Managing Transboundary Crises: The Gradual Emergence of EU Capacity

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Introduction: The prospect of transboundary crises

Modern societies face the prospect of what we refer to as transboundary crises (Boin and Rhinard 2008; Ansell, Boin and Keller 2010). Whether we speak of cyber attacks, infrastructure failures, pandemics, tainted food, or financial implosions, these crises share some disturbing characteristics: transboundary crises unfold across borders and have widespread consequences. Their cascading nature and the insidious knock-on effects typically outstrip local coping capacity and resist unilateral responses. Transboundary crises are unusually complex and very hard to manage.

The integration of Europe has made EU member states increasingly vulnerable to what could once be considered “foreign” or “local” problems in distant places (OECD 2003; Sundelius 2005; Missiroli 2006). From its origins in 1957, the European Union (EU) has prioritized the “four freedoms:” the free movement of goods, services, capital and labor across borders (Art. 12 EU Treaty). Physical and technical barriers were lowered, regulations were harmonized or made compatible, and critical infrastructures were tied together. In the 1980s, member states agreed to create a single economic market in Europe.

Many of the systems that sustain basic societal functions (e.g. energy grids, transport networks, food distribution, financial flow structures) now reach across European political borders. As a result, an incident in one corner of Europe can turn into a crisis for the entire continent: the Chernobyl explosion, the outbreak of mad cow disease, a power outage in Germany, illegal immigration in Southern Europe, a blocked oil pipe in the Ukraine, terror attacks in Madrid and London, an ash cloud above Iceland, or a budget problem in Greece – these are all instances of “local” crises that reached far beyond geographical and functional boundaries.

If there is one type of crisis deserving of crisis management capacities at the EU level, we argue, it is the transboundary type. As this paper demonstrates, we can indeed find a variety of transboundary response capacities at the EU level. This capacity is not concentrated in one agency or policy directorate. In contrast to other crisis types (such as
natural disasters or foreign conflicts), most transboundary crises have no specified policy “home” inside the EU institutions. While capacities relevant to transboundary crises have emerged at the EU level, they are not always easy to identify.

In this paper, we search for those capacities and explore how they emerged. We begin our “discovery process” by focusing on those policy sectors that we suspect have developed transboundary crisis management capacities (even if these capacities are not labeled as such). In addition to “vertical” (sector-specific) capacities, we look for “horizontal” (sector-spanning) measures that can be used to manage transboundary threats, crises and disasters.

The EU’s first transboundary disaster: Radioactive clouds over Europe

In the early morning of 26 April 1986, reactor 4 of the Chernobyl nuclear power plant in Ukraine suffered a massive nuclear chain reaction. An explosion tore off the top of the reactor building exposing the reactor core, which allowed the dispersion of large amounts of radioactive particulate and gaseous debris containing cesium-137 and strontium-90, both highly radioactive reactor waste products (Medvedev 1992).

The explosion released at least 100 times more radiation than the atomic bombs on Hiroshima and Nagasaki. Nearby regions in Belarus, Ukraine and Russia received much of the fallout, but in nearly all countries in the northern hemisphere traces of radioactive deposits were found. Wind direction and rainfall led to increased levels of contamination in Scandinavia and the UK, who were amongst the first to alert European partners of a radioactive cloud (Liberatore 1999; Marples 1986).

The EU reacts
The EU’s response was shaped by different levels of competence given to the EU by member states in the two policy domains most affected: health and trade. The protection of health was an important aspect related to European social policy generally, but was not an EU competence in 1986. Trade, on the other hand, was an “exclusive” EU competence and a high priority for the EU (Marples 1986). As soon as Chernobyl affected the free circulation of goods within the EU, and trade with external countries, the Commission could become involved to standardize measures and issue basic guidelines (Liberatore 1999: 205).
Four days after the explosion, several EU member states placed import restrictions on food emanating from contaminated areas (Liberatore 1999). Responding to member state complaints regarding the unilateral imposition of these restrictions, the Commission banned imports of bovine animals and meat from East European countries (Commission Decision of 7 May 1986, OJ L120). This represented only a partial ban, since those products were the only ones the Commission had legal authority to regulate. The Council of Ministers, the only body with the authority to suspend the import of all relevant agricultural products, would not agree on such a ban until one week later, on 13 May 1986 (Liberatore 1999).

The Commission was slow to respond even to the trade dimension of Chernobyl, and member states made little effort to coordinate. One reason for this was the lack of adequate communication channels for use during a nuclear crisis. Communication lines for nuclear issues did exist, via a network of national authorities founded by the EURATOM Treaty. Yet that network was not intended for emergency situations (Liberatore 1999: 205). As a result, the Commission had precious little information regarding the extent of the fallout and the implications for food and agriculture in Europe. To overcome the problem, the Commission turned to a rapid alert system normally used for food contamination episodes, based on experience from the wine contamination episodes in the early 1980s. That system was made operational, but only within days.

Regarding the question of contamination of humans, and any collective emergency management needs, little took place at the EU level (although provisions existed for emergency crisis response in the EURATOM treaties, see Liberatore 1999). Most operational cooperation on emergency management, if ever required for Europe, was considered by national governments to be primarily within the remit of the International Atomic Energy Association (IAEA).¹

**Building EU capacity**
Liberatore (1999: 207-213) identifies six areas in which the EU demonstrated some degree of “policy learning” after Chernobyl: nuclear risk management activities, health protection,

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¹ In the early 1980s, the IAEA had guidelines drawn up for “mutual emergency assistance arrangements in connection with a nuclear accident or radiological emergency” (Medvedev 1992).
emergency management, information exchange, research, and international nuclear safety assistance programs.

The Commission took a much more systematic approach to exercising its rights (under the EURATOM Treaty) to inspect nuclear sites and radioactivity monitoring centers in Europe (Liberatore 1999: 209). New powers were given to the Joint Research Centre in Ispra, Italy, to establish the “Radioactivity Environmental Monitoring” database to collect and organize readings of contamination within Europe.

At the time of the Chernobyl tragedy, it is safe to say, few European governments foresaw the need for closer cooperation on nuclear crisis management at the EU level, not least because existing cooperation was conducted via the IAEA. The disaster revealed gaps in coordination and information exchange amongst European states, and served as an impetus for new legislation in areas ranging from health to trade, and from emergency response to research. These initiatives took some time to be adopted by member states, however: in some cases, policies emerged over ten years after the event. Although one of modern Europe’s earliest and most politically salient examples of a transboundary crisis, Chernobyl’s effect on crisis management in Europe is best measured in decades rather than years.

Managing food security

A frightening disease emerges

The first cases of BSE (Bovine Spongiform Encephalopathy or “mad cow disease”) were officially acknowledged in November 1986 in the UK. Contaminated food was quickly confirmed as the principal cause of this disease in cows. Veterinary officials in MAFF (British Ministry of Agriculture, Fisheries and Food) recognized the possibility that BSE might transmit to humans (by eating beef) as soon as the disease was first diagnosed 1986. That health risk, however, was considered acceptably low (van Zwanenberg and Millstone, 2001).

Any admittance that consuming meat, milk or dairy products from sick cows might be harmful would, of course, undermine domestic and international confidence in the safety of British beef. The consequences for the British meat industry could be huge. Economic fears dominated UK policy-making the first 20 months of the epidemic. As the epidemic rapidly escalated, UK policy makers avoided taking regulatory action and tried to
keep information about the risks for humans within the ministry (van Zwanenberg and Millstone, 2001).

Firm evidence that BSE might cause Creutzfeldt-Jakobs disease (CJD) in humans did not emerge until 1995 when cases of this horrible neurological disease began to be discovered in young and otherwise healthy people. On 20 March 1996, the British government acknowledged a possible connection between BSE and CJD. Humans could be at risk of contracting a fatal and an incurable disease by consuming contaminated beef. Because there was an incubation period of several years, anybody who had ever eaten beef from the UK could potentially be infected (Grönvall, 2000; van Zwanenberg and Millstone, 2001).

Almost immediately after the British announcement, several EU countries imposed unilateral bans and closed their borders for British beef. For years, most European countries had seen BSE as an exclusively British problem. But as more and more confirmed cases of BSE emerged, political and public concerns rose across the continent against a backdrop of understanding that EU rules promoted the cross-border movement of goods. The “mad cow” scandal, fueled by newspaper and press reporting, spiraled out of control and a full-fledged panic took hold of European consumers. The bungled EU response that followed plunged the EU into one of the deepest crises it had ever experienced.

Identifying Responsibility in the EU

It long remained unclear who “owned” this crisis. Initially defined as a veterinary issue, the Commission’s DG Agriculture and Rural Development (DG Agriculture) took the lead (Grönvall, 2000; 2001). DG Agriculture did not coordinate with other DGs. Although the BSE problem clearly could have implications for public health, DG Health and Consumer Protection was not involved in the EU’s crisis decision-making. Instead, DG Agriculture made use of the standard operating procedure for a veterinary problem: it convened the Commission’s Scientific Veterinary Committee (ScVC) to advise what action should be taken. In addition to the ScVC, which contained independent experts, the Council’s Standing Veterinary Committee (SVC), consisting of national representatives, was involved. It was between the two committees that a great deal of conflict and contention took place.

The Commission’s ScVC, which contained a high number of British experts, defined the BSE problem primarily as a veterinary question, with insignificant implications for public
health. According to the ScVC, all necessary measures had been taken by the UK to prevent contaminated beef from entering the market. Under pressure of member states and forced to take action in the face of the concerns over public health, however, the Commission overrode the advice of the ScVC and proposed to the Council that its SVC consider a provisional export ban. The SVC voted in favour of the ban, the UK being the only country to vote against it (Grönvall, 2000; 2001).

Quarrelling between experts in the Commission’s ScVC and the Council’s SVC began when the SVC allowed experts from the UK to present their case in a SVC meeting called by the UK. Other EU member states brought their own experts to the SVC meeting. The debate turned into a technical discussion among independent scientists and national experts: UK experts, supported by ScVC experts, claimed the safety of British beef for human beings and argued for easing the imposed export bans; SVC experts emphasized the possible risk of BSE to public health and defended tough measures imposed on the UK (Grönvall, 2000; 2001).

The SVC approved the ban on 25 March 1996, but the two British Commissioners refused to follow the decision. After a personal intervention of the British Prime Minister John Major, the SVC met again to discuss the decision. On 26 March 1996, six days after the initial British announcement, the decision was confirmed by the SVC. The Agricultural Council endorsed the decision during an emergency meeting in Luxembourg (1-3 April 1996).

The UK, under pressure by domestic interests to punish the EU, announced a so-called “non-co-operation policy” which created a deep institutional crisis for the EU (Grönvall, 2000; 2001). The UK refused to cooperate with other member states in the European institutions, particularly by blocking measures in the Council (though not using a veto). They continued this policy even when the ban on gelatine, tallow and bull semen was lifted. In frustration, the UK government launched proceedings against the European Commission in the European Court of Justice, arguing that the ban was unjustified and violated due process. In July 1996, the Court ruled against the UK government. By that time both national and European officials deemed the crisis to have sufficiently subsided and the EU ban was partially lifted (Grönvall 2000: 77-78).

**Building EU capacity**

The EU’s response to the BSE crisis has been widely described as a failure (Vincent 2004; BSE Report 2007). Following the BSE crisis, the Commission took some major steps toward dealing more effectively with this type of transboundary crisis. Policy portfolios were
reshuffled, DG Agriculture was restructured, and the DG for Health and Consumer Protection won new crisis management competences.

These changes resulted in an improved response to the dioxin scandal that broke out in 1999 (Olsson, 2005; Staelgrave and ‘t Hart, 2008). This time the Commission did not leave the decision-making to its experts in the ScVC; it almost immediately forced Belgium to trace and destroy the Belgian chicken contaminated with dioxin. Whereas in the BSE case experts took considerable time to provide advice (and then still could not agree), in the dioxin case information was not verified by experts in view of perceived urgency of the threat to public health (Olsson, 2005).

The European Food Safety Agency (EFSA) now takes a high-profile role in crisis monitoring and planning. The agency was created in 2002 for risk assessment and risk communication on food safety questions. Located in Parma, Italy, it has the task of providing “independent scientific advice and communication on existing and emerging risks associated with the food chain” (Commission 2000). EFSA supports the Commission, Parliament, and national authorities in providing an assessment of potential problems regarding food and feed safety, and does so largely on the request of the EU institutions for scientific advice. EFSA has no risk management responsibilities: such decisions remain in the domain of the Commission and member states. The agency operates the Rapid Alert System for Food and Feed (RASFF), which comprises a network of monitors in every member state. The RASFF helps to flag dangerous trends in the food supply.

Managing illegal immigrants

The end of the Cold War lifted the lid on a number of small wars and ethnic conflicts around the world. Yugoslavia slid into civil war in June 1991. By the end of 1993, more than 500,000 refugees had fled abroad (Carmichael 2002). Many of these refugees passed into western

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2 It can be difficult to distinguish between illegal immigrants and asylum seekers, since many use the same routes and strategies for getting into the EU and make similar claims to legitimize their movement. Considering limitations of time and space, our focus here will be on policies and initiatives taken in the EU to prevent and manage mass influxes of migrants. As an aside, we note that the EU still lacks a genuine “European Asylum Policy”, and makes progress in only a piecemeal fashion owing to member state reluctance to share sovereignty on a core responsibility of national governments (Collett 2009).

*Europe Reacts*

As migrants began pouring over the borders into Western Europe, some countries adopted special measures to accommodate them (Barutciski 1994: 32). Other parts of Europe refused to lift normal asylum procedures or offer temporary protection. The effect was to drive migrants to European states which offered refuge, an effect that prompted Germany, for example, to tighten its policies by the end of 1992 (Mazower 2002). This was followed by additional restrictions in countries closer to the war zone, including Austria and Hungary.

At an international conference in May 1992 to address the mass exodus, EU countries banded together to support a “safe havens” proposal by which certain regions in the former Yugoslav republic would be set aside and protected. By keeping refugees in their own countries (and even their own homes, as the UN-generated idea of a “right to return” would later aim for), it was hoped that the pressure on asylum countries would lessen (Barutciski 1994).

The EU was widely criticised for its understated role in the Balkans, initially in the attempt to dampen conflict and again as the refugee crisis unfolded (Crawley 1993). Fragmented legal arrangements, poor coordination of tightening and loosening of restrictions, and a strategy of sending aid and resources to the Balkans rather than manage migration flows within Western Europe sparked objections from human rights groups and the UNHCR (*The Guardian*, March 9, 1993).

*A long policy history*

The immigrant problem has a long EU history. The story begins in the early 1970s, when the 1973 oil crisis and subsequent economic depression led to widespread migration. With anti-immigrant sentiment rising, most European countries put a stop to the legal admission of foreign workers after years of permissive consent (Pastore 2007: 2). These unilateral decisions, without prior warning or coordination, generated a number of problems for European countries, including imbalances as immigrant flows shifted towards the more “permissive” countries. This, in turn, forced tighter restrictions by countries with no initial
intention to do so. Although such events did not prompt common policies in the 1970s, they did increase efforts to coordinate more closely and regularly, albeit outside of the EU framework (Pastore 2004: 94).

Ratification of the Single European Act in 1986 meant that the EU was to become “an area without internal frontiers in which the free movement of goods, persons, services, and capital is ensured” (SEA, Article A). The prospect of open borders inside the EU quickly drew attention to the problem of differentiated immigration and asylum procedures within Europe, and highlighted the need to not only improve coordination but also to formulate common policies (Barutciski 1994; Monar, 2001).

Policy cooperation continued in an intergovernmental fashion. The first Schengen Agreement (1985), which took a step towards abolishing border controls for individuals moving between signature countries, included only five of the ten member states. The second Schengen Agreement (1990) took several steps further, establishing plans to completely abolish internal border controls, to create common external border policies, and to adopt common visa policies for third country individuals. Reacting to the problem of “asylum shopping”, Schengen countries signed the Dublin Convention (1990) by which the first country receiving an asylum application must examine and deal with the claim.

The Maastricht Treaty (1992) brought immigration policy firmly within the EU framework, although the policy process retained an intergovernmental mode of decision-making. Not until the adoption of the Amsterdam Treaty (1997) could we say that EU immigration policy was fully “communitarised”. Decision-making on immigration policy was moved from the third to the first pillar, thus subjecting it to the Community Method (e.g. active Commission participation and decision-making by majority vote). At the turn of the millennium, the Tampere European Council (1999) adopted a common migration and asylum policy for the first time in the EU:

The European Union needs a comprehensive approach to migration addressing political, human rights, and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competences in the Treaties,
to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a key element for the success of such a policy, with a view of promoting co-development (Presidency Conclusions, Item 11, Tampere European Council, October 1999).

A follow-up to these conclusions by the European Commission, which marked the first move towards migration crisis policy at the European level, took an equally broad approach. The Commission stated in a Communication that:

The causes of a mass influx of displaced persons lie in events affecting the Union’s external relations, its common foreign and security policy and its security and defence identity. Community humanitarian aid is also involved. Upstream of any crisis, the EU has early warning capacities and participates in measures to prevent and manage crises (Commission 2000).

In addition to coordinating policies of member states, the EU adopted a strategy of “externalizing” the problem (Lavenex 1998; Ucarer 2002). In 2004, the Commission issued a “Communication on the Managed Entry in the EU of Persons in Need of International Protection”. That Communication committed the Commission to developing the notion of “Regional Protection Programmes” to support areas of the world with high levels of refugees (Haddad 2008). This includes establishing asylum processing centers in the “buffer” countries surrounding the EU, in order to address influxes at an early stage and outside of the EU territory.

After the “big bang” enlargement of the EU in 2004, the question of immigration, or more accurately, the shape of a common immigration policy, moved further into the limelight. At issue, and of concern to “old” member states, was the movement of the EU’s external border to new member states with “untested” border protection capabilities (Ruspini 2006). Additional attention was focused on internal security questions, since the opening of internal borders was seen as a conduit for transnational crime, drug trafficking, and terrorism. This explains why the Hague Programme (2004), and its replacement, the Stockholm Programme (2009) put considerable emphasis on managing immigration.
Policy Instruments and Mechanisms

Capacities were first developed in the early 1990s with CIREA (the Centre for Information, Reflection, and Exchange on Asylum) and CIREFI (the Centre for Information, Reflection, and Exchange on Crossing of Frontiers and Immigration), which were informal exchange and consultation groups with no decision-making powers. Criticized even by the Commission for their lack of effective and actionable analysis, the possibility of a “virtual European Migration Observatory” was explored (Commission 2000, in Pastore 2001: 4), which was fully funded in 2005. Since the operational start of FRONTEX, the EU borders agency in 2005 (see below), many of these early warning networks have been shifted to the risk analysis unit of the agency (House of Lords 2008: 25).

In 2002, at the Seville summit on combating illegal immigration, an action plan was adopted with a variety of measures to guide the development of an integrated EU approach to border management (Boutruche 2003; see Council 10019/02). Still in effect today, it provides for a set of operational measures by member states aimed at improving coordination and cooperation, achieving a common integrated risk analysis, securing personnel and hardware for border management, and working towards common legislation on burden-sharing (Illies 2008: 6). Most of these measures fall into two categories. The first category includes standards that all external border efforts must follow. For the most part, these standards are now consolidated in the “Schengen Borders Code”, which sets rules for assessing individuals at borders and for managing border traffic (Council Regulation 562/2006). The second category involves measures for operational coordination and cooperation. These measures are consolidated largely through the creation of FRONTEX (see below).

A key part of the EU’s border management approach is the creation of information databases regarding the crossing of frontiers. For example, as a result of the creation of Schengen, police and judges now share information on individuals passing through the EU’s external border. The Schengen Information System (SIS) compiles this data. An expanded system (SISII) will have the capability to store and exchange biometric data for use in security and law enforcement investigations (Brady 2008: 24).³ Information on visa applications

³SISII, following a number of technical problems delaying its implementation, is currently planned to go on-line in the first quarter of 2013 (Council 2010).
within the Schengen area will be available via the Visa Information System (VIS). Still under development as of 2011, VIS will contain photographs and fingerprint information from third-country nationals who apply for a Schengen visa (Ilies 2009: 9). VIS will complement EUROPADAC, a database designed to prevent abuse of member state asylum systems by communicating information regarding asylum applications in different member states (Ilies 2009: 9). 

More recently, a satellite-based European External Border Surveillance System (EUROSUR) was proposed to assist member states “in reaching full situational awareness” and to enhance “operational readiness” of law enforcement officials (Commission 2008). As of the time of writing, EUROSUR was still under development, with the Commission planning legislative proposals in 2011 to complete several phases of EUROSUR alongside the EU’s Internal Security Strategy (Council 2010).

Structures and Venues

EU policies on immigration and asylum are proposed by the Commission (normally prepared therein by the former DG for Justice, Freedom and Security, now DG Home and DG Justice) and decided upon by the Council (acting in the form of the Justice and Home Affairs Council). The Lisbon Treaty has changed the decision-making procedure for all immigration and asylum issues, from varying degrees of unanimity to complete qualified majority for all policies.

Frontex is one of the main structures through which EU member states cooperate on immigration issues. In May 2002, the Commission proposed an ambitious plan to create a “European Corps of Border Guards” (Commission 2002; see COM(2002)233). The plan, although supported by EU member states bordering the Mediterranean, was roundly rejected by other EU members. The Commission instead proposed a series of more modest steps towards “integrated border management” and waited for a more opportune time to explore the creation of an agency (House of Lords 2008: 22). The European Council, meeting in Thessalonica in 2003, returned to the issue and invited the Commission to “explore the 

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4 Four financial instruments were created as part of the “Framework Programme on Solidarity and Management of Migration Flows” (Commission 2005) in order to assist over-burdened governments: the European Refugee Fund, the European Fund for the Integration of Third Country Nationals, the External Borders Fund, and the Return Fund.
necessity of creating new institutional mechanisms, including the possible creation of a Community operational structure” for the management of external borders. Later that year, the Commission made a proposal for FRONTEX (Commission 2003; see COM(2003)687). In 2004, the Council agreed to its creation (Council 2004; see Council Regulation No. 2007/2004). FRONTEX, seated in Warsaw, Poland, took up its operational responsibilities in 2005.

Since each EU member state remains responsible for managing its external borders, the task of FRONTEX is to coordinate operational cooperation between member states in the field of border security. The regulation establishing FRONTEX sets out six tasks for the agency: (i) coordinate operational cooperation between Member States in the field of management of external borders, (ii) assist Member States on training of national border guards, including the establishment of common training standards, (iii) carry out risk analyses, (iv) follow up on the development of research relevant for the control and surveillance of external borders, (v) assist Member States in circumstances requiring increased technical and operational assistance at external borders, and (vi) provide Member States with the necessary support in organizing joint return operations (Council 2004; see Council Regulation No. 2007/2004). Since it has few “own resources”, it relies on the resources (e.g. officers, ships, helicopters) of member states.

In 2007, EU interior ministers agreed to a further step: to establish a rapidly deployable force of border guards to assist countries facing an immigration “emergency” (House of Lords 2008). RABIT teams, as these rapid border intervention teams are known, operate via FRONTEX and include a pool of over 450 national experts made available at short notice (within five working days) to any member state whose national borders are under “urgent and exceptional” strain from unexpected migration (Ilies 2009: 7). All twenty-seven member states must participate in RABIT, and once contributions are made available, each member state is obliged to mobilize those contributions when requested (House of Lords 2008: 40). Record-high levels of immigration into the EU along the Greek-Turkish border in the second quarter of 2010 prompted the deployment of the first-ever RABIT team to help stem the flows and properly process asylum applications (Frontex 2010).
Managing terrorism

On 11 March 2004 bombs exploded in four commuter trains in Madrid, killing 191 people and injuring 1,500. The EU did not play a part in the rescue phase. A few member states offered assistance through the Commission’s MIC, but Spain did not request help.

On 25 March 2004, the Council issued a Declaration on Combating Terrorism. That same year, the European Council appointed Mr. Gijs de Vries to the position of Counter Terrorism Coordinator. His responsibilities were the coordination of Council efforts to combat terrorism, as well as updating all the Union’s counter-terrorist instruments. The Madrid attacks thus helped to shape a perception that an attack on one member state is an attack on the Union. In the words of Commission President Barroso:

“An attack against an EU citizen is an attack against all Member State citizens. An attack against a Member State is an attack against the Union. It is an attack against the values we stand for. Terrorism seeks to destabilise societies by creating tension, fear and panic. Reactions to the Madrid events of last year made it clear that a terrorist attack on any part of the EU affects the EU in its entirety. This is natural because the EU is a Union of nations whose Governments have signed a Constitutional Treaty that solemnly announces the principle of solidarity. The security requirements of such a Union reach beyond borders.”

Policy history


European-wide cooperation first took root in the terrorism-plagued 1970s, within the framework of the Trevi Group established in 1976 (Von Hippel, 2005). The Trevi Group consisted of high-ranking officials from interior and home ministries, along with the heads of European security/intelligence agencies. Their informal gatherings facilitated cooperation to exchange information and to provide mutual assistance on terrorism and related international crimes. With the adoption of the Maastricht Treaty in 1992, the group was formally incorporated into the EU’s third pillar on Justice and Home Affairs issues. Nevertheless, terrorism policy remained a peripheral issue at the EU level through the early 1990s.

Terrorism reached the high-level EU agenda for the first time at the Madrid European Council session of 1995, at which heads of state signaled their converging understanding that terrorism should be treated as a common threat to democracy, and to economic and social development. Subsequently, the 1997 Treaty of Amsterdam revision elevated the fight against terrorism alongside other serious forms of transboundary crime (Dittrich 2005). Among other initiatives, the treaty expanded Europol’s role in police and judicial cooperation.

The 11 September 2001 attacks had a focusing effect. The European Council made several pledges to increase counter-terrorism cooperation and in 2003 the Council adopted the “European Security Strategy” (ESS), which asserted that “terrorism poses a growing strategic threat to the whole of Europe” and that “Europe is both a target and a base for terrorism”. The Hague Programme (2004) emphasized enhanced prevention, preparedness and response to terrorism offences, reduction of terrorists’ financial and economic resources, and exchange of investigation information and protection of critical infrastructure programs.

Another seminal event in the EU’s terrorism policy history, in addition to the Madrid attacks detailed above and the events of 11 September 2001, were the London transport bombings. In the morning of 7 July 2005, three bombs targeting the London transport system exploded within a minute of one another, in what appeared to be a well-coordinated attack on a major European city in the middle of its morning rush hour. An hour later, a

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8 TREVI stands for Terrorism, Radicalisation, Extremism and International Violence.
fourth explosion occurred on a double-decker bus at Tavistock Square. The attacks killed 52 people and wounded more than 770.

UK authorities made no request for EU assistance in the aftermath of the attack. The international response to the attacks consisted mainly of signs of solidarity and support (Bulley 2009). On 13 July 2005, the EU’s Council of Ministers adopted a declaration condemning the attack and setting out a list of priorities for EU cooperation, including boosting measures to pursue and investigate terrorists across borders by intensifying the exchange of information and intelligence through Europol (and its counter-terrorist task force) and Eurojust (Council Declaration, 11116/05, 13 July 2005). The declaration also highlighted the need to continue work towards preventing people from turning to terrorism, protecting citizens and infrastructure, and managing and minimizing the consequences of terrorist attacks.

Policies and instruments

Until 2001, the EU had few policies focused specifically on terrorism. The attacks of 11 September, 2001 changed that virtually overnight. In late 2001, the EU adopted a “Framework Decision on Combating Terrorism”, which included a common definition of terrorism. The EU also adopted an “Action Plan to Fight Terrorism” and a program to tackle chemical, biological, radiological and nuclear (CBRN) threats. The instruments put in place to accomplish these goals were drawn from existing ones across EU policy sectors, including intelligence collection, critical infrastructure protection, regulations to prohibit the accumulation of material used in explosives, and EU-UN dialogue processes for terrorism issues.

The Madrid bombings provided another strong impetus for policy development. The “Declaration on Combating Terrorism” adopted shortly after the attacks called for a revised

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9 The EU defines a terrorist group as a “structured organization (...) of more than two persons, acting in concert to commit terrorist offences”. Terrorism is interpreted as “an intentional act, which, given its nature or its context, may seriously damage a country or an international organisation, as defined as an offence under national law, where committed with the aim of: (i) seriously intimidating a population; (ii) unduly compelling a government or an international organisation to perform or abstain from performing any act; or (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation” (Council 2001).
Plan of Action\textsuperscript{10}. The revised Plan of Action recommended boosting the authority of Europol (the European Police Office) and authorized a specialist anti-terrorist unit to improve the sharing of police data and information and to conclude operational agreements with countries such as the United States. It also included measures aimed at the suppression of terrorist financing, including several instruments to allow for the freezing of assets and the tracking of monetary transfers across borders.

The Plan of Action also included plans for the implementation of the European Arrest Warrant (EAW), which was first introduced with Council Framework Decision of June 13 2002.\textsuperscript{11} The EAW requires EU member states to recognize and respond to surrender requests from fellow states. The EAW was the first instrument of “mutual recognition”, a principle by which member states must accept and recognize key measures in each others’ judicial systems, and which is now envisioned to serve as the backbone for further JHA cooperation (Dittrich 2005).

Other actions, which can in part be seen as follow-up to the Madrid bombings, were the Council’s updating of the EU list of terrorist organizations and individuals connected to terrorist activities. Being on the list meant one could be subjected to freezing of funds and economic resources.\textsuperscript{12} Member states agreed to combine international safety regulations with European laws in a comprehensive approach to regulate aviation security standards at all EU airports. The Hague Programme, agreed on in November 2004, established the “principle of availability”, which prescribed that law enforcement officials in any state can request, and should receive, information necessary for crime fighting if that information is available (Dittrich 2005: 17).

The London bombings led to a number of initiatives (many already in the legislative pipeline), including a framework decision on simplifying exchange of information and intelligence between law enforcement authorities, a draft framework decision on the retention of telecommunications data, and a draft framework decision on the European Evidence Warrant (Council Press Release 14390/05, 1-2 December 2005). The UK Presidency of the EU, in the latter half of 2005, played a leading role in pushing forward a EU Counter-

\textsuperscript{10} Available online at: \url{http://www.consilium.europa.eu/uedocs/cmsUpload/EU_PlanOfAction10586.pdf}

\textsuperscript{11} Ibid.

Terrorism Strategy that focused attention on four strands of cooperation (“preventing”, “protecting”, “pursuing” and “responding” to terrorist attacks). Although the Strategy notes that providing emergency response is primarily the responsibility of the member states affected by an attack, it also highlights the need for the European Union to be able to respond collectively and show solidarity in the event of an extreme emergency.

Institutional structures in EU counter-terrorism

Over the past years, a variety of new venues, organizations, and networks have been established to carry out EU cooperation on counter terrorism. The creation of DG Justice, Freedom and Security (DG JLS) in 1999 marked a crucial step on the institutionalization ladder. As a result, the EU now has budding capacity to coordinate the interactions between security agencies of the Member States (Monar 2006). This capacity was explicitly designed to deal with transboundary threats. After the events of 2001, this capacity was quickly seized upon to deal with the terrorism threat. This added a forceful impetus to nascent cooperation in the field of internal security (Dalgaard and Hamilton 2006:8).

Two agencies, in particular, reflect the growing institutionalization of cooperation in this field. Although both Europol and Eurojust started their organizational lives as “toothless tigers”, they have gradually developed into respected organizations in and through which specialists share information and initiate cooperation between relevant member state agencies.

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13 The four policy areas are rather self explanatory. “Prevent” simply refers to the task of preventing people from turning to terrorism, in Europe and in other parts of the world, by addressing the conditions considered conducive to the development of this phenomenon. “Protect” refers to the mission of protecting citizens and infrastructure, reducing Europe’s vulnerability to attacks. “Pursue” refers to the strategy of investigating terrorists within Europe and internationally, impeding the planning, travel, communications and funding of terrorist acts by terrorists and bringing them to justice in the event of terrorist attacks. The final policy area “respond” focuses on how Europe best manage and minimize the consequences of terrorist attacks, should they occur.

14 DG Justice, Freedom and Security was split in 2010, following a Commission reorganization, into two separate directores-general: DG Home, responsible for internal police, immigration, and security questions, and DG Justice and Fundamental Rights, responsible for judicial cooperation.

15 For an overview of EU anti-terror measures, see Cottee p. 178-179.
Europol, the European Union’s law enforcement cooperation organization, was created as part of the 1992 Maastricht Treaty. The original remit of Europol was extremely restricted, owing to disagreement amongst member states as to its exact purpose. The organization focused initially on drug interdiction cooperation, but Europol’s mandate has expanded progressively since the 1990s (Fijnaut 2006; Lavenex and Wallace 2005). By 2002, the mandate of Europol was extended to deal with all serious forms of international crime.

Terrorism took on a special significance for Europol, with several high level working groups in the Council now incorporated in the organization’s headquarters in The Hague. A counter-terrorism unit analyzes information on terrorism developments and produces threat and risk assessments. The Commission has urged member states to provide the Europol Terrorism Task Force with all relevant data, “not just limited and filtered strategic and technical intelligence.”

The establishment of Eurojust, the European Judicial Cooperation Unit, in 2002 signaled the intentions of member states to enhance the effectiveness of national authorities when investigating and prosecuting serious cross-border crime. While its formal authority is still limited, this unit has rapidly become a hub for information exchange between European prosecution agencies (Van den Wyngaert 2006; Thwaites 2007).

Other, more peripheral venues in which counter-terrorism measures are discussed include the Aviation Security Regulatory Committee, initiated in 2002, and the Joint Situation Centre (SitCen) of the Council, which assists EU member states with analysis of threats such as terrorism. The EU Police Chiefs’ Task Force (established in 2000) provides a forum in which senior police authorities meet regularly to coordinate operational approaches to transnational crime problems. A substantial number of working groups and preparatory committees can be found in the area of counter terrorism cooperation (Dittrich, 2005).

The European Commission’s unit for biosecurity threats, expanded after the US anthrax attacks in the fall of 2001, maintains networks of national biosecurity monitoring centers to facilitate early detection and rapid alert. One component of this unit is the management of the program of “cooperation on preparedness and response to biological and chemical agent attacks”. The overall aim of the program is to ‘coordinate and support

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the public health/health security preparedness and response capacity and planning of the Member States against biological and chemical attacks’ (Commission 2003). Four objectives were identified to fulfill that aim: (i) setting up mechanisms for information exchange; (ii) creating a EU-wide capability for the timely detection and identification of biological and chemical agents; (iii) creating a medicines stocks and health services database, and (iv) drawing up rules and dissemination guidance on facing-up attacks (Ibid.).

Complementing these initiatives, and more specifically geared to intentional biological threats, the EU Health and Security Committee has established a 24 hour/7 day-a-week Rapid Alert System for Biological and Chemical Attacks and Threats (RAS-BICHAT). This alert system relies heavily on the member states’ surveillance systems for the occurrence of infectious diseases. Individual member states must notify the Commission of emerging problems, and the Commission is responsible for the exchange of information on outbreaks (Council Decision 2003). Inventories of laboratories and their diagnostic capabilities were compiled to facilitate reliable and timely detection of likely biological agents. Both the rapid alert system for biological and chemical threats, which has been operational since June 2002, and the more general Early Warning and Response System (EWRS) of the Communicable Disease Network, were incorporated in the newly established European Centre for Disease Prevention and Control (ECDC), established in Stockholm in 2005 (ECDC 2005; for more on the ECDC, see below).

Managing epidemics

A Virus Appears

The H5N1 virus was first detected in Hong Kong in 1997, affecting both wild birds and domestic poultry. In the following years, the epizootic spread across many countries in Southeast Asia, to both Russia and Kazakhstan, thus directly threatening Europe (Coulombier and Ekdahl 2005). During the summer of 2005, the capacity of H5N1 to transmit from animals to humans became apparent. A 38-year old man and his two daughters died from bird-transmitted flu in Indonesia (McLauchlin, October 2005).

At the June 2005 Council meeting, national leaders urged the EU institutions, including the Commission, to ramp up its coordination efforts (Coulumbier and Ekdahl 2005). The French called on the Commission to reinforce surveillance of migratory birds at the
European level. Other initiatives included increased surveillance, and information sharing, at the EU level regarding cases of dead birds found with the virus, and a ban on imports of live birds from infected countries.

In the autumn of 2005, Turkey, Romania and Bulgaria found evidence of the virus in dead birds. In early 2006, dead birds with the H5N1 virus were found in seven EU countries: Austria, France, Germany, Greece, Hungary, Italy and Slovenia.

Much of the public discussion on the EU’s response to H5N1 focused on preparatory action, especially the stockpiling of vaccines and anti-virals. The Commission continuously pushed member states to abide by the WHO’s recommendation of stockpiles for at least 25% of the population (McLauchlin, October 2005). Debate soon emerged as to the benefits of EU level coordination and management of anti-viral stocks, with Italy, Belgium, Lithuania and Cyprus calling for centralized stockpiles and common stock management (Banks 2005). Other countries, particularly France and UK, balked at these proposals. Pharmaceutical companies based in Europe were particularly strident in their criticisms of the EU states’ lack of preparation and the long delays preceding their requests for vaccine manufacturing (Beatty 2005). One additional issue causing controversy related to the vaccination of birds. In February 2006, the Commission gave France and the Netherlands permission to vaccinate poultry stocks against H5N1, despite disagreement on the vaccine’s effectiveness and concerns that vaccination would mask the outbreak of a disease (Smith 2006).

DG Health played the leading operational role in the Commission, organizing much of the common response from the Health Emergency Operations Facility (HEOF) in Luxembourg. A multi-service group was convened within the Commission, led by DG Health but including DG External Relations, DG Development, and DG Enlargement. The task set for this group was to monitor the spread of the disease from Asia to Europe (Smith, 2006).

Policy history

Until the 1980s, communicable diseases seemed a minor threat (MacLehose et al. 2002). It was the Maastricht Treaty, signed in 1992, in which member states first agreed to some cooperation in the area of public health. Article 219 confirmed that combating disease and enhancing public health should be an EU competence, although actions remained limited to research programs, education campaigns, and other “light” forms of coordination (Lezaun and Groenleer 2006).
The “mad cow” crisis in 1996 had the effect of concentrating minds on the cross-border risks inherent to the internal market, including food safety problems, animal diseases, and human health. Member states agreed to stronger cooperation in the form of a “communicable diseases network” to draw public health authorities together (Decision 2119/98/EC). That network, which is still in operation today, is used for surveillance, early detection of diseases, and early communication of response measures.

Further crises, including the Dioxin Scandal (1999) and SARS (2002) highlighted European vulnerabilities to health threats (MacLehose et al. 2002). The emergence of H5N1 avian influenza in 2005 sparked a number of emergency meetings on the states of preparedness in Europe. Ministers showed “strong agreement that EU member states need to coordinate efforts in the face of a risk of a human pandemic” and agreed to “ensure strong coordination and information sharing” to tackle the uncertainties involved in a pandemic outbreak (Press Release EU Council of Health Ministers 2005).

Concerns quickly surfaced regarding a lack of pandemic preparedness planning (Summary Report of the Health Services Consultation 2005, Euractive 2007). A basic level of capacity to survey outbreaks, act upon them, and adequately inform European partners was singled out as an especially important need. Another set of evaluations concluded that “the involvement beyond the health service sector and the development of detailed plans sub-nationally needs strengthening (Coulombier and Ekdahl 2005). Better coordination between EU agencies such as the Evaluation of Medicinal Products (EMEA), the European Food Safety Agency (EFSA) and the ECDC was encouraged.

These policymaker opinions on the need to “do more” were complemented by opinion polls confirming that the public sees cooperation on health threats as a key role for the EU (Eurobarometer 2006). After the H5N1 crisis subsided, the Commission, along with the ECDC, were given renewed authority to monitor and assess national preparedness plans (Pitman and Laddomada 2008).

In June 2009, the WHO declared H1N1 (also known as the “swine flu”) a full pandemic, leading to a raft of new measures related to planning, situation monitoring and assessment, reducing the spread of the disease, providing adequate health care, and communicating with the public (WTO Press Release 2009).

Instruments and venues
The first policies to emerge on communicable diseases were those focused on building networks of public health specialists (MacLehose et al. 2002). The Commission led the drive, first with the communicable disease network described above, and again with a series of rapid alert systems related to public health questions. These systems are technical networks serving to link surveillance centers in the various EU member states.

For example, the Early Warning and Response System (EWRS) for communicable diseases has been put in place to notify national authorities and to recommend control measures when an outbreak requiring coordination occurs. In the aftermath of the US anthrax attacks, a special network was established for biological threats. The Rapid Alert System for Biological and Chemical Attacks and Threats (RAS-BICHAT) was established to ensure rapid communication of a potential attack in Europe (Sundelius and Grönvall, 2004).

Two additional initiatives deserve notice. First, the EU is authorized to place certain communicable diseases on a watch list for monitoring and tracking (Commission 2007). This list is updated when deemed necessary by the Commission, thus obligating member states to increase surveillance and reporting capacity regularly. The list is coordinated closely with the WHO. The addition of new diseases to the watch list has led to disease-specific networks (approximately seventeen) that further bind national health authorities together. Perhaps the most prominent of these networks is the European Influenza Surveillance Scheme that draws data from member state sources to create a weekly influenza report. Second, shared laboratory detection standards and common hospital treatment guidelines for communicable diseases have been created in an attempt to build capacities across the EU (Rhinard 2009).

Public health policy at the EU level is formulated and managed through the Commission’s DG for Public Health and Consumer Protection (DG Health, or known internally by its French acronym of “DG Sanco”). DG Health houses most of the policy expertise within the Commission on the topic, although implementation and day-to-day policy management of on health threats is the task of the “health threats unit” founded in 2003 and located in Luxembourg. There, the previously described HEOF and many of the health related rapid alert systems are based.

In response to concerns that member states were not adequately prepared for communicable diseases, the ECDC was founded in 2004 in Stockholm, Sweden. The mission of the agency is to “identify, assess, and communicate current and emerging threats to
human health from communicable diseases” (Parliament and Council, 2004). The ECDC is, in other words, intended to consolidate the surveillance and early warning responsibilities that have been delegated to the European level. The ECDC is also intended as a repository of scientific knowledge that can be deployed across Europe, and as a source of “best practice” for countries that may not have sufficient capacity.

**Managing critical infrastructures**

In April 2007, cyber attacks swamped websites of Estonian government agencies, communication services, media outlets, and major banks. The attacks forced Estonia to shut down all incoming foreign internet traffic. The scale of the attack, the organization of the attackers, and the threat it posed to Estonian national security took this incident beyond a minor hacking incident to a full-fledged Internet sabotage with implications for regional security and stability.

Global attention to so-called critical infrastructures can be traced to the Y2K threat identified during the second half of the 1990s. However, attention quickly dissipated after the feared paralysis of critical structures did not materialize in the first hours and days of the new Millennium. After the events of 9/11, the protection of critical infrastructure protection again moved to the top of national security agendas (Auerswald et al 2006). In Europe, policymakers now accept that the creation of the single market has led to increasing connectedness, and thus increased vulnerability, of European critical infrastructures. The power outages that swept across ten European countries during the first weekend of November 2006 provided a first taste of just how interconnected and vulnerable European critical infrastructures have become (Strauss, 2006).

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17 Some observers claim that the offensive on Estonia was of an unprecedented sophistication. At the time it occurred, it may have been the second-largest instance of state-sponsored cyber warfare, following Titan Rain, a series of coordinated attacks on American computer systems in 2003.

18 The exact source of the attacks remains unknown, but it has been suggested that the attacks originated in Russia. For example, Project Grey Goose found that some connections existed between the Russian government officials and hackers through open-source social networks. Russia has denied any kind of involvement in the attacks.
Policy History

In 2002 the EU first paid heed to the importance of critical infrastructure protection as an explicit goal of policy coordination. The Commission proposed a program to “improve co-operation for preventing and limiting the consequences of CBRN terrorist threats” (Council 2002). In the proposal, the Commission argued that the potential for catastrophic terrorist attacks that affect critical infrastructures was increasing in Europe. Upon adoption of the proposal by the JHA Council, the accompanying conclusions encouraged the Commission to look further into ways to enhance critical infrastructure protection. In early 2004, the Commission adopted a Communication on “prevention, preparation, and response to terrorist attacks” involving critical infrastructures (Commission 2004b). The Communication argued the case for a pan-European approach to protecting critical infrastructures, but took no steps towards legislation.

Several months later, in June 2004, heads of state and government meeting in a European Council summit invited the Commission to prepare an overall strategy to protect the Union’s critical infrastructures. The Commission responded in 2005 with a “Green Paper” laying out ideas for a “European Programme for Critical Infrastructure Protection” (EPCIP) (Commission 2005).

The Green Paper suggested an ambitious goal for EPCIP: to ensure both adequate levels of protection for European critical infrastructures and rapid recovery arrangements. Noting that some degree of pan-European supervision might be necessary, the Green Paper nevertheless acknowledged the importance of subsidiarity whereby member states would remain responsible for critical infrastructure even within a common framework. The EU role would concentrate only on aspects of CIP with cross-border effects.

Some key questions outlined by the Green Paper included the definition of “European” infrastructures, the competences and responsibilities of different stakeholders (including the private sector), different protection requirements in different sectors, and the types of shared standards and “best practices” that could be most effectively coordinated. These rather elementary questions foretold a period of policy confusion and conflict, both

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19 Critical infrastructures are defined as “those physical and information technology facilities, networks, services and assets which if disrupted or destroyed, would have a serious impact on the health, safety, security or economic well-being of citizens or the effective functioning of governments in the member states” (Commission, 2004a: 3).
within the Commission and between the Commission and member states. No obvious ways forward in policy development presented themselves.

Rather than issue a single legislative proposal, the Commission issued a package of initiatives in December 2006. Together, this package set the framework for policy developments on critical infrastructure protection in the EU (Commission 2006). The package comprised three elements:

- First, a proposal for a directive “on the identification and designation of European Critical Infrastructure and the assessment of the need to improve their protection”. This proposal was seen as a modest first step upon which an eventual program would be based.

- Second, a Communication on a “European Programme for Critical Infrastructure Protection” which presented the (few) agreed-upon findings from the consultation, including non-binding measures intended to encourage convergence in national protection measures, to ensure each member state designed a cross-sectoral critical infrastructure protection official, and to set out the framework for an “EPCIP Action Plan” for future work.

- Third, a Communication outlining steps forward for critical infrastructure protection in two specific sectors (in which some degree of consensus has been reached): energy and transport. This Communication on “Protecting Europe’s Critical Energy and Transport Infrastructure” represented the most progress made on critical infrastructure protection, arguably because it focused on a limited number of goals (Fritzon 2010).

If we look into specific policy areas, we can find more concrete initiatives aimed at protecting critical infrastructures (Fritzon et al. 2007). Europe’s oil networks are the focus of legislative proposals to make supplies more secure through the maintenance of minimum stocks of crude oil and petroleum products, putting in place emergency procedures to be used in the event of a shortage (Council 2009). The EU is financing a number of electricity and gas transmission infrastructure projects of European interest, most of which cross national borders or have an influence on several EU Member States. Road, sea, and air transport policies in the EU have been supplemented with a variety of security measures intended to prevent breakdowns in critical transport networks. One focus is on tunnel security and transportation of dangerous goods, addressed by harmonising minimum safety
requirements and enhancing tunnel safety (Parliament and Council 2004a). Another example is the Single European Sky II legislative package, proposed by the Commission in 2008 and adopted by the Parliament in Council in 2009, which proposes to extend the European Aviation Safety Agency’s (EASA) competences to make it the EU’s only air safety regulator (Council and Parliament 2009). Within the food sector, European-level attention is being placed on protecting the food supply chain “from farm to fork” through standard setting, inspection control, and harmonization (Parliament and Council 2002a).

Because critical infrastructures span many national borders in Europe, a role for the EU in guarding against breakdowns and preparing for failures seems evident. The precise nature of such a role, however, remains unclear. Although the EU announced plans for EPCIP, practical work on how to protect those infrastructures and how to manage breakdowns is in a nascent stage. Member states insist that critical infrastructure protection must remain a national competence, and that any European-level programs should show clear “added value” and remain voluntary. Very few initiatives, beyond a large number of meetings, conferences, and feasibility studies (Commission 2007) have emerged on this issue since the initial spate of new ideas and proposals.

**Institutional structures**

The EU’s critical infrastructure protection policy is managed by officials from the Commission’s DG for Home Affairs (DG Home), and decided upon by the Council formation of Justice and Home Affairs ministers. One structure to emerge from this policy is CIWIN, a critical infrastructure warning information network (proposed as part of the Commission’s 2005 Green Paper). CIWIN brings together member-state CIP specialists to assist the Commission in drawing up programs to facilitate exchange of information on shared threats and vulnerabilities and appropriate counter-measures and strategies.

Within specific sectors, additional structures can be found. For the protection of critical information infrastructures, for instance, the EU’s agency for network and information security (ENISA) offers a hub for coordination. ENISA has a broad but fairly shallow mandate, charged with assisting member states, public organizations, and industries

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20 ENISA was created in March 2004 as a part of the implementation of the EU’s policies on information communication technology (Parliament and Council 2004b).
to prevent, manage, and solve problems of ICT security. ENISA, however, has no decision-making authority on policy questions.

The EU has launched a project focused on building, and ensuring the resilience of, trans-European energy networks. The TEN-E project offers structures in which member states authorities can gather to consider infrastructure supply and protection issues, with resources available for cross-border studies and more operational projects (Parliament and Council 2006). A similar project supports trans-European networks related to roads, rail, waterways, and air transport. The goal is to bring together national authorities in regular discussion forums, to emphasize shared infrastructures, to focus member state attention on building capacity, and to offer aid towards ensuring resilience and security (Parliament and Council 1996).

In the area of aviation security, a European aviation safety agency (EASA) was established in 2002 with wide-ranging authority for regulatory and executive tasks. EASA provides technical expertise to the European Commission by assisting in the drafting of rules for aviation safety in various areas and providing technical input to the conclusion of the relevant international agreements (Parliament and Council 2002b).

**Managing financial crises**

Where it started, exactly, will be debated for years to come (Financial Crisis Inquiry Commission 2011). The global financial crisis first became apparent with the collapse of the US housing market. In the summer of 2007, the US sub-prime mortgage market collapsed as homeowners struggled to make their payments when their interest rates rose and property prices fell. The problems in the housing market soon spread to the US banking sector and the international financial system at large (Hodson and Quaglia 2009).

In 2007, several European banks suffered large sub-prime related losses. In August of that year, the German government decided to rescue IKB Deutsche Industriebank. Some days later, BNP Paribas suspended three of its investment funds, claiming a complete lack of liquidity in certain market segments of the US securitization market. The European Central Bank (ECB), in an effort to ensure orderly conditions in the Euro area markets, responded by offering 100 billion euro in short-term financing to banks. This was the first in a series of emergency liquidity measures by the ECB and monetary authorities world-wide.
The collapse of the US investment giant Lehman Brothers on September 15, 2008 plunged financial markets into turmoil and led to world-wide destabilization. One EU member state after another was forced to rescue over-extended banks.

In a press release from 14 October 2008, the Commission outlined the EU’s response to the financial crisis. The Commission emphasized that only member states have the legal authority and the capital to commit taxpayer money for “rescue plans”, and to intervene directly in individual financial institutions. Nevertheless, the Commission called for coordination between member states and in cooperation with EU institutions.

The Commission argued that its role in the financial crisis was limited to three main areas. The first is to apply EU law, notably on competition and state aid. The second is to propose adjustments to EU law where necessary. The Commission’s third role is to work “behind the scenes, as a ‘bridge’, facilitating agreement and ensuring coherence between national action and European action; between member states within the euro zone and outside it; and between all the institutions of the EU and the member states” (Press release 2008).

The European Central Bank (ECB) played a key role in this crisis. The ECB, which defines monetary policy in the Eurozone (for more on the ECB, see below), cut the base rate to a historic low of 1.0 % in May 2009, allowed banks to use a wider range of assets as collateral when borrowing from the Eurosystem, and provided banks with unlimited liquidity at very low interest rates. In that same month, the ECB purchased 60 billion euro worth of covered bonds and debt securities, backed by mortgages or public-sector loans, in order to ease credit conditions in the euro area (Hodson and Quaglia 2009).

In December 2009, following worse-than-expected reports on the Greek economy, the world’s top credit ratings agencies downgraded Greece’s sovereign debt (Financial Times, 18 March 2010). Greek officials announced sweeping spending cuts to bring the public deficit, which had ballooned to 12.7 percent of GDP, under control. But those announcements did little to sooth the nerves of either financial markets, which continued to sell off Greek bonds, or those of the public, which responded in February 2010 with mass protests in the streets of Athens (BBC News, 17 February 2010). In March 2010, the Commissioner for Finance, Olli Rehn, asked the Greek government to announce further austerity measures to tackle its budget deficit crisis (Parliament Press Release, 1IPR66990).
Greece responded with more severe cuts in government programs, state-sector salaries, and pension spending, while proposing to raise taxes.

Although the financial markets stabilized temporarily vis-à-vis Greece in response to these measures, fundamental instabilities remained. In response, heads of EU governments convened in Brussels several times between February and March to discuss the terms of an EU “rescue package”. The key players in this discussion, German Chancellor Angela Merkel and French President Nicolas Sarkozy, did not share the same view on an adequate response, with the former resistant to a financial “bail out” of Greece (BBC News.com, 23 March 2010). On 25 March 2010, guided in the negotiations by Herman Van Rompuy, the then-newly appointed President of the European Council, Eurozone leaders agreed to a rescue package by which Greece would receive coordinated bilateral loans from its Eurozone partners as well as IMF assistance in the event of “very serious difficulties” (Financial Times, 25 March 2010).

The financial crisis in Europe took yet another turn when Ireland ran into financial troubles. Having experienced a decade-long period of rapid economic growth, sustained by a low corporate tax rate and low ECB interest rate, the Irish economy began to stumble (Bloomberg.com, 24 November 2010). The prevalence of “bad debt” undermined confidence in Irish banks, and required an expansive bail-out from government. This bail-out, in turn, added to the country’s swelling deficit (BBC News.com, 29 November 2010).

The ability of the Irish government to sustain funding for a bail-out, and the possibility of “contagion” prompted action from other European financial ministers and the ECB. Officials encouraged the EU’s newly-created European Financial Stability Facility (EFSF) and the International Monetary Fund (IMF) to lend financial support to Ireland’s government in the middle of November 2010. Although initially resistant to the idea of a financial aid package because of likely restrictions on autonomy, the Irish government formally accepted a deal on 21 November 2010 (Wall Street Journal.com, 1 October 2010). One week later, the EU agreed on a €85 billion rescue deal of which €22.5 billion would come from the European Financial Stability Mechanism (EFSM), €22.5 billion from the EFSF, and €22.5 billion from the IMF. Bilateral loans would also come from the United Kingdom, Denmark and Sweden. The Irish Republic would also contribute with €17.5 to the overall fund from its own cash reserves (Bloomberg, 24 November 2010).
Since the financial crisis is still unfolding as we write this, with Portugal now the latest to ask for a bail-out, a complete assessment of the EU’s response will have to wait. Short-term responses from the international media have been less than kind, suggesting that Europe’s reaction (particularly in early stages) was “too little, too late.” More recently the verdict has shifted to “confused, and making things worse”. European leaders repeatedly failed to issue a common statement, beset as they were with rivalries, contradictory analysis, and conflicting policies (BBC News.com, 24 February 2009). Nevertheless, as described below, a number of policy and institutional innovations emerged from the crisis.

Policy History
The EU’s role in financial regulation and supervision is an offshoot of the drive to build a European single market. Within a single market, a long-standing argument goes, a financial institution authorized to provide financial services in one member state should be able to provide the same services throughout the market. That implies the construction of a single market in financial services based on a “level playing field” and within a “consistent regulatory environment” (FSA 2003: 2) covering areas such as cross-border banking, insurance, and securities and investment funds.

In 1985, the European Commission proposed a White Paper on the Internal Market. The “Cockfield Paper” detailed a long list of priorities for completing the internal market, and highlighted the need for a more efficient and integrated regulatory structure for European economies. Legally enshrined by the 1986 Single European Act, Lord Cockfield’s ideas re-launched the drive to complete the EU’s internal market. The creation of a regulatory framework around a single market for financial services was part of that drive.

During the 1990s, a number of criticisms were lodged against EU financial legislation. Swiftly changing market conditions often made proposals out-of-date by the time they were approved. The criticisms also included worries about the disconnect between EU-agreed laws and implementation effectiveness in national capitals. In response to these problems, heads of state and governments in July 2000 established a Commission of Wise Men on the Regulation of the European Securities Market under the chairmanship of Alexandre

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See for instance the fierce criticism repeatedly formulated by FT commentator Wolfgang Munchau (2009a, 2009b, 2009c).
Lamfalussy (Gualandri and Grasso 2006). Its report recommended major reforms in how financial market regulations were decided upon in the EU, in the interest of speeding up the process, making it more flexible, and connecting it more closely with national regulators. The Lamfalussy group’s proposals were adopted by EU leaders in 2001.

The introduction of the Euro provided a “major impulse to the integration of money, debt, and equity markets”, not least because use of the euro by financial institutions across borders would reveal a patchwork of national regulators and would challenge the abilities of national-based financial regulators and services (Commission 1999). The result was to boost national willingness for new regulations towards a single market in financial services (Commission 1998: 1).

To that end, and at the behest of heads of state and governments during a 1998 European Council meeting, the Commission identified five priority areas for completing the single market in financial services (Commission 1998). Those priority areas included: (i) creating a new legislative process for the supranational regulation of financial markets, (ii) eliminating fragmentation in capital markets, (iii) lowering any remaining obstacles to cross-border retail banking, (iv) coordinating national supervisory authorities, and (v) facilitating cross-border financial transactions for consumers and banks. These five areas, and the challenges they sought to overcome, provided the main components of the Commission’s Financial Services Action Plan (FSAP), a document that spawned numerous proposals and provided the backdrop for the EU’s heightened role in financial regulation. It was complemented by a White Paper on Financial Services Policy, which outlined the Commission’s financial services policy priorities through 2010 (Commission 2005; see also, Commission 1998).

Although the EU’s role in financial regulation grew during this period, its role in financial supervision did not. The supervisory aspect of financial markets includes ensuring that “banks or financial institutions subject to regulation follow the rules correctly and uniformly, that they adequately manage their risks, and that they adhere to certain minimum standards” (House of Lords 2009). National governments have been slow to give up substantial supervisory responsibilities to the European level, and there is only limited legal authority in the EU treaties on the subject of supervision. This disconnect became quite controversial and the source of debate in the wake of the financial crisis.
Several obstacles stand in the way of a strong EU role in financial crisis management. The first is a legal prohibition against the EU’s full involvement in the regulation of European markets and any meaningful involvement in supervisory arrangements. This is particularly apparent during moments of instability or crisis. Although European finance is increasingly cross-border, and while the framework for encouraging this dynamic takes place at the EU level, the decision processes for ensuring financial stability and crisis management remain at the national level (Nieto and Schinasi 2008). The second obstacle to change is political resistance to many of the Commission’s proposals. The move towards greater coordination has met with reluctance, while proposals for a single European supervisor have met with hostility (Evans-Pritchard 2009).

The most important European players find it hard to agree on the type of capacities needed to contain financial crises. The German government has called for a stricter fiscal rulebook for Eurozone members, to lower the risk of “moral hazard” following the EU’s rescue package (Financial Times, 24 March 2010). The French government, on the other hand, has called for the formation of an “economic government” for the EU to promote stronger coordination of economic policy and to shrink the governance gap in Europe between monetary policy (handled by the ECB) and economic policies (handled mainly by member states) (Financial Times, 25 March 2010). More recently, the German government has agreed to stronger economic policy coordination at the EU level, more resources for the fiscal rescue mechanisms, and has expressed willingness to allow the ECB to buy sovereign bonds (Financial Times, 28 November 2010). Tensions remain between the French and German government over how to reconcile their differing perspectives (Der Spiegel 17 December 2010, 3 January 2011).

At a European Council summit in November 2010, however, three initial steps were taken by governments to expand the EU’s role in battling future crisis. First, a stricter Stability and Growth Pact (which sets rules over sovereign debt in the Eurozone) was proposed, one which contained more sanctions and binding power over governments. Second, a new economic surveillance mechanism was introduced, allowing the European Commission to foresee early warnings and address governments in a meaningful way. Third, a permanent crisis mechanism was adopted to replace the temporary European Financial Stability Facility (EFSF) in the future (Presidency Conclusions, 28-29 October 2010). These innovations, which represent yet more innovations wrought at the hand of a crisis, could be
noted as examples of cooperative outcomes even under conditions of stress and high levels of national sovereignty concerns (Emmanouilidis 2010).

By early 2011, the German and French governments, after lengthy negotiations, reached an unexpected agreement by which they would support each others’ proposals for more economic integration (in the area of pensions, wage, and labor rules) and stricter limits on government debt. Whether or not other EU member governments (and other eurozone members, more specifically) will agree to such groundbreaking steps was an open question at the time of writing.

Policies and Instruments
The EU’s role in supervision, along with that the European Central Bank (ECB), has been limited, but not completely absent. European-level involvement in supervision stems from the fact that there are over 60 financial supervisors in European Union countries, with diverse responsibilities for both retail and wholesale banks and financial institutions (Gualandri and Grasso 2006: 17). Some degree of coordination is necessary, and acknowledged increasingly by national governments (House of Lords 2009).

The “Financial Conglomerates Directives” of December 2002 determines how the lead supervisor of a financial conglomerate should be decided, and ensures that supervisory arrangements are fulfilled (FSA 2003: 10). The “Risk-based Capital Directive” of June 2004 sets out rules for how national supervisors should monitor capital requirements associated with the Basel II accords. Actual coordination between financial supervisors responsible for financial stability and crisis management was initiated after a group of experts reported their findings in 2002. The “Brouwer Reports” led to a Memorandum of Understanding between all banking supervisors and central banks in the EU to ensure financial stability (FSA 2003: 15; Gualandri and Grasso 2006: 10).

The ECB’s role as a lender of last resort is highly constrained (Schinasi and Teixeira 2006) while the EU institutions have no capability for recapitalizing banks or for applying massive economic stimulus measures. The EU does have legislation in place, however, regarding the supervision and minimum requirements of deposit guarantee schemes (Council 1994; see also House of Lords 2009:23). It also issued several directives regarding corporate insolvencies as part of the FSAP, including a “Bank Winding-Up Directive” from
April 2001 to ensure that insolvent banks can be wound up and reorganized in the EU as a single entity if necessary (FSA 2003: 10).

A strong role for the EU can be found in regulating state aid, a core competence of EU level and a key instrument for national governments attempting to stimulate economies. The EU must approve all state aid requests from national governments, and tends to relax strict rules during a financial crisis.

Institutional Structures
The EU has no single decision venue in which EU crisis decisions can be made. Different financial-relevant directorates within the Commission, the Parliament, Council, ECB, and, of course, the Eurozone finance ministers each play various, and sometimes complicated, roles in making policy decisions. This proliferation of “institutional diversity” creates problems of coherence (Tezcan 2009).

The key actors involved in financial regulation and supervision in the EU include the European Commission (more specifically, DG Internal Market), the Council of the European Union (more specifically, the Economic and Finance Council, ECOFIN), and the European Central Bank. The Commission makes legislative proposals on financial regulation, and has the power to issue administrative rules on the topic. The Council reacts upon the Commission’s legislative proposals, while the European Central Bank defines and implements the monetary policy of the Eurozone.

Financial regulation at the EU level is structured in terms of the Lamfalussy process, which connects four separate levels of governance (House of Lords 2009: 12). The first two levels involve the creation of regulation, with the main distinction being the establishment of “core principles” at the first level (through the EU legislative process) versus the establishment of more specific “technical standards” (through the EU comitology process) at the second level. These two levels are meant to mirror at the EU level the distinction between primary law and secondary law at the national levels (Lastra 2003: 62). The “level two committees”, consisting of twenty-seven national regulators, are expected to react to Commission proposals more quickly and flexibly than in the past. The third and fourth levels involve consistent implementation of supervisory standards and enforcement of rules in member states. The “level three committees” are groups of national banking supervisors which act as a feedback link to the Commission, as well as “provide information exchange,
foster supervisory convergence and formulate best practice” (House of Lords 1999: 14). The level three committees are constituted by national supervisory authorities and can only issue non-binding guidance. Level four refers to the enforcement of regulation and practical supervision, two tasks undertaken solely by national authorities.

The European Central Bank (ECB), established by the Treaty of Amsterdam in 1998, succeeded the European Monetary Institute (EMI), an organization created in 1994 to encourage cooperation between the national banks of the member states. Headquartered in Frankfurt, the ECB serves as the central bank of the Eurozone. Like any central bank, its primary objective is to maintain price stability. Its key tasks are to define and implement the Eurozone’s monetary policy, to conduct foreign exchange operations, to manage the foreign reserves of the European System of Central Banks, to promote a sound financial market infrastructure in Europe, and to authorize the issuance of Euro bank notes (Leino 2000). With the entry into force of the Lisbon Treaty on 1 December 2009, the ECB, according to the article 13 of TEU, gained official status as an EU institution.

The crisis has cast a spotlight on major regulatory gaps and supervisory discrepancies, and pushed financial markets regulations to the top of political agendas. The Commission has brought forward many proposals for increased banking regulation and more effective supervision, two tasks that financial experts broadly agree upon (Economist 2009). For instance, Barroso picked up de Larosière’s idea of a “European Systemic Risk Council”, and proposed that by the end of 2010 a new system, including a new EU wide financial supervisory authority, should be in place:

“De Larosière suggested a trial period of three years. We suggest this should be made immediately”... “If we use the single market to the full, we have the strongest possible platform for the future”... “Going national is going back. Going European is ahead” (European Voice 2009).

Accordingly, in 2009 the European Commission proposed two bodies aimed at addressing regulatory weaknesses: the European System of Financial Supervisors (ESFS) and a European Systemic Risk Board (ESRB). Following strenuous debate between the Commission, Council and Parliament, the proposals were eventually agreed and came into effect on 1 January 2011. The ESFS compromises new authorities which institutionalize the different committees described above as part of the Lamfalussy “level three” process. These authorities are the European Banking Authority (EBA), the European Insurance and Occupational Pensions
Authority (EIOPA), and the European Securities and Markets Authority (ESMA). The ESFS as a whole will focus on micro-prudential supervision, involving policy coordination and rule-setting, as well as the coordination of national authorities overseeing financial firms. In contrast, the ESRB will serve as an independent EU body responsible for macro-prudential oversight of the financial system in Europe. It consists of a network of national financial supervisors working together with the heads of the ECB, national central banks and ESAs.

**A horizontal perspective: Generic capacities for transboundary crisis management**

When we move out of the sector-specific inquiry applied above and cast our eye across policy boundaries – using a transboundary viewpoint if you will – we discover more generic capacities that are explicitly designed to handle transboundary threats. The most important are the EU Crisis Coordination Arrangements and the Commission’s Argus system. In this section, we also discuss the potential consequences of the recently adopted Solidarity Clause.

**EU Crisis Coordination Arrangements (CCA)**

In contrast to the many “technical” initiatives related to crisis management at the EU level, the EU Crisis Coordination Arrangements concern the strategic and political dimensions of crisis decision-making. The 9/11 attacks in the USA in 2001 contributed to a growing awareness that such capacities were lacking in the EU. Outside of the normal legislative process, there was no way for national political representatives to join with the EU’s institutional leadership to ensure a coordinated set of responses to a major event. The typical examples used to justify new arrangements were the possibility of needing to shut down airports, respond to a string of terror attacks, or manage the knock-on effects of a pandemic (Gustenau 2006).

As part of the Hague Programme to strengthen the EU’s area of freedom, security, and justice, the Council invited the Commission in December 2004 to prepare a mechanism for the “management of crises within the European Union with cross-border effects” (Council 2004, 16054/04). This declaration, contained in Section 2.4 of the Hague Programme, is one of the few explicit acknowledgements in EU documents regarding the importance of preparing decision structures for transboundary crises.
Only weeks later, the Asian Tsunami struck. Seven months later, the London bombings led the Council of JHA ministers in July 2005 to call for the development of “arrangements to share information, ensure coordination and enable collective decision-making in an emergency, particularly for terrorist attacks on more than one Member State” (Council 11158/1/05). Specific arrangements were formally presented under the UK Presidency of the EU in the autumn of 2005, agreed in December 2005, and initiated in July 2006 (Rhinard 2007).

The CCA allow for the EU to be on a “crisis footing” when a disaster or emergency strikes, and are managed by the Council’s Joint Situation Centre (Sit Cen). They include bodies and procedures for intergovernmental and inter-institutional coordination to facilitate common public communication and crisis management action at the EU level, all described in a “CCA manual” agreed in June 2007 (Council Memo, Document 10011/1/07) and regularly updated (see Larsson 2009). At the heart of the system is the “Crisis Steering Group” consisting of high-level, Brussels-based representatives of the Presidency, the Council Secretariat, the Commission, and each Member State affected by the crisis at hand (Council Memo, Document 20578/08). The Crisis Steering Group is not a permanent structure, nor does it have explicit decision powers. It prepares and facilitates decision-making by the 27 permanent representatives in Brussels, who ultimately take the decisions. The Crisis Steering Group can call upon the expertise and resources of the “CCA Support Group” assembled to offer advice on different issues and in different sectors.

The CCA is still in a formative stage. Moreover, it has never been fully triggered in a crisis (although it was put on “stand by” during the Lebanon evacuation (July 2006) and Georgia invasion (August 2008), was placed on “alert mode” during the Mumbai terror attacks (November 2008), and was almost triggered during the recent financial crisis). The CCA is exercised on an annual basis, using a constructed scenario typically involving a transboundary crisis and its cascading effects. Discussions on whether to allow the CCA to be “partially” triggered, thereby engaging its support functions but not the permanent representative decision-making arrangements, are underway (European Voice, 22 July 2010).

As the Lisbon Treaty comes into effect, the relationship between the CCA and the External Action Service (where the Sit Cen is now formally placed) will need to be settled, as will the relationship between the CCA and the new committee for internal security (COSI).
At the time of writing, a review of the CCA was underway. Insiders shared a degree of pessimism about the future of the CCA, mainly because member states “have no common, shared understanding of what kinds of crises requires the triggering of the CCA. It is the prevailing perception among some Member States that the CCA should only be used in ‘catastrophic’ situations. Other Member States think that the arrangements could be used for responding to less dramatic crises, which would benefit from cross-sector information exchange and political consideration at the EU level. Among EU institutions there are also diverging opinions as to when and how crisis procedures like CCA should kick in” (Situation Centre Memo, 13 December 2010). The future of the CCA, therefore, will depend on the resolution of institutional uncertainty and a clarification of its purpose in the eyes of member states.

**Argus**

The organization of the Commission into policy-specific directorates has long been the source of coordination problems, as it is for any large public organization (Christiansen 2006). For many years, this meant that the Commission’s various crisis management initiatives, in the areas of transport or environment, for example, took place with little mutual awareness and even less overarching guidance. Recently, steps have been taken towards more comprehensive internal coordination on transboundary crisis management efforts. A network of Commission directorates active in crisis management initiatives now meets regularly to improve internal communication, while a business continuity planning effort is underway.

In a similar vein, a web-based system called “Argus” was introduced in 2006 to facilitate the sharing of information across directorates in the Commission (Kjellen 2009):

It is appropriate for the Commission to establish a general rapid alert system called Argus, in order to enhance its capacity to react quickly, efficiently and in a coordinated manner, in its domain of competences, to crises of a multisectoral nature covering several policy areas and that require action at the Community level, whatever their cause (Commission Decision (2006/25/EC, Euratom). Argus not only links directorates and units together, it also serves as a “network of networks” bringing together the many rapid-alert systems operating independently in various Commission directorates. The Commission’s Security Office is the operative point of
contact for Argus, with staff on-call around the clock. The policy point of contact for Argus is a unit within the Secretariat General of the Commission, established in 2008 as part of the Secretary General’s personal drive to improve coordination in crisis management matters.

Warnings issued through Argus are immediately communicated across the system. Such warnings are issued according to crisis levels I or II (Kjellen 2009: 79). The first type of crisis is not considered to be cross-sectoral, and thus can be managed largely by the directorate most immediately involved, via normal procedures. Other directorates are simply informed. The second type of warning concerns a more serious event affecting multiple directorates and thus requiring operational coordination. Only the Commission President, or his designee, has the authority to authorize a level II crisis warning, and if authorized, the Commission President will decide whether he or another Commissioner will take responsibility for the crisis. Key to a level II activation will be the role of the Commission’s Crisis Coordination Committee, comprised of high-level Commission officers (normally directors-general) with responsibility over the affected sectors. The Crisis Coordination Committee will take crisis decisions on behalf of the Commission under the direction of the Commission President.

One question for the future is the relationship between the Commission’s internal crisis coordination and the CCA arrangements. In some respects, the two are integrated via Argus, which has links within its Council counterparts. Yet a divide still remains between the two major EU institutions, owing to institutional rivalries and the principle of collegiality within the Commission, which requires consensual agreement before taking action outside of the institution. This can reduce the flexibility of the Commission’s participation within CCA and lead to deadlocks during inter-institutional decision-making, especially since the Commission retains control over many of the operative capacities and legal competences that would come into play during a crisis.

Solidarity Clause
The most legally prominent, horizontal provision related to “transboundary” crises in the EU is the Solidarity Clause, now enshrined as Article 222 in the Treaty on the Functioning of the European Union (TFEU). This one-page provision creates one of the most explicit demands upon EU members to act jointly and to assist one another in the face of disasters, emergencies, and crises on the European continent. Yet the precise meaning of this demand,
and its implications for EU institutions and member states, is still being assessed (Myrdal and Rhinard 2010).

In some respects, the lack of attention to the Solidarity Clause is easy to understand. The Lisbon Treaty was full of headline-grabbing and complicated changes requiring the full attention of busy governments. The Solidarity Clause has not generated similar headlines, perhaps because other treaty changes appear more pressing, because its brevity belies its content, or because it tends to be confused with the more narrowly focused ‘mutual defence clause’ (Article 42.7) on cooperation in the event of armed aggression.

In other respects, neglect of the Solidarity Clause is surprising. The concept of ‘solidarity’ is one of the more symbolically powerful elements in the narrative accompanying European integration and has been invoked in recent years in the aftermath of ash clouds, pandemics, explosions, or cross-border infrastructure failures – all of which outstripped national coping capacities. Similarly, after disasters and terror attacks national governments tend to loudly proclaim the importance of enhancing cooperation to protect the safety and security of citizens. The Solidarity Clause, conceived as a treaty-based method for improving EU cooperation on a range of complex threats, acknowledges the need to mobilize a host of instruments to deal with new security concerns. It thus provides a concrete answer to increased rhetorical concerns.

The Solidarity Clause contains three obligations. The first enjoins both EU institutions and member state governments to “act jointly...if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster”. By including the EU institutions with national governments in this phrasing, the Clause suggests a supranational (rather than a purely intergovernmental response), while the inclusion of broadly defined disasters indicates a fairly wide perspective on threats. The second obligation states that the “Union shall mobilize all the instruments at its disposal, including the military resources available by the Member States” to both prevent and respond to terrorist attacks and to assist one another in cases of terrorism or natural disaster. The third obligation demands that EU institutions and member state governments organize their responses via the Council of Ministers, thus suggesting a coordinated effort from the EU level when attacks happen or disasters strike (Article 222, TFEU).

Solidarity, however, means different things to different people (and to different governments). For some, solidarity is measured by how much support flows to a country in
need. For others, solidarity means everyone doing their own ‘homework’ to avoid the need for assistance in the first place. Still others believe that solidarity against today’s risks and threats is best pursued outside of EU frameworks. In the past, as long as “solidarity” remained a rhetorical concept, such differences could be tolerated. Now that solidarity has been established as a legal concept in the form of the Solidarity Clause, such differences need to be reconciled. Moreover, instruments to ensure a truly “Union” response to transboundary crises will require new structures and procedures for inter-institutional and cross-sectoral cooperation in Brussels (Rhinard and Myrdal 2010).

In 2011, the European Commission is expected to propose EU-level “implementing arrangements” for the Solidarity Clause. Those arrangements are likely to clarify several outstanding questions, including the types of threats covered by the Clause, the triggering threshold, the policy sectors covered, the legal force of stated commitments, and how the Clause’s threat assessment procedures might work. Time will tell whether these arrangements will usher in a new (and more binding) era of solidarity in Europe.

Conclusion: The incremental emergence of transboundary crisis management capacity

One might argue that the EU was born out of the biggest transboundary crisis ever witnessed on the European continent. On the ruins of war-ravaged Europe, six nations came together to create a unique form of cooperation to make sure a similar disaster would never occur again. The founders of the European Community built strong economic ties to help member states rebuild and prosper, while preventing future manifestations of the distinctly transboundary threat of war.

In its fifty-plus years, the EU did not see any wars within its boundaries. But it did confront several transboundary threats, which posed complex challenges to member states and the EU. The Chernobyl disaster (1986), the BSE Crisis (1996), the attacks on Madrid (2004), London (2005) and Estonia (2007), the H5N1 pandemic (2005), and the unfolding financial crisis (2007-?) posed common threats, requiring a shared response.

In response, the EU has developed transboundary crisis management capacities: instruments, policies and venues that can be used in response to transboundary threats and crises. But these capacities have not, or hardly, been institutionalized. This paper suggests
that the transboundary capacities we found in the various policy sectors are in a nascent stage of institutionalization.

These transboundary capacities all seem to follow the same institutionalization pattern. First there is a crisis, which suggests a role for the EU. Most new policy initiatives (as well as reforms) on transboundary crisis-related policy were preceded by external “shocks” to the system (cf. Sabatier and Jenkins-Smith 1993). In response to the mad cow disease, member states agreed to new health security measures and the Commission built institutions for regulating animal and human health questions. More recently, terror attacks have had a galvanizing effect on collective action in crisis management. These events provoked a Europe-wide response, generating a host of new measures regarding internal security such as biosafety preparedness, customs controls, joint policing, and intelligence sharing. The financial crisis has made possible policies and mechanisms that were unthinkable not so long ago.

The evolution of the EU’s transboundary crisis management capacity is characterized by fits and starts, not by an overarching strategy or vision. Partially, this lack of direction reflects an uncertain degree of political commitment behind the EU’s role. National leaders are keen to profess the importance of cooperation in crisis management, but their apparent enthusiasm may stall when the actual policy process begins. The member states are wary of giving up too much of their own policymaking autonomy in exchange for supranational coordination. National officials are not always keen on making use of EU tools and mechanisms, especially when other, more established international coordination structures. The contrast between enthusiastic political declarations and hesitant practical action creates patchy capacities at the EU level, where supranational actors can initiate ideas but national authorities must carry them out. The legitimacy of the EU as a locus for transboundary crisis management capacity is still relatively low.

The Commission has been a key driver behind the incremental institutionalization of transboundary crisis management capacity. As an autonomous institution with its own budget, it initiates its own programs and forms new bodies. Moreover, through its formal agenda setting power, the Commission employs the force of expertise and argument to exploit divisions in member state preferences in the legislative process (Radaelli 1999). Such strategies allow the Commission to build crises management capacities within existing legal competences, and to expand those competences through new legislation when
circumstances allow – usually in the aftermath of a major crisis (Kaunert 2007; Guiraudon 2003).

This sets the stage for further institutionalization. This can happen quite quickly, as demonstrated in the financial realm. It can move very slow, as seems to be happening in the area of critical infrastructure protection. As it stands, the EU is still far removed from acting in an autonomous fashion in response to transboundary crises. Member states maintain full authority and choose which tasks they want to delegate to the EU. Many member states have yet to implement commitments made in EU venues (Crosbie 2007).

What is most needed, perhaps, is the development of integrated (e.g. non-sector specific) transboundary crisis management capacities such as CCA and Argus. This paper demonstrates that such capacities are still in an early phase of institutionalization. They remain unused and thus untested, which explains the lack of institutionalization.

More capacities will be needed, if only because of “spillover” effects from increased integration. Over the past fifty years, according to this narrative, European governments responded to common policy challenges by building common solutions, including a single market, interconnected infrastructures, and systems for the free movement of people, goods and services. Those solutions brought prosperity and interstate peace, but they also hastened new problems: interconnections generate interdependence as threat agents move and escalate within an increasingly borderless European space. Cooperative arrangements, the argument goes, are needed for addressing common vulnerabilities stemming from the abolition of internal border controls and the building of transnational networks for people, goods, and services.

These threats represent what economists call the “negative externalities” of interdependence: they expose states to common problems that cannot be easily solved unilaterally.

Indeed, rarely does a meeting of government officials (in the EU’s Council of Ministers, for instance) pass without reference to the need for stronger cooperation to overcome the limitations of national action. In 2000, following the end of the mad cow disease crisis, Irish authorities lamented that the “single market was created to facilitate trade rather than respond to the needs of consumers” and pointed to new threat pathways in Europe generated by a combination of “the global distribution of food and the single European market”. They declared that “a coordinated approach to food safety in Europe was
long overdue” (Irish Food Safety Authority 2000). Again in 2001, following the September 11 bombings, ministers stood together to acknowledge the “vulnerabilities of our interconnected societies” (Council 2001). After the 2004 bombings in Madrid, Spain’s minister for interior matters declared that the time is ripe to “increase cooperation to protect the critical infrastructures that connect Europe” (Suarez 2004).

In short, a paradox has emerged: despite member state acknowledgement that common capacities are crucial to combat complex, transboundary threats, those capacities have not been realized. When talk turns to action, national authorities are slow and hesitant to carry out their commitments.
References


International Herald Tribune (2011). Germany and France roll out plan to boost euro. 5-6 February 2011.


http://online.wsj.com/article/SB10001424052748704116004575523121071932284.html