

EUROPEAN INSTITUTIONAL MECHANISM FOR POLITICAL RESPONSE TO CROSS-BORDER CRISES – EFFECTIVENESS IN ENSURING EUROPEAN SECURITY AGAINST TERRORIST ATTACKS AND THE REFUGEES AND MIGRANTS CRISIS

Gabriela Cristina ȘPAIUC*

Abstract

In recent years, the European Union, as a supranational actor, with the declared objective to play an important role in the security field, has developed its own regulatory framework and capabilities in order to manage the cross-border crises. In the service of this objective, European Union has built a mechanism aiming at coordinating and leading at the highest political level the response to threats that require by the nature of their consequences a conjugated reaction. We propose ourselves to analyse its effectiveness by studying the events that generated the triggering of the mechanism, or which could have led to the triggering of this mechanism, but did not do it. The approach of the threats that transcend the national boundaries can involve actions which start with the interconnection of states' response capacities to their integration through the framework advanced by EU.

Keywords: IPCR, terrorism, crisis management, solidarity clause, temporary arrangements

Introduction

The emergence of the EU's security dimension has manifested as a response to various types of threats (Stephenson and Rhinard, 2008, pp. 1-26), but the present work aims to document and assess the evolution of processes contributing at the redefinition of the institutional instruments and of the mechanisms developed in order to ensure as much coordination and complementarity as possible between Member States' efforts, regarding two types of crisis-generating situations. On one hand, a first analysis, carried out both from the perspective of the engine role of the evolutions and the evidentiary role of the product of these developments, is given by events disruptive for the internal security such as terrorist attacks produced in the territory of European or extra-European with repercussions on the European states. On the other hand, we will refer to the analysis of the modality of managing the situations occurring at the external borders of the Union as a result of the flows

*Gabriela Cristina ȘPAIUC is PhD student at National University of Political Studies and Public Administration, Bucharest, Romania; e-mail: spaiucgabriela@gmail.com.

of illegal immigrants, which implies the reshaping of the legislative framework in order to allow a structured and predictable response, situated in a stage of negotiation and alternative proposals until the completion of the negotiations.

Both types of security threats, related to the recorded crises and to the policies and strategies developed by the European Union, were at the basis of the response approaches materialized in the optimization of the normative and institutional framework for integrated crisis management of the cross-border crisis. The objective of providing Member States with leverage to access operational capabilities and the EU-level decision-making process has been achieved by signing arrangements designed to allow for coordination in crisis situations and the response at the political level of the European Union (by assigning a central role to the Council of the European Union), respecting the attribute of complementarity in relation to the actions of the competent authorities of the Member States. The full implementation of these arrangements has been the subject of evaluation reports, which led to the identification of new possibilities for improvement of the developed mechanisms and finally to the reform of the normative framework. In this regard, in order to implement the *solidarity clause* (article 222 TFEU), the set of mechanisms and tools aimed at providing an EU response to crises has been perfected and expanded.

So far, crises related to terrorist attacks and those caused by migrants in need of international protection have been addressed both at Member State level and by recourse to the mechanisms developed at European Union level, in which case the coordination has oscillated between facilitating the exchange of information between Member States and bringing forward proposals for action. The complexity of the phenomenon represented by transnational terrorism involves, in terms of the EU reaction to terrorist incidents (in 2017 there were 282 terrorist incidents in Europe, Institute for Economics & Peace, 2018, p. 2), the development of support mechanisms in crisis situations, particularly by virtue of the principle of solidarity. The setting-up of an automatic relocation mechanism through the allocation of quotas was an exceptional measure in an exceptional situation, but subsequent to the crisis of refugees from 2015 has not been reached a long-term solution. The current practice is based on the assumption of *pledges* from the Member States for the relocation of migrants who are the subject of search and rescue operations, in the absence of these pledges the states in the front line (Italy, Malta, Spain) refusing to disembark migrants, despite the urgent need for action in to counterbalance dramatic effects reflected by the statistical data on the number of deaths recorded on the Mediterranean routes (between January and August 2019, the estimated number is 909 deaths and 53,916 arrivals on the Mediterranean transit routes)¹.

¹ Flow Monitoring. Arrivals to Europe, 2019 (retrieved from <https://migration.iom.int/europe?type=arrivals>).



1. Crisis Coordination Arrangements (CCA)

Due to events with a cross-border impact, which have brought to light the need to act above the national plan in the crisis-management area, respectively of involving an actor which would use its institutional resources and which would update its regulatory framework with the aim of ensuring the coordination of actions between States in the event of a crisis, EU agreements for coordination in emergency and crisis situations have been adopted (*EU Emergency and Crisis Coordination Arrangements/CCA*).

The identification of the absence of an arrangement for the coordination at the highest political level of the actions for managing the crisis situations produced inside or outside the Union, with repercussions on the security of the Member States, triggered the reactive action of the European Union in response to these events. As a result, the CCA has established the way in which the EU institutions and the affected Member States interact in a crisis situation.

The need of adaptation to the deepening of the cross-border nature of the challenges faced by EU Member States in the security plan, in the conditions of an overcoming of the internal capacity of the States to act individually, constituted the impetus for initiating a process of establishing the legal basis for the management of the crisis with cross-border effects at the Union's level. At the foundation of this release was the paradigm shift, intervened with the attacks of the 11th of September 2001, in the relation with the terrorist threat, a shift initiated by the United States' declaration of the *War on Terror*, followed by virulent position-assuming in the implementation of legislative instruments and counter-terrorism strategies at European and global level.

In this context, the European Council launched a strategic guidance line for the European institutions, which led to the proposal and negotiation of integrated and coordinated EU crisis-management arrangements for crises with cross-border effects within the EU, with the designation of the deadline of the 1st of July 2006 for their implementation (Council of the EU, 2005, p. 10). The process of establishing a legal framework to enable the coordination and the augmentation of the efficiency of the decision-makers' response in crisis situations, including through the exchange of information, has been driven by the events with a security impact - the bombing attacks in London on July 7, 2005 (O'Brien, 2016, pp. 199-200), followed by the assuming of the decision to act, "particularly for terrorist attacks on more than one Member State" (Council of the EU, 2005).

EU Emergency and Crisis Coordination Arrangements (CCA), adopted in December 2005 (Council of the EU, 2005, 1-2 December) have been implemented since July 2006, at which time they were not fully functioning, engaged in a process of full implementation. At the centre of CCA there was a *Crisis Steering*

Group subordinated to COREPER II² (Larsson and Olsson, 2009, p. 127); as such it was managed at the level of the Council of the European Union and was addressing institutional and cross-sectorial issues, with a profile both technical and political, immediately below the highest decision-making level of the Council. A progress report developed one year after the adoption of the CCA highlighted issues that could have supported an improvement in relation to the objectives stated in the *Manual on EU Emergency and Crisis Coordination*, approved in order to facilitate the implementation of the CCA, with the profile of a document that can be permanently updated and adjusted as a result of periodic reviews. The manual is structured in sections referring to the following issues: EU agreements for political coordination at the level of the European institutions for major crises inside and outside the Union, pre-established points of contact in the Member States, available at all times in the case, for example, of the occurrence of a terrorist attack, as well as the activity of identifying a single point of contact for all types of emergencies, good practices and tools for the cross-border cooperation within the EU and with third countries (Council of the EU, 2007, 20 June).

In the enforcement of the CCA, the impact of a crisis, respectively its assessment by the Member State/States directly affected shall shape the course of response. This can be achieved either with the support of other Member States or the EU institutions, in which case it involves the coordination at the political level of the EU, or without external support, in which case it relates to the management of the crises at national level, without recourse to the CCA. Between the two cases, a third case is placed which involves recourse to external assistance without the need for EU coordination, but involving the recovery of the national contact points indicated in the CCA, for the provision of operational support.

In the event that the affected Member State took the decision to call for political coordination at EU level, the commissioning of specific procedures followed: The transmission of information on the crisis to the General Secretariat of the Council (Sit Cen), to the specially appointed representatives within the Council and the Commission, the consultation between representatives who have come into possession of information with the aim of analysing the opportunity of triggering the crisis-coordination agreements, taking the final decision on the activation of the CCA by the Presidency of the Council, in agreement with the Member State/States directly involved. The activation of CCA was performed by convening the Crisis Coordination Group, which consists of representatives of the Presidency of the Council, the Member States affected (permanent representatives within the Permanent Representation of the Member States at Brussels), the General Secretariat of the Council (Deputy Secretary-General), the European

² COREPER (Committee of the Permanent Representatives of the Governments of the Member States to the European Union) is a working group of the Council of the European Union composed of each member states' permanent representatives which has responsibility for all EU policy areas, characterized by rapidity and high political commitment.



Commission (the Secretary-General), with the role of assessing the situation and formulating a preliminary view on the EU's response options. The central body for the coordination of the decision, the Committee of Permanent Representatives (COREPER), was acting by taking into account the national competences, the actions undertaken by the States and the European institutions, with the objective of imbuing coherence and coordination in the formulation of the response to the crisis in the concrete case (Council of the EU, 2007).

2. Integrated Political Crises Response Arrangements (IPCR)

At the level of EU, a mechanism has been relatively recently developed regarding the reaction to non-predictable situations that have the potential to develop as threats to the security of Member States, namely terrorist acts and any type of situations that can be qualified as major crises. “The European Union counter- terrorism strategy”, adopted on November 30, 2005 (Council of the EU, 2005), formulated the EU-wide objective of responding to a terrorist attack, with a view on managing and mitigating its consequences to a minimum, as well as for the coordination of the response and the reaction in assisting the victims of terrorism. In order to achieve this objective, the EU has developed a crisis coordination mechanism to work alongside the main crisis response tool – *the EU Civil Protection Mechanism*.

The EU strategy on the fight against terrorism was preceded by the development of the terrorist attacks in London in July 2005, being a clear expression of the need to counter the terrorism, a cross-border phenomenon, by the Union as a whole, not just exclusively at national level by the Member States. Next, the approach of the threat posed by terrorism is placed as a primary responsibility of the Member States, EU taking the role of contributing through four modalities: strengthening of the national capacities, facilitating the European cooperation, developing the collective capabilities of response, promoting the international partnerships.

The need to develop a framework for coordinating the responses at the highest political level in the face of major crises has imposed itself as a result of the paradigm shift in approaching the internal security, following the attacks on 9/11 and the terrorist attacks in Madrid (2004) and London (2005). Prior to the EU's Integrated Political Crisis Response/IPCR mechanism, established under the coordination of the Council of the European Union on the 25th of June 2013, there were EU arrangements for coordination in emergency and crisis situations (Crisis Coordination Arrangements/ CCA), designed to manage major terrorist attacks and natural disasters. These arrangements, officially approved by the Council of the EU since 2006 onwards, have allowed the EU and the Member States to provide a strategic political response to crises in a coordinated way.

The Integrated Political Crises Response Arrangements (IPCR) are at the service of the Presidency of the EU Council by means of instruments ensuring the



exchange of information, joint decision-making and coordination of responses to the highest political level. The IPCR was conceived as a tool more flexible and adaptable to crisis situations, able to consolidate the political process. The aim of the IPCR is to promote the common approach-the mobilization of all relevant services and bodies, without the overlapping of competences and to ensure a coordinated set of actions in the EU response to crises. The achievement of a unitary action of EU response to crises is required under the conditions of institutions and bodies with different crisis management cultures (Minard, 2015, p. 2).

A first instrument to support and advise the Presidency of the EU Council in crisis management is the organization of informal meetings involving bringing together the key actors and experts, such as representatives from the European Commission, the European External Action Service (EEAS), the Office of the President of the European Council, international organizations and experts from the Member States. The role of the informal roundtables is to prepare the decisions regarding the possible crisis management within the Council and to develop proposals for action (Council of the EU, 2016, RS 195).

Another tool is the Integrated Report of Situational Analysis and Awareness (*Integrated Situational Awareness and Analysis/ ISSA*), representing an analytical written information, drafted by the Commission and the EEAS/ High Representative of the Union for Foreign Affairs and Security Policy, which serves as a decisional basis for the Council, by providing a strategic radiography of the situation as well as its possible developments. The flexibility of this instrument is proven by the drafting of these key documents for political decision-making, by reference to the particularities of the crisis in the actual case. The reports reunite the validated contributions made available voluntarily by the Member States, the Commission, the EEAS and the relevant Union agencies, as well as the relevant international organizations (Council of the EU, 2016, RS 195).

The exchange of information is facilitated by the existence of an IPCR web platform which ensures the pooling of essential documents, including the ISAA report, situational maps and stakeholder contributions. In the event of a crisis, one or more pages of monitoring the development of the crisis can be generated on the IPCR web platform, depending on the situation and the political needs identified. Based on the information provided following the updates on the evolution of the crisis, the Commission, the EEAS, the General Secretariat of the Council may advise the Council's Presidency on the appropriateness of the activation of IPCR. The decision of partial or total activation of IPCR agreements may intervene on the basis of the Presidency's decision, following the revaluation of centralized information on the crisis and following the convening of an informal roundtable or at the request of a member. The activation of IPCR determines the creation of a crisis page that replaces the previous monitoring page (Minard, 2015, p. 2).

An essential tool for the performance of the monitoring and alerting functions for the fulfilment of the IPCR aims is the implementation of a singular union contact point, functioning 24 hours a day and 7 days a week, with the aim of



maintaining the permanent link with the competent authorities of the Member States and other interested parties. The Emergency Response Coordination Centre/ERCC has been established by the Decision No. 1313/2013/EU as a coordination centre for assistance and collection point for the database containing the information related to ISSA (Council of the EU, 2013, 20 December).

The integrated mechanisms for political response to crises can be activated by the Presidency of the Council of the EU or following a request from a Member State, in the context of a major crisis requiring the need for political coordination between Member States, whether the event takes place inside or outside the EU. Depending on the size of the crisis situation there are three levels of activation of IPCR: a monitoring mode not equivalent to the *de jure* activation of IPCR and two activation levels for which support instruments are available, i.e. the modality of sharing/distributing information and the full activation of IPCR. The monitoring, carried out through the access to the IPCR web platform, allows the information about a crisis to be shared voluntarily. The second level of engagement, the exchange of information, implies the obligation for the Commission and the EEAS to draw up ISSA reports, which are included on the page dedicated to the crisis in question, generated by the General Secretariat of the Council on the IPCR web platform. The full activation of the IPCR involves managing the crisis at EU level by organizing extraordinary meetings at the level of the Council or the European Council, thereby contributing to the increasing of the visibility of the EU crisis response. At the same time, the full activation involves the preparation by the Council Presidency of proposals for action by recourse to exceptional measures, in engaging the decision-making process by contributing to the presentation of the ISSA reports to the Council and COREPER and the contributions of the informal roundtables.

The Commission communication entitled “EU Internal Security Strategy in Action: Five steps towards a more secure Europe” has set the objective of amplifying the Union's response to crisis situations and natural or provoked disasters, through a number of actions including the full use of the solidarity clause (European Commission, 2010, 22 November). Therefore, the structuring of the political response in crisis situations through the mechanism provided by the IPCR is closely linked with the solidarity clause (TFEU, 2012, pp. 47-390), innovation introduced by the Treaty of Lisbon (article 222 TFEU), which opens the possibility of granting assistance on behalf of the Member States and the Union in case a Member State is subject to a terrorist attack. The summoning of the solidarity clause by a Member State determines the automatic triggering of the IPCR mechanisms. The political coordination of the response to the summoning of the solidarity clause is within the competence of the Council, while the General Secretariat of the Council, the Commission and the EEAS contribute to the management of the IPCR mechanisms. The management of a crisis situation arising from a terrorist attack, by invoking the solidarity clause, becomes necessary when the response capabilities available to the affected Member State are clearly insufficient (Council of the EU, 2014, 1 July, pp. 53-58). The Member States

remain responsible for the management of the crises occurring in their territory and what determines the use of the solidarity clause is, regarding to the nature of the crisis, the potential of cross-border dissemination of its effects, and regarding the taking over of the sharing of the response responsibility, the decision of the affected State based on the exceeding of the response capacity. The IPCR agreements are based on the principle of subsidiarity, fully respecting Member States' responsibilities in a crisis situation. Also, they do not replace the arrangements already in place at sectorial level. The practical operation of this innovation implies a staged development/a progressive approach: the action at national level until the response capacity is consumed, a certain degree of solidarity being activated at this stage by mobilizing the community civil protection mechanism; the request from the political authorities, the directly affected state, the activation of the solidarity clause; the establishment by the Council of the strategic and political direction of the Union's response and the automatic activation of the IPCR agreements (EU-Logos, 2015).

The European Union prioritized the provision of security against cross-border threats by building a complex system of legal instruments and operational capacities based on a specific legislation and expressly mandated to meet operational tasks for the prevention and fighting against criminality, including terrorist-specific activities. By the institutionalization of the legislative framework for preventing and fighting against terrorism the aim has been to increase the degree of cooperation and coordination between Member States in order to: identify groups and individuals suspected of terrorist activities, mitigate and halt terrorist financing activities, facilitate the exchange of information, conduct criminal prosecutions and bring the terrorists to justice.

The European External Action Service (EEAS) possesses structures in the field of information gathering (Int Cen – The EU Information Analysis Centre, including a counter-terrorism department), as well as the network of delegations that can contribute to the response given to threats or disasters occurring in the territory of the Member States (Council of the EU, 2014, 1 July, pp. 53-58). The Commission's Directorates-General have competences circumscribed to actions approaching the threats in the internal security plan as a result of certain crisis situations. From this perspective, the role of the IPCR is to concentrate the expertise and competences existing at EU's level in order to avoid institutional competition and to develop a „coherent, integrated and efficient” crisis resolution system (EU-Logos, 2015).

In the 90s, steps were taken towards a closer cooperation and coordination of anti-terroristic activities, approved through the Maastricht Treaty, which has become operational starting with 1st of July 1999 (Council of the EU, 1995, pp. 1-32). The need for an information exchange centre also derives from the need for systematic management of the monitoring of persons suspected of terrorist activities, in the context of the space without internal frontiers generated by the implementation of the Schengen Agreement (Trandafir *et al.*, 2003, p. 147). The



European Police Office (EUROPOL) is an institution with attributions in collecting and analysing the information with implications for the security of the states (operational analyses, strategic reports, analysis of criminal activities, based on the data provided by the Member States), with the role of coordinating the States' efforts in preventing and combating serious forms of organized international crime and terrorism (Tomescu, 2011, p. 84). The Member States continue to hold the investigative authority by means of the delegation of liaison officers, Europol assuming the role of providing expertise and technical support for joint investigations and operations. After September 11, 2001, Europol developed its competence domain by establishing a crisis centre for the coordination and exchange of information on the phenomenon of transnational terrorism, subsequently developing a unit specialized in counter-terrorism with the aim of providing analyses and assessments of terrorist threats (Occhipinti, 2003, p. 304). Europol presents itself as a key partner of Member States in meeting the security challenges, by providing a platform for the exchange of information, as well as analytical and operational support for complex international investigations (European Police Office, 2017, p. 7). The alignment of Europol with the requirements of the Treaty of Lisbon was achieved by the adoption of Regulation (EU) 2016/784, which establishes a closer link with the Union's citizens through the performance of a review by the European Parliament and the national parliaments on the activities of the European Union Agency for Law Enforcement Cooperation (European Parliament, Council of the EU, 2016, 24 May, pp. 53-114).

3. IPCR activation and the level of activation

The first full engagement of the IPCR agreements occurred following the decision of the Presidency of the Council of the European Union, in the first phase on October 30, 2015 (Council of the EU, 2015, 30 October) in the manner of exchanging information, followed by the full activation on November 9, 2015 (Council of the EU, 2015, 9 November), in the context created by the exacerbation of the refugee crisis. The necessity of ensuring a coordinated response of EU at the highest political level in the face of a major crisis, a key purpose of the IPCR, was at the heart of the concern for monitoring and analysing the migratory flows. In adjunction to the objective of implementing the agreed measures and granting the support for the decision-making process, the setup of roundtables at political level and of technical roundtables targeted issues related to the free movement of persons, visas, borders (Minard, 2015, p. 4). The application of the IPCR agreements, in the case of the refugee crisis, constituted a test that proved the applicability, the flexibility, the high degree of adaptability to the crisis situations of this political tool.

The activation of the IPCR mechanisms as a result of a major crisis triggered outside the European Union has not occurred until now. External events, which led to the implementation of the operations carried out as part of the Common Security



and Defence Policy (CSDP), with repercussions on the European security – an example may be the prolonged conflict in Syria, which expanded on European territory through the incidence of terrorist attacks and the phenomenon of the return of a large number of foreign fighters at high risk of radicalization – were not the object of the IPCR activation. By complying with the territorial criterion of proximity and the major repercussions on the European states the terrorist attacks produced on European territory may constitute the basis for triggering the IPCR agreements. However, the option of fully activating the IPCR process remains politically sensitive, being influenced by the willingness of the Member States to take joint decisions at EU level and the degree of restrictiveness of the national policies.

In the period 2006-2013 the CCA mechanisms were applied for the purpose of exchanging information in three crisis situations, one of which being linked to a terrorist attack on an extra-European territory – the terrorist attacks in Mumbai in 2008, and two related disasters – produced in 2010 in Haiti and Iceland (Minard, 2015). The reviewing process of CCA, which lasted two years, was finalized by the progress registered in the mission of strengthening the EU's ability to make rapid decisions when faced with crisis situations, by the co-optation of the support on behalf of the institutions and synchronizing it with the actions of the Member States, in such way that no institutional overlap would be possible.

The CCA proved their limits, by not being fully activated, being used only in the process of information exchange. The reviewing process sought to compensate for the weaknesses in structural rigidity, with the IPCR agreements reaching a greater flexibility for the adoption of swift decisions leading to the strengthening of the cooperation between the parties involved in a major crisis.

The IPCR was widely used to support the exchange of information regarding certain complex crises (monitoring pages on Syria/Iraq, Yemen, Ebola, Ukraine, Nepal, etc.), for communication in crisis situations (good practices and communication strategies), humanitarian assistance and counter-terrorism. It was activated for the first time in October 2015, for the refugee and migration crisis. Since its activation, it has been instrumental in monitoring and supporting the crisis response, informing COREPER, the Council and the European Council. The IPCR has also been used to conduct Union's response exercises to major crises caused by cyber-attacks, natural disasters or hybrid threats (Council of the EU, 2016).

4. Temporary arrangements

The refugee and migrant crisis, with an exponential increase in arrivals in 2015, highlighted the existing weaknesses and underlined the structural limitations of the European migration, asylum and border management system. At present, although the number of third-country nationals arriving at the European Union's external borders is below the level before the crisis, the structural pressure exerted by migration remains very high. Recent developments regarding the situation of the transit on the Central-Mediterranean route of the migrants desiring to reach Europe



show the need to increase the search and rescue capacity, to which the unfolding of EU operations in the Mediterranean Sea have been contributing (the recent extension of the mandate of EUNAVFOR Med Operation Sophia³), in accordance with the long-term maritime legal obligation to rescue persons on the high seas. The estimated number of deaths at sea is of 2,299 in the year 2018⁴, most of which are registered in the central area of the Mediterranean Sea, the coastal authorities of Libya and Italy being forced to save or intercept a large number of migrants. These situations with a high destabilising potential pose a challenge to the Member States and the European Union.

Despite the process of reforming the EU norms regarding the asylum, the issues related to the takeover of migrants as a result of search and rescue operations in the Mediterranean Sea (Search and Rescue/SAR), of landing and intra-EU resettlement present issues that require an immediate solution.

In the Commission Communication of December 4, 2018 (European Commission, 2018), the need was signalled to move from ad hoc responses, currently used in the face of crisis situations caused by pressure exerted at the external border of the Union as a result of migrants' arrivals, to the identification of sustainable solutions to contribute at the rescue of as many lives as possible at sea, alongside avoiding the creation of attraction factors, reducing the number of illegal arrivals and discouraging the movements of migrants/refugees from one Member State to another. The EU policies in the domain of the asylum and immigration rights are carried out by applying the principle of solidarity and responsibility (article 80 TFEU) and, given the political nature of the issue represented by the fair distribution of the nationals of the third-party countries which are subject of intra-EU resettlement operations and their voluntary nature, the negotiations to identify effective solutions are difficult.

The imperative underlying of the need to identify transitional measures, in the context of the impasse the negotiations on the package of reformation of the common European asylum system have been finding themselves in, has been brought into question with reference to the search and rescue operations of the migrants illegally arriving at the external border of the Union by means of the boats which are roaming the Mediterranean Sea (European Commission, 2018, 4 December). The European Union as a whole, the support provided to the coastal Member States included, has sought to contribute to the identification of efficient landing solutions in order to demonstrate the ability of reducing the pressure

³ According to the official website dedicated to this operation of the Union's external policy, entitled EUNAVFOR Med Operation Sophia, "the mission core mandate is to undertake systematic efforts to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers, in order to contribute to wider EU efforts to disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean and prevent the further loss of life at sea".

⁴ Recorded migrant deaths by region. Mediterranean., 2019 (retrieved from <https://missingmigrants.iom.int/>)

caused by the existence of a massive inflow of immigrants, in accordance with the provisions of article 78 TFEU⁵.

*The temporary arrangements*⁶ would be based on a political commitment, expressed by the Member States with the aim of filling the lack of a predictable framework facilitating the rapid landing of migrants, namely identifying a solution for replacing the current practice of ship-by-ship type. The treatment of future landings by applying the framework provided by the future *temporary arrangements* is seen as a temporary and transient measure until the adoption of the legislative proposal regarding the Dublin Regulation (European Commission, 2016, 04 May).

In the context of the stagnation of the negotiations on the reform of the Common European Asylum System (CEAS), focusing on the difficulty of advancing the discussions on the Dublin Regulation⁷, the EU wants to offer a solution allowing the transition from the ad hoc approach of the situations generated by the arrival of the immigrants at the borders of the first-line states, to a more efficient framework by applying certain practical and predictable arrangements. Such a mechanism can be based on the established principles of the joint effort, the voluntary contributions from the Member States, the support from the relevant EU institutions and agencies, in an effort to reach a balance between solidarity and responsibility. They should also search for solutions, by referring to lessons from past experiences.

The search and rescue operations have proved their limits, being often dramatic, including as a result of the response from the European States situated at the European Union's external border, in conjunction with the European States' reaction to the support granted for the takeover of migrants. The cases of boats crossing the Mediterranean Sea, identified by the coastal authorities of the Member States and allowed - or delayed, in some cases - to land on European shores⁸ may constitute examples from which to extract both the shortcomings regarding the

⁵ Article 78 paragraph (3) of the TFEU states that: "In the event of one or more Member States being confronted by an emergency situation characterized by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned."

⁶ The European Union has coined this term. The expression temporary arrangements appears for the first time in COM (2018) 798 final, 04.12.2018.

⁷ Through the current proposal of reforming the Dublin Regulation, the EU aims to add provisions allowing the approach of the situations in which the asylum systems of some Member States are subject to disproportionate pressure, together with the conservation of the main objectives – the provision of the swift access of the applicants to an asylum procedure and the examination of the application by a single Member State.

⁸ In 2018, a number of ships were not allowed to disembark migrants immediately until they started or obtained the agreement from the Member States that have shown themselves voluntarily to take over migrants (e.g.: 'Sea Watch 3', 'Sea-Eye' with 18, respectively 12 days spent at sea).



management of the situations in which a number of migrants reaches the gates of Europe and the examples of best practices that can be exploited in order to advance a support and response solution to these problems.

The main difficulty in implementing *the temporary arrangements*, if these will be adopted, will be posed by the operational coordination, with the involvement of Member States, European institutions and agencies. This could be achieved either by using the existing instruments (IPCR) or by developing an operational platform (possibly supported by coordination reunions, discussions in existing formations, and the allocation of a key role to the Commission and to the Member State of landing under pressure). The alternative of an operational coordination platform at the Commission level would have the objective to ensure the efficient and coordinated support for the Member State of landing, based on the cooperation with the applicant Member State/States and the participating ones.

Solutions can be identified either based on principles similar to those applied in response to the terrorism-related crises, or through the capitalization on the regulatory framework currently being used for managing and mitigating the effects of such crises, taking into account the applicability of temporary arrangements restricted to the existence of exceptional circumstances.

The context of the changes at European institutions is likely to print to the EU's activities and policies on migration and asylum a course characterized by innovative solutions. In this regard, the signals coming from the newly elected President of the European Commission, Ursula von der Leyen, argued that it is desired to continue to reform the Dublin Regulation in order to support the Member States that are under the pressure of migration, so that the *burden*⁹ is equitably redistributed at European Union level. To settle differences of opinions encountered in the negotiations for the reform of the legislative package on the asylum system and the improvement of the applicable legal framework can contribute both to the support already manifested by the President of the European Commission for the states located at the southern external border of the Union, balanced by the diluted language towards the central and eastern European countries (Poland and Hungary) regarding the economic sanctions carried in connection with the non-respect to the principles of the rule of law. A new proposal by the European Commission for the recast of the Dublin Regulation could be a first step in trying to harmonize the positions of the Member States regarding the appearance of the common European asylum system.

Conclusions

The role that COREPER occupies in the management of the crisis at Union's level, with regard to the monitoring of the implementation of the IPCR, the

⁹ Foreign Policy, Ursula von der Leyen's Big Promises for Europe, July 16, 2019 (retrieved from foreignpolicy.com/2019/07/16/ursula-von-der-leyens-big-promises-for-europe/).

reception of information on the crisis, the debates on the strategy to be followed in order to prepare proposals for the crisis response, emphasizes the predominantly political character of this process, through the fact that it grants the governments of the Member States the primary responsibility for the decision making. From this perspective, one can observe that in the EU response to major crisis situations certain key responsibilities are being allocated to the institution representing, by structure and competences, the interests of the Member States, which shows that possible difficulties in applying the regulatory framework governing this area - and the absence of its application - will be explained primarily based on the understanding of the political aspects and interests on the internal stage of the Member States, and less as a result of the bureaucratic or institutional shortcomings.

The inclusion of the principle of solidarity in the internal security strategies formulated at Union level aims to ensure a common action as a response to crisis situations. However, the commitment to solidarity is not doubled by a legal one, the Member States being the ones establishing the means they use in a crisis situation, and they can choose only a mere declarative positioning regarding the conviction of a terrorist action. Moreover, the adoption of a position in the spirit of solidarity is linked to the formulation of a request for support from the political authorities of the affected State, fact which is tantamount to the existence of prerequisites for invoking the solidarity clause. The identification of the acts of violence produced in the territory of a state as terrorist attacks, the acceptance of the identification of the elements in a crisis situation as falling within the next definition: „*Crisis* means a situation with such a broad impact or political significance that requires a swift coordination of policies and a swift response at the political level of the Union” (Council of the EU, 2018, 12 December) represent such examples.

The Member States continue to have the responsibility and the main competences in the management of crises produced in their territory, with the full recognition of the subsidiarity principle. At the same time, as a complement to the action on a national plan, taking into account the broad impact and political significance, the trans-sectorial and transnational character of the crises, the convergent action of a number of actors (Member States, European institutions and agencies) in support of the efforts of efficiently managing the effects of a crisis are achieved by recourse to the principle of solidarity – as a foundation for the process of developing the EU’ legislative and operational tools in the field of crisis management – so as to facilitate a coordinated response of the EU at the political level.



References

- Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), JO C 326, 26.10.2012, Brussels.
- Council of the European Union (1995), *Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)*, JO C 316, 27 November, Brussels.
- Council of the European Union (2005), *Extraordinary Council meeting Justice and Home Affairs, Council Declaration on the EU Response to the London Bombing*, 13 July, Brussels (retrieved from http://europa.eu/rapid/press-release_PRES-05-187_en.htm).
- Council of the European Union (2005), *Press Release 2696th Council Meeting Justice and Home Affairs 14390/05 (Presse 296)*, 1-2 December, Brussels (retrieved from http://europa.eu/rapid/press-release_PRES-05-296_en.htm).
- Council of the European Union (2005), *The European Union Counter-Terrorism Strategy. Prevent. Protect. Pursue. Respond*, 30 November, Brussels.
- Council of the European Union (2005), *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union 2005/ C 53/ 01*, JO C 53, 03 March, Brussels.
- Council of the European Union (2007), *Report and revised Manual on EU emergency and crisis coordination – Endorsement 10011/1/07 PROCIV 83 JAI 265 COSDP 441 PESC 641*, 20 June, Brussels.
- Council of the European Union (2014), *Council Decision of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause 2014/415/UE*, JO L 192, 1 July, Brussels.
- Council of the European Union (2015), *Measures to handle the refugee and migration crisis – Council conclusions 13880/15 JAI 842 ASIM 143 FRONT 240 RELEX 902 COMIX 563*, 9 November, Brussels.
- Council of the European Union (2015), *Migratory crisis: EU Council Presidency steps up information sharing between member states by activating IPCR (Press Release)*, 30 October, Brussels (retrieved from <https://www.consilium.europa.eu/en/press/press-releases/2015/10/30/migratory-crisis-activating-ipcr/>).
- Council of the European Union (2016), *The EU Integrated Political Crises Response – IPCR – arrangements: in brief RS 195*, Brussels (retrieved from https://www.consilium.europa.eu/media/29699/web_ipcr.pdf).
- Council of the European Union (2018), *Council Implementing Decision (EU) 2018/1993 of 11 December 2018 on the EU Integrated Political Crisis Response Arrangements*, JO L 320/28, 12 December, Brussels.
- EU- Logos (2015), *The solidarity clause: one of the most unacknowledged innovations of the Lisbon Treaty. The European Parliament debates its implementation but also its ambiguities*, 27 July, Brussels (retrieved from <http://www.webcitation.org/78FVt1o63>).
- European Commission (2016), *Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) COM (2016) 270 final*, 04 May, Brussels.



- European Commission (2018), *Communication from the Commission to the European Parliament, the European Council and the Council Managing Migration in all its Aspects: Progress Under the European Agenda on Migration COM (2018) 798 final*, 04 December, Brussels.
- European Commission (2010), *Communication from the Commission to the European Parliament and the Council. The EU Internal Security Strategy in Action: Five steps towards a more secure Europe COM (2010) 673 final*, 22 November, Brussels.
- European Parliament, Council of the European Union (2013), *Decision No. 1313/2013/EU of the European Parliament and of the Council of 17 December on a Union Civil Protection Mechanism L 347/924*, 12 December, Brussels.
- European Parliament, Council of the European Union (2016), *Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA*, JO L 135, 24 May, Brussels.
- European Police Office (2017), *European Union Serious and Organised Crime Threat Assessment (SOCTA). Crime in the age of technology*, Haga.
- Institute for Economics & Peace (2018), *Global Terrorism Index 2018: Measuring the impact of terrorism*, Sydney, p. 2.
- Larsson, P. and Olsson, S. (2009), *The Crisis Coordination Arrangements* in: Olsson, S. (ed.) *Crisis Management in the European Union*, Berlin, Heidelberg: Springer, pp. 127-138.
- Minard P. (2015), The IPCR arrangements: a joined-up approach in crises response?, *EU Institute for Security Studies*, No. 38.
- O'Brien, P. (2016), *The Muslim Question in Europe*, Philadelphia: Temple University Press.
- Occhipinti, J. D. (2003), *The Politics of EU Police Cooperation. Toward a European FBI?*, Colorado: Lynne Rienner Publishers.
- Stephenson, A. and Rhinard, M. (2008), Managing Transboundary Crises: What Role for the European Union?, *International Studies Review*, 10(1), pp. 1-26.
- Tomescu, I. R. (2011), *European Institutions and Instruments for Combating Terrorism*, Annals of "Constantin Brâncuși" University of Târgu Jiu, Târgu Jiu: Series Letters and Social Sciences, No. 2, pp. 83-100.
- Trandafir, C., Stoica, M. and Șopu, M. (2003), *The Influence of International Terrorism in Europe*, Craiova: Sitech.

