single Market (such as in finance, energy or other infrastructures), and broader policy dynamics, such as climate or demographic change. These domains are characterised by the transboundary effects of market liberalisation and cross-border economic activity that come into conflict with

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<sup>2</sup> Boin, A., Ekengren M., and Rhinard M. 2013. *The European Union as Crisis Manager: Patterns and Prospects*. Cambridge: Cambridge University Press.

national political preferences and competencies, as well as constitutional dynamics within member states – as in the case of youth unemployment. In such cases, EU transboundary crisis management may take the form of regulations, directives, or recommendations that intend to address transboundary effects across levels of governance.

### Table 3: The Youth Guarantee

High rates of youth unemployment (peaking at above 50 per cent) in (some) EU member states led to the adoption in 2013 of a Council Recommendation that created a ‘Youth Guarantee’. This first European social ‘right’ aimed at fostering access to the labour market and training, and added financial support to particularly affected member states to support national measures for the training and skilling of unemployed under the age of 25.

Nevertheless, these existing frameworks have been widely found to be insufficient. A more extensive debate about the transboundary crisis management capacity of the European Union is needed to deal with the diverse crises affecting its citizens. Indeed, developing effective capacities that address crises experienced by EU citizens is one essential way of enhancing the legitimacy of the EU.

To approach the question how to organise transboundary crisis management, it is essential to **consider what core tasks or functions need to be fulfilled**. Table 4 illustrates seven tasks that are essential for crisis management. Evaluations

and exercises based on these seven tasks have been utilised by national and European crisis managers in order to prepare for and manage

crisis. Any debates should therefore focus on questioning *who* should execute these functions and *how*.

#### Table 4: The seven tasks of crisis management

Seven tasks or functions are central to effective and legitimate crisis management capacity. These tasks can be distributed across EU, national and sub-national, as well as non-state institutions. Whatever their locations, they all contribute to effective and legitimate crisis management. These seven tasks include:

- **Detection:** the timely recognition of an emerging threat
- **Sense-making:** the collecting, analysing and sharing of information to develop a shared picture of a situation
- **Decision-making:** the choice and implementation of strategic decisions that relate to the immediate crisis response and its aftermath
- **Coordination:** the identification of key actors and the facilitation of collaboration
- **Meaning-making:** the formulation of a key message that provides advice to citizens and suggests that the situation is under control
- **Communication:** delivery of a central messages to select audiences
- **Accountability:** the account-giving to different public fora in order to explain conduct during and following immediate crisis.

## 6. Diagnosed deficits in transboundary crisis management in the EU

The past decade has also highlighted the challenges for crisis management in fields of EU competence. Criticism has focused on limited analysis, quality of decision-making and lack of enforcement activity, as well as on the rigid nature of EU-level rules. For example, criticisms of the EU during the financial and refugee crises centred on its rigid frameworks on the one hand and on its limited effect on the other. In many cases, these polar opposite criticisms were made at the same time, by the same actors.

Responses to the various transboundary crises over the past decade have proved challenging for EU transboundary crisis management. On the one hand, there have been moves to re-introduce boundaries (even if on a temporary basis, such as the case with Schengen). On the other hand, there has been considerable strengthening of executive-based EU-level crisis management regimes, such as the creation of a banking union that provides common banking crisis management within the Eurozone. This complexification represents a further source of tension that impedes effective and legitimate transboundary crisis management.

Underpinning all debates about developing transboundary crisis management capacity in the EU are two fundamental questions, namely those relating to resources and legitimacy.

**Effective transboundary crisis management requires resources**, whether these are of an organisational, legal, informational or financial nature. For example, one of the key problems in EU transboundary crisis management relates to the presence of extensive EU-level provisions that lack the underlying member state administrative capacity to perform the required functions, for example in the case of the regime applying to invasive alien species.

### Table 5: Dealing with invasive alien species in the EU

The Single Market has increased the risks from the transfer of species (animals and plants) into new ecological contexts, leading in some cases to extensive economic and social costs. A Regulation was adopted in 2014 to list a set of species of common interest across member states, requiring them to take action to reduce the risk of invasions.

Similarly, as pointed out by the European Court of Auditors (2017), the ambition of a European Youth Guarantee fell short when it came to implementation because of the considerable variety in the ways in which administrations, especially in the member states most affected by the economic crisis (Spain, Italy, Greece), could actually process this policy in view of their own limited resources. Questions of administrative capacity therefore need to consider the pre-requisites for different crisis management strategies, whether

these are demands on analytical, delivery, oversight or coordination capacity.

### **Effective transboundary crisis management also requires legitimacy.**

Solving transboundary crises require a legitimate political authority to make decisions that are likely to affect citizens and governing arrangements. Yet, whatever the type of EU transboundary crisis management mechanisms (Commission resources, regulations relying on member states, private mechanism such as CORESO in the area of electricity transmission system operators<sup>3</sup>), they often lack a clear political authority as member states and EU institutions have been reluctant to acknowledge the need and existence of such common mechanisms in light of the various challenges described above. In other words, transboundary crisis management needs to address the legitimacy question as to whether European citizens are willing to incur losses imposed by supra-national authorities, or whether they rather prefer arrangements that rely on national authorities, but that arguably increase the likelihood of a crisis (and therefore its costs).

At the governance level, the EU's transboundary crisis management has revealed **four central deficits that fundamentally affect**

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<sup>3</sup> CORESO is a Brussels based regional security coordinator of Central Western European transmission system operators.

**the capacity in which transboundary crisis management in the European Union can be exercised.** These deficits point to fundamental design tensions that affect all transboundary crisis management and that need to be addressed before assessing the administrative capacity prerequisites. Addressing the tensions that emerge from these deficits should therefore be at the heart of any discussion as to how to enhance transboundary crisis management capacities.

- **A central authority deficit.**

There is a diagnosed lack of oversight and leadership across different domains that have experienced transboundary crises over the past decade. Central authority refers here both to a lack of overall leadership and a lack of administrative capacity at the EU-level. The financial crisis highlighted the need for a harmonised, if not common, banking regulatory and crisis management framework. A lack of central authority was evident in EU decision-making characterised by deep cleavages across different member states and regions of the EU (a similar lack of consensus on problem-definition and potential solutions was also evident in the development of approaches dealing with youth unemployment). Similarly, concerns about the stability of electricity supplies have led to repeated calls for the adoption of more centralised risk and crisis preparedness measures to reduce regional differences and

enhance cooperation. In addition, concerns exist about the quality of implementation in different member states given a lack of quality information. Lack of administrative capacity at member state level represents a potential further contributing factor in aggravating transboundary crises (as in the case of youth unemployment).

- **A prescriptiveness deficit.**

There is a diagnosed lack of consistency in the administrative context of transboundary crisis management, especially in terms of reporting and compliance requirements placed on member states. Transboundary crises over the past few years have given rise to complaints about the discretionary ways in which member states have responded to crises and also the lack of detailed guidance that would enable information exchange and other forms of coordination. One example here is the uncoordinated nature of policy responses across member states during the financial crisis. Concerns about a lack of coordinated responses also emerged in electricity grid management during the 2017 cold spell when some regions of the EU were experiencing expected and unexpected shortfalls in electricity generation.<sup>4</sup>

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<sup>4</sup> ENTSOE, 2017, *Managing critical grid situations*, [https://www.entsoe.eu/Documents/News/170530\\_Managing\\_Critical\\_Grid\\_Situations-Success\\_and\\_Challenges.pdf](https://www.entsoe.eu/Documents/News/170530_Managing_Critical_Grid_Situations-Success_and_Challenges.pdf)

### Table 6: Electricity transmission networks crisis management system

The goal of an integrated European electricity market places considerable emphasis on network interconnection. At the time of writing, crisis management remained primarily a national competence; however several mechanisms had been created to provide coordinated responses to national and regional disruptions. Operational responsibilities rested with transmission network operators that defined 'network codes' (e.g., on 'Emergency and Restoration') and Regional Security Coordinators. Cooperation among member states was governed by a Directive (from 2005) and a Regulation (from 2009). Both of these provisions were criticised as being insufficient. At the time of writing, a Regulation dealing with risk preparedness was under discussion that included, for example, the creation of Regional Operational Centres to enforce coordination.

- **A flexibility deficit.**

EU transboundary crisis management regimes are also said to lack flexibility. The centralisation of authority and one-size-fits-all frameworks fit uneasily with crises that are unevenly felt across member states (or where different regions are vulnerable in different ways), and where there are differences in administrative capacities to deal with transboundary crises. In some cases, this may involve *less* prescriptiveness: more discretionary approaches may be more supportive of effective transboundary crisis management than demands for strict uniform rule adherence. One example here might be the invasive alien species domain, where some criticism has been directed at the way in which a common EU list has been developed despite

the highly diverse ecologies existing across the European Union.

- **A subsidiarity deficit.**

EU transboundary crisis management is also said to lack appreciation of capacities outside of the framework of the European Union. One of the central debates across EU governance is the appropriate level of competence. On the one hand, demands for more EU capacity have traditionally focused on questions as to the supranational or intergovernmental character of particular arrangements. On the other hand, the criticism has been made that the EU lacks an effective appreciation of the capacity of arrangements that sit outside the EU, such as the Pentalateral Energy Forum in Western Europe.<sup>5</sup> In other words, the EU needs to acknowledge the existence of European-level capacities that exist as part of bi-lateral and multi-lateral agreements that are however not governed by EU provisions.

**It is not feasible to address all four deficits at the same time.** For one, the diagnosis of a particular deficit is linked to existing perceptions as to the appropriate way in which the EU should be governed, and also how particular crises should be interpreted.

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<sup>5</sup> The Pentalateral Forum is an intergovernmental initiative, involving an autonomous secretariat, established to support cross-border exchange of electricity and market integration.

Apart from highlighting the likely existence of competing understandings as to what constitutes effective and legitimate transboundary crisis management, they point to fundamental tensions between criticisms of ‘too much EU leadership’ and those that complain about ‘too much gridlock’ in decision-making, as well as tensions between those that criticise a lack of consistency and those criticising too much flexibility. Questions as to how much flexibility should be granted to member states are likely to be highly contested, especially in areas where member states are in explicit opposition to other member states and EU institutions.

These diagnosed deficits therefore go beyond criticisms of the presence of particular resources and capacities at one particular level of government rather than another. In fact, it is not just that capacity-related criticisms vary across different crises, but they also differ during the same crisis. For some member states and EU institutions particular developments merit the involvement of the European Commission as central authority, while other member states deny the appropriateness of that response.

In view of these diagnosed deficits and tensions, **any discussion about appropriate transboundary crisis management needs to move to questions of the *where and how*, in terms of appropriate level of organisation, and**

**the appropriate extent of prescriptiveness.** The ‘where’ question invites answers in terms of increasing the robustness of crisis management capacity at the EU-level (whether that be through supranational or intergovernmental institutions or instruments) or at the national level. The ‘how’ question requires answers as to whether crises merit new rules and procedures with a high level of prescriptiveness, or whether particular types of crises are better managed through more flexible, ad hoc, temporary policy tools. Answering such questions is unlikely to be straightforward as it involves high political sensitivity, debates between competing programmatic views regarding the European Union and particular policy problems, and the need to acknowledge diverse administrative arrangements and capacities at member state level.



## 7. Approaches to enhance effective and legitimate crisis management in the EU

In light of the diversity of crises and institutional arrangements at the EU level, it is important to consider different trajectories in which institutional arrangements can be developed further so as to address the capacity deficits identified in the previous section. What matters, therefore, is not that all these tasks (see Table 4) are performed within one organisation, but that **capacity to perform these tasks exists within and across levels of governance and organisations, and that there is knowledge and coordination of these capacities**. Indeed, it is likely that effective and legitimate execution of the seven tasks of transboundary crisis management involves different levels of governance.

**Four approaches or strategies for enhancing crisis management capacity** can be distinguished (see Table 7). Two dimensions are at the heart of the debates about the EU's capacity to deal with transboundary crisis management. One is the level of competence, namely with the extent to which the EU should be centrally involved in addressing transboundary crises, or whether that responsibility should lie with ad-hoc arrangements and the member states. The second dimension deals with questions of dispersion or fragmentation; it addresses the question of the degree of prescriptiveness of

rules guiding responses to crisis across levels and sites of governance.

These four approaches are not intended to be mutually exclusive or fully exhaustive. Instead, the purpose is to accentuate differences and highlight the options available. In view of the diagnosed capacity deficits and the need for crisis leadership across these tasks for effective and legitimate transboundary crisis management, each one of these strategies has distinct implications in terms of the allocation of legal authority, and organisational (staffing), and financial resources. These different scenarios also have distinct implications for leadership in transboundary crisis management in the EU. Leadership, whether in organisational and individual terms on the one hand, or political and administrative on the other, is required to develop the kind of capacities to mitigate future transboundary crises, but as the discussion below highlights, leadership requirements exist across levels of government, and vary according to task and type of crisis. The Appendix offers further elaboration of these strategies on specific cases (terrorism, electricity, backsliding).

**Table 7: Strategies for enhancing EU transboundary crisis management**

<p><b>Strengthen consistency among member states</b>  <i>Advantages:</i> Adjusts to diversity across member states and encourages consistency in goals, but not necessarily means  <i>Pathologies:</i> Limited interest among member states to report and mitigate according to set benchmarks and guidance, given also member state diversity.</p>	<p><b>Strengthen EU level capacities</b>  <i>Advantages:</i> Establishes leadership responsibilities through formal authority  <i>Pathologies:</i> Information asymmetry, problems in dealing with diversity and potential lack of implementation at the national/sub-national level; legitimacy concerns</p>
<p><b>Rely on ad hoc responses</b>  <i>Advantages:</i> Limited requirements for building crisis management capacity outside times of crisis  <i>Pathologies:</i> Problems with co-ordination and development of timely responses; likely source of further ambiguity and conflict during times of crisis</p>	<p><b>Strengthen EU-national multi-level governance</b>  <i>Advantages:</i> Joint working among EU-level and national administrative actors allows for adjustment according to diverse circumstances  <i>Pathologies:</i> Lack of oversight and co-ordination</p>

**(1) Rely on ad hoc responses.**

This option relies on ad hoc responses to particular crisis incidents. Such an approach promises ‘tailor-made’ responses to particular crises. In doing so, a reliance on ad hoc responses reduces the costs of developing crisis management regimes that lack popular support and involve tricky redistributive conflicts across member states, and that may not be suited for future crises in the first place. It would involve a reliance on summits to address particular crises. Relying on such crisis management responses implies that future crises are not of such a fundamental nature that they are an immediate threat to social and economic life across member states and therefore also a threat to the European Union.

In view of the underlying dynamics and types of transboundary crises observed over the past

years, it is likely that such a reliance on *ad hocery* is more costly in the long-term than adopting more anticipatory approaches. For one, such an approach is not targeted at preventing particular risks (and does not seek to mitigate its effects). The absence of framework means that there is a lack of expectations as to levels of appropriate responses to crises and regarding decision-rules which will detrimentally effect the execution of the critical crisis management tasks outlined earlier. Adding inconsistent transboundary crisis management arrangements across sectors will create further scope for ambiguity at times of actual crisis and therefore is likely to become a source of crisis itself. A reliance on a series of ‘summit of all summits’ to address one particular crisis or another might make for good headlines; however, it fuels the sense of a wider crisis of crisis management in the

European Union, therefore reducing the legitimacy of the EU as a whole in general, and of European transboundary crisis management capacities in particular. A reliance on summitry might also come undone as summits become sites for political grandstanding in view of national electorates.

## **(2) Strengthen EU level capacities**

According to this option, the key to improved transboundary crisis management lies in strengthening the EU institutions and crisis management regimes. This would require re-enforcing or establishing formal legal authority to act by EU institutions, backed by sanctions. Adopting this option would require the resourcing of the distinct crisis management infrastructures that have already emerged across EU institutions and a fuller reflection on what resources are necessary for effective engagement with crises that affect some or all member states. Furthermore, strengthened capacities would also be essential to ensure better information from across all of the European Union member states and tools to support efforts to address emerging and actual crises. It is for this reason that the European Commission has recently advocated the creation of a dedicated capacity for civil protection activities in the case of natural disasters (rescEU).<sup>6</sup> A further example is the proposal to strengthen the status of ENISA (the

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<sup>6</sup> [https://ec.europa.eu/echo/news/resceu\\_en](https://ec.europa.eu/echo/news/resceu_en)

EU's cybersecurity agency) to support crisis management in cybersecurity across the EU.<sup>7</sup>

This option allocates clear leadership roles in any particular domain. It works primarily for the kind of crises that affect the whole of the EU. It relies on consistent member state responses, backed by a supposedly neutral arbiter to assess member state performance, as in the case of banking supervision and resolution. It might also be an advantageous strategy to deal with acute crises that do not necessarily involve redistributive conflicts among member states, but where additional support can be directly targeted into specific areas. However, such a central level capacity can be organised in different ways – such as the creation of particular capacities within DGs, the creation of agencies or expanding the remit of particular agencies, or creating more intergovernmental arrangements.

There are certain disadvantages with this option. First, it is not at all obvious that all transboundary crises are best addressed through a consistent and centralised EU-wide framework, especially as regional variety in performance might be considerable. In addition, there is also the question as to the

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<sup>7</sup> Commission Recommendation on coordinated response to large scale cybersecurity incidents and crises, 13 September 2017  
<http://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-6100-F1-EN-MAIN-PART-1.PDF>

political feasibility of centralising authority and capacity at the EU level, given potential political sensitivities at the member state level on the one hand, and national and sub-national administrative diversity on the other. It is, for example, questionable whether the reliance on the legal force of a Regulation (instead of a Directive) that interacts with a variety of national regimes will necessarily enhance compliance despite its legal force. Instead, such a strategy is more likely to dilute the normative authority of a Regulation in general.

### **(3) Strengthen EU-national multi-level governance**

This approach to enhanced transboundary crisis management encourages the further development of networks of national and EU-level institutions, some of which also rely on sectoral governance. A range of similar multi-level governance systems exist, ranging from the discretion of transposing EU Directives, looser forms of cooperation, such as national responses to recommendations (as in the case of youth unemployment), to the existence of sectoral and agency networks with governance responsibilities, e.g., ENTSO-E (for systems operators) and ACER (for regulators) in electricity.

Strengthening multi-level governance arrangements involves the specification of legal authority across different institutions so as to address coordination problems due to actor

fragmentation. The emphasis on developing transboundary crisis management capacities in this way would rely on enhancing the information provision across member states and the actual implementation of decisions taken at the transnational level (beyond formal transposition). It also necessitates central oversight, in particular from the European Commission. Since the reliance on member states to develop appropriate crisis management capacities in view of EU-level obligations requires not just a willingness and capacity to do so (politically and administratively), this option would require mechanisms to address differential crisis responses, with some 'reserve' oversight powers to compensate for potential failings at the member state level.

Such a network approach is frequently employed across sectors in the European Union and it is best placed to deal with transboundary crises that affect all member states but in differential ways (in terms of timing or intensity), whether it is because of exposure, constitutional reasons or because of different types of vulnerabilities. One might argue that such an approach enhances legitimacy in that it relies on member state institutions, but it might be said to lack effectiveness if member states lack the resources to engage with processes.

The disadvantages of this approach are the reliance on the resources of national

administrative bodies in informing transnational processes. It is for this reason that some critics dismiss this kind of approach as it poses too high demands on the various actors at a time of crisis. Another related issue is the differentiated resources between member states and how these have been affected by the financial and economic crisis. This can lead to imbalances in that decisions are largely informed by and reflective of the interests of those member states with the capacity and motivation to engage in these processes. It also might suffer from a lack of hierarchy in that member states authorities' decision-making, even in the context of leadership by the Commission, might become gridlocked. This concern with developing co-ordinated responses requires arrangements in which central authority can 'overrule' national responses, especially in cases where non-compliance risks aggravating the transboundary nature of a particular crisis.

#### **(4) Strengthen coordination within and among member states**

This strategy to enhance crisis management capacities emphasises the centrality of member states in effectively and legitimately addressing crises, even those of a transboundary nature. The emphasis is on developing the capacities and the procedures informing member state crisis responses so as to allow for timely and consistent behaviours. The primary emphasis here would rely on EU-level benchmarking

(such as the European Semester), the presence of multi-lateral agreements among member states outside the EU framework to the development of guidelines for national administrations (as those developed by the OECD for emergency risk governance) and the targeted support for national and sub-national administrations in developing resources.

The emphasis on member state coordination can take a range of forms. One is to adopt shared standards or benchmarks in order to define what a crisis is and when and how a member state should respond. Member states would be required develop shared benchmarks, report on their own performance and readiness and learn about 'smart practices' in comparison from their own experiences, as in the case of the European Semester. A looser framework would be to rely on multi-lateral agreements outside the framework of the EU. Examples of such frameworks exist in the form of the Pentalateral Forum dealing with the development of electricity crisis management standards among its member states. Such intergovernmental arrangements might lack the legal standing of EU instruments, but might be seen as alternative European 'solutions' to sensitive transboundary crisis management issues.

The advantage of this approach is that it establishes a common framework in areas where arguably there is little scope for the agreement on a strategy to enhance crisis

management capacities and where member states might be reluctant to engage in any transfer of authority in the first place. It might also be the most suitable strategy for those crises that occur across member states but where the impact is largely localised.

Such an approach has the disadvantage to introduce further diversity into EU multi-level governance. It lacks oversight and is prone to member state gaming and cheating. Some extent of mutual reporting might take place, but it usually is taking place in a 'low political attention' level in that reporting reflects information that is already collected at the national level and reflects positively on existing member state policies. In addition, despite some evidence of 'learning', whether these instruments actually encourage member states to enhance their transboundary crisis management capacities is also questionable, especially in contexts where the 'cost' of mitigation is high and the benefits of these measures are largely occurring among other member states. It might even be argued that such an approach simply reinforces existing national administrative structures and therefore risks that attention to transboundary crises will be subsumed and subordinated by domestic agendas.

None of these four approaches therefore offer clear-cut advantages over the other approaches. Considering these approaches carefully nevertheless offers one way to **consider in a more reflective way *how and where* capacities for transboundary crisis management in particular policy domains and across domains should be developed so as to enhance effective and legitimate transboundary crisis management in the European Union.**

## 8. Recommendations

Simple and elegant solutions are simply not available. It is neither feasible nor sufficient to simply call for a ‘more Europe’ of strengthened and centralised EU capacities in view of the highly diverse administrative infrastructures across member states and the separate electoral logics that shape national policy choices and that come into conflict with broader aims of the EU, such as market integration. Similarly, intergovernmental arrangements are insufficient: the critical aspects of crisis management involve the ‘trivial’ day-to-day administrative working. Likewise, a ‘return to the member state’ is hardly a universal option for transboundary crisis management. Such an option would enable member states to further undermine the normative core of the EU (in the case of backsliding by member states, for example), and it would also trigger considerable coordination problems in case of future transboundary crises, as debates surrounding the future relationship between the EU and Brexit-UK illustrate.

Appropriate leadership in transboundary crisis management does not involve a universal call for ‘more EU governance’. The time for such Pavlovian responses to transboundary crises is clearly over. Instead, leadership for enhanced capacity and legitimacy requires an acknowledgement of the various ways in which transboundary crisis management can be

conceived and, more importantly, that each strategy involves its own pathologies. For example, a highly prescriptive EU-level approach will always incur criticism for its rigidity, lack of flexibility and lack of democratic credentials. Credible crisis leadership needs to anticipate these criticisms and engage in dealing with the resultant trade-offs.

### **This White Paper therefore advocates a mixed approach towards transboundary crisis management in the EU.**

A mixed approach is not an admission of intellectual defeat or analytical confusion, but can be based on clear principles. These principles involve the acknowledgement of the need to consider the tasks of effective and legitimate transboundary crisis management in view of the different approaches. This means, first of all, that not all transboundary crises require similar governance arrangements. Instead, what is required is an understanding of where and how particular tasks are supposed to be executed. It also requires an understanding of how to address particular resource constraints that might impede the execution of these particular tasks. In particular, this White Paper calls for:

- **A clear understanding as to the ‘who’ takes leadership and ‘how’ across the different tasks** identified for capable and legitimate transboundary crisis management. Episodes of transboundary crisis have highlighted the

need to establish shared understanding of legitimate leadership, and these understandings need not involve central EU-level authority alone, but an appreciation of the various governance capacities that exist across levels of government (and outside of government).

- **The acknowledgement of administrative capacity prerequisites.** Any attempt at transboundary crisis management needs instruments to identify threats and mitigate them. Such arrangements cannot be prescribed through formal rules, but require consideration of the type of organisational, financial, legal and information resources required. Such resource requirements do not merely relate to the capacities relevant for the execution of particular tasks, but also to the need to co-ordinate, whether it is in terms of joint-working or in terms of information exchange. Assessing capacity with the ‘transboundary crisis management capital’ survey instrument offers one way of developing a better understanding of existing capacities across the key tasks of transboundary crisis management.<sup>8</sup>

- **The recognition of the inherent trade-offs** involved in governing transboundary crises as each strategy encompasses its specific advantages and pathologies. Such recognition should also be central to debates about the future of EU transboundary crisis management across different policy domains in order to encourage awareness and debate, as well as enhance legitimacy.

- More concretely, **the development of a truly transboundary crisis management capacity.** Existing transboundary crisis management capacities are largely organised on a purely sectoral level. What is missing is a transboundary capacity to move beyond sectoral boundaries in order to develop an appreciation of potential vulnerabilities ex ante and address cascading effects across sectoral boundaries during times of crisis (e.g. unemployment in case of a financial crisis).

- The creation of an **ex ante challenge function at the European level is required** to assess the capacity of member states to gather and report information, to generate sufficient legal, organisational, financial and information resources to process demands of transboundary crisis management, and to be able to take appropriate action during times of crisis. Such an ex ante challenge function could take the role of a peer-review process, as practiced by the OECD. Such exercises are

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<sup>8</sup> See TransCrisis (2018) *Crisis management capital development: a survey tool*, <https://www.transcrisis.eu/wp-content/uploads/2018/01/D7.1-Crisis-capital-management-development.pdf>



far from problematic as they raise concerns about how to handle evident non-compliance. Difficult decisions have to be made as to when to support capacity building at member state level and when to apply informal and formal sanctions. Without a clear appreciation of the need to urgently consider the crisis of transboundary crisis management in the European Union, any future transboundary crisis risks returning the European Union to the days of wider existential crisis.

## Appendix 1: Strategies to enhance transboundary crisis management in selected cases

The four strategies or approaches of addressing transboundary crises are explored in more detail by focusing on different transboundary crisis dynamics and existing variety in EU competencies. In the following, we discuss types of crises associated with civil protection and security (**terrorist attack**), with large infrastructures (**electricity transmission networks**) and with the tendency of member state governments to turn back on earlier constitutional commitments (**backsliding**). Tables 4-6 illustrate the advantages and pathologies of the four strategies to enhance transboundary crisis management across the three types of crisis and what kind of broad demands they would place on the key tasks for effective and legitimate transboundary crisis management. Only by openly considering, debating and weighting these advantages and pathologies, feasible and legitimate transboundary crisis management arrangements can be established.

### (1) Enhancing terrorist attack crisis management

The example of a terrorist attack illustrates that while a move towards a central authority at the EU level would provide for increased resources as well as more visible leadership, it raises questions as to the appropriate resources and degree of 'reach' into member state

competencies, especially in areas of domestic security. Looser arrangements, such as a reliance on ad hoc cooperation, would, in contrast, reduce the preventive capacity of transboundary cooperation, especially in terms of formalised information exchange.

Even a reliance on standardised procedures is faced with questions as to how powerful such frameworks can be in the face of organisational and jurisdictional boundary questions. Finally, measures of enhanced cooperation (such as a reliance on Schengen) offer the prospect of multi-level governance in terms of limited centralised authority and reliance on member state administration. However, as the refugee crisis and the French response to terrorist attacks (when it invoked the mutual assistance rather than the Solidarity clause), highlighted such looser arrangements are vulnerable to member state decision-making that undermine transboundary joint-working.

**Table 8: Enhancing transboundary terrorism crisis management**

<p><b>Europeanised member states: strengthen consistency among member states</b>          (limited) Schengen - information sharing system, enhanced system compatibilities</p> <p>+ enhances national capacities and cross-national cooperation          - national organisation boundaries, turf and trust</p>	<p><b>Strengthen EU-level capacities</b>          EU-level task force to offer rapid response, investigation and/or prosecution</p> <p>+ central authority and capacity (responsibility &amp; visibility)          - move into higher politics, high coordination requirements, questions about 'reach' into member states</p>
<p><b>Rely on ad hoc responses</b>          Bilateral information exchange/support of cross-border activities (intelligence/police)</p> <p>+ appropriate for 'national events' (e.g. Breivik)          - limited capacity for transboundary cooperation; irrelevance for transboundary terrorism</p>	<p><b>Strengthen EU-national multi-level governance</b>          (enhanced) Schengen - enhanced information exchange and police-judicial cooperation ('hot pursuit')</p> <p>+ good cooperation without compromising on 'national' security sovereignty          - dispersed and less visible authority</p>

**(2) Enhancing electricity crisis management**

Transboundary crises relating to questions of critical infrastructures, such as potential blackouts caused by electricity transmission network disruption, point to different governance dynamics for effective transboundary crisis management. A reliance on central authority might offer the prospect of requiring comparable information requirements and ways of ensuring consistent patterns of compliance. However, a reliance on such a central authority faces the information asymmetry problems inherent in such complex vertical relationships. It is questionable whether a central authority would easily receive timely information and be able to respond without engaging in considerable redistributive conflicts (as to who would be protected and

who would not). This case raises the interesting question as to what is more legitimate in the eyes of the European citizen: an EU level regime that enhances information exchange but takes decisions as to who will bear losses and who does not, or a national (or sub-national) level regime that distributes losses within its territory, but in doing so reduces information exchange across boundaries, potentially leading to considerable losses elsewhere.

A reliance on enhanced multi-level governance would primarily rely on regulated self-regulation by industry (such as ENTSO-E, the European Network of Transmission System Operators - Electricity). However, such arrangements raise questions as to the oversight over these providers and how

consistency across networks can be ensured. Such problems become even more pertinent when turning to other strategies. Ad-hoc responses would rely on member states in an area of potential high domestic cost, both in terms of pre-crisis prevention and during times of crises when cooperation among member states might be limited. A reliance on

Europeanisation via standardisation of national procedures might therefore offer a degree of flexibility to adapt to distinct member state and regional arrangements; however, it faces questions as to how to ensure consistency across regions of the EU (as in the current situation).

**Table 9: Enhancing transboundary electricity crisis management**

<p><b>Europeanised member states: strengthen consistency among member states</b> enhance prescriptive rules applicable to member states (to be enacted at national level)</p> <p>+ accommodates diversity of markets, political preferences and industry characteristics</p>	<p><b>Strengthen EU-level central capacities</b> create EU regulator and central coordinator within Commission</p> <p>+ rise of homogeneity of approaches/information on national compliance - information asymmetry, inflexible</p>
<p><b>Rely on ad hoc responses</b> Reliance on bilateral and multi-lateral responses to individual crises/near-crisis</p> <p>+ flexible tool and quick response - high resilience pre-requisites</p>	<p><b>Strengthen EU-national multi-level governance</b> Strengthen sectoral governance (ENSO-E) and regulatory networks</p> <p>+ sectoral expertise and legal flexibility - sectoral capture, asymmetry of resources among members</p>

### (3) Backsliding

Finally, transboundary crises relating to member **states' domestic actions that seem to violate liberal democratic norms (backsliding)** reveal the limitations of all potential strategies for dealing with transboundary crises. Relying on central authority would imply an aggressive use of infringement procedures. Such measures are likely to aggravate the national political backlash against the EU, thereby increasing the potential extent of backsliding against

existing constitutional commitments. Similarly, relying on Europeanised provisions that would 'punish' backsliding by the suspension of voting rights or financial payments runs the risk of enhancing conflict between the EU and targeted member state(s) – as in the current situation with Poland. In a system such as the EU which relies on issue linkages and compromises, the explicit 'naming and shaming' of one or more member state is likely to negatively affect wider decision-making, leading to gridlock. At the same time, relying

on 'ad hoc responses' is unlikely to be particularly effective in that it is not linked to consequences. Finally, a reliance on multi-level governance involves the engagement of third actors and venue shifting to redefine the conflict away from the existing cleavage between member state and the EU. However,

this strategy runs the risk of being portrayed as issue avoidance.

**Table 10: Enhancing backsliding crisis management**

<p><b>Europeanised member states: strengthen consistency among member states</b>          Normative pressure - expulsion from party groups; financial pressure: threat of budget reductions in view of violating key indicators</p> <p>+ routines, potentially low transaction costs          - limited effectiveness/backlash by national politics/potential issue linkages</p>	<p><b>Strengthen EU-level capacities</b>          Aggressive use of infringement procedures, rule of law framework (Art 7)</p> <p>+ assertion of central norms &amp; maintaining integrity of EU          - backlash by national politics</p>
<p><b>Rely on ad hoc responses</b>          Normative pressure via statements by political leaders/reports</p> <p>+ flexible low cost tool          - limited effectiveness, symbolic/fig leaf function</p>	<p><b>Strengthen EU-national multi-level governance</b>          Strengthen actors outside EU/strengthen third-party actors at national level</p> <p>+ alternative venues/redefinition of issues          - works for narrowly defined issues, mainly issue avoidance effect, reinforces 'them vs us' rhetoric</p>

These illustrations highlight the advantages and potential pathologies of particular options for enhancing transboundary crisis management capacity in the EU. **Across different types of transboundary crisis, the (lack of) actions by member states is contributing to costs on the wider EU and its member states.** The type of costs, however, varies, and so do the underlying

political and administrative barriers to joint-working. Both the (lack of) member state action and EU response are associated with **competing visions of what is perceived as legitimate.** Such diversity calls for an appreciation of the need for variety in transboundary crisis management capacities in the European Union.

## Appendix 2: List of relevant EU provisions and texts

*Directive 2005/89/EC of the European Parliament and of the Council Concerning Measures to Safeguard Security of Electricity Supply and Infrastructure Investment.* <http://data.europa.eu/eli/dir/2005/89/oj/eng>.

*Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on Conditions for Access to the Network for Cross-Border Exchanges in Electricity.* <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009R0714>.

*Council Recommendation of 22 April 2013 on Establishing a Youth Guarantee.* [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013H0426\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013H0426(01))

*Council Regulation (EU) No 1024/2013 of 15 October 2013 Conferring Specific Tasks on the European Central Bank Concerning Policies Relating to the Prudential Supervision of Credit Institutions.*  
<http://data.europa.eu/eli/reg/2013/1024/oj/eng>

*Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.*  
<http://data.europa.eu/eli/dir/2014/59/oj/eng>

*Regulation 806/2014 of the European Parliament and of the Council of 15 July 2014 Establishing Uniform Rules and a Uniform Procedure for the Resolution of Credit Institutions and Certain Investment Firms in the Framework of a Single Resolution Mechanism and a Single Resolution Fund.*  
<http://data.europa.eu/eli/reg/2014/806/oj/eng>

*Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the Prevention and Management of the Introduction and Spread of Invasive Alien Species.* 2014.  
<http://data.europa.eu/eli/reg/2014/1143/oj/eng>

*Treaty on the Functioning of the European Union (Consolidated Version 2016).* <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2016:202:TOC>

European Court of Auditors. 2017. 'Youth Unemployment – Have EU Policies Made a Difference?'  
Luxemburg: <http://www.eca.europa.eu/en/Pages/DocItem.aspx?did=41096>.



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

Enhancing the EU's Transboundary  
Crisis Management Capacities