Università
Ca'Foscari
Venezia

Master's Degree

in

Comparative International Relations

Final Thesis

Crisis management in the European Union

How emergency politics affect EU decision-making

Andrea Bambi
974401

Supervisor
Prof. Jan Zielonka

Assistant supervisor
Prof. Stéphanie Novak

Academic Year
2020 / 2021

Abstract

Dopo le riforme istituzionali attuate dal trattato di Lisbona, il processo decisionale nell'Unione europea (UE) è stato modificato in una certa misura. Sebbene la Commissione mantenga ancora il monopolio dell'iniziativa legislativa, il Consiglio Europeo ha rafforzato il suo controllo e la sua influenza sulla definizione dell'agenda – sia formale che informale – attraverso la creazione di una presidenza permanente (Bocquillon and Lobbels, 2014). Inoltre, il Parlamento Europeo (PE) ha ora un ruolo più rilevante nel processo legislativo. Infatti, le proposte legislative devono essere concordate sia dal PE che dal Consiglio dell'Unione Europea per essere convertite in legislazione, mentre prima del Trattato di Lisbona il PE aveva solo un ruolo consultivo (Verdun, 2013). Nel complesso, il Consiglio Europeo è stato descritto come un protagonista centrale nella governance dell'UE (Bulmer, 1996) e come il nuovo nucleo decisionale, essendo stato il principale destinatario del potere perso dalla Commissione nel corso dei decenni (Ponzano *et al.*, 2012; Pollack, 1997). Questo passaggio di potere ha modificato il rapporto tra il Consiglio Europeo e la Commissione.

La ricerca su tale argomento ha messo in evidenza due paradigmi che descrivono questo fenomeno nel quadro decisionale: infatti, tale relazione può essere reciproca e cooperativa (Bulmer e Wessels, 1986; Wessels, 2008), oppure gerarchica, con il Consiglio Europeo che agisce come istituzione dominante (Moravcsik, 2002). Inoltre, la recente ricerca pionieristica di Bocquillon e Lobbels indica una possibile connessione diretta tra la presenza di un evento di focalizzazione o di una crisi internazionale con l'instaurarsi di un rapporto gerarchico dominato dal Consiglio Europeo, che è stato anche descritto come il gestore delle crisi in UE (Curtin, 2014). Basandosi sulle elaborazioni teoriche degli autori citati e sulla crescente tendenza verso una modalità di governance caratterizzata dal termine “emergency politics” (Honig, 2009; White, 2013), questa ricerca indagherà come le crisi influiscono sul processo decisionale e sulla definizione dell'agenda programmatica in Unione Europea. Innanzitutto, l’elaborato presenterà una sezione dedicata alla spiegazione delle metodologie analitiche utilizzate per la ricerca, nonché una rassegna delle principali ricerche finora effettuate sull’argomento in esame.

In seguito, presentando tre casi studio relativi alle crisi post-Lisbona – ovvero la crisi dell'Eurozona del 2009, la crisi dei rifugiati del 2015 e la crisi sanitaria innescata da SARS-CoV-2 nel 2020 – questa tesi esplorerà l'alterazione del processo decisionale in tempi di emergenza, al fine di valutare quanto esso esuli dal quadro normativo standard, e cercherà di definire che tipo di relazione emerge tra il Consiglio Europeo e la Commissione. Tale analisi verrà condotta attraverso la presentazione del quadro legislativo attuale, e tramite la comparazione dei rapporti di potere tra le due istituzioni. Una parte della ricerca verrà inoltre dedicata alla discussione circa i principali termini che riguardano i processi di gestione delle crisi, andando a definire la differenza tra "stato di emergenza", crisi", e "politiche di emergenza". In tale contesto, questa dissertazione includerà anche una sezione completamente dedicata all'analisi dei meccanismi e degli strumenti attualmente disponibili in Unione Europea per la gestione delle crisi, non dimenticando di effettuare una valutazione sulla loro efficacia e sui risultati da essi ottenuti nel corso degli anni. Alla fine, l'analisi della governance della gestione della crisi e degli effetti che ha sui rapporti di potere dell'UE rivelerà una tendenza all'accentramento dei poteri nelle mani dei Capi di Stato e una posizione dominante del Consiglio europeo.

Summary

1. Chapter 1 – Introduction

1.1. Research question

The process of European integration has always represented a topic of extreme interest for scholars due to its atypical nature, characterized from the very beginning by the constant tension between the adoption of a supranational model (regulated by a constitution) and an intergovernmental model, ruled by international law. From a Member State perspective, the process of European integration can be considered as a process of transferring national sovereignty and, therefore, power, from the national states to a delegated agent - the EU and its institutions. The tension between the supranational and intergovernmental model is reflected not only in the models of interpretation of the integration process proposed in the literature but also in the functions assigned to the institutions that govern the European Union (EU). When it comes to distribution of power, one must consider the allocation of legislative and executive powers among the Commission, the European Parliament and the representatives of the Member states (Council of the EU and European Council), as well as the influence of third agents that can eventually participate in the decision-making process.

This research will try to explain to what extent the decision-making process in the European Union (EU) has been modified so far, looking at the institutions separately, their correlation and the potential conflict. It will show how the European Council has strengthened its influence regarding the agenda setting, even though the Commission still retained an important role that should not be neglected. These power shifts have modified the relationship between the European Council and the Commission. The concepts of crisis, emergency politics and state of exemption will be defined, with a special focus on the Union`s crisis management infrastructure. A separate sub-chapter will be devoted to European Union as a crises manager itself, with a focus on the positive and the negative aspects of its complex nature.

Following the entry into force of the Lisbon Treaty in 2009, the dedicated literature has highlighted two paradigms describing a power shift between the Commission and the European Council in the decision-making framework: in fact, this relationship can be reciprocal and co-operational (Bulmer and Wessels, 1986), or hierarchical, with the European Council being the dominant institution (Moravcsik, 2002). With the focus on the growing trend towards a mode of governance characterized by the term "emergency politics" (Honig, 2009; White, 2015), this research is intended to investigate how crises affect the decision-making and agenda-setting patterns in the EU and its feedback at institutional level.

After the introduction to the topic, this section will proceed by clearly defining the research question and methodology used.

The second chapter will include definitions of concepts such as already mentioned emergency politics, definitions of crisis and crisis management, correlated concepts of state of exception etc. The research will go through all the European institutions separately, define their characteristics, compare them and focus on the changes made in the power sharing in that complex web. It will also describe the main innovations introduced by the Lisbon Treaty concerning legislative and implementing procedures, as well as powers assigned by the Treaty to the Commission end the European Council, in order to define the formal framework in which those institutions operate, and distribution of power as set in *formal* rules and its distribution in *practice*. In this regard, special attention will be given to the relation between the European Council and the European Commission. A separate sub-chapter will define crisis management in the European Union as a whole, including both positive and negative aspects of this enormous entity.

The third chapter provides a brief analysis of the three case studies in the broader light of emergency politics studies, in order to identify common patterns in decision-making and agenda-setting during exceptional times and evaluate the impact of the crises in terms of distribution of power among EU agents. Three crisis case studies will be mentioned - that is the Eurozone crisis of 2009, the refugee crisis of 2015, and the sanitary crisis set off by SARS-CoV-2 in 2020. In order to highlight the type of relationships between the European Council and the Commission in emergency situation, those cases will consider the legal framework (Treaty), the emergency decision-making process and the outputs adopted in time

of crisis. In its broader scope, this dissertation will explore the alteration of the decision-making process during emergency times, in order to assess how much it falls outside of the standard legal framework, and what kind of relationship emerges between the European Council and the Commission.

The concluding chapter will address the trend towards the centralization of powers in the hands of Heads of State and Government (HSG) and a dominant position of the European Council, as well as new possibilities and scenarios for improved crisis management in the European Union as a whole.

1.2. Methodology and structure

Having in mind the increased number of crises affecting the world on a global scale, where the rules and actors have changed, this dissertation will go through the history in parallel with the theoretical part, since it represents a greater- challenge than to simply analyze situations *post facto.* This way, in order to make the analytical framework more precise, possible recommendations for the future improvements of crisis management in the European Union will be included in the concluding part of the dissertation, grounded on both facts and history.

Regarding the methodology, the first step has been to define the main research question. The next step will be to conduct a literature review which will explore all the relevant authors and approaches in the area of interest explained. Unlike quantitative analysis, which is statistics driven and largely independent of the researcher, qualitative analysis is heavily dependent on the researcher's analytic and integrative skills and personal knowledge of the social context where the data is collected, with the emphasis on understanding a phenomenon, rather than predicting or explaining (Bhattacherjee, 2012, p. 113). The flexibility of the qualitative research approach permits the combined use of innovative data-collection and data-analysis strategies (Berg, 2001, p. 287). The knowledge that will be gathered consists out of many data from history – not just as facts from the past, but it will be descriptive, factual, and fluid, providing access to a broader understanding of human behavior and thoughts (Berg,

2001, p. 211). For collecting and organizing data, content analysis will be used to gather the information and make it systematically comparable, including observational techniques, documentation, sentiment analysis etc., as stated by Berg (2001, p. 238). The definition of the content analysis offered by Lisa Given is that it is the intellectual process of categorizing qualitative textual data into clusters of similar entities, or conceptual categories, to identify consistent patterns and relationships between variables or themes, as a way of reducing data and making sense of them (Given, 2008, p. 120). Secondary data analysis will also be used with previously collected data by other researchers using combination of techniques (Bhattacherjee, 2012, p. 23).

Interpretive research will be conducted, based on the assumption that social reality is not singular or objective, but is rather shaped by human experiences and social contexts and is therefore best studied within its socio-historic context by reconciling the subjective interpretations of its various participants (*epistemology*) (Given, 2008, p. 103). Of great importance is the fact that data collection and analysis can proceed simultaneously which helps the researcher correct potential flaws or even change original research questions. Distinguished from literature review, content analysis or historical legal research, doctrinal legal research studies legal propositions based on secondary data of authorities such as conventional legal theories, laws, statutory materials, court decisions, among others. Therefore, the research relies predominantly upon an examination of primary sources such as legal texts, including treaties, conventions, declarations, state documents, international agreements etc. The analysis of these primary sources is enriched by additional secondary legal sources, books, academic journals, commentaries to treaties, reviews and reports by international organizations, etc.

This research will start with the introduction chapter, where all the most essential definitions relevant for the topic will be enlisted. After defining the research question and methodology that will be used, the literature review will be presented at the end of the first chapter, with all the relevant theory and authors in the field of interest examined in detail. Distribution of power will be the focus of the second chapter, specifically the relationship between the European Commission and the European Council, in the light of new changes in their balance of power. European Union as a crisis manager will be also put into the spotlight.

Comparison of three different European crises will emphasize the importance of dealing with the research question on a global scale. The concluding part of the research will provide a summary of the research, possible improvements for the crisis management dealings in the European Union, as well as the power distribution newly enshrined.

Considering the interactive nature of international relations both carried out in the legal and in the political realms of world politics, as stated by Wiener (2006), with both spheres increasingly overlapping under conditions of trans-nationalization, a certain extent of legal interpretation will be used to make the arguments more valid. Throughout the research, additional efforts were made to avoid preconceived ideas and to provide a valid and impartial analysis in the work.

1.3. Literature Review

The following section offers a review of the relevant literature available on the topic in question, focusing on the role of the European Commission and European Council in the decision-making process in the European Union and how it has been modified over decades. Together with relevant definitions of concepts provided, it will include their relationship and trend towards the centralization of powers in the hands of Heads of State and Government (HSG) and a more dominant position of the European Council. It will also mention the three case studies that will be used as an example; however, they will be discussed in more detail in a separate chapter that follows.

Numerous scholars wrote on the issue of EU institutions and their interconnection and either interdependence or countervailing of power. For example, according to Verdun (2013), European Parliament (EP) has now a more powerful role in the legislative process – while before Lisbon it only had a consultative role. On the other hand, the role of European Council and European Commission – and their relationship – will be in focus of the research, since the European Council has been seen as new decision-making core and the main recipient of the power lost by the Commission over the last decades (Pollack, 1997; Ponzano *et al*., 2012). Paolo Ponzano wrote with his colleagues on the alleged limitations of the

"Community Method", of which the Commission's monopoly over legislative initiative is such a crucial element (Ponzano *et al.*, 2012). As this study argues, three different kinds of issues need to be distinguished in order to effectively measure the way in which the Commission's exercise of the power of initiative has partly changed its nature: first, we have agenda-setting, where the fact that the Commission is now forced to pay increasing attention to the guidelines and suggestions put forward by the European Council and Parliament is highlighted; then the definition of the terms of debate, or in other words the content of the legislative texts due to be submitted for negotiation, where it is important to specify that the Commission has managed to hang on to a fairly broad margin for maneuver, making every effort to heed its co-legislators' positions when putting together its own proposals; and lastly, the negotiations that lead to the finalization of the texts, where the extension of the co-decision procedure and the increasing power of the European Parliament have restricted the Commission's power to influence (Ponzano *et al*., 2012). The Commission can often find itself playing a less central role in the context of this trialogue, yet still it plays a crucial and irreplaceable one.

Scholars like Andrew Moravcsik discussed about the European Council's role as the "dominant institution" (2002, p. 8). The basic case for the existence of a democratic deficit is straightforward: only one branch of the EU is directly elected, which is the European Parliament (EP), but it remains only one of three major actors in the EU legislative process. For its part, the European Commission, which enjoys a powerful role as an agenda-setter and regulatory coordinator, is widely perceived as a technocracy (Moravcsik, 2002). Surmounting super majoritarian and unanimous voting requirements is not enough, however, to pass legislation. The EU is a system of separation of powers: it is divided horizontally among the Commission, Council, Parliament, and Court, and vertically among local, national, and transnational levels—requiring concurrent majorities for action (Moravcsik, 2002). Focusing on legislation, the Commission must propose; the Parliament must consent; if then challenged, the Court must approve; national parliaments or officials must transpose into national law; and national bureaucracies must implement (Moravcsik, 2002, p. 7).

The European Council has also been described as the crisis manager in the EU (Curtin, 2014). Secrecy arrangements, practices exercised in a concerted fashion by the various executive actors at different levels of governance and resulting in the blacking out of crucial information and documents – all led to an acceleration of decision-taking by supranational and national executives at the European level, often with a very profound and wide–reaching national impact (Curtin, 2014). One of the key characteristics of the practice of executive type power by various institutions and actors, as it has emerged over the past decades in particular, is its fragmentation, as stated by Deirdre Curtin (2014), with crisis management by the European Council shifted from economic governance – in the sense of a rules-based normative system – to economic government – entailing discretionary executive decisions (Curtin, 2014, p. 10). The author calls it the "ever mighty" European Council, authoritatively considered as the top-level leader of the European Union as such, with its executive powers consolidated and even expanded in processes of incremental institutionalization, first in layers of legal and institutional practices and more recently in formal Treaty provisions after the Lisbon Treaty (Curtin, 2014, p. 10).She also stated that the European Council has gradually developed into a very significant agenda setter of the larger developments in the EU, in spite of the Commission's monopoly of legislative initiative. This does not mean that actors at the supranational level such as the Commission do not also get significant powers in this context, but generally the European Council keeps an overall supervisory role and has also become an effective supervisor of the Council of the EU. However, according to Curtin, the Commission's role did seem to be weakening (2014, p. 11). One of the reasons for an always present nationalist approach is offered by Wiener, who states how studies in international relations have analyzed State behavior based on elite participation in international negotiating situations, on the one hand, and non-State advocacy groups seeking to enhance compliant behavior of states pointing to the legitimacy of international norms, on the other (Wiener, 2006). Conventional constructivists hold that members of a community, such as liberal states of the West, expect from community members of a given identity to consider the same norms, principles, and values as appropriate (Wiener, 2006, p. 22). However, persistent divergences in the interpretation of the normative structure of world politics between the Nation States is omni present.

Going further, in addressing all the changes that are happening in a complex entity such as the European Union, a study by the European Commission itself in 2018, entitled: *The resilience of EU Member States to the financial and economic crisis: What are the characteristics of resilient behaviour?* discussed about resilience as one of the key concepts. Resilience is measured by investigating the dynamic response of these variables to the crisis in the short and medium run. The report defines four resilience indicators: the impact of the crisis, the recovery, the medium-run, and the bouncing forward. All these could indicate entry points for policies to increase countries' resilience to economic and financial shocks (*The resilience of EU Member States to the financial and economic crisis,* 2018, p. 3). Resilience is a key concept in the current narrative for the European Union: the Union`s interest in resilience has been rising rapidly during the last twenty years, as a response to increasing uneasiness about potential shocks that would test the limits of the coping capacities of individuals, regions, countries and institutions, and that cannot be expected to vanish in the future (*e.g.*, digital innovation, demographic change, climate change, globalization or immigration) (*The resilience of EU Member States*, 2018, p. 5). The authors of this publication highlight transformative capacity as a key factor to successful resilience, that requires learning from past events and implementing changes ideally towards a better development path, given the current constraints.

One of the best-known scholars in both the legal and international politics arena, Jürgen Habermas, discussed the division of the constituting powers and its effect on the legitimate construction of the Union (Habermas, 2012). As long as the citizens of a Nation State operate alone as the constituting subject of that state – he argues – they not only lay down the primacy of federal law but also reserve the responsibility for making constitutional changes either for themselves (through national referenda) or for the legislative federal organs (Habermas, 2012, p. 344). The Nation States are more than just the embodiment of national cultures that are worth preserving; they vouch for a level of justice and freedom that citizens rightly want to see preserved (Habermas, 2012, p. 345). Originally shared sovereignty requires that equal legislative powers be given to the Council of the EU and the Parliament in all relevant political fields; and, most importantly, the European Council is an anomaly – it is a strange contrast between the political power it has been invested with, and

the fact that its resolutions lack legal force (Habermas, 2012). The Lisbon Treaty was supposed to address this issue of decision-making power.

Giacomo Delledonne also wrote about the European Council after Lisbon in its review article in 2014. In reviewing the main relevant issues and critical viewpoints related to the European Council, some aspects have been considered in depth. For example, the increasing institutionalization of the European Council and its critical position with regard to the management of the economic and financial crisis and to the ongoing process of "politicization" of the Union (Delledonne, 2014, p. 128). His conclusions highlighted the process of autonomation of the European Council and its emancipation from the Council of the EU as a political institution; furthermore, a generally accepted point is that the European Council takes part in the exercise of the executive power together with the Commission, an exercise for which both institutions play a crucial role for the purposes of a deeper integration; and, finally, the degree of autonomy of the European Council vis-à-vis some of the Member States that should be managed in a better way (Delledonne, 2014).

On a different analytical slant, Dennis Leech (2002) explored the voting system of the Council of the EU, and the questions that the prospect of enlargement of the European Union by the accession of new member countries from Eastern Europe has posed about how its institutions of governance should change in response. Moreover, Schulz and König (2000) wrote on institutional reform and decision-making efficiency in the European Union, where they tackled the legislative activity of the European Union (EU) that has expanded greatly in both scale and scope. The EU gradually extended its competencies to issue areas not explicitly covered by the Treaties of Rome, and the most common suggestion is that the EU decision- making process has become inordinately slow (Schulz & König, 2000). The EU treaties set out several different decision-making procedures and specify the circumstances in which they are to be used. The most important procedures are the consultation procedure, the cooperation procedure, and the co-decision procedure. The consultation procedure is the standard legislative procedure introduced by the Treaties of Rome; the Single European Act (SEA) of 1987 introduced the cooperation procedure, which, for the first time, provided the EP with the ability to influence EU legislation; and finally, the co-decision procedure was introduced by the Treaty on European Union in 1993, providing the EP with an absolute veto

over legislation (Schulz & König, 2000). Under cooperation and co-decision, the Council decides by qualified majority voting (QMV) (Schulz & König, 2000, p. 655).

Jonathan Golub (2007) stated that practitioners, as well as scholars, of European integration have debated for decades why it takes so long for the European Union (EU) to adopt legislation and how to improve decision-making efficiency. A number of quantitative studies have researched it, still, in a topic such as this, quantitative conclusions are considered unreliable. Three factors have been discussed: voting rules, veto players and actor preferences. Compared with unanimity, where decision-making is painfully slow, QMV should expedite decisions for two separate reasons: first, QMV should make Council agreement easier to reach by reducing the size of the core and expanding the size of the win-set of the status quo; and second, QMV should speed up decisions by increasing the proportion of winning coalitions in the Council and thereby reducing the capacity of individual states to block legislation (Golub, 2007, p. 158).

George Tsebelis and Xenophon Yataganas (2002) also wrote about veto players and decision-making in the EU, with the focus on the Nice Agreement: Policy Stability and Bureaucratic/Judicial Discretion. They stated how Treaty of Nice introduced a triple majority requirement for Council decisions, so in order to be valid, Council decisions require not only a qualified majority (slightly larger than before), but also an absolute majority of Member States and, at a country's request, a 62 per cent majority of the total population of EU countries (Tsebelis & Yataganas, 2002). This was the first time this occurred, but still, the legislative power-sharing in the EU multilevel system keeps changing.

As argued by Arthur Benz (2016), multilevel structures of governments are on the rise: both processes of transnational integration and regionalism, and of national decentralization, devolution and regionalization have generated a variety of territorial organizations of governments that need to accommodate by the new structures capturing the structural variety (Benz, 2016).

More recently, Katharina Holzinger and Jan Biesenbender (2019) wrote more about this evolution. Change, exogenous or endogenous, requires the flexible adjustment to restore the power balance without ending up in rigidity, where the key is constitutional policy (Holzinger & Biesenbender, 2019). Given its definition, the EU clearly qualifies as multilevel

government, with 60 years of existence influenced by eight major revisions of its basic treaties (Holzinger & Biesenbender, 2019, p. 332). With few exceptions, the response to accession pressures and crises in the form of constitutional adjustments went into the same direction: widening and deepening; with the territorial scope of the EU increased, ever more substantial competences and ever more decision-making powers were shifted to the upper level of government, implying an impressing instance of authority migration (Holzinger & Biesenbender, 2019).

For some time, the EU has been facing a multidimensional crisis: the Eurozone crisis, the migration crisis, environmental crisis, Brexit, democracy crisis and the recent sanitary crisis set off by SARS-CoV-2 in 2020, together with a level of Euroscepticism never reached before. It is difficult to predict if the response will again shift more authority upwards. This dissertation will explore the alteration of the decision-making process during emergency times, but more on crises will be stated later on in a separate chapter. Even at the national level, where there are sub-national entities, decision making is always problematic. In the case of the Eurozone, political decisions taken in one country affect the economies of other countries, making the manner in which the crisis is dealt is important for the future of Europe. A serious challenge is being faced by the two European giants Germany and France and also United Kingdom, that technically remains outside the euro zone, as stated by Anand and its collaborators in their study from 2012.

The last decade of European integration has arguably been the most challenging one yet, ending with the immense human toll and economic wreckage caused by the global COVID-19 pandemic in the spring of 2020 (Matthijs, 2020). The paper enlists a few reasons for it: renewed Russian aggression to European Eastern borders, a surge in refugees from the Middle East and North Africa, a breakdown in its Schengen system of borderless travel, the UK vote to leave the Union, and the election of Donald Trump as US president, all led to serious thunders in the Union. Two more things need to be emphasized: a steady rise of populist and Eurosceptic parties on both left and right in most of its member states, and the systematic erosion of democratic principles in member states like Hungary and Poland (Matthijs, 2020, p. 1127).

In the words of Monika Heupel: “after decades of increasing interconnectedness and emerging transnational governance, today one sees new forms of emergency politics that are cross-border in range” (Heupel, 2021, p. 1). Emergency politics has gained new features after globalization, with the logic of emergency embraced in international contexts, with COVID-19 the latest occasion. The aim of further research in international relations should focus on addressing the implications for the legitimacy of transnational institutions, and the constitutional and political ways in which it might be contained.

2. Chapter 2 – Crisis management and institutional relationships

2.1. Crises and emergencies: a glossary

The influence of liberalism on the creation of the European Union has clearly been a decisive factor as the supranational organization rests on the Western ideas of liberal democracies. The European Union derives consent from Member States and their citizens, and its role is extensively described and limited by the rule of law. EU institutions pride themselves on being accountable and transparent in the decision-making process. However, recent events showed that the limitation of Western democracy has been too punitive in situations that require immediate and severe responses.

In traditional political theory, crisis response often entails the declaration of a state of emergency, whereas it is defined as a: "governmental declaration made in response to an extraordinary situation posing a fundamental threat to the country" (Born *et. al.*, 2005). Under state of emergency, the executive has the legal right to suspend normal functions of the government (such as the suspension of the legislation), curtail freedoms (*e.g.*, freedom of movement), issue rules by decree, and in some cases even deploy the military.

Politics in a state of emergency is often called "emergency politics" which is defined as: "an action breaking established norms and rules that are rationalized as necessary responses to exceptional and urgent threats" (White, 2013). Emergency politics is a reactive logic, one that sees actions explained in terms of external demands rather than chosen normative priorities. Emergency politics entail a readiness to go beyond legal and political boundaries, and it reflects dominant beliefs and power structures that affect how problems are conceptualized and what constitutes a response. (Ripoll Servent, 2019). When the boundaries between ordinary and emergency politics blur, the threat of using the emergency

as an excuse to circumvent the traditional decision-making process arises. White argued that "a sense of urgency pervades emergency politics and is commonly used to excuse the pre-empting of debate and patient efforts to build public support - necessity rather than consent is the organizing principle" (White, 2013, p. 4).

Traditionally, the right to declare a state of emergency rested in the sovereignty of state governments, as proposed by Carl Schmitt. He identified the capacity to declare the state of exception as the defining feature of a sovereign power, and linked this power closely to executive suspensions of the law, pointing out that: "like every other order, the legal order rests on a decision and not on a norm" (Schmitt, 2005). Therefore, the actor with whom this decision rests was to be considered as sovereign. However, the rise of supranational institutions, such as the European Union, altered the situation and created – one could say – an action breaking with the established norms. Recent scholarly works hypothesized that the European Union itself was born out of emergency politics. White (2019) proposed the argument of examining the European Union and the prevailing international order as a natural response to the emergencies of the 20th century and basically the legacies of extraordinary measures of the past. But the rise of the European Union also posed a problem in response to crisis management.

When writing about crisis management, which will be the topic of a separate subsection, it is initially necessary to sort out some concepts – the most important one being "crisis". According to Larsson *et al*. (2009), a crisis is defined as a large-scale incident that comes unexpectedly, calls for immediate action and threatens the fundamental values of the society; examples of typical crises are earthquakes, wildfires, terrorist attacks or pandemics, as they cannot be handled through everyday routines and existing resources. In the EU context, the concept crisis management has primarily been used in reference to military and civilian interventions within the framework of the European Security and Defense Policy, ESDP (Larsson *et al*., 2009). For the purposes of this research, Wessel and Blockamns' (2009) definition is used which states that: "crisis management refers to the organization, regulation, and procedural frameworks to contain a crisis and share its future course while resolution is sought." More definitions will be offered in a separate chapter, with a special focus on the crisis management of the European Union as a whole.

As White (2019) noted, the transnational nature of crisis response results in a "dispersed emergency rather than a clearly authored state of exception", whereas state of exception is defined as the idea that the constitutional order normally in force does not apply (Heupel *et al.*, 2021). These definitions foreshadow the complex situation the EU and Member States are in. The transnational nature of crises elicits a response from supranational institutions such as the EU, even when a clear and well-defined constitutional mechanism does not exist.

Emergency politics has long been concerned about military issues, such as wars and security problems, to which the 20th century provides more than enough examples. However, the 21st century is increasingly earmarked by multiple nonmilitary emergencies that cannot be solved by force. These include the Global Recession of 2008 and the subsequent Eurozone crisis, the refugee crisis of the 2010's and the most recent sanitary crisis caused by the Sars-CoV-2 pandemic. These emergencies created a double state of emergency for European countries, as both the state governments and the European Union suspended the traditional rule of law. While recent research has highlighted the necessity to differentiate between the norms surrounding a national and a supranational emergency response (Heupel *et al.*, 2021), both Kreuder-Sonnen (2019) and White (2019) had already argued that the trans-nationalization of emergency politics forced the rethinking of crisis response dynamics. This is no longer Schmitt's sovereign, who declares a state of emergency in response to a threat. It is a multilateral and supranational body that uses the loom of threat to advance key policy measures that otherwise might not be possible.

Honig is one of the scholars who asked certain questions, such as: must emergency necessarily enhance and centralize top-down forms of sovereignty? (2009) Those who oppose executive branch enhancement often turn instead to law, insisting on the sovereignty of the rule of law or demanding that law rather than force be used to resolve conflicts with enemies, with more democratic ways to respond to emergency politics (Honig, 2009). She argues that democracies must resist that urge. The last three decades have been spent perfecting the techniques of emergency rule and dismantling the apparatuses of universal entitlement. Democratizing emergency means seeking sovereignty, not just challenging it, and insisting on the fact that sovereignty is not just a trait of executive power that must be

chastened, but also a potential a trait of popular power as well – one to be generated and mobilized, as stated again by Honig in another paper of hers 2014. Rather than oppose democracy and emergency, then, we might think about democratic opportunities to claim sovereignty even in emergency settings (Honig, 2014, p. 48).

Thinking in an Emergency by Elaine Scarry (2011) brings to the domain of emergency politics a deliberative sensibility, arguing against Schmittians who debate that emergencies require quick responses and maximum flexibility, and that crisis politics are inherently undemocratic since we cannot afford democracy in that moment (2011). On the contrary, Scarry promotes a democratic theory of emergency: societies should focus on training people and addressing a relevant expert authority to help them make decisions and actions. Emergency, according to Scarry, requires population's assistance and consent (2011, p. 8). Honig (2014) as well states that emergency can and should be democratic, but only if approached properly: with proper preparation, habituation, and training (2014, p. 52).

According to Leigh (2016, p. 1), "the discipline of critical thinking may help the crisis manager establish situational awareness and impose effective strategy, direction and action in situations that are exceptionally volatile and uncertain". In such circumstances, information available to decision-makers is commonly ambiguous, unstructured, confusing and possibly contradictory. Governments have often played loose with their state's constitution in the name of warding off an urgent threat (Heupel *et al.*, 2021). But after decades of increasing interconnectedness and emerging transnational governance, today one sees new forms of emergency politics that are cross-border in range; from the European Union to the World Health Organization, the logic of emergency is embraced in international contexts, with the Covid-19 pandemic as the latest occasion (Heupel *et al.*, 2021).

Emergency politics has also been central to international relations from the beginning, where the archetypical emergency was war; the sovereign – that is the monarch who could rise an army – and the emergency government made war (Heupel *et al.*, 2021). In more recent years however, after September 11, 2001, and the proclaimed war on terror, the security issues have been kept to the front, and emergency politics have been increasingly applied in nonmilitary issues as well, together with being extended to transnational institutions instead of solely national aspects.

In times of fundamental crisis, according to Kreuder-Sonnen (2019), when the State is confronted with an extraordinary threat, discretionary emergency powers should be vested in the executive branch of government to effectively deal with the problem. The author also states that in that case, even the strongest international human rights instruments contain exception clauses to allow for derogations in cases of extreme peril for the survival of the State itself as the most important aim of all (Kreuder-Sonnen, 2019, p. 3). Since state governments have historically been the main and unparalleled centers of public authority that were eventually responsible for the survival of a political community, the problem of the exception and its normalization has long been tied to the Nation-State and its Constitution; however, political authority is in a process of internationalization and international organizations are becoming increasingly potent sites of political authority that sometimes parallel, sometimes complement, and sometimes even challenge the authority of the state (Kreuder-Sonnen, 2019, p. 3).

2.2. EU decision-making: the legal framework

This sub-section presents the current legal framework of the decision-making process in the EU. With a focus on the legal predicaments of the treaties in terms of legislative procedures, this section will include an overview of the main actors in the decision-making process.

The concept of a legislative procedure is officially defined in the Treaties, following the entry into force of the Treaty of Lisbon. In fact, *Article 289* of the revised (and renamed) Treaty establishing the European Community – known after Lisbon as Treaty on the Functioning of the European Union (TFEU) – establishes an Ordinary Legislative Procedure and a Special Legislative Procedure". It states as follows:

Article 289

1. *The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 294.*
2. *In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a special legislative procedure.*
3. *Legal acts adopted by legislative procedure shall constitute legislative acts.*

Though the Commission retains its almost exclusive power of legislative initiative, according to *Article 289(4)* TFEU there are a few cases where legislation can be proposed by the European Parliament, Member States or other bodies. The Ordinary Legislative Procedure is governed by standard rules, set out in Article 294 TFEU that is cited in whole:

Article 294 (ex Article 251 TEC)

1. Where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

3. The European Parliament shall adopt its position at first reading and communicate it to the Council.

4. If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.

5. If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.

6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

7. If, within three months of such communication, the European Parliament:

(a) *approves the Council's position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;*

(b) *rejects, by a majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;*

(c) *proposes, by a majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.*

8. If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority:

(a) *approves all those amendments, the act in question shall be deemed to have been adopted;*

(b) *does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.*

9. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

10. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of

its being convened, on the basis of the positions of the European Parliament and the Council at second reading.

11. The Commission shall take part in the Conciliation Committee's proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

12. If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.

14. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

15. Where, in the cases provided for in the Treaties, a legislative act is submitted to the ordinary legislative procedure on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice, paragraph 2, the second sentence of paragraph 6, and paragraph 9 shall not apply. In such cases, the European Parliament and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also, if it deems it necessary, take part in the Conciliation Committee in accordance with paragraph 11.

This is basically the formalization of the rules that governed the co-decision process: that is the possibility of first-reading deals, a second reading deal after the Council adopts its first-reading position, the possibility of conciliation if a second-reading deal is not reached,

and the constitution of a two-chamber legislature (EP and Council) as far as the adoption of EU legislation is concerned.

With respect to the pre-Lisbon co-decision process, the application of the Ordinary Legislative Procedure has been extended to a number of important other domains of EU law such as agriculture, fisheries and external trade; in addition, with this procedure, qualified majority voting (QMV) always applies. As unanimity is no longer required, there are, however, a few cases (criminal law and social security for migrants) where an individual Member State can stop decision-making on specified grounds, followed by an attempt at dispute settlement in the European Council. The special legislative procedures are not governed by standard rules, but by different rules according to the legislative domain which provide for such procedures. There are about thirty cases of special legislative procedures set out in the Treaty, where the Council and EP are still each involved in the adoption of legislation, but subject to different *ad hoc* rules than those which govern the ordinary legislative procedure.

Any EU measure adopted by means of a legislative procedure is a "legislative act" (*Article 289(3)* TFEU), but the Treaties provide a legal basis also for **"**non-legislative acts", though there are no standard rules covering the procedure for adoption of non-legislative acts based on the Treaty. As for the negotiation and approval of treaties by the EU, the Council of the EU authorizes the Commission to negotiate and then decides on whether to sign the treaty. The conclusion of each treaty, after the entry into force of the Treaty of Lisbon, requires not only the approval of the Council of the EU but also the consent of the EP if the subject-matter of the treaty concerned falls within the scope of the ordinary legislative procedure or an area in which the EP has the power of consent. Since most treaties will meet these criteria, almost all treaties are subject to the EP's consent power. It should be noted that the Treaty rules out the use of legislation in the field of foreign policy – so all foreign policy measures are non-legislative acts.

With regard to executive power, a specific feature of the EU is the so-called "comitology", based on *Article 202* EC (now *Article 291* TFEU), as follows:

Article 291

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

4. The word 'implementing' shall be inserted in the title of implementing acts.

Thus, the power to adopt implementing measures at EU level is normally to be conferred on the Commission – but in exceptional cases that power can be conferred on the Council instead, without general rules set by the Treaty for governing those cases. The comitology process can be used to implement either legislative or non-legislative acts, but it does not apply to foreign policy measures, that must be implemented by the Council of the EU. Comitology procedures consist essentially in the Commission chairing committees of Member State representatives, and submitting them draft implementing measures for discussion and vote. The Decision establishing general rules then specifies four types of these procedures: the advisory procedure; the management procedure; the regulatory procedure; and the regulatory procedure with scrutiny (RPS).

In the advisory procedure, the vote of the representatives is not binding in any way; in the management procedure, a QMV of the representatives against the measure is necessary to block it, while in the regulatory procedure and the RPS a QMV of the representatives in favor of the measure is necessary for it to be adopted. In the rare event that a draft implementing measure is blocked by the representatives, the Commission must make a proposal on the issue to the Council of the EU. Where the management procedure applies, the Commission may defer the adoption of its draft decision, but the Council of the EU may

take a different decision by QMV within a specified time limit (no more than three months). Where the regulatory procedure applies, the Council of the EU can either adopt the act by QMV, or block it by QMV against the proposal, in which case the Commission must re-examine the proposal; the Commission may submit an amended proposal, the same proposal or a legislative proposal on this issue. If the Council of the EU does not act, then the Commission can approve the proposal. The EP is informed of the draft proposal, and can express non-binding objections on certain grounds if the measure would implement legislation adopted by means of the co-decision procedure. Other than in the RPS procedure, the EP has a limited role, being informed only of draft implementing measures and also being sent draft agendas of committee meetings and records of committee proceedings.

There is also special provision for a safeguard procedure in the case of international trade: the Commission must inform the Member States and the Council of draft measures, and a Member State may then refer the draft decision to the Council of the EU, which can control the decision-making of the Commission by blocking or approving it.

The Treaty of Lisbon has also introduced a new procedure for delegated acts, based on *Article 290* TFEU:

Article 290

> *1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.*
>
> *The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.*

It should also be noted that powers can only be delegated to the Commission, not the European Council. Compared with the pre-Lisbon system, the current framework actually provides a legal base for legislative procedures, but the rules are still open to interpretation

and provide for a large set of special or extraordinary cases, mostly linked to those subject-matters where transfer of sovereignty from national states to EU is limited.

2.3. The European Council and the Commission's role in the decision-making process

The first European Council took place in Dublin in 1975 and since then European Council meetings became more frequent. The Single Act (1986) included the European Council in the body of the Community Treaties for the first time, defining its composition and providing for biannual meetings, while the Treaty of Maastricht formalized its role in the EU's institutional process, while the Treaty of Lisbon completed the institutionalization of the European Council into EU's administrative and legislative architecture. The legal bases of role and functioning of the European Council rest on *Articles 13, 15, 26, 27* and *42(2)* of the Treaty on European Union (TEU) as follows:

Article 15

5. The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.

6. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work.

7. The European Council shall meet twice every six months, convened by its President. When the agenda so requires, the members of the European Council may decide each to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission. When the situation so requires, the President shall convene a special meeting of the European Council.

8. Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus.

9.

Since Lisbon, the European Council has a long-term president – whose mandate lasts for two and a half years – while the Council of the EU maintains the rotating presidency. Formally, the European Council can adopt conclusions and take decisions, but has no explicit legislative or executive powers or direct authority over other institutions such as the Commission or the Council of the EU. Still, it has acquired a number of institutional decision-taking powers, as it is now authorized to adopt binding acts, which may be challenged before the Court of Justice of the European Union, including for failure to act (as stated in the *Article 265* of the TFEU). Moreover, the new institutional power of the European Council is exemplified by *Article 7(2)* of the TEU, which gives it the power to initiate the procedure suspending the rights of a Member State as a result of a serious breach of the EU's principles, subject to the consent of the European Parliament.

Scholars have argued that the European Council is the most powerful among the three governmental institutions of the European Union (EU), for example Schalk and his collaborators (2007), but also Moravcsik (2002). A final reason for a toothless presidency is the existing "culture of consensus", since decision-making in the European Union is often characterized by intensive negotiations and compromises (Schalk *et al*., 2007, p. 230). The EU's culture of consensus is the result of the forty-year history of negotiations among the same partners and the acculturation of new members to those norms, structured in a framework where, because of the iterated nature of the negotiations, trust is very high and reputation matters a great deal (Heisenberg, 2005, p. 68). It is possible to make the case that consensus is actually a more efficient mechanism: in their search for agreement in one issue, Member States need to meet the demand of another Member State in a different issue area which creates demand for another legislative act in that issue; in QMV, if that Member State is not needed in the majority, its requirements are ignored (Heisenberg, 2005, p. 70).

In terms of responsibilities, the European Council defines the principles of and general guidelines for the Common Foreign and Security Policy (CFSP), and decides on common strategies for its implementation (*Article 26* of the TEU). It decides unanimously whether to recommend to the Member States to move towards a progressive framing of a common EU defense policy, under *Article 42(2)* of the TEU. If a Member State intends to oppose the adoption of a decision for important reasons of national policy, the European

Council may decide by qualified majority to refer the matter for a unanimous decision (*Article 31(2)* of the TEU). The same procedure may apply if Member States decide to establish enhanced cooperation in this field (*Article 20* of the TEU). The European Council also plays an important role in the European Semester. At its spring meetings, it issues policy orientations on macroeconomic, fiscal and structural reform and growth-enhancing policies. At its June meetings, it endorses recommendations resulting from the assessment of the National Reform Programs drawn up by the Commission and discussed in the Council of the EU.

This institution is also involved in the negotiation of the multiannual financial framework (MFF), where it plays a pivotal role in reaching a political agreement on the key political issues in the MFF regulation, such as expenditure limits, spending programs and financing (resources). Golub (2007) argued that qualified majority voting (QMV) and European enlargement increased the decision-making speed, while the increment of the power of the European Parliament decreased it.

The European Commission is the EU's executive arm. Formally, it has the monopoly on legislative initiative and great executive powers in various policy fields such as competition and external trade. As the principal executive body of the European Union, it is formed by a College of members composed of one Commissioner per Member State. The Commission oversees the application of EU law and respect for the Treaties by the Member States; it also chairs the committees responsible for the implementation of EU law. Legal bases defining the Commission's role and powers are *Article 17* of the Treaty on European Union (TEU), *Articles 234*, *244* to *250*, *290* and *291* of the Treaty on the Functioning of the European Union (TFEU), and the Treaty Establishing a Single Council and a Single Commission of the European Communities (Merger Treaty). The Treaty of Lisbon stipulates that the results of European elections have to be taken into account when the European Council – after appropriate consultations (Declaration 11 on *Article 17(6)* and (7) TEU) and acting by a qualified majority – proposes the candidate for President of the Commission to Parliament. This candidate is elected by Parliament by a majority of its component members (*Article 17(7)* TEU). The Council of the EU, acting by a qualified majority and by common accord with the President-elect, drafts the list of the other persons whom it proposes for

appointment as members of the Commission, on the basis of the suggestions made by Member States. The President and the other members of the Commission, including the High Representative of the Union for Foreign Affairs and Security Policy, are subject to a vote of consent, as a body, by the European Parliament and are then appointed by the European Council, acting by a qualified majority.

With regard to accountability, *Article 245* TFEU states that members of the Commission are required "to be completely independent in the performance of their duties, in the general interest of the Union"; in particular, they may neither seek nor take instructions from any government or other external body. They are also asked "not to engage in any other occupation, whether gainful or not". These provisions, in particular, give the Commission the character of an independent and supranational technocratic body – a view supported by a considerable number of studies (*e.g.*, Donnelly and Ritchie 1994, p.35; Crombez, 1996; Pollack, 1998; Tsebelis and Garrett, 2000). However, in practice, while the Commission's positions are generally pro-harmonization and for a strong regulation compared to Member States' positions, the degree to which this is the case varies from issue to issue.

The Commission is collectively accountable to Parliament under *Article 234* TFEU. If Parliament adopts a motion of censure against the Commission, all of its members are required to resign, including the High Representative of the Union for Foreign Affairs and Security Policy as far as his or her duties in the Commission are concerned. The Commission works under the political guidance of its President, who decides on its internal organization. Each Commissioner has responsibility for a specific policy sector and authority over the administrative departments concerned. The High Representative is automatically a Vice-President of the Commission. A member of the Commission must resign if the President so requests, subject to the approval of the College.

The Commission has a Secretariat-General (Sec-Gen) consisting of 33 Directorates-General (DGs), which develop, manage and implement EU policy, law and funding. In a way, it could be argued that the Commission and its DGs try to emulate the executive structure of a Nation-State: the College of Commissioners could be compared to a State's government, with the President of the Commission paralleling a State's Prime Minister and the other Commissioners resembling the various ministers, each with their own ministry

(DGs). In addition, there are also 20 special departments (services and agencies), which deal with *ad hoc* or horizontal issues. There are also six executive agencies, such as the Research Executive Agency, which perform tasks delegated to them by the Commission, but which has its own legal personality. With a few exceptions, the Commission acts by a simple majority of its members (*Article 250* TFEU).

The Commission meets every week to discuss politically sensitive issues and adopt the proposals that need to be agreed by oral procedure, while less sensitive matters are adopted by written procedure. Measures relating to management or administration can be adopted through a system of empowerment, whereby the College gives one of its members the authority to take decisions on its behalf (this is particularly relevant in areas such as agricultural aid or anti-dumping measures), or through sub-delegation, where decisions are delegated to an administrative level, usually to Directors-General. In practice, most decisions are prepared by one or more Commissioners and then approved by the College in its weekly Wednesday meeting. Only a limited number is discussed, and an even lower number is put to a vote, as consensus is the preferred outcome. When the College votes, however, it only requires a simple majority.

Over time, the President of the Commission acquired more and more power and influence, as they set the political agenda and direction of the Commission as a whole, and also represent the Commission in the European Council, the European Parliament, and the world at large. The Commission has been given a broad array of functions and remits, ranging from the executive, via the legislative to the quasi-judicial branch, making it hard to fit the Commission in the traditional model of the separation of powers. Firstly, as it comes to legislative proposals, with the exception of the Common Foreign and Security Policy, the Commission has the exclusive right of initiative. Consequently, a proposal from the Commission is usually necessary for any legislation to be adopted. During the legislative process, moreover, the Commission retains the right to withdraw its proposal, which gives it continued influence over the legislation. In addition, legislative acts of the Council and Parliament often delegate significant rulemaking or implementing powers to the Commission. Combined, these powers give the Commission almost full effective legislative powers.

Secondly, the Commission is commonly considered the EU's executive branch, as it administers the EU's revenue and budget and is also in charge of many EU programs. With regard to international relations, the Commission plays a central role in negotiating agreements with third countries, including accession treaties, and in maintaining international relations on behalf of the EU, except in the field of the Common Foreign and Security Policy.

Thirdly, the Commission has important enforcement and quasi-judicial functions and powers: it checks whether Member States fully comply with EU law and if they do not, the Commission may start an infringement procedure.

2.4. The EU's interinstitutional power relations

Detailed analyses of the EU's legislative procedures generally emphasize the power of the supranational institutions (*e.g.*, Tsebelis 1994; Steunenberg 1994; Tsebelis and Garrett, 2000). According to these analyses, the Commission's right to formulate the initial proposal gives it a resource with which it can influence decision outcomes to its advantage. On the basis of a close reading of the EU treaties, it would appear that the Council of the EU and EP are on an equal footing (Tsebelis and Garrett 2000, p. 24). However, some researchers argue that amongst all EU institutions, the Council of the EU stands out as the most powerful one (Naurin and Wallace, 2008, p. 1; Moravcsik, 2008). In Moravcsik's view, as previously stated, the Commission has seen its power usurped by changes to the procedural rules that have eroded its power in legislative decision-making. In fact, the extension of the co-decision procedure gives the EP more possibilities to change the Commission's initial proposal.

However, the fact that in practice the process, through which policy demands are transformed into decision outcomes, is defined by informal bargaining designed to reach consensus, together with the fact that the treaties do not provide a clear-cut attribution of classic separation of powers to a specific institution – as both the Commission and the European Council detain some degree of executive as well as

legislative power – make it challenging to identify the effective type of relationships (i.e. hierarchical or reciprocal) between those institutions.

Pollack (1997, p. 121) distinguishes between formal and informal agenda setting. Formal agenda setting powers correspond to the procedural ability to draft and put forward legislative proposals. It is defined by institutional rules as well as legislators' preferences. In this perspective, the Commission acts as a "conditional agenda setter" (Tsebelis and Kreppel 1998) - it has the prerogative of drafting legislative proposals, but has to take account of the Council of the EU and European Parliament's preferences.

By contrast, informal agenda setting powers refer to the ability of an actor to set the substantive agenda of an organization that is to define, prioritize and frame the issues to be discussed and legislated upon (Kingdon, 1984; Princen, 2007). In other words, the right to initiate proposals was not confined to the Commission's ability to locate its legislative proposal in the policy space, but also to frame the proposal, by defining the terms in which issues are discussed. Furthermore, the Commission's influence is not restricted to the formulation of the initial proposal: it is also actively involved in the policy discussions in the Council, and in negotiations between the Council and the Parliament. Informal agenda setting precedes the submission of a draft proposal and contributes to shaping its general form and content. In this perspective, although the European Council and Commission do not have a monopoly over agenda-setting (Peters, 1994), they represent key focal points due to their role in providing the formal legislative process with impetus. Moreover, from a formal point of view, the President of the European Council – as seen in the treaties – plays a fundamental role in enabling the European Council to be the agenda-setter as well as being an effective coordinator and power broker of Union institutions and the Member States, all tasks that in the past belonged to the Commission. In this regard, it has been observed how "the introduction of the co-decision procedure in the EU decision-making and the functioning in practice of the inter-institutional system has transformed the role of the Commission from that of an autonomous initiator to that of a reactive initiator" (Ponzano *et al.*, 2012). According to this view, the Commission's power to initiate legislation has been significantly eroded by both the European Council and the Council of the EU, as the Commission has

increasingly considered itself politically committed to following up to the conclusions of the European Council and to consider as informal mandates the Council's resolutions.

Two different agenda-setting routes can be envisaged: one where the European Council directly calls for EU action in response to a focusing event; the other where relevant topics are brought to the attention of the European Council by EU officials willing to define new avenues for European regulation (Princen & Rhinard, 2006). Usually, in the first case, the European Council and its members place an issue at the top of the agenda in response to a shared problem, salient to the public and often brought forward by a symbolic event or an international crisis (Princen, 2007). In this scenario, the European Council, under pressure from public opinion and the media, acts very much like a principal towards its agent, as will be discussed in the next paragraph. In the second case, issues emerge progressively and are put on the agenda through the joint action of technicians, experts and politicians. In this case, the Commission can frame the issue, build coalitions of support to promote its favored solutions and, eventually, get the approval of the European Council.

The first case is consistent with the "principal-agent" (Bocquillon & Dobbels, 2014) approach that stresses the hierarchical nature of the relationship between the European Council and the Commission, and defines their interaction in terms of "command and control", so that the European Council is considered to be the "dominant institution" of the EU (Moravcsik, 2002, p. 612). The European Council acts as a principal, delegating power to the Commission – the agent – to steer the legislative process and monitor the implementation of its decisions. Delegation usually takes the form of summit conclusions, which are then translated into concrete legislative proposals by the Commission. (Bocquillon and Dobbels, 2014). It has to be noted that this is also the case presenting the characteristics enlightened by the emergency politics approach.

The "joint agenda setting" (Bocquillon & Dobbels, 2014) approach, on the contrary, presents a relationship in which the Commission and European Council act

as equal partners. Considering the second route of agenda setting pattern, this corresponds more closely to the formal rules set out in the treaties, which allows us to infer that this approach better explains the standard decision-making process, or that is more easily adopted in normal times, without the pressure imposed by an emergency.

As argued by Robert Thomson (2011), considering executive power, "usually decision makers delegate at least some discretionary power to implementers […] because implementers can use technical knowledge to fill in the details of policies" and "can react dynamically to unforeseen developments within the general policy framework already set" (Thomson, 2011). According to principal-agent theories, in fact, delegation takes place in order to reduce transaction costs (identifying, negotiating and enforcing agreements) and to enhance the efficiency of the decision-making process (Bocquillon & Dobbels, 2014). In brief, the European Council, whose activities are limited to occasional summits, does not have the temporal and administrative resources to draft legislation and needs a neutral agent with specialized knowledge and expertise. The Commission, with its relatively large resources in terms of administrative staff, is much better able to transform political guidelines into single detailed legislative proposals (Moravcsik, 1993, pp. 511–512). Of course, there is always a risk of agency loss when the agent gains autonomy and pursues its own goals. This so called "bureaucratic drift" is likely to occur because information and expertise are asymmetrically distributed between the principal and its agent, and also because controlling the agent his linked with high costs (Kassim & Menon, 2003, pp. 124–125; Pollack, 1997, pp. 112–113).

As the often-ambiguous conclusions of the European Council leave a certain margin of interpretation, the Commission can steer the issue in its own preferred direction by playing with this ambiguity (Werts, 2008, p. 53. One of the most important characteristics of the bargaining process to be considered is that actors usually find the prospect of failing to adopt a law highly undesirable, thus they may be driven to adopting a law that contains compromises to incorporate the positions of all actors. As noted by Curtin (2004), the traditional paradigm of diplomacy in international relations asserts that control over secrecy and openness gives power, as it influences what others know and thus what they choose to do. As decision-making assumed the form of informal bargaining aimed at consensus, the

negotiations in the Council assume a diplomatic vest in the sense that they have to be kept secret in order not to damage the chance of reaching a consensus. The actual input of Member States in this view remains hidden behind notions of diplomacy applied in the context of a legislative procedure. This diplomatic mentality has also operational consequences: for example, the full minutes of the meetings are not necessarily classified but nonetheless are kept secret or not intended to be shared publicly, even with other public actors such as national parliaments or EP itself. In brief, The European Council provides the impetus and guidelines while the Commission translates these into concrete legislative proposals that are then submitted to the legislators: the Council of the EU and – in most cases – the European Parliament.

Furthermore, analyzing agenda-setting processes, Bocquillon and Lobbels (2014) concluded that before and after Lisbon, the relationship between the European Council and the European Commission in legislative agenda-setting in high profile cases can be best characterized as one of competitive co-operation (Smith, 1998). Although friction and competition are unavoidable, the relationship between the two EU institutions appears to be dominated by collaboration, given their interdependence and mutual importance. Competition and co-operation coexist, posing both obstacles and opportunities in terms of dispute resolution and mutually reinforcing initiatives.

The European Commission also gained new powers as the Treaty on European Union (TEU) outlines that the High Representative of the Union for Foreign Affairs and Security Policy – who is also Vice-president of the Commission, can refer any questions in relation to common security or foreign policy to the Council, as well as submit proposals. The fact that the High Representative – who presides over the Foreign Affairs section of the Council of the EU, is also a high-ranking official in the Commission's executive signals the expansion of the Commission's powers into matters of collective security and international crisis management.

Lastly, the Treaty of Lisbon (artt. 9 and 10) maintained some degree of separation in matters of security policy between the European Council and the

Commission. However, vagueness between the exact role of each institution – and their respective power over the subject-matter, still persists. In fact, while the European Council is responsible for identifying strategic interests of the Union that both relate to the CFSP and other external actions of the EU, the Commission is invested with the mandate to represent the Union in its foreign policy endeavors. Some sort of external representative mandate is also invested on the President of the European Council, further complicating inter-institutional relations.

The study of the EU's legislative process is a challenging task that creates certain methodological problems and threatens several pitfalls which involve data gathering, storage and preparation for the statistical analyses, the identification and construction of the explanatory variables as well as the selection of the appropriate statistical method (König, 2008, p. 162). The prospect of enlargement of the European Union by the accession of new member countries from Eastern Europe has posed fundamental questions about how its institutions of governance should change in response - the Intergovernmental Conference held in Nice in December 2000 was held to address these issues and produce an agreement on the basic structures of decision making as a framework for enlargement (Leech, 2002, p. 438). The EU treaties set out several different decision-making procedures and specify the circumstances in which they are to be used, as shown in the above subchapters. The most important procedures were also mentioned, which are the following: the consultation procedure, the cooperation procedure, and the co-decision procedure (Schulz & König, 2000, p. 2). The question is whether institutional reform has enabled the EU to deal efficiently with an expanding legislative agenda: time lag between a Commission proposal and a Council decision has been a central indicator of EU decision-making efficiency, as well as offering an insight on the distribution of power in the decision-making process (Schulz & König, 2000).

According to Bulmer (1996) a countervailing trend amongst European institutions has been the persistence of a very strong form of territorial politics. It is precisely for this reason that the federal principle is well suited to analyzing the governance of the EU, where one can regard the EU as giving a particular institutional balance to territorial and non-territorial claims (Bulmer, 1996). The European Council – due to its intergovernmental

nature – is organized territorially, whereas other EU institutions – such as the European Commission and the European Court of Justice - are organized around other functions, with a less prominent territorial link (Bulmer, 1996, p. 23). In this section, the relationship between the European Council and the European Commission will be presented, focusing on the nature of their roles inside the legislative framework and on the power-relations they entertain.

The European Commission, as the upper-level executive, is particular insofar as it is the only institution having the formal right of legislative initiative. However, the European Council could always ask the Commission to prepare a proposal and still does so in many instances (Holzinger & Biesenbender, 2019, p. 337). The Parliament developed a similar practice, introducing so-called initiative reports, where its legislative power is mostly in developing a proposal and brokering between member states, Council and Parliament (Holzinger & Biesenbender, 2019, p. 337).

The once informal European Council is now the major body driving constitutional development, and the trouble-shooter of last resort, implying that sovereignty finally rests with the lower level, the member states, whichever competence allocation and democratic decision-making we may have in the day-to-day business (Holzinger & Biesenbender, 2019, p. 336). The Lisbon Treaty of 2009 introduced a formal system of competence allocation that distinguishes three categories of competences: EU exclusive competences, EU shared competences and EU supporting competences, each associated with a list of policy fields, which makes the EU a "cooperative multilevel system" (Holzinger & Biesenbender, 2019, p. 336).

2.5. Crisis Management in the European Union

This section serves as an in-depth exploration of the EU`s crisis-management system, before leaving space to the empirical analysis of the three case scenarios.

In the execution of its governance role, the European Union covers a wide array of policy areas – for which its competence is defined by the treaties (Title 1, TFEU). Given the cross-cutting nature of many of the policy areas for which the EU is authorized to act upon – and also given the increasing interdependence between Member States highlighted by political scientists (Olsson, 2009; Heinrich and Kutter, 2013; Schoeller, 2018) – it is not surprising that the past two decades have seen a considerable number of major emergencies and crises which breached borders and affected the decision-making process at both national and transnational level.

In recent years, natural disasters, terrorist attacks, pandemic outbreaks and financial collapses have forced the EU to act – or better, react – with emergency means to prevent the political and economic union from implosion (Wendling, 2010). As it has been discussed in the previous chapters, the treaties failed to equip the EU with a clear and defined mechanism for crisis-management. In fact, crisis response as per the TFEU is sometimes in the hands of the HSGs (European Council), sometimes in the hands of the supranational executive (European Commission), depending on the policy area where the emergency arises. For example, based on the treaties (art. 4 TFEU), public health policies are characterized by shared competence between the Union and the Member States. At the same time, the Commission is authorized to take "any useful initiative" to safeguard "a high level of human health protection" in the EU (art. 168 TFEU). This also includes covering "the fight against the major health scourges" (ibid.), which virtually gives the Commission the mandate to step in and act as a coordinator in the Union`s response to sanitary crises like the COVID-19 pandemic. As another example, in terms of monetary policy the Union has exclusive competence (art. 3 TFEU), meaning that Member States are not authorized to legislate, and their role is limited to applying the law. However, Member States have shared competence in internal market policy and economic cohesion, and are required to "coordinate their economic policies within the Union", with the European Council being able to "adopt

measures" and "guidelines for these policies" (art. 5 TFEU). This blurriness between who is in charge of what allowed the European Council to have the central role in managing the Eurozone crisis of 2009 (Dinan, 2011).

In terms of structural organization for crisis-management, the EU maintains the mandate blurriness of the treaties. In fact, as highlighted by Wendling (2010), in case of crises and emergencies the Union can resort to two tools – which, however, are managed by two different institutions. On the one hand, the Civil Protection Mechanism (formerly known as Community Civil Protection Mechanism), was established in October 2001 by the European Commission to prevent, manage and respond to "natural or man-made disasters inside or outside the EU" (European Commission, DG ECHO). It is important to note how the "Commission plays a key role in coordinating the disaster response worldwide" (ibid.), effectively being the principal actor during emergencies. On the other hand, the European Council established its own crisis-response mechanism in 2005, formerly known as Crisis Coordination Arrangements (Wendling, 2010) – and then renamed Integrated Political Crisis Response arrangements (IPCRs) – through which "the presidency of the Council coordinates the political response to the crisis" (European Council). Therefore, just by looking at the official organization of the EU`s crisis-response mechanism, it is not possible to understand whether crisis-management will be of supranational nature (European Commission), or intergovernmental nature (European Council).

Numerous positive aspects can be highlighted from the cooperation presented when Member States decide to cooperate on crisis management. For example, Larsson with his collaborators (2009) defined the following: the first benefit is the official and informal sharing of information and benchmarking that occurs between Member States through EU seminars, workshops, and cultural events.; the potential to profit from the output of research performed inside the EU-framework, as well as the option of funding national crisis management preparedness with EU contributions, is the second added value; furthermore, the EU's cooperation, which can improve a Member State's attentiveness and situation awareness when it comes to recognizing and managing a crisis is also to be considered as a benefit; finally, by coordinating with other Member States, specialized national crisis management strategies may produce more efficient results.

However, there are also some potential problems and risks, concerning the fact that international cooperation on crisis management also takes place outside the EU, for example in intergovernmental organizations such as the UN and NATO, and bilaterally or regionally between a limited number of states (Larsson *et al*., 2009, p. 8). In this regard, negative aspects – highlighted in Larsson's research – need to be considered. First of all, the development of EU-wide crisis management cooperation may replicate international accords and mechanisms currently in place within the UN framework; a second problem with the promotion of cooperation at the EU level is that the Member States face different threats to their security, and therefore a homogeneous crisis-management mechanism might be hard to implement; moreover, the risk that Member States may benefit from the common system without making proper national contributions cannot be overlooked; and finally, a fourth problem with EU level cooperation is that the EU policymaking process puts extensive demands on the national ministries and central agencies in charge of crisis management issues (Larsson *et al*., 2009, pp. 8-9).

Crisis management as a policy area within the Union is likely to change – both in the near future and over time, with new initiatives and a strong wish among the governments of most Member States to renew the Union's legal foundation (Olsson, 2009). Two impulses can be highlighted: that of Southern European countries (among which are Italy, Spain and Portugal), which defended a community model for emergency management, and that of Northern European countries (among which are the Netherlands, Belgium, etc.), which defended an intergovernmental model of emergency management (Wendling, 2010, p. 81).

Three aspects are likely to have an impact, as defined by Olsson in 2009: the first is the solidarity clause after the terrorist attack in 2004 in Madrid, when Member States enacted a Declaration on Solidarity against Terrorism; the second feature of the Treaty of Lisbon that definitely affected the Union's crisis management is the Standing Committee on Internal Security (COSI), that acts as a counter-part to the Political and Security Committee in the Council, which is responsible for coordinating policies within the European security and defense policy (ESDP) and the overall Common Foreign and Security Policy (CFSP), subordinate to the Council (Olsson, 2009, p. 162).

Even though a high level of responsibility remains in the hands of the various national governments when it comes to crisis management, the EU is now able to support the Member States in a way that was unheard of fifteen years ago – with one important difference worth emphasizing: since the EU's system for crisis management is not the result of one master plan, but rather something that has grown incrementally and causally as a response to specific emergencies, the system lacks leadership at the strategic level (Olsson, 2009, p. 164). If, as argued by Gourlay (2004), effective crisis management requires an integrated approach, and the employment of military and civilian elements, then it is true that the greatest strength of the Union in crisis management is that it "can draw on a panoply of military and civilian instruments with different institutional structures and for different purposes" (Gourlay, 2004). However, to use all of its resources inside a co-operational and synergetic framework in response to a crisis still represents a challenge for the EU. The intergovernmental decision-making procedures that relate to the Common Foreign and Security Policy (CFSP) and ESDP are distinct from those that govern deployment of tools by the Commission, according to the community method, including new procedures developed for the conduct of autonomous military operations, that rely on NATO assets and civilian operations (Gourlay, 2004, p. 405).

As argued by Boin and t'Hart (2010), contemporary studies of crisis management have paid much attention to organizational structures and the strategic and operational capacities that countries have when coping with different types of crises, and in the literature these are commonly labeled hardware factors, with less attention devoted to analyzing the so-called software factors – that is, how norms, values, social trust, cultures and other informal structures impact human action and interaction in a crisis situation (Boin and 't Hart, 2010). When an EU country is the object of a terrorist attack or a natural or man-made disaster, the EU can react through a civil protection mechanism and an accompanying operational hub in the form of the Emergency Response Coordination Centre (ERCC), which coordinates the response of the participating countries in the event of a crisis. In this regard, Olsson debates how earlier studies on the EU as crisis manager have often overlooked this with administrative cultures that may impact the effectiveness and legitimacy of such institutions (Olsson, 2009).

As the EU has increasingly built up its crisis management capabilities, the attention of scholars has been drawn to an effort to map the organizational structures the EU has developed, to provide an analysis of how and why the EU has done so, and to assess how well the EU has prepared for or responded to particular crises. For example, in their research Persson and his colleagues (2016) focus on the often-overlooked importance of social trust and administrative culture in various countries, and the impact this may have on public confidence in EU crisis management institutions. In particular, they showed interest in citizens' beliefs in the effectiveness of EU-coordinated civil protection, and particularly on the ability of the EU to manage crises shared between the Member States and the supranational level (Persson *et al.*, 2016, p. 102). The role of the EU in crisis management is based on the principle that the nature of transboundary threats, whether fiscal, environmental, or military, surpasses the capabilities, both resource wise and policy wise, of the Member States. Therefore, it has been argued that the EU should play a more defined role in managing disasters (Boin & Rhinard, 2008). The problem, however, is twofold: who defines – and how – the nature of an emergency? Secondly, how can the EU effectively and legitimately organize crisis management? In addition to these interrogatives, there is a question of which areas should be covered in the new EU crisis management. Arguably, the EU has committed a significant number of resources, built legitimacy, and created new mechanisms in the areas of safety and security management, such as the European Commission's Cooperation and Verification Mechanism. As it has been discussed earlier, however, less visible are the EU approaches to responding to non-military problems such as financial threats, civil protection, and natural disaster preparedness. The EU has not been spared from criticism for taking up on duties that is supposedly belong to the jurisdiction of Member States, such as emergency management. However, these critiques ignore the nature of modern threats and mistakenly believe that Member States possess the necessary infrastructure and expertise to manage threats completely on their own. As scholars have pointed out (Boin and Rhinard, 2008) modern threats are overwhelmingly transboundary in nature: they affect all Member States to varying degrees, ignore borders and jurisdictions, and their danger grows over time. Transboundary crisis is also defined as a threat to life-sustaining systems or critical infrastructure of multiple Member States (Ansell, Boin and Keller, 2010). In 2006, the

Commission launched the European Programme for Critical Infrastructure Protection (Commission of the European Communities, 2006). This initiative, for example, assessed several areas as critical infrastructure – such as energy (generation, transmission, and distribution), information and communication technologies (Internet, telecommunications infrastructure, satellite access, broadcasting, network protection), water (access and distribution), food, health, financial, public safety and order, transportation, nuclear defense, and space. Boin and Rhinard (2008) pointed out that the integration of Member States into the EU has also contributed to the increased vulnerabilities of the system. The power grid is interconnected, food safety protocols are numerous and hard to enforce, banking systems share infrastructure and resources, and the list goes on. The consequence of the interconnectedness of these basic systems is that they transcend national boundaries, supervision, and legal jurisdiction. In response, the EU adopted "an attack on one is an attack on all" approach (similarly to Article 5 of the NATO's founding treaty) in *Article 222* of the Treaty on the Functioning of the European Union, requiring Member States to assist other EU states during emergencies and act jointly. However, TFEU did not describe nor define the role of EU institutions in facilitating Member State response to a crisis.

Broadly speaking, crisis management can be seen as risk management with the goals to reduce risks and increase societal resilience to resist and, when necessary, respond, cope, and then bounce back from extreme events, since the solidarity clause in the Treaty on the Functioning of the EU (Article 222) introduced a legal obligation that the EU and its Member States should provide assistance (Persson *et al*., 2016). The Article states the following:

Article 222

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

(a) - prevent the terrorist threat in the territory of the Member States;

- protect democratic institutions and the civilian population from any terrorist attack;

- assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;

(b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions.

4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

In 2014, the EU adopted a decision laying down the rules and procedures for the operationalization of the solidarity clause. The decision ensures that all the parties concerned at national and at EU levels work together to respond quickly, effectively and consistently in

the event of terrorist attacks or natural or man-made disasters. Furthermore, the European Union Solidarity Fund is an instrument financing operations in the field of civil protection first created in 2002, with revised rules adopted in 2014, with working procedures simplified and eligibility criteria clarified and extended.

The territory of the former Yugoslavia or the recent conflicts in the EU's neighborhood (the Caucasus, the Middle East) have posed a realistic threat to the Union – as argued by Blockmans and Wessels – and for this reason the Member States have almost always failed the test of unity in the EU's efforts to resolve conflicts on its borders, showing the need to move beyond the security structures that were introduced in the Treaty of Maastricht (Blockmans and Wessel, 2009, p. 2). In fact, the authors note, the EU has never acted in the capacity of enforcer of peace (like NATO in Kosovo in 1999), nor in defense against an armed attack on its territory. While most of the early ESDP operations were fairly successful, largely thanks to the fact that they were usually short term and limited in both scope and size, they have also revealed shortfalls, bottlenecks as well as broader issues in crisis management, such as budget and capabilities that will have to be addressed (Blockmans and Wessel, 2009, p. 10). Yet, leadership and decision-making within the expanded Union are potentially the hardest issues to resolve: on the one hand, leadership is required at three levels: the political drive to crystallize the idea of a security policy; the institutional responsibility within EU structures; and, finally, the practical administration of EU policy; when the lack of leadership at these levels makes it difficult to decide whether a crisis exists, it is also hard to determine the scale of the crisis and to achieve a consensus on the response and effective crisis management with effective decision-making (Blockmans & Wessel, 2009, p. 25).

To conclude, the Member States and EU actors need to take both the potential added values and the potential problems with crisis management cooperation at the EU level into account when developing an EU crisis management system. The development of crisis management capabilities and actions within ESDP is not simply an extension of the traditional Community approach to external engagement – it entails a complex equation of national interests and perceived political value of using the EU framework, rather than working within *ad hoc* coalitions of the willing or the OSCE, NATO or UN structures

(Gourlay, 2004, p. 420). Aspects such as inefficient and fragmented approach to planning, deployment, mission support, training and recruitment for civilian crisis management operations all need to be addressed in order to overcome the inefficiency of the crisis management of the EU as a whole.

3. Chapter 3 – Three EU Crisis Management Case Studies

This chapter's scope is to analytically explore the outburst, developments and consequences of three relevant crises that affected the European Union in the past decade. The reason for the choice of these particular events is that they were all major happenings which had severe repercussions on a global scale, and not just on the Union. These events also share the fact that, as it will be explained, they all originated because of exogenous factors – meaning that they were not directly triggered by EU action (or rather inaction). Another relevant factor which contributed to influence the choice of this event as a case-study for crisis-management in the EU is that they cover different policy fields: economic and fiscal policy; migration policy and external action; and, finally, public health policy and humanitarian aid. This diversification in terms of policy areas will thus allow us to elaborate a broader and more inclusive discussion in the analysis of the EU's responsiveness to, management and prevention of large-scale emergencies.

The three case studies that are going to be analyzed are the Eurozone crisis, which unfolded during the last years of the first decade of the XXI century; the refugee crisis, which deeply affected the EU's internal dialogue on security policy and migration; and, finally, the very topical – and ongoing – sanitary crisis set off by SARS-CoV-2 at the closing of the last decade. For each focusing event, the research is going to offer an overview of its onset, its management in terms of EU action, and its consequences on the broader mechanism of crisis-

management in the Union. With regard to the methodology, this section employs both contemporary accounts and on retrospectives – in order to provide a more balanced and accurate timeline of events, as well as a more informed reflection on the controversies and issues linked to each crisis.

3.1. The Eurozone Crisis

The Euro-zone crisis unfolded in early 2010 after the outbreak of the Greek sovereign debt crisis in late December 2009, onwards to other EU member states facing interest rate hikes (Lane, 2012). These contagion effects threatened to undermine the stability of the Euro-zone and, ultimately, the EU as a whole. Thus, in 2011 no less than six European Council summit meetings took place including one 'informal' one. The frequency of summits attested to the seriousness of the crisis and the extent to which "the European Council has emerged as the centre of political gravity" in the EU (Puetter, 2012, p. 161).

At the onset of the crisis, the Eurozone faced four major, and related, economic challenges, as described by Nelson and his colleagues (2012): first of all, high debt levels and public deficits in some Eurozone countries weakened the financial stability of the macroregion; second, the weaknesses that affected the European banking system cannot be overlooked; third, the presence of economic recession and high unemployment in some Eurozone countries; and, finally, persistent trade imbalances within the Eurozone (Nelson *et al.*, 2012). Although the Greek crisis has lasting effects, the acute phase of the crisis ended in 2015, as the risk of contagion in the Eurozone was contained (Wasserfallen et al., 2019, p. 5). As we have seen, following the Lisbon Treaty, the institutional distinction between pillars was erased, but the contrast between separate logics and decision-making regimes, supranational and intergovernmental, was maintained. In terms of the EMU, the Lisbon Treaty makes it explicit that its policies should be pursued through soft law, not hard law (Heipertz and Verdun, 2010). The Stability and Growth Pact (SGP, 1998-1999) expressly vested the Council with sole authority over measures relating to the excessive deficit procedure and the Lisbon Treaty institutionalized it, reserving economic and financial policy

to the Council, with the Commission permitted to have a technical role in evaluating Member States' economic performance. The so-called *Modest Proposal* by former Greek Minister of Finance Yanis Varoufakis (2013) suggested that existing institutions be used in ways that remain within the European legislation but allow for new functions and policies. The policies he mentions are the following: a Case-by-Case Bank Program (CCBP), since the Eurozone must eventually become a single banking area with a single authority; a Limited Debt Conversion Program (LDCP), to be applied where most Eurozone Member States have exceeded this debt limit set by the Maastricht Treaty; an Investment-led Recovery and Convergence Program (IRCP) – very similar to the convergence strategy that was adopted with the European Economic Recovery Program of 2020; and, finally, an Emergency Social Solidarity Program (ESSP), that would guarantee access to sustainment and to basic energy needs for all Europeans (Varoufakis, 2013). As an expert in the theory of games and social conflicts, the Greek economist stated that the crisis has been featured as a large-scale multilevel game, with French and German banks as creditors and Greece turned into a "debt colony" (Varoufakis, 2017). The instruments and methods of war had no limitations, neither moral nor rational ones, in that uncooperative game (Nenovsky & Sahling, 2020).

As already cited in *Article 122*, when a Member State is in difficulties or seriously threatened with severe difficulties beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, financial assistance to the Member State concerned. The Eurogroup, which gathers the various Eurozone finance ministers and the President of the European Central Bank to assess the economic situation of the Eurozone and potential structural reforms to encourage growth and productivity, has the status of an "informal institution," embodying a specific approach to policymaking defined as "informal governance" (Puetter, 2006), with main deliberations as regulated in the Lisbon Treaty. Although the Eurogroup lacks formal decision-making competences, it plays a pivotal role in EMU's economic governance. The negotiation environment created by the Eurogroup is particularly suited for policy deliberation and consensus formation among the Euro area's key decision-makers (Puetter, 2004, p. 866).

By the end of 2011, economic governance had developed into a set of binding rules, institutions and obligations guiding fiscal policy and structural reform among euro zone

members: European Stability Mechanism (ESM), Euro-plus Pact, Fiscal Compact Treaty etc. Hughes defined the reasons that could be stated as reasons for EU failing in this regard, which are the following: mishandling political relations between member states, national and EU failure of lacking policy choices and debate, and an apparent lack in most EU countries of real open policy debates (Hughes, 2011). She made the first factor at the forefront, since the concentration of decision-making on the Euro crisis on two countries and a few unelected officials represented a real issue. Such forms of exceptionalism have increasingly taken hold in the governance repertoire of the EU and its member states, extending well beyond the euro crisis with five features standing out: self-empowerment; rule circumvention; rule bending; domination; and judicial deference (Kreuder-Sonnen, 2021). Politically, this strategic selectivity is not only expressed in a strong Franco-German leadership but also in the privileged access and interest reflection of transnational business and financial conglomerates in European decision making and institutions seen in the EU's reactions to the Eurozone crisis (Heinrich & Kutter, 2013, p. 16).

In the Council of September 7, 2010, the European Semester was approved, an instrument for enhancing time consistency in EU economic policy coordination, which entered into force by January 2011. If the former were instruments of crisis management (to help Ireland, Portugal, and then Greece to face the crisis of sovereign debt), the latter was rather a framework for promoting crisis prevention, finalized to coordinate *ex ante* the budgetary and economic policies of the EU member states, in line with both the SGP and Europe 2010 strategy (see Hallerberg, Marzinotto, & Wolff, 2012). On the monetary policy side, the ECB was then given a leading role in the day-to-day management of financial markets while the European Council called on the European Commission to present a legislative proposal on a pan-European supervision of banks (Single Supervisory Mechanism, SSM), an additional step towards a full-fledged banking union including a single resolution mechanism for failing banks and a common deposit guarantee scheme.

Despite all efforts by EU member states and EU institutions to assuage market fears and regain control over the situation, it was not until 2013 that interest rates started to decrease significantly. The two major interventions aimed at addressing the crisis were: the extraordinarily monetary policy conducted by the European Central Bank (ECB) and the

EU's fiscal and economic policy reforms adopted by the member states. The outcomes of intergovernmental agreements by Eurozone members include the European Stability Mechanism (ESM) and the Euro-plus Pact. The European Financial Stability Facility (EFSF), which preceded the ESM, was composed of an administrative decision in the structure of a private entity founded under Luxembourg jurisdiction and therefore entitled to bargain with its Seventeen stakeholders. It was implemented in the sidelines of the ECOFIN Council, beyond the EU legislative framework., the members of the Council have been said to have "switched hats and transformed themselves into representatives of their states at an intergovernmental conference" (De Witte, 2013, p. 1). In that role, they approved an executive action committing themselves to establish the EFSF outside of the EU legislative framework, which became functional directly afterward signature by government representatives without the requirement for confirmation by Member States legislatures (De Witte, 2013). A first version of the Treaty on the European Stability Mechanism (ESM) was signed in July 2011 by all the EU member states. The Treaty's project was decided on March 25, 2011, after a European Council's decision submitted on December 16, 2010, to amend art. 136 TFEU that states that "the member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole."

During the European Council's meeting of December 2011, a German proposal to amend the Lisbon Treaty for integrating the fiscal policies of the member states was advanced (Fabbrini, 2013). Fabbrini also describes how automatic mechanisms of sanctions on member states not respecting the more stringent criteria of deficit-GDP percentage (0.5% a year) and debt-GDP percentage (60%, with the downsizing of 1/20 of the over stock every year) were proposed. In addition, it was requested that each member state would introduce the rule of a mandatory balanced budget domestically at the constitutional or equivalent level (Fabbrini, 2013). The Fiscal Compact Treaty (Title VI, Art. 14.2) state that it "shall enter to force on 1 January 2013, provided that *twelve* Contracting Parties whose currency is the euro have deposited their instrument of ratification.": this representing the first time in the European integration experience that unanimity has not been adopt for activating an intergovernmental treaty - that would require, by its own logic, the unanimous consent of all the contracting

parties. The Fiscal Compact Treaty tries to deal with the noncompliance possibility providing for a binding and automatic intervention of the European Court of Justice upon those contracting parties that do not respect the agreed rules. It is stated (Art. 8.1) that where a Contracting Party considers, independently of the Commission's report, that another Contracting Party has failed to comply with Article 3(2), it may also bring the matter before the Court of Justice the judgment of the Court of Justice shall be binding on the parties in the procedure (Treaty On Stability, Coordination And Governance in The Economic And Monetary Union, 2012).

Thus, by the end of 2011 economic governance had developed into a set of binding rules, institutions and obligations guiding fiscal policy and structural reform among eurozone members. During the Euro-zone crisis, the rise of particular decision-making patterns could be noted. One of these is the so-called "Merkozy duumvirate", which stands for the close co-operation and dominant role of Germany and France in Eurozone crisis management (Schoeller, 2018, p. 1). It is worth noting that the actual leader (or hegemon) in the couple seems to be Germany, since as Bulmer (2014) put it: "Germany has played a prominent role in advocating solutions to the Eurozone crisis, sometimes with France, sometimes without" (Bulmer, 2014, p. 1253). The close co-operation between French President Sarkozy and German Chancellor Merkel (*Merkozy*) dominated a significant part of Eurozone crisis management (Schoeller, 2018). Yet, explains Schoeller, after the election of a new French government in 2012, the Franco-German co-operation in the Economic and Monetary Union deteriorated. Drawing on bargaining theory, he argues that Germany used *Merkozy* as a negotiation strategy to further its aims in Eurozone crisis management. However, when the preferences of the two countries were no longer reconcilable due to changes in France as well as in the negotiation environment, the strategy failed. Thus, while much of the literature has focused on the persistence of the Franco-German partnership, this approach accounts for variation in its functioning. The results provide an explanation for the rise and fall of *Merkozy* and bear implications for assessing the future Franco-German relationship. (Schoeller, 2018) The manner in which Merkel pushed her proposal was typical of the dynamics of the Franco–German relationship and of the European Council, who approved what was, in effect, a *fait accompli:* the already agreed-upon proposal of the Eurozone leaders for a Greek rescue

package (Dinan, 2011, p. 108). Christian Kreuder-Sonnen (2021) in recent research 2021 listed the obstacles to realizing a European Emergency Constitution to provide an expanded problem-solving capacity, seeing political motivation as the main one (p. 15). The emerging Eurozone crisis, together with ongoing implementation of the Lisbon Treaty, dominated governance and institutional affairs in the EU in 2010, and at the same time, the European Council was undergoing an important institutional reform with its own, full-time President elected for the first time (Dinan, 2011, p. 104). Years after the outbreak of the Eurozone crisis, questions regarding the stability and the sustainability of the European Economic and Monetary Union (EMU) remain. political decision-making, preferences, salience, and contested policy issues were key concepts that were defined in the research. The two major interventions aimed at addressing the crisis were: the extraordinarily accommodative monetary policy conducted by the European Central Bank (ECB), and the EU's fiscal and economic policy reforms adopted by the member states (Wasserfallen et al., 2019).

Finke and Bailer (2019) analyzed EU decision-making during the Eurozone crisis by evaluating the predictive power of three bargaining models, investigating the impact of asymmetric market pressures, formal voting rules, and agenda setting (the Commission enjoys agenda setting power in legislative, but not in intergovernmental bargaining). In the traditional analysis of inter-institutional relations, the Commission and the EP were allies, lined up on the supranational side against the Council, and as for institutional balance, the EP's leadership now sees the Commission neither as a partner nor a rival, but as a lesser entity in a new political landscape dominated by the Council and the EP, locked in a conflicted relationship (Dinan, 2011, p. 117). Despite ritualistic calls for a strong Commission, the impression of Commission being placed at the bottom of the Commission–Council–EP triangle is difficult to refute (Dinan, 2011, p. 118). Applied to the EU, focus on functional imperatives tends to minimize the range of thinkable outcomes and with it the possibility to do more than applaud success or deplore failure (Kreuder-Sonnen and White, 2021, p. 2). As a consequence, the European crisis response took a form of emergency politics characteristic for polities beyond the nation-state. Five features stand out in particular, as highlighted by Kreuder-Sonnen, (2021).

- Self-empowerment: In the absence of rules governing the determination of an emergency and the conferral of emergency powers, the expansion of executive discretion in contravention of existing norms and rules comes about by way of executive self-empowerment. Such as the European Financial Stability Facility (EFSF) and the ESM in circumvention of the no-bailout clause (Art. 125(1) TFEU). Absent any legal framework to guide emergency empowerment, the process was inherently political and marked by power struggles among member states fighting over the distribution of costs and benefits (Schimmelfennig, 2015).
- Rule circumvention: In the absence of constitutional pathways to swiftly adapt institutions and legal rules to fit the exigencies of a crisis situation, the context of international law allows member states to create alternative institutions that may conflict with the norms and rules of the original institution (Morse and Keohane, 2014). Careful not to open flanks to critics in terms of blatantly breaking existing rules, decision-makers may thus choose to circumvent legal norms by shifting to and channeling activities through alternative institutions. The creation of the EFSF and the ESM outside the legal framework of the EU and the establishment of the Fiscal Compact as a separate treaty under international law are examples of this practice in the context of the euro crisis (Tomkin, 2013). The shift outside the constitutional bounds of the European Treaties allowed member states much greater executive leeway at the expense of democratic accountability and judicial oversight (Dawson, 2015). Not only did they implement measures that were legally questionable under EU law, but they also prevented democratic participation in the process of rule change (with lower ratification requirements for international treaties than EU Treaty amendments) and escaped review by the European judiciary that does not have jurisdiction outside the EU Treaties.
- Rule bending: A complementary strategy to conceal departures from legal norms in times of crisis is the open or clandestine reinterpretation of rules (Schmidt, 2016). As a matter of regularity, European authority-holders presented their measures as exceptional responses to exceptional threats (White, 2015a), but at the same time claimed that they were perfectly legal and fell within the scope of their competence.

The best-known example is ECB President Draghi's announcement to do "whatever it takes" to save the euro—factually rendering the Bank the lender of last resort to Eurozone governments in 2012—while asserting that this was "within our mandate." Subscribing to that notion, however, implied a fundamental reinterpretation of that mandate by the ECB itself. Hence, in the course of the crisis, the rules governing ECB authority have been changed considerably through expedient reinterpretations that factually accorded the bank more and more discretion.

- Domination: In the absence of constitutional regulations constraining the reach and intrusiveness of emergency powers, exceptionalism opens the door to the exercise of domination. Particularly if backed by the interests of powerful states, emergency politics of IOs may be directed against weaker states and their societies and impose authority or rule that is arbitrary from the perspective of the addressees (see Eriksen, 2018). That is, their rights as political equals are suspended. Both sovereignty rights of states and the liberal or republican rights of individuals in those states may be compromised. Operations by the Troika during the euro crisis are emblematic for this type of problem in the context of European emergency politics. Entrusted with the task to enforce the political will of the creditor toward the debtor states, the Troika issued detailed reform lists to countries such as Greece, Portugal, and Spain for politically salient issue areas. Given their dependence on the financial aid administered by the Troika, these states could hardly refuse the demands and were thus factually stripped off their fiscal sovereignty and budgetary autonomy (Dawson and de Witte, 2013: 825).
- Judicial deference: Given the recurrent extra-legality of emergency powers beyond the state, courts are put in a near to impossible situation when asked to adjudicate on the legality of emergency measures. With no legal regime constituting and constraining extraordinary powers, courts are put between a rock and a hard place. If they stick to the letter of the law and rule the emergency powers unconstitutional, they may contribute to a deterioration of the threat or crisis that the emergency powers were intended to avert. On the contrary, if they rubber-stamp the self-empowerment as legal, they constitutionalize the new authority *permanently*, including its authoritarian

baggage (Suntrup, 2018). In the European case, the European Court of Justice was drawn onto the scene at a time when the crisis was at its peak. Both its landmark judgments in *Pringle*, regarding the legality of the ESM, and in *Gauweiler*, regarding the legality of the OMT program, were handed down under severe pressure from states and market actors, who warned that annulments by the Court would have catastrophic consequences. In both situations, the CJEU deferred to the rationale of necessity and accepted the legal reinterpretations of the authority-holders (Joerges, 2016; Kreuder-Sonnen, 2019: pp. 133-135, pp. 148-150; Lokdam, 2020). As a consequence, it contributed to the legal normalization of originally exceptional powers.

Greece's problems have also demonstrated that there was a lack of due diligence when the country was admitted to the currency union and future bids for membership of the eurozone should be reviewed more rigorous, with full exchange of information and cooperation (Dadush, 2010, p. 85). Supervisors in the EU failed to detect, warn and act upon major risks that were accumulating in the financial system, and the Commission proposed an ambitious reform - European System of Financial Supervision (ESFS), that would create a network of EU financial supervisors. In addition, regulatory and supervisory initiatives have been taken in the pursuit of crisis prevention that will further address liquidity, leverage, dynamic provisioning, and the quality of capital (Economic Crisis in Europe: Causes, Consequences, and Responses, 2009).

The lessons should be viewed as forward-looking contributions to the institutional and policy reform agenda in Europe, looking beyond fiscal policies too narrowly focused on public sector debt and the rescue program for very weak countries, substantial reductions in public debt should be traded with true structural reforms that improve GDP and the competitive environment of the local economy (Baldwin & Giavazzi, 2015).

3.2. The refugee crisis

Considering the subject-matter of the refugee crises (2015-2016), Treaty of Lisbon provided in the *Article 77* that the Union shall develop a policy to tackle internal borders, external borders, with European Parliament and the Council acting in accordance with the ordinary legislative procedure, adopting measures concerning the common policy on visas and other short-stay residence permits etc. The refugee crisis can be seen as a result of existing dysfunctionalities and a catalyst creating additional functional pressures, since while the number of refugees was moderate, limitations of Frontex and the weaknesses of the system remained tolerable (Niemann & Speyer, 2018, p. 30).

In 2015, the *New York Times* flagged the extreme emergency that was happening in front of the gates of the European Union. According to their report, early 2015 "witnessed a 1,600% increase in the number of migrants drowning while attempting to cross the Mediterranean as compared to the same period in early 2014" (Addario, 2015), but was only after the casualty in March 2015 occurred in the Mediterranean gained attention by the media that the migrants pressure on external border turned into a crisis at European level. As overseer of the Schengen system and, by association, the Common European Asylum System, the EU level would seem to be the natural place to resolve transboundary migration challenges, although EU institutions are limited by subsidiarity and deep political sensitivity of the matter, as external border are a domain of national sovereignty per the treaties (artt. 4, 72, 73 TFEU). Nonetheless, on April 20 the Commission presented to the Council a ten-point response plan to respond to the emergency, anticipating the European Council meeting on 23 April 2015 that called upon the Commission to address the need to undertake coordinated Union action to prevent further loss of life at sea by strengthening the presence of naval forces in the Mediterranean and fighting human smugglers and traffickers. (Bakowski and Drachenberg, 2015). The European Council also reiterated the importance of "preventing illegal migration flows and reinforcing internal solidarity and responsibility" of the Member States (Bakowski and Drachenberg, 2015). Just a few days later, the European Council adopted a resolution to urge both the EU and the Member States to build on the existing cooperation in the Common European Asylum System and do everything possible to prevent

further loss of life at sea. All relevant actors were then called upon "to take a comprehensive European approach and step-up fair sharing of responsibility and solidarity between Member States" (European Council, 2015). Subsequently, the Commission presented the European Agenda on Migration on 13 May 2015, based on the ten-point original proposal, as a comprehensive Union's set of actions in order to tackling the refugee crisis (Carrera, Gros and Guild, 2015). From an operational point of view, the Agenda proposed to create a set of hotspots of which the broad goal was to bring EU agencies to work on the ground with frontline Member States to identify, register, and fingerprint incoming migrants. Accomplishing these aims was seen to be critical for the overall success of the Common European Asylum System, in order to assess which country was responsible for asylum applications and to organize relocation (Carrera, Gros and Guild, 2015). The EU agencies and the EU Regional Taskforces (EURTFs) were on the frontlines for the implementation of the hotspots, especially the European Asylum Support Office (EASO) and border-control agency Frontex. The two agencies quickly moved into operational roles: EASO, for example, aided national authorities in handling relocation and providing information to asylum seekers, whilst Frontex supported Italian and Greek officials with identification, registration, interrogation, and arranging repatriation (European Court of Auditors, 2019). The German government unilaterally suspended the Dublin Regulation for Syrians in August 2015, but about two weeks later, the same government under pressure of a wave of arrivals in Bavaria reversed its course and reinstated border controls at the internal Schengen border with Austria, as highlighted by Niemann and Zaun (2018). This prompted a chain reaction, pushing several other EU countries (Austria, France, Denmark, and Sweden) to also introduce internal border controls in order to avoid becoming a "dead end" where "unwelcome" refugees could get "stranded" (Pastore and Henry, 2016, p.54).

Subsequently, in October 2015, in response to the increased numbers of asylum-seekers Hungary closed its borders to Croatia and Serbia. This step allowed Hungary to shift migration flows to neighboring countries, particularly Slovenia (Trauner, 2016). This eventually led to a complete closure of the "Balkan route", compelling tens of thousands of people to get stuck in Greece (Weber, 2016, p. 38). Previously in the 2015, as movement along the Western Balkan route increased, DG ECHO encouraged states along the route to

activate the EU Civil Protection Mechanism (EUCPM). Hungary did so in June 2015, and Serbia, Croatia, and Slovenia during Autumn 2015. But despite repeated encouragement, Greece did not activate EUCPM until December 2015 (Niemann and Zaun, 2018).

As discussed by Collett (2018), the EU Civil Protection Mechanism was established in 2001 to better coordinate responses to natural and man-made disasters. Unlike many EU mechanisms, the EUCPM covers both the Member States and non-Member States anywhere in the world. Once a government makes a request to activate the mechanism, the European Commission (through the European Response Coordination Centre, or ERCC) coordinates voluntary in-kind contributions from participating states and assists with transportation of the equipment provided. This mechanism is thus entirely reliant on the active participation of national civil protection authorities. The EUCPM was not originally intended to respond to migration crises, however, already in 2013, Bulgaria activated it to address inflows of Syrian refugees (Collett and Le Coz, 2018). The author also argues how the language in EU executive was one of crisis – "highlighting the plight of families sleeping in parks and railway stations in Budapest […] or on shores in Kos" (Collett and Le Coz, 2018, p. 15) the Commission's response to the escalating crisis seemed to be focused on advancing longer-term EU policy goals and how much this reflected internal doubts. By this stage, the crisis had taken on many dimensions: first and foremost, a humanitarian emergency had emerged, with administrations unable to supply housing and food to refugees; second of all, a clear political crisis saw European Heads of State and Government unable to reach a consensus on a collective response. Collett and Le Coz (2018) are very clear about the fact that within the EU institutions, t was uncertain who should take the lead and, most importantly, what the EU's response should be. Accepting onwards circulation rather than stopping immigration demanded quite distinct ethical and realistic solutions (Collett and Le Coz, 2018).

According to Niemann and Zaun (2018), from a political point of view, relocation of refugees was one of the most polarizing issues. The Commission launched a proposal for a *Dublin plus* regulation, preserving existing regulations but also incorporating a corrective fairness mechanism, which would allow refugees to be reallocated in times of crisis to relieve strain on frontline governments. (Niemann and Zaun, 2018). The Commission claimed to

having addressed existing dysfunctionalities of the system, especially between a supranational Schengen and an intergovernmental external border regime, but actually the crisis acted as a catalyst for further sovereignty transfers in the subject-matter of border protection and the introduction of the European Boarder Coast Guard, in a highly sensitive area of national sovereignty, where Member States had usually been reluctant to transfer substantive powers to a shared border agency (Niemann and Speyer, 2018). As Ripoll Servent (2019) underlines, delegation towards the EBCG and EASO was not a symmetrical process in which all Member States participated to the same extent. Drawing on principal-agent theory, Niemann and Zaun (2018) could uncover the complex forms of agencification in this aspect of government, highlighting divisions among EU Members — of which only a few serve as principals, entrusting the supervision and oversight of their fellow members to EU authorities. In particular, an asymmetry is identified between a State on the frontline of migration route and countries only affected by relocation; or even northern states willing to impose more strict measure at external EU borders invading the area of sovereignty of weaker regulators States, such as the Mediterranean countries. (Ripoll Servent, 2019).

Even though the European Union "aims to develop" a common asylum policy (Factsheets on the European Union, 2021), the treaties leave a great deal of discretion to the individual member countries, which allow them to regulate refugee migration and keep authority over border controls (Henrekson et al., 2019). Following the outbreak of the Arab Spring uprisings across the region, an increasing number of people decided to move towards Europe, which affected the functioning of mechanisms such as the Dublin Regulation and the Common European Asylum System (CEAS). This also led to the partial suspension of the 1985 Schengen free-movement agreement in several countries. However, the absence of a strong political will among EU member states slowed down any reform process and the Union decided to find a solution outside its internal arrangements – it focused on external action, developing partnerships with third countries (Tagliapietra, 2019, p. 2). The competences of the EU in the field of asylum and immigration were introduced by the Maastricht Treaty of 1992 in the third pillar (Justice and Home Affairs) and was largely intergovernmental; things started to change with the creation of the Area of Freedom, Security and Justice (AFSJ) under the Treaty of Amsterdam, after which the European

Commission bore the responsibility of bringing forward proposals on migration and asylum (Tagliapietra, 2019, p. 1). The Treaty of Amsterdam provided for decisions in this field to be reached via unanimity in the European Council, which decided to adopt the co decision procedure involving the European Parliament, which was all confirmed by the Treaty of Lisbon (Tagliapietra, 2019, p. 3). The five pillars consisted out of two regulations (Dublin Regulation and Eurodac Regulation) and three directives (Asylum Procedures Directive, Qualification Directive and Reception Conditions Directive), where regulations are binding legislative acts and directives only define common goals, which all member states must achieve (*Improving the Responses to the Migration and Refugee Crisis in Europe*, 2016, p. 36). Their implementation falls under the responsibility of the states themselves who establish their own laws on how to reach those goals. The EU responded to the refugee crisis by allocating additional resources, creating specific agencies and introducing a European Border and Coast Guard Agency. It also attempted to further harmonize asylum procedures through the Asylum Procedures Directive (2013/32/ EU), which entered into force in July 2015, and through EU agencies such as the European Asylum Support Office. However, EU intervention has not been successful in sharing the responsibility for asylum seekers between member states (Bordignon & Moriconi, 2017, p. 2).In his critique of a refugee crisis management, Selanec (2015) stated that the Union in its centralized capacity failed to activate an efficient legal framework to respond to a crisis of the present magnitude, thus creating a perfect ground for individual Member States to become the main actors of crisis management, each invoking its own political particularities and national interests. The already mentioned Integrated Political Crisis Response (IPCR) in the Council in information-sharing mode, activated its highest crisis mode on 9 November 2013, and became the 'situation room' for crisis response. As stated by Schoemaker (2018), IPCR roundtable included the presidency to bring key actors and expertise together providing proposals for formal decision-making.

Assessing the EU challenges, Carrera (2015) stated the following: "first, a fairer sharing of responsibilities in the European asylum system; second, enforcing member states' implementation of EU standards; and third, a multi-policy angle for the EU agenda on migration" (2015, p. 14). The few EU Member States which have reintroduced temporary internal border checks for over a period of two to three months have done so in accordance

with the rules envisaged in the Schengen Borders Code; however, a key challenge in current border policies and criminalization practices in Hungary is that Schengen rules accept no walls stopping asylum-seekers from having access to international protection in the EU (Carrera, 2015, p. 16). Carrera and others also offered an interesting overview of potential policy recommendations for the future of the EU's agenda on migration. First of all, EU policy responses need to move from a security-centric focus towards a 'multi-sector policy approach guaranteeing a balanced setting of priorities across all relevant policy sectors such as development cooperation, foreign affairs, trade, economic, as well as social and employment considerations. All these responses should fully guarantee a fundamental human rights compliant focus, so that their effects over individuals' well-being and lives are properly and systematically prioritized over other sectoral policy considerations and interests. This is a central condition for ensuring the legitimacy of the EU both inside its borders as well as when engaging in effective cooperation and partnerships with third countries. A policy mainly focused on security approach driven by EU and Member States' interests will damage EU's image abroad and will pose fundamental obstacles over foreign affairs and wider international relations. (Carrera, Gros and Guild, 2015). Second of all, the EU Dublin System needs to be fundamentally revisited and substituted by a new regime of redistribution of responsibility on the basis of new key criteria. These criteria should combine numerical factors, as well as the personal, family and personal circumstances and preferences of asylum-seekers. The issue is not only about moving asylum-seekers around but also about making sure that proper reception conditions are in place everywhere across the Union. The upcoming evaluation by the European Commission of the Dublin system constitutes a key opportunity for this process to be launched. A key for the success of the future European asylum and borders systems will be boosting legal sharing of responsibility by boosting institutional capacity. The EU should call for the setting up of a common European Asylum service with the competence in assisting member states in the assessment of asylum applications, building their domestic capacity on reception and deciding on the redistribution of asylum applications on the basis of new criteria (Carrera, Gros and Guild, 2015).

Thirdly, the Commission should, in close cooperation with the European Parliament, more effectively (and independently) monitor and properly enforce existing EU law asylum and

borders standards by Member States, as well as their compliance with the principles laid down in Article 2 TEU. Strict oversight should be exerted to the implementation of EU measures that have the potential of violating international law. A case in point is CSDP Operation Sophia, whose Operation Plan and Rules of Engagement should be scrupulously subjected to the highest international (legal) standards and guarantees applicable to search and rescue at sea, including human rights law. (Carrera, Gros and Guild, 2015). Finally, the future of the EU common external borders policy is also a central issue. If the Schengen Area is to endure, it needs to establish a common institution responsible for securing external borders (Gros, 2015). The Commission aims at opening a debate about the setting up of a common European border service and coastal guard. Any future step towards the setting up a common European border service should take the uniform and high standard application/implementation of the Schengen Borders Code. Such as service should follow a predominantly civilian (non-military) nature and should come along the establishment of a 'border monitor' to ensure administrative guarantees and fundamental rights (Carrera, 2010).

One of the most severe consequences of the unsuccessful migration and asylum policies and the most obvious indicator of the inability to face the crisis was the suspension of the Schengen System – objectively the most significant political and functional achievement of European integration and a guarantee for achieving basic freedoms (freedom of movement of people, goods, capital and services) and a precondition for the economic and social development of the EU. This is an indicator of the lack of solidarity and the unwillingness to find a joint solution to the crisis, where precedence is given to particular over common interests (Maldini & Takahashi, 2017, p. 68). While commenting on the available literature on the subject matter, Christof Roos and Laura Westerveen (2019) noted that the Commission is portrayed as a moral and orthodox defender of the freedom of movement, in line with the 'interests and principles of the EU as a whole' (Roos and Westerveen, 2019). As Saara Koikkalainen (2021) noted in her recent research, freedom of movement is the most prized asset of Europeans. Main aims in this part of the EU crisis management would also be to strengthen European Border and Coast Guard Agency (FRONTEX); to revise the Common European Asylum System (CEAS), with Progress reports on the European Agenda on Migration issued annually by the European Commission,

as well as the established Migration Partnership Framework (MPF) in 2016. At the very least, the current Commission unsuccessful proposal for a Dublin IV wasted the opportunity to redesign the basic idea of solidarity and shared responsibility for refugee policy by means of a new responsibility and distribution procedure (Bendel, 2017, p. 8). The transboundary crisis management model (Attinà, 2016) demonstrates that the EU leaders have been late in detecting the characteristics of the phenomenon and have not conceded to reconcile their conventional view to the features of the current migration - their response decisions were not well timed and acceptable to all. The refugee crisis had a significant effect on the rise in populism, especially of the right-wing political options in many EU countries, with noticeable rise in support to these political parties, especially those accentuating nationalism (Maldini & Takahashi, 2017, p. 66).

Germany's role in EU migration policy and EU-Turkey affairs attempted to lead European policies, with great potential in assuming a leading role due to its institutional framework – it opened the opportunity for simpler decision-making where a decision is not only easier to reach in principle, but where the German government also has greater weight due to respective voting provisions, as stated by Reiners and Tekin (2019, p. 8).

3.3. The Sanitary Crisis

The outbreak of human cases of Covid-19 started in China on December 2019 and was declared a Public Health Emergency of International Concern by the World Health Organization (WHO) on 30 January 2020. At first sight, the EU is an unlikely candidate to manage transboundary crises – the EU inhibits numerous factors that impede rapid cooperation across vertical and horizontal borders since it has no authority to make binding decisions (Kuipers et al., 2015, p. 3). Sandra Mantu (2020) noted that the pandemic has significantly impacted the right to freedom of movement within the European Union, and the fact that some citizens of member states of the Schengen Area were stranded at the internal Schengen borders (due to the introduction of border controls measures) raises certain questions about the added value of being a citizen of a Member State of the Schengen Area and of the right to freedom of movement during periods of crisis. The initial absence of a swift response by the European Union to the proliferation of national restrictive measures raised the same concerns (Mantu, 2020).

To respond to the COVID-19 outbreak, on 28 January 2020 the Croatian presidency decided to activate the EU's integrated political crisis response mechanism (IPCR) in information sharing mode. Considering the changing situation and the different sectors affected (health, consular, civil protection, economy), the Presidency escalated the activation of the IPCR mechanism to full mode on 2 March 2020. Subsequently, on 7 February 2020, the Croatian presidency organized an informal high-level videoconference, where Member states, together with representatives of the European Commission and the European Centre for Disease Prevention and Control (ECDC), reviewed the state of play regarding the outbreak. On February 13, the Council of Ministers on the Employment, Social Policy, Health and Consumer Affairs Council (Health) held the first official meeting on the Covid-19 pandemic and adopted conclusions welcoming the effective EU response to the threat of a possible pandemic outbreak, and calling for increased cooperation both at EU and international level. In particular, the conclusions states that the Council "urges Member States to act together, in cooperation with the Commission, in a proportionate and appropriate manner in line with WHO recommendations and the advice of ECDC" (*Council Conclusions*

on COVID-19, 2020). On 10 March 2020 the President of the European Council Charles Michel held a videoconference with European Council members. President of the European Commission, Ursula von der Leyen, President of the European Central Bank, Christine Lagarde, Mario Centeno, President of the Eurogroup, and High Representative Josep Borrell also took part in the discussion. During the meeting, four priorities were identified: limiting the spread of the virus; ensuring provision of medical equipment; promoting research, including for a vaccine; and, last but not least, tackling socio-economic consequences. On 18 March 2020 The Council agreed its position on legislative proposals which would free up funds from the EU 2020 budget to tackle the effects of the COVID-19 outbreak. Given the urgency of the situation, both proposals were approved without amendments: they are known as the Coronavirus Response Investment Initiative and the proposal to extend the scope of the EU Solidarity Fund to cover public health emergencies. (European Commission, 2020)
After obtaining the green light from the executive arm, on 9 April the Eurogroup met via to draw up a package of response measures to present to EU leaders. The report proposed three immediate safety nets for workers, businesses and Member States. It also prepared the ground for a recovery fund to relaunch the economy and ensure EU solidarity with the Member States most affected by COVID-19, like Italy and Spain. In the summit of 23 April, EU leaders endorsed the package agreed by the Eurogroup. Heads of States and Government, pressured by their national constituencies, also tasked the Commission to urgently come up with a proposal for a so-called Recovery Fund, conceived as support mechanism for Member States to inject liquidity into their economy and prompt investments to tackle the rising rates of unemployment caused by the enforced lockdowns. On 8 May Eurogroup agreed on a deal on emergency financial support to Euro area countries Finance ministers agreed on the features and standardized terms for Euro area countries to access the European Stability Mechanism (ESM) in its Pandemic Crisis Support version. On 12 June Health ministers had first discussion on the European Commission's proposal for a regulation establishing the fourth Health programme (EU4Health programme) for the period 2021-2027. On the Commission website the EU4Health programme is defined as “the first bricks of a European Health Union” (European Commission, 2020) and it’s based on two pillars: a stronger health security

framework, which will entail harmonizing European, national and regional preparedness and response plans, and an EU emergency system – which would trigger increased coordination and rapid action to develop, stockpile, and procure the equipment needed to face the crisis; and, secondly, a more robust European infrastructure, to be achieved thanks to the strengthening of some EU agencies dedicated to public health: ECDC, EMA, and the newly founded HERA (European Commission, 2020). During a special European Council held in 17-21 July in Brussels, EU leaders agreed a deal on the recovery package and the European budget for 2021-2027. On 17 December, following the European Parliament's consent on 16 December 2020, the Council adopted the regulation laying down the EU's Multiannual Financial Framework (MFF) for 2021-2027. The next day, the German presidency of the Council and the European Parliament's negotiators reached a provisional agreement on the Recovery and Resilience Facility. The facility is the centerpiece of the Next Generation EU recovery instrument, which will support public investments and reforms in Member States, aiding them to address the economic and social consequences of the COVID-19 pandemic, as well as the challenges posed by the green and digital transitions. (European Commission, 2020). On May 2020, the newly installed Portuguese presidency reached a political agreement with the European Parliament on the EU Digital COVID certificate, which has been conceived to monitor and regulate travel and access to services (European Commission, 2020).

In this regard, the European Commission issued several guidelines on border management and containing the virus. On March 30, 2020, the European Commission released information containing guidance on temporary border restrictions during the pandemic (European Commission, 2020). Crisis management included a number of problems of internal capacity-building, so the EU relied extensively on the capacities of non-EU actors such as IMF, United Nations High Commissioner for Refugees (UNHCR) and NATO. (Genschel & Jachtenfuchs, 2017). Orchestrating third party capabilities has obvious advantages over creating genuine EU capacities, as stated by Abbott *et al.* (2015). Does emergency politics buy time for democracies or seek to override democratic processes? This question, posed by Truchlewski *et al.* in a recent study in 2021, is worth unfolding. Buying

time for collective action would suggest that Member States had the scope to express their preferences before the Commission or the Council Presidency set the agenda with policy proposals (in a way where discussion amongst national executives would precede communications about concrete policy-making steps); on the other hand, pandemic management should be marked by "top-down communication from the Commission, encouraging and coordinating competent national executives" (Truchlewski *et al.*, 2021, p. 6). The speed of action suggests that buying time is incompatible with the sole nature of crisis management, where decisions should be made in favor of public health, not on political or economic imperatives. Goniewicz *et al.* (2020) discussed on the EU Council activating the EU integrated political crisis response mechanism (IPCR) on 28 January 2020, with border restrictions implemented to serve that purpose, imposing temporary restrictions on non-essential travel to the EU for 30 days (2020, p. 4).

The Covid-19 pandemic has caused the dynamics of the EU institutions to change. The handling of these challenges varied greatly across the institutions, largely because of structural reasons and differences in institutional DNA; however, the overall, crisis decision-making has worked surprisingly well (Russack & Fenner, 2020). To start with the European Parliament, this institution was unable to convene the traditional plenary under lockdown, but it managed to implement remote voting to facilitate decision-making from home. It was described as flexible and creative, interpreting existing rules to permit remote voting (Russack & Fenner, 2020). The Council of the EU has been unable to convene formal meetings, introducing a derogation making the written procedure more accessible by removing its previous standard of unanimity, causing concerns about security and secrecy. It was the described as the most rigid EU institution. The European Commission has been left unaffected in terms of amending its working methods. Urgency shifted Commission decision-making procedures towards more expedited methods, introducing a 'fast-track ISC', and acting on the mandate of the European Council, the Commission created coordination networks covering a range of policy areas between Commission DGs and national ministers (Russack & Fenner, 2020, p. 10).

Institutional flexibility emerged as an essential quality to enable EU institutions to succeed during the Covid-19 crisis, with the European Commission intensifying information exchange and recommending guidance plans to the member states (Russack & Fenner, 2020, p. 1). Comparatively, the institutional performance of the Commission was superior to that of the EP and the Council, additionally because it was less affected by travel restrictions, being entirely based in Brussels and equipped with a plethora of administrative and secretarial staff.

Future policy and decision-making in the EU, and globally, should incorporate thorough after-action reports and government commissions to investigate best practices and lessons learned from the COVID-19 pandemic. There is a need for strong containment, strong coordination, resource availability, political responsibility, and educational initiatives (Russack & Fenner, 2020, p. 9). Ever since Maastricht Treaty, EU treaties have set the consensus principle as the default option in Council decision-making on CFSP; however, majority voting is not applied if a government declares that it has a vital national interest in opposing such a vote (*Understanding the EU's crisis response toolbox and decision-making processes*, 2016). Since the Lisbon Treaty, the constituent treaties of the EU have included a solidarity clause and a mutual defense clause in connection with crisis response. Successive crises in the European Union have led critics to identify a pervasive tendency to emergency politics, where democratic deliberation gives way to policy decisions forced through by executive authority. By contrast, Truchlewski *et al.* argued that crises may stimulate deliberation and compromise, even when preceded by open conflict and an evident collective action failure (2021, p. 1). Europe's response to the pandemic also seems to vindicate those concerns about exceptionalism that were already mentioned, with drastic restrictions on personal liberties (Kreuder-Sonnen & White, 2020, p. 4).

The overall impact of the Covid-19 pandemic spread has been very tasking and straining on the EU, on Schengen treaty provisions and on the guardian role of the European Commission, where Member States forces have been stretched beyond anything ever prepared or anticipated due to the suddenness of the pandemic and its rapid and seemingly uncontrollable spread. The devastating Covid-19 pandemic and the reintroduction of border

control measures by states alluded to the refugee crisis in 2015 all raised vital questions as to the continued sustainability of the agreement.

4. Conclusion

The research tried to explain to what extent the decision-making process in the European Union (EU) has been modified so far, looking at the institutions separately, their correlation and the potential conflict. After the entry in to force of the Lisbon Treaty, the European Council has been described as to having a central role in the governance of the EU (Bulmer, 1996) and as the new decision-making core, having been the main recipient of the power lost by the Commission over the decades (Ponzano et al. 2012; Pollack, 1997). Moreover, recent trailblazing research by Bocquillon and Lobbels indicates a possible direct connection between the presence of a focusing event or international crisis with the establishment of a hierarchical relationship dominated by the European Council, which has also been described as the crisis manager in the EU (Curtin, 2014).

After having presented the three crisis case studies, it is safe to state that the European Council has definitely strengthened its influence regarding the agenda-setting and decision-making in times of emergency, even though the Commission still retained an important role that should not be neglected. The pattern does seem evident: the Council rises in influence when a crisis strikes; the Commission enjoys a boost of executive privileges (Becker *et al.*, 2016); new actors emerge and the European Parliament takes a back seat (Bickerton *et al.*, 2014). The European Council, being the "dominant institution" in the words of Moravcsik (2002), cannot be neglected in dealing with the threats all around the European Union in numerous fields where Member States wished to be safe and sound. As the example of the three crisis case studies that were researched in detail - that is the Eurozone crisis of 2009, the refugee crisis of 2015, and the sanitary crisis set off by SARS-CoV-2 in 2020 - the relationship between the European Council and the Commission in emergency situation has been challenging. In any of the crisis considered, the EU was not the epicenter of the crisis but was responding to an external treat, threating the EU *raison d'etre*. Third agents therefore can exercise strong influence in defining the timing and nature of the crisis and a suitable response: the ECB, in the case of the eurozone crisis, NGOs in the case of refugees crisis and WHO in the case of sanitary crisis. Those third agents "positioning themselves as the most reliable guarantor of the long-term public

interest, able as technocratic actors to look beyond the short time-horizons of elected politicians, and hence the most authoritative voice in determining when an exceptional political response is justified." (White, 2013). Moreover, considering the "narrative" and trade-off choice elements, has to be noted that national preferences expressed in Council are not driven by needs emerged from public opinion or institutions but by "scientific" reasoning (on which technical decision are based).

Evidence suggests that the decision-making process is speed-up by crises, with the Council approving Commission proposal with little discussion and the EP aligning on Council position, but not altered in substance. In this regard the Commission build up on its technical competence to push forward legislation aimed at strengthening its regulatory and semi-judicial powers. Concern over decision-making speed stretches back decades and holds both substantive and theoretical importance (Golub, 2007). All these cases highly influenced emergency decision-making process and outputs adopted in time of crisis. The last decade of European integration has arguably been the most challenging one yet. The decade started with a pending Greek default in the spring of 2010 that quickly led to Eurozone-wide financial contagion and resulted in a full-blown crisis of sovereign debt. The decade ended with the immense human toll and economic wreckage caused by the global COVID-19 pandemic in the spring of 2020 (Matthijs, 2020, p. 1127). In between these two systemic crises, the European Union has had to cope with renewed Russian aggression to its Eastern borders, a surge in refugees from the Middle East and North Africa, a breakdown in its Schengen system of borderless travel, the UK vote to leave the Union, and the election of Donald Trump as US president, who sees the EU as both a competitor and a free rider (Matthijs, 2020, p. 1127).

Successive crises in the European Union have led critics to identify a pervasive tendency to emergency politics, where democratic deliberation gives way to policy decisions forced through by executive authority. By contrast, it is also argued that crises may stimulate deliberation and compromise, even when preceded by open conflict and an evident collective action failure (Truchlewski et al., 2021, p. 1). The European Commission acted swiftly but also bought time for member state governments to deliberate which has been one of her greatest strengths.

This dissertation explained in detail the decision-making process during emergency times, defined all the necessary concepts needed for its understanding and offered examples of the changes the crises caused to agenda setting, decision-making and EU crisis management in general. These situations caused the explained power shifts that modified the relationship between the European Council and the Commission.

Even if the introduction of a comprehensive emergency constitution for Europe seems currently out of reach, the containment of EU-level emergency politics remains an important task. Both the uncovering of the problems of emergency politics and the elaboration of an ideal proposal to keep them in check contain the seeds for behavioral change that can be implemented without institutional reform (Kreuder-Sonnen, 2021, p. 16). The main practical value-added of the above discussion, then, was to raise awareness about the normative and empirical implications of unregulated emergency politics and to emphasize the regulative ideal of emergency powers that actors can and should integrate in their handling of future crises, as stated in numerous works cited by Kreuder-Sonnen in this research.

A safe way to improve the Union's crisis management capacities without creating a new agency would be to initiate a process of standardization - to adopt common strategies with common goals and streamline national agencies, so that cooperation will run more smoothly (Olsson, 2009, p. 164). Guidelines and instructions are necessary for the smooth management of chaotic situations, and investing in civilian first- aid education, basic hygienic knowledge, etc., can be of importance for future crisis management policies (Goniewicz et al., 2020, p. 9).

Future policy and decision-making in the EU, and globally, should incorporate thorough after-action reports and government commissions to investigate best practices and lessons learned from the COVID-19 pandemic, as well as from other case studies mentioned in the previous chapter. There is a need for strong containment, strong coordination, resource availability, political responsibility, and educational initiatives (Goniewicz et al., 2020, p. 9). Closer collaboration is called for with the military which will allow for more effective resource distribution and shared information about future global threats, together with

health organizations being able to work independently, avoiding political partnership and decision-making (Goniewicz et al., 2020).

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