

From the 'Ordinary' Method to the Transgovernmental Method

Comparative Trends in EU Governance

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Clingendael Report



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Cover image: The official EU flag superimposed on an alternative design comprised of EU Member State flags, metaphorically depicting the transgovernmental method of EU governance.

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Executive Summary

Governance and changes in the Interinstitutional Balance

We observe an emerging split between policy areas that are governed by the Community/ Ordinary method, such as more technical single market issues, and politically sensitive policy areas that are governed by what is usually termed as “intergovernmentalism.” However, the governance structures that we see emerging in politically sensitive policy areas cannot be properly described as “intergovernmental” because they display a stable set of new interinstitutional relations, in which the European Commission also plays a varying role, albeit that the Member States overall have a more pronounced role. Hence, we see a shift from “the” interinstitutional balance to the emergence of two different interinstitutional balances: the Ordinary method and the Transgovernmental method. Transgovernmentalism is characterised by a bigger role for the Member States and a less strategic role for the Commission (and hence the EP and European Court of Justice) compared to the Ordinary method, but goes beyond simple intergovernmental governance, because it is clearly based on standing European practices, meetings with defined procedures and reporting mechanisms. Evidently, the role of the European Parliament is different in both areas. The consequence for the further development of defence policy is that we assume that it will develop along the lines of transgovernmental governance, even though the European Commission and potentially other EU institutions might favour the “efficiency” of a single, Ordinary method, with a more focal role for the European Commission in the interinstitutional balance.

1 Introduction

Governance concerns “the way we do things.” Broadly defined, governance is about policy instruments that steer public behaviour, with a view to achieving political goals, and about the institutions that manage these instruments. Debates about governance that characterise developments in a broad range of EU policy fields, such as the EU’s multilevel defence policy, have been driven by perceived needs to deepen integration (due to perceptions of new geopolitical realities, migration pressures, doubts regarding the stability of the euro, economic opportunities, *et cetera*). “European governance” is, however, not exactly a buzzword. And yet, European governance is at the very heart of current (election campaign) questions of European integration, the resolution of which will shape the fate of the EU for years to come. And while governance is a tricky subject in any context, it is most sensitive in areas of high politics – political matters that are deemed crucial for national sovereignty, and therefore ultimately the survival of the state, such as defence policy. Thus, while governance may not define political discourse at surface level, its configurations underlie every major political development in the EU. Governance is not just about rules, but in the end, it is about (access to) power, the influence of small versus big countries, transparency, accountability and, ultimately, trust. Therefore, if one’s objective is to gain an understanding of how a certain policy area may develop in the future, governance needs to be taken into account.

To this end, this study examines the developments in the governance structures of three high political areas, namely Economic and Monetary Union (EMU), space, and migration policy. Rather than treating each policy area separately with the danger of reinventing the wheel of governance in individual policy areas, this policy brief considers developments in EU governance horizontally across different sectors.

What can current developments in EU governance in these fields teach us about the possible future trajectories of governance in other policy areas? Acknowledging sectoral differences, is it possible to see any common patterns in EU governance? To answer these questions, this policy brief discusses the following questions: How has EU governance evolved? Which theoretical attitudes towards EU governance exist? How can we use theories to learn more about EU governance? And finally, what horizontally emerging patterns in EU governance can be identified? Accordingly, section two of this paper addresses the history of EU governance, section three explores (Dutch) preferences in governance, section four erects an analytical framework (and methodology), the case studies of EU governance in areas of high politics are presented in section five, and in section six the paper concludes with lessons from the analyses of trends in governance.

Finally, the paper makes some preliminary reflections on possible implications for developments in the governance of defence, a field where many open questions remain. Given methodological and the usual time constraints, and in view of the fact that "governance" is a wide field, the purpose of this policy paper can be little more than to use the conclusions drawn from our case studies to inform the discussions on governance in the field of the EU's multilevel defence policy.

2 The evolution of EU governance

EU governance used to be relatively simple, but the widening and deepening of European integration has added new layers and approaches. The basic form of governance has been the Community method (post-Lisbon: “Ordinary method”) in the past three decades, which is based on the right of initiative of the Commission, Qualified Majority Voting (QMV), co-decision by the European Parliament (EP) and Council, and binding rulings by the European Court of Justice. As part of the Community method, Member States are responsible for first-order control over implementation, whereas the Commission is responsible for second-order control (controlling the controllers). The Community method evolved¹ over time from requiring unanimity to QMV and from application in a limited number of areas to the ubiquity of the Ordinary method. Moreover, the Community method was professionalised (impact assessments, ex post evaluations, transparency, consultations – a combination that leads to some paradoxes regarding depoliticisation and finding public support). Since the introduction of the EMU, governance has developed into a major research area. The reason is that because the EU has no competencies in economic policies (the welfare state), the Community method did not apply and a different governance model was needed.² Hence, partly driven by Dutch initiatives, open (or soft) coordination became a new governance instrument from the 2000s onwards. Moreover, we have seen the rise – and partly the demise – of EU agencies as a consequence of governance modernisation.³ In addition, the profile of the President of the Commission plays a role in the evolution of the Commission’s governance style – whereas Barroso was more technocratic, Juncker aimed at a “very political” Commission (though it is too early to speak of a longer trend towards politicisation).⁴

1 Renaud Dehousse, ed., *The ‘Community Method’: Obstinate or Obsolete?* (London: Palgrave Macmillan UK, 2011).

2 Finland, Ministry of Finance, *Looking for a Deliverable Lisbon Strategy on Sustainable Growth and Jobs: Provisional Agenda for Strategy-Focused Public Governance*, by Seppo Määttä (Helsinki: Ministry of Finance, 2006).

3 Adriaan Schout, “EU agencies after 25 years,” *Clingendael* (December 2018), https://www.clingendael.org/sites/default/files/2018-12/PB_EU_Agencies_0.pdf.

4 Adriaan Schout and Thijs Buirma, “Tien jaar Barroso: Laf of smooth operator?” *Internationale Spectator* 68, no. 2 (February 2014), https://spectator.clingendael.org/sites/spectator/files/2017-07/2014-02_0.pdf.

Over the past twenty years, since the publication of the Commission's White Paper on Governance,⁵ major governance innovations have been tried and tested, e.g. in relation to ensuring fact-based policies and monitoring (better regulation, impact assessments, independent monitoring, agencies, *et cetera*) as well as in relation to decision-making (widening of QMV, flexible integration, creation of new leadership positions such as President of the European Council, a Commissioner for Budget and the High Representative of the Union for Foreign Affairs and Security Policy/Vice President (HR/VP)). Additional policy instruments emerged that do not easily fit – e.g. the Open method of Coordination (OMC) – which largely failed.⁶

Overall, some of the most drastic changes have been the appearance of EU agencies, especially at first in the Internal Market (although this experiment delivered mixed, if not disappointing, results), and – at least in EMU – a development away from the Commission (and hence the European Parliament), basically due to distrust in the Commission (see the banking supervision through the European Central Bank (ECB), and the role of economic supervision through new bodies such as the European Stability Mechanism (ESM), the European Financial Stability Facility (EFSF), and the Troika including the International Monetary Fund (IMF)) and concerns over sovereignty. Moreover, a discussion has emerged on the reliability of the Commission (as is also the case in the Eurobarometer that is broadly used as well as distrusted⁷). As a result of the developments described in this section, EU governance has been changing drastically over the past 60 years.

5 European Commission, *European Governance: A White Paper [COM(2001) 428 final]* (Brussels: European Commission, 2001).

6 The Open Method of Coordination (OMC) is a governance coordination instrument that was developed in the context of the Lisbon Strategy (2000), which aimed to improve governance of economic, social, and employment policies (where the EU only has limited competences) through the establishment of joint goals (peer pressure), sharing of information, and policy comparison (identifying best practices) between Member States. Critics have argued that, amongst other weaknesses, the OMC does not deliver on its promises, as – lacking a forceful enforcement mechanism – it does not provide sufficient incentives and is unable to overcome domestic opposition to structural reforms. See: Egidijus Barcevic ius, J. Timo Weishaupt, and Jonathan Zeitlin, eds., *Assessing the Open Method of Coordination: Institutional Design and National Influence of EU Social Policy Coordination* (Basingstoke: Palgrave Macmillan, 2014); Charles Wyplosz, "The failure of the Lisbon strategy," *Vox EU*, January 12, 2010, <https://voxeu.org/article/failure-lisbon-strategy>.

7 Martin Höpner and Bojan Jurczyk, "How the Eurobarometer Blurs the Line between Research and Propaganda," *Max Planck Institut for the Study of Societies* (Discussion Paper, October 2015), https://www.mpifg.de/pu/mpifg_dp/dp15-6.pdf.

3 EU governance and Dutch preferences

Although “EU governance” was first conceived of as soft coordination in addition to the traditional legal type of governance in the EU,⁸ governance is an eclectic theme, covering all types of instruments and decision-making structures. The discussions over governance acquired momentum around 2000 and resulted in the publication of the Governance White Paper. The Internal Market activities of the Delors Commission, enlargement and the introduction of the euro, among others, had demanded new ways of working. This became apparent when the chaotic ways of working in the EU built up to the implosion of the Santer Commission in 1999. Experiments with instrumentation resulted.

Governance instrumentation is not neutral:⁹ steering involves winners and losers and, in an EU context, steering affects the power divisions among large and small Member States, and between the Member States and the EU, as it did in the case of EMU (as mentioned above). Tools of governance are complementary: Policies and decision-making demand a host of interconnected instruments and activities such as decision-making procedures, implementation and supervision, building new national and EU institutions, complementing negative and positive forms of integration, instruments to steer incentives, *et cetera*.¹⁰ As a corollary, the notion of “integration by stealth” is related to governance debates because steps in one direction usually demand flanking measures¹¹ and policy decisions often lead to unanticipated consequences.¹² Issues of sovereignty are therefore in several ways inherently linked to governance.

Because of the linkages between governance and sovereignty, if governance changes, so do the attitudes of Member States concerned about their sovereignty. Governance was first concerned with regulation (the EU as regulatory state¹³), subsequently we

8 E.g., European Commission, *White Paper*.

9 Pierre Lascoumes and Patrick Le Galès, *Gouverner par les instruments* (Paris: Presses de Sciences Po, 2010).

10 For a more in-depth discussion of tools of governance, see e.g.: Fritz Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford: Oxford University Press, 1999).

11 E.g., Giandomenico Majone, *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration by Stealth* (Oxford: Oxford University Press, 2005).

12 Julian Priestley, *Six Battles that Shaped Europe's Parliament* (London: John Harper, 2008).

13 The EU budget concerned mainly agricultural policy – later also regional/structural policies.

saw a broadening in instrumentation (e.g. OMC and EU agencies), and now attention is shifting not only to governance outside the realm of the Commission but also, where it concerns rules, to strengthened monitoring and supervision (either through the Commission or through bodies such as agencies, the European Central Bank (ECB), or *sui generis* bodies such as the ESM). The Netherlands has been an active actor in these developments, pleading first for the Community method (and the idea of the European Commission as the Netherlands' best friend), subsequently promoting open coordination, and now pushing for independent authorities¹⁴ and for keeping tasks outside the Commission (at least in some areas related to EMU).

This stands in contrast to the preferences of the Commission, which first explored “soft” governance, as was also clear in the White Paper,¹⁵ but has continued to look for more traditional – top-down – forms of steering. It has done so amongst others through the EU budget, through rules and regulations, and through direct political steering in the form of a proposed EU Minister for Economy and Finance, Frontex as a “fully operational border and coast guard” (which raised fears that national border and coast guards would be replaced) and strengthening the HR/VP (see below). Similarly, the Commission has been favouring regulations, which centrally apply to the EU at large, over directives, which Member States need to transpose into national law, providing them with leeway over the means of implementation.

The fact that the EU is mostly based on multilevel governance also means that legitimacy checks and balances are distributed over the European and national levels. Consequently, Member States are deeply involved with output legitimacy (does the system deliver? I.e., do the Member States as well as the EU produce satisfactory outcomes?) and input legitimacy (democratic control is largely shared between national parliaments and the EP, though in areas of economic policy and defence national parliaments have the upper hand).

Some Member States have more demanding ambitions when it comes to the EU.¹⁶ Dutch Prime Minister Mark Rutte, in line with the traditional EU preferences, clearly stated in his Zurich Speech (February 2019) that output legitimacy has to be guaranteed as far as possible by the Member States. The EU can only function on the basis of strong Member States and the EU itself is largely a basis for cooperation. In terms of input

14 E.g., regulatory scrutiny board, supervision tasks.

15 Governance is defined as “rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence.” See: European Commission, *White Paper*.

16 For general EU preferences of other Member States, see: Adriaan Schout, “The Netherlands: The 100% Union that Never Was and Never Will Be,” in *National EU Narratives in Europe's Multilevel Context*, ed. Hussein Kassim and Adriaan Schout (forthcoming).

legitimacy, Rutte's objective is European cooperation. He only supports deepening European integration, essentially linked to giving more powers to EU institutions and therefore ultimately to the EP, on strict criteria (e.g., QMV in foreign policy only if the European Council unanimously votes to do so). Hence, weaknesses in EU governance are (correctly) identified to lie mainly at the level of (weak) Member States. As regards the Commission, Dutch EU policy is keenly interested in separating policy-making and judge-like enforcement tasks. However, separating "a-political" enforcement tasks from political tasks (agenda-setting and norm-setting) will imply a more political Commission next to more independent supervisory bodies. As it seems, the Netherlands favours neither the current mixture of an a-political/political Commission, nor more separate independent supervisory bodies next to a more political Commission – particularly if it is headed by a *Spitzenkandidat*.¹⁷

This begs the question what Commission model the Netherlands prefers. The extent of the Dutch search for a model becomes clear when comparing the *Financial Times* (FT) contributions by former Minister of Foreign Affairs Frans Timmermans in 2013 ("Monnet's Europe needs reform to fit the 21st century"¹⁸), in which a more political Commission was suggested, and the recent FT op-ed by his successor Stef Blok in 2019 ("A less political European Commission is needed"¹⁹).

17 Schout, "EU Agencies." For example, the Dutch Parliament has been reluctant to accept the European Labour Authority as a further elaboration of the Brussels machinery. Strong criticism has also come from Dutch MEPs and industry representatives. See: Renske Leijten and Martin van Rooijen, "Motie Leijten/ Van Rooijen over niet instemmen met het voorstel voor een Europese Arbeidsautoriteit – Europese Raad," *Parlementaire Monitor*, May 27, 2019, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vkmuc3jy5uz8>; Dennis de Jong, "European Labour Authority is so Much Hot Air," *SP International*, April 16, 2019, <https://international.sp.nl/nieuws/2019/04/european-labour-authority-is-so-much-hot-air>; "Europese Arbeidsautoriteit is niet nodig," *VNO-NCV*, April 25, 2019, <https://www.vno-ncv.nl/nieuws/europese-arbeidsautoriteit-niet-nodig>.

18 Frans Timmermans, "Monnet's Europe needs reform to fit the 21st century," *Financial Times*, November 14, 2013, <https://www.ft.com/content/346f4ff4-4c82-11e3-923d-00144feabdc0>.

19 Stef Blok, "A less political European Commission is needed," *Financial Times*, February 5, 2019, <https://www.ft.com/content/0f306466-286a-11e9-9222-7024d72222bc>.

4 EU governance: An analytical framework

How can governance be analysed in the context of a particular policy area?
The following framework provides the necessary tools for classifying different types of governance, choosing the right level of analysis, and navigating the particularities of meaningful case studies.

Governance encompasses all public and private steering mechanisms and can be classified in terms of:²⁰

- Specific instruments including legislation, agencies, budgets, steering through information, peer pressure, mission statements, *et cetera*.²¹
- Broadly defined sets of steering mechanisms. The distinction between “markets, networks and hierarchies” is often used.²² “Markets” relate to competition, “networks” to instruments that facilitate cooperation and learning, and “hierarchies” to steering through budgets, legislation and political leadership (e.g. a type of HR/VP). In case of the EU, legislation has been the traditional (internal market) instrument.
- Single level or multilevel governance. The EU is mainly based on multilevel governance. It has only a limited number of own competencies (trade, monetary policy, competition policy). Most policies are shared responsibilities (environment, border control) and a number remained national responsibilities (e.g., national welfare systems, taxation – although increasingly less so).
- Policy and polity: Policies demand institutions and new (EU) policies demand new (national and European) political-administrative capacities such as revision of the Directorate General for Economic and Financial Affairs (DG ECFIN), setting up OMC for economic conversions, designing – mutual or hierarchal – monitoring systems, etc.

20 See: Walter W. Powell, “Neither Market nor Hierarchy: Network Forms of Organization,” *Research in Organizational Behaviour* 12 (1990): 295-336; Adriaan Schout, “Framework for assessing the added value of an EU agency,” *Journal of Public Policy* 31, no. 3 (December 2011), 363–384. See also the discussion on “governance, not governments”: Laurence E. Lynn, Jr., Carolyn J. Heinrich and Carolyn J. Hill, *Improving Governance: A New Logic for Empirical Research* (Washington, D.C.: Georgetown University Press, 2001); Jon Pierre and B. Guy Peters, *Governance, Politics, and the State* (New York: St. Martin’s Press, 2000); Linda Weiss, *The Myth of the Powerless States* (Ithaca: Cornell University Press, 1998).

21 Andrew Jordan and Andrea Lenschow, “Environmental policy integration: A state of the art review,” *Environmental Policy and Governance* 20, no. 3 (May 2010): 147-158, doi:[10.1002/eet.539](https://doi.org/10.1002/eet.539).

22 Powell, “Network Forms of Organization,” 295-336; Schout, “Assessing the added value.”

EU governance, encompassing EU responsibilities, shared responsibilities, and national responsibilities, can best be seen as a system of multilevel governance. Treating the EU as a multilevel governance system helps avoid confusion over “governance” that frequently arises due to a common tendency to jump to conclusions rather than to start with diagnosing problems. A famous case in point is a remark that came from Merkel’s EU advisor, Nikolaus Meyer-Landrut, who wrote a brief note around the height of the eurocrisis signalling that policies that work well in the EU are centralised. However, the first question that has to be asked is why problems have emerged. The reasons that crises emerge can often be explained by failing national institutions and policies. EU actions therefore have to try to repair the damage caused when Member States fail.²³ Meyer-Landrut jumped to conclusions without diagnosing why crises emerge. Moreover, “centralisation” is always a misleading concept: centralisation always includes decentralisation and vice versa (new targets, new control mechanisms, new capabilities at both levels, *et cetera*). Any useful federation combines balanced and interconnected sets of multilevel capacities. A discussion about the “reorganisation of the Commission” can therefore not be seen independently from discussions about tasks of the Commission as well as tasks and capacity requirements at the national level. In other words: the EU is a multilevel governance system and can only be understood as such.

Analysis of EU governance becomes even more meaningful when taking into account that the EU is also a networked governance system. The classifications above show that governance concerns complementary instruments and related (multilevel) institutions. Although Commission President Juncker gave the impression of being particularly interested in strengthening EU-level governance with, among others, references to a European Minister of Finance and an EU army,²⁴ a general characteristic of EU governance is that the EU’s public management operates basically through public (national) and private bodies.²⁵ Even competition policy (exclusive competence) is set up as networked governance. “Networked governance” can be defined as a system of governance in which central bodies are “dependent upon the cooperation and joint

23 This phenomenon, which can be observed in EMU, may be referred to as ‘Integration by default,’ see: Adriaan Schout, “The EU’s Existential Threat: Demands for Flexibility in an EU Based on Rules,” in *EU60: Re-Founding Europe. The Responsibility to Propose*, ed. Gianni Bonvicini, Nicoletta Pirozzi and Lorenzo Vai (February 2017), https://www.clingendael.org/sites/default/files/pdfs/The_EUs_Existential_Threat.pdf.

24 This impression was not given by the Commission as a whole. High Representative Federica Mogherini, for instance, has made more nuanced statements about improving European military capabilities: “Our work on security and defence is not a way to ‘militarise’ our Union.” See: “Speech by High Representative/Vice-President Federica Mogherini at the European Parliament plenary session on the reports on Common Foreign and Security Policy and on Common Security and Defence Policy,” European Union External Action Service, December 12, 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/55310/speech-high-representativevice-president-federica-mogherini-european-parliament-plenary_en.

25 Les Metcalfe, “New Challenges in European Public Management: Designing Interorganisational Networks,” *European Institute of Public Administration* (Maastricht, 1999).

resource mobilisation of policy actors outside their hierarchical control.”²⁶ As underlined by Metcalfe,²⁷ public management in general is about managing through other organisations and European public management is about managing through EU-wide networks of often national administrative bodies.

The discussion above underlines the number of interrelated and overlapping instruments, and decision-making and enforcement procedures that should be addressed in an analysis of the EU's sectoral governance capacities. EU governance should be seen as networked multilevel governance.

Moreover, every policy sector will have its specific governance characteristics. For example, the Internal Market is less politically contagious and largely based on legislation (formulated on the basis of the Ordinary method).²⁸ In contrast, the areas in this policy brief belong to the category of high politics, as does defence policy. Whereas Internal Market legislation is well established, these high politics areas are still very much in flux and are closely connected to sovereignty and basic conceptions of a “state”, “identity” and sovereignty.

Currently, we see major differences across the EU's multilevel governance structures in different policy fields. The answer to the question concerning the extent to which a general European pattern in EU governance preferences is emerging is not immediately straightforward, given that the relevant literature is fragmented and non-cumulative

26 Tanja A. Börzel, “Organizing Babylon: On the Different Conceptions of Policy Networks,” *Public Administration* 76, no. 2 (1998): 260; Andrew Jordan and Adriaan Schout, *The Coordination of the European Union: Exploring the Capacities of Networked Governance* (Oxford: Oxford University Press, 2006).

27 Les Metcalfe, “International Policy Coordination and Public Management Reform,” *International Review of Administrative Sciences* 60 (1994): 271-90; Les Metcalfe, “Building Capacities for Integration: The Future Role of the Commission,” *EIPASCOPE* 2 (1996): 2-8; Les Metcalfe, “Reforming the Commission: Will Organizational Efficiency Produce Effective Governance?” *Journal of Common Market Studies* 38, no. 5 (December 2000): 817-41.

28 The internal market is based on the Community method: right of initiative of the Commission, decision-making in the Council based on QMV, and the final responsibility for implementation and enforcement lies with the European Commission and the European Court of Justice. In general, the EU budget plays a limited role in EU governance, except in agriculture and structural policies, where it serves to support economic, social and territorial cohesion. Yet, discussions have reappeared for more active investment, industrial and innovation policies. However, there is only a limited willingness (from the Northern countries) to use the budget as a tool of governance and, depending on one's preferences, opinions are divided as regards the need for an EU budget so long as governments respect their international commitments and create their own financial as well as defence capacities (see also Rutte's Zurich speech). Coordination instead of hierarchy (including the budget) might, for different reasons, be more suitable as a primary governance tool.

despite a stream of theoretical reviews.²⁹ Still, a development that can be observed relates to the diverging trajectories of the Ordinary method that characterises the Internal Market, and what can be called “transgovernmental” forms of EU governance. Transgovernmental governance³⁰ is characterised by a bigger role for the member states and a less strategic role for the Commission (and hence the EP and European Court of Justice). Transgovernmental governance goes beyond simple intergovernmental governance, because it is clearly based on standing European practices, meetings with defined procedures, reporting mechanisms, *et cetera* – whereas intergovernmentalism only indicates decision-making between Member States and budget allocations defined by unanimity. The Commission (and EP) also have roles to play in transgovernmental governance, e.g., in elaborating or initiating legislation; however, the ways of working, decision-making, funding and monitoring are different from the Ordinary method, and even non-EU bodies (such as the European Space Agency or ESM below) play a role. Therefore, it would be wrong, as often happens, to term, for instance, Eurozone governance ‘intergovernmental’; transgovernmental would be more appropriate.

The three high politics case studies we chose deal with the Economic and Monetary Union (EMU), migration and asylum (including border control), and space policy and programmes. Governance will differ per policy area due to Member State preferences that fluctuate depending on the area, such as sensitivities (political prominence at home, sovereignty concerns, costs and transfers, *et cetera*), historical and cultural differences, economic prominence (innovation capacity of a Member State, influence of national competitiveness, share of the economy), geographical locations (resource dependence, trade relations, proximity to Russia, *et cetera*), and width of the field (e.g., EMU is closely linked to the national welfare state in all its aspects). Access to one’s territory, and control over national fiscal and economic policies, go straight to the heart of national sovereignty and relate to identity, social welfare traditions, and feelings of national or economic security. Space policy is an area with major differences between Member

29 E.g., Manuele Citi and Martin Rhodes, “New Modes of Governance in the EU: Common Objectives versus National Preferences,” *European Governance Papers (EUROGOV)* N-07-01 (January 2007); Beate Kohler-Koch and Berthold Rittberger (2006), “Review Article: The ‘Governance Turn’ in EU Studies,” *Journal of Common Market Studies* 44 (2006): 27-49, doi:[10.1111/j.1468-5965.2006.00642.x](https://doi.org/10.1111/j.1468-5965.2006.00642.x); Oliver Treib, Holger Bähr and Gerda Falkner, “Modes of governance: towards a conceptual clarification,” *Journal of European Public Policy* 14, no. 1 (February 2007): 1-20, [10.1080/135017606061071406](https://doi.org/10.1080/135017606061071406); Adriaan Schout, Andrew Jordan and Michelle Twena, “From ‘Old’ to ‘New’ Governance in the EU: Explaining a Diagnostic Deficit,” *West European Politics* 33, no. 1 (January 2010): 154-70.

30 Helen Wallace and Christine Reh, “An Institutional Anatomy and Five Policy Modes,” in *Policy-Making in the European Union*, ed. Helen Wallace, Mark A. Pollack and Alasdair R. Young (Oxford: Oxford University Press, 2014).

States³¹ in terms of innovation³² capacity, economic relevance, and security ambitions. More or less, these case studies relate to the high politics of sovereignty, national economic interests and security, as does defence policy. They speak directly to models of governance that may be relevant for defence and only indirectly to defence as a policy area.

31 The policy area of space differs from EMU and migration and asylum policy in that it is highly industry-driven and overwhelmingly dominated by three central stakeholders, namely the UK, France, and Germany, whereas some other Member States have a very low stake in it. It is therefore less of a pan-European issue.

32 Adriaan Schout, Herman Beun and Marloes van Schaick, "The Innovation Potential of the EU Budget 2021-2027," *Clingendael* (January 2019), <https://www.clingendael.org/publication/innovation-potential-eu-budget-2021-2027>.

5 Case Studies

European space governance

Short historic overview

Until the 1960s, space was mainly a national matter. In May 1975, the European Space Agency (ESA) was created, a merger of two existing organisations for space research and launcher development. ESA was set up as an intergovernmental organisation with its own Council. The Council meets at least twice a year and is ESA's governing body that provides basic policy guidelines within which ESA develops the space programmes. The Council elects the ESA Director General, who has the responsibility to implement the Council's decisions. ESA is the European research and development space agency, which remains outside the EU institutions. Today, ESA has 22 members (20 EU Member States plus Norway and Switzerland³³).

The European institutions started their involvement in space matters in the 1980s, after the European Parliament adopted its first resolution on European Community participation in space in 1979. The first European Space Policy was developed by ESA, but the growing involvement of the European Commission in the 1990s – including the emergence of the two flagships of EU space programmes (EGNOS/Galileo and Copernicus³⁴) – resulted in the first joint Commission-ESA Space Strategy in September 2000. In 2004, the Framework Agreement regulating the cooperation between ESA and the European Community entered into force. This agreement represented a strategic partnership between the supply-side of space systems (ESA) and the demand-side for space systems (the Community). In terms of governance the Framework Agreement established the Space Council, a joint secretariat, and a high-level space policy group.³⁵

33 The following EU Member States are not ESA members: Bulgaria, Cyprus, Lithuania and Malta (all having a cooperation agreement with ESA); Latvia, Slovenia and Slovakia (all participating in the Plan for European Cooperating States); Croatia. Canada is the only non-European state with a cooperation agreement with ESA and a seat on the ESA Council.

34 EGNOS stands for European Geostationary Navigation Overlay Service. The service became operational in 2009. Using geostationary satellites EGNOS is mainly used for critical applications such as flying aircraft or navigating ships through narrow channels. Galileo is an advanced Global Navigation Satellite System (GNSS). Composed of 30 satellites, it is planned to become fully operational in 2020. EGNOS and Galileo are managed and operated by the European GNSS Agency (GSA), an EU agency. Copernicus, originally named the programme on Global Monitoring for Environment and Security (GMES), will provide users access to earth observation information collected by satellites, airborne and seaborne sensors.

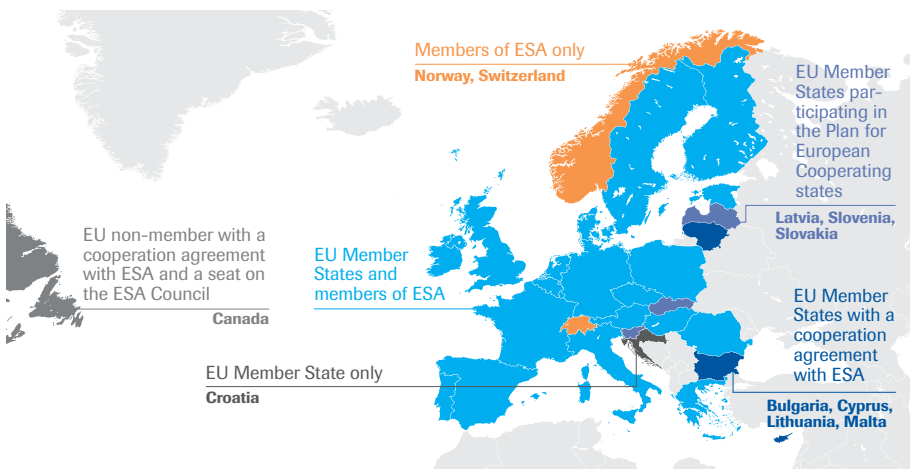
35 Vincent Reillon, *European space policy: Historical perspective, specific aspects and key challenges* (Brussels: European Parliament Research Service, 2017), 14-15.

In 2007, a new European Space Policy was adopted by the Space Council, which built on previous editions. In October 2016, the European Commission published the Space Strategy for Europe, which was followed by a Joint EU/ESA Statement on the shared vision and goals for Europe in space of the same month. Within the EU, space is discussed in the Competitiveness Council, bringing together all ministers that are responsible for trade, economy, industry, research and innovation, and space.

Governance structure

The historical overview shows that many actors are involved in European space policy and space activities: the EU institutions, a non-EU intergovernmental organisation (ESA) and Member States. There is partly overlapping and partly non-overlapping membership in the EU and ESA (see Figure 1).

Figure 1 EU and ESA Member States



In addition to the variety in EU and ESA membership, many institutions are involved in European space policy and activities. Space policy is defined and implemented by the EU (Commission, EEAS), European governmental organisations (ESA and EUMETSAT³⁶), and Member States with national space agencies (such as France, Germany, and Italy).

36 EUMETSAT is the European Organisation for the Exploitation of Meteorological Satellites. Despite the suggestion in its abbreviation, EUMETSAT is not an EU institution. It was founded under a convention, signed in 1983, as an intergovernmental organisation. EUMETSAT operates a system of meteorological satellites and supplies collected data to national meteorological services. The governance of EUMETSAT is similar to that of ESA, with a council representing the Member States adopting the programmes and a Director General in charge of their implementation.

The different actors have roles that overlap, but according to a complicated pattern. Figure 2 shows the relationship between the different actors and space activities.

Figure 2 Role of the different actors in the European space sector

Activities	EU	ESA	EU METSAT	GSA	Member States	National space agencies	Industry
Define space policy	●	●			●		
Define and fund space programmes	●	●	●		●		●
Develop and implement programmes		●				●	●
Operates space programmes		●	●	●		●	●
Fund space R&D activities	●	●			●		●
Perform space R&D activities		●				●	●
Conduct space exploration programmes		●				●	
Regulate the space sector	●				●		

Source: Vincent Reillon, *European Space Policy: historical perspective, specific aspects and key challenges*, European Parliament Research Service, January 2017.

Governance of European space can be defined as follows: “The combination of legal norms that emanate from international, European and national legal frameworks which, together, organise a coherent decision-making process in both space policy and programmatic activities.”³⁷ From the factors mentioned above it follows that European space governance is a complicated endeavour, as it is shared between the EU, ESA, and the Member States.

Pros and cons

The diversity of EU, non-EU, and national actors in space policy and activities provides some flexibility for the benefit of Member States with national space structures. They can decide to implement their own space programmes at the national level, in cooperation with other states if needed, through ESA, or collectively through EU space

37 Florent Mazurelle, Jan Wouters and Walter Thiebaut, “The Evolution of European Space Governance: Policy, Legal and Institutional Implications,” *International Organizations Law Review* 6, no. 1 (April 2009): 8.

programmes.³⁸ Some programmes – such as Galileo, Copernicus or Space Surveillance and Tracking (SST) – cannot be executed at the national level, as they are too expensive and have to serve the needs of all Member States. Others, addressing national needs, might still be kept at the (multi)national level. This applies in particular to satellites with a purely military purpose.

The overlapping layers of national, EU, and non-EU European space activities have a positive effect in the sense that they have led to the involvement of more and more EU Member States in the space sector and the development of a diversified European space industry.

On the other hand, the associated complex system of governance is also creating inefficiencies in support for research activities, development of international relations, and implementation of space programmes.³⁹ The division of roles between the EU and ESA looked fine when the 2004 Framework Agreement entered into force, but fifteen years later there is “a multiplication of expertise needed to define, develop and operate” the Galileo programme across all institutions. Furthermore, the asymmetry of financial rules between the EU and ESA “creates additional constraints and difficulties in implementation of the EU flagship programmes.”⁴⁰ Although being positive about its general performance, the mid-term evaluation of the Copernicus program of October 2017 concluded “the need for a simplification of procedures and governance models.” The partnership between the EU, Member States, ESA, and EUMETSAT should as a principle continue to drive the future development of the Copernicus programme, but post-2020, “the Commission might, however, explore further opportunities for streamlining and optimisation, and assess the need for involving new actors where this could bring clear value and increased efficiency to the programme.” Furthermore, “the Commission should plan a long-term vision for the programme, in order to give visibility and predictability to all partners in Copernicus, allowing them to invest, benefit and support, especially considering the shifting priorities of the programme.”⁴¹ With regard to Galileo, the governance system that was decided in 2013 between the three actors (Commission, ESA, GSA) has led “to some inefficiency”, in particular with regard to the organisation of responsibilities and control processes. There are overlaps in the deployment and exploitation phases. Thus, “it is still worthwhile to further optimise the current governance scheme for the Galileo and EGNOS programmes, in order to reflect the entry into operational phase of such service-driven programmes. This may

38 Reillon, “European space policy,” 32.

39 Ibid., 1.

40 Ibid., 33.

41 European Commission, *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Mid-term Evaluation of the Copernicus Programme (2014-2020) [COM(2017) 617 final]* (Brussels: European Commission, October 2017).

involve reducing the administrative burden for the key actors, as well as the complexity and length of the decision-making process,” in particular in view of new security challenges such as posed by cyber threats. While the independence of the operation of the three organisations involved should be maintained, the argument is made for “a fully integrated management.”⁴²

The further development of the governance structures for space policy and space activities themselves is stuck in inertia. The Space Council met for the last time in 2010 and the Joint Secretariat is not active anymore. The Joint ESA-EU Statement of 2016 did not indicate any possible decision on the further evolution of the institutional relationship.⁴³ Despite the enormous progress that has been made in the European space sector, “the fragmented governance of space and the diverse configurations and rules under which space programmes are developed in Europe can be seen as barriers when addressing key challenges: maintaining independent access to space; increasing efficiencies by developing synergies between civil and defence space programmes; securing space infrastructures; ensuring the uptake of space data and services; or adopting a long-term vision and financial commitments to increase private investment in the sector.”⁴⁴

An appraisal

The evolution of Europe’s involvement in space has seen a gradual transfer from the national level to the European level with the creation of ESA in the 1970s, outside the EU, and the growing involvement of the EU institutions from the 1980s onwards. Collectively, the governance style can be termed “transgovernmental” governance, as its operating mechanisms and bodies have clearly moved beyond simple intergovernmental governance. Driving factors for the Europeanisation of involvement in space seem to have been both political (Europe as a space actor) and economic-industrial (Member States individually cannot afford larger programmes). From an output point of view, this Europeanisation is pragmatic and successful. Europe has become a serious participant with the United States, Russia, and other countries in the International Space Station (ISS) programme. ESA has developed various satellite projects to the benefit of EU/ European countries. Galileo and Copernicus deliver European space capacities, which would perhaps not have been possible without European space cooperation. From the perspective of EU Member States with space (industrial) capacities, this Europeanisation process created the context for drawing in more resources from other countries and ended national duplication by launching European level programmes.

42 European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of the Galileo and EGNOS programmes and on the performance of the European GNSS Agency [COM(2017 616 final)]* (Brussels: European Commission, October 2017).

43 Ibid.

44 Reillon, “European space policy,” 34.

In terms of governance, however, this gradual Europeanisation process has led to complex structures. The involvement of many actors – outside and inside the EU – puts the governance efficiency at risk and may endanger European space programmes (delay, disagreement over competencies, *et cetera*). The particular issue in the space sector is that the research and development part has been kept outside the EU, while the development of strategy, policy, and demand takes place inside the EU, although in practice this does not seem to significantly hinder progress, reflecting a broader pattern of transgovernmental cooperation. Non-overlapping membership makes any model of merging the two in one governance structure very difficult, if not impossible. In terms of the relationship between the EU institutions and the Member States, it seems that a return to national governance is contrary to the well-recognised added value of space efforts at the European level. Not only the main players (such as France, Germany, and Italy), but also Member States with limited space capabilities (such as the Netherlands) have profited from the Europeanisation process, both in terms of political influence as well as from a technological-industrial point of view.

Migration & asylum policy

Introduction: Migration and asylum governance in the EU

The past thirty years of European integration have gradually led to the establishment of a European Union (EU) migration and asylum governance system encompassing – in terms of policy areas – border control, visa regulations, EU asylum policies, legal migration policies, as well as policies directed at combatting irregular migration. The 2015 migration crisis provided a major shock to the system, exposing issues in implementation and enforcement of EU policies such as the Dublin Regulation. While Member States undertook unilateral measures to decrease the immediate number of arrivals of asylum seekers, Commission proposals for an overhaul of the European governance framework remain stuck in the Council to this date, showing that control over borders is still at the heart of Member States' sovereignty. These developments lead to major questions on the effectiveness of the EU's migration and asylum governance system, both in terms of its capacity to manage migration and asylum in practice, and with regard to the "subsidiarity-question": the appropriate level on which to legislate, implement, and enforce legislation. This case study examines the evolution of the EU's migration and asylum policies, focusing on the dynamic between national sovereignty and identity, external migration pressures, calls for "more Europe," and other factors that have ultimately shaped today's EU governance in this field, with an eye on actual effectiveness and subsidiarity of today's system. It asks whether (and if so, how) today's EU's "governance model" on migration offers insights into governance relevant to the field of defence. Arguably, both migration and defence are policy areas where Member States harbour marked reservations over sovereignty and have to find a balance between national and EU competencies. The study concludes with lessons (as well as

cautions) that can be learned from the EU's efforts to mould a "European" migration model to Member States that are now committed to develop a European Defence Union (EDU).

Historic Overview: From Schengen and Dublin I To Frontex and Dublin IV

Europe's migration and asylum governance has developed from international public law (bi- or multilateral agreements between states) to full-fledged EU legislation. Until 1993, migration issues were managed between European governments on an *ad hoc* and intergovernmental basis. The 1992 Treaty of Maastricht provided EU institutions with a formal (but still minor role), for example offering the European Parliament (EP) the right to be consulted. Only with the landmark Treaty of Amsterdam (1999) did EU institutions gradually acquire increased powers over borders: The Schengen Acquis was incorporated into the EU, and migration and asylum law became part of the so-called "first pillar" (creating an "Area of Freedom, Security and Justice"). In the ensuing European Council in Tampere (1999), a common asylum and migration policy was initiated. For a five-year transition period, Member States shared the right of initiative with the European Commission, but consensus was still required. After 2005, co-decision applied to asylum, illegal migration, aspects of visa policy, border controls, and residence permits.⁴⁵ In these areas, the (sole) right of initiative was in the hands of the Commission, with the EP acting as co-legislator to the Council.⁴⁶

The Treaty of Lisbon (2009) took another major step towards communitarisation: Justice and Home Affairs (JHA) became a so-called "shared competence." As a result, Member States lost their sole competence on all issues where EU legislation was introduced. This applied to migration and asylum issues as well, with the exception of passports, residence permits, and emergency decisions regarding asylum, which all remained national competences.⁴⁷ Instead of "measures" or "minimum standards,"⁴⁸ the Treaties now pursued a common policy on migration, asylum, visa, and an integrated management system for external borders.⁴⁹ From Lisbon onwards, the ordinary legislative procedure applied to migration and asylum policy. In 2014, after the end

45 Legal migration and family law remained subject to unanimity in the Council and consultation of the EP, and some aspects of visa policies subject to QMV in the Council and consultation of the EP. See: Steve Peers, *EU Justice and Home Affairs Law: Volume 1: EU Immigration and Asylum Law* (Oxford: Oxford University Press, 2016), 10.

46 Alexander Caviedes, "European Integration and the Governance of Migration," *Journal of Contemporary European Research* 12, no. 1 (February 2016): 557; Peers, *EU Justice and Home Affairs Law*, 4-7, 71-77.

47 Peers, *EU Justice and Home Affairs Law*, 25.

48 Treaty Establishing the European Community (TEC), art. 61-63, 2002.

49 Treaty on the Functioning of the European Union (TFEU), art. 77(1)(c), 77(2)(a), 77(2)(d), 78(1), 79(1), 2012.

of a five-year transitional period, the European Court of Justice (ECJ) acquired full jurisdiction and the Commission assumed oversight capacity and the right to launch infringement procedures on migration and asylum matters against Member States.⁵⁰ After Lisbon, the so-called *passerelle* clause applied to JHA matters, meaning that decision-making can be further shifted from unanimity to QMV without treaty change, thereby opening up the possibility for further integration.⁵¹

This short overview shows a continuous shift of competencies from the Member States to “Brussels” on all matters dealing with migration and asylum. Within the relatively short time span of two decades, the EU has secured a central role and say over all migration and asylum matters, resulting from the shift from consensus decision-making to QMV. Today, almost all Directorate Generals within the Commission are in the “migration business,”⁵² and a wide range of bodies and agencies have emerged, from Frontex (since 2016 renamed Frontex – The European Border and Coast Guard Agency); the European Asylum Support Office (EASO); to the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) – see below.

What have been the main drivers of communitarisation in this area, and how can this dynamic be explained?

The Dynamics of Migration and Asylum: Borders, Globalisation, and Sovereignty

Migration and asylum policy has followed the conventional route from intergovernmental coordination (until 1999), via a more supranational system of introducing minimum standards (until 2009), towards broad EU harmonisation (a common policy) of legislation (today). It should be clear that this process of “Europeanisation” (as it is often called) of migration and asylum policy has been haphazard, and certainly not consciously preordained. From the start, four dynamics have become apparent, shaping the course and speed of the EU’s migration and asylum policies.

50 Cavedes, “Governance of Migration,” 557; see also: European Commission, “A new era for EU Justice and Home Affairs policies” (Brussels: European Commission, December 2014), http://europa.eu/rapid/press-release_IP-14-2266_en.htm. Primary source: Treaty on European Union (TEU), protocol no. 36 on transitional provisions, art. 10.

51 For migration and asylum, issues that remained subject to unanimity in the council with consultation of the EP after Lisbon concern passports and identity cards (TFEU, art. 77) and family law (TFEU, art. 81). See: Council of the EU, General Secretariat, *Background: The Lisbon Treaty's impact on the Justice and Home Affairs (JHA) Council: More co-decision and new working structures* (Brussels: General Secretariat, December 2009): 2, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111615.pdf.

52 Andrew Geddes, “The politics of European Union Migration Governance,” *Journal of Common Market Studies* 56, no. S1 (July 2018): 121.

First, EU border governance is rooted in the development and deepening of the Common Market, which has flattened borders for goods, services, and capital, but also strengthened the call for the abolishment of the EU's internal border controls on persons. This process took hold during the optimistic era around the end of the Cold War with the creation of the Schengen zone (in 1985), which as a side effect spurred the need for the common regulation of external borders and asylum.⁵³ In 1990, the European Community was transformed into an area of genuine freedom of movement and mobility of all its citizens, which (in 2004) was developed further after the right of EU citizens to live and work within the territory of all Member States was introduced. With the incorporation of the Schengen Acquis into the EU (in 1999), external border management was brought into the EU legal framework,⁵⁴ and the Commission and ECJ gained influence on the implementation of Schengen obligations.⁵⁵

Second, real-world migration pressures on Member States have driven major reform of the EU governance system. The decision to create an intergovernmental JHA "pillar" under the Maastricht Treaty (1992), can at least partly be explained by the growing anxiety of large-scale migration from Soviet-successor states and the Balkans. The reality of dramatic refugee-flows from the disintegrating Federal Republic of Yugoslavia put pressure on the EU's Dublin Convention (of 1990), which introduced the "country of first entry"-principle in the EU Asylum system – the notion that the first point of irregular entry to the EU determines which Member State is responsible for the examination of an asylum application. Clearly, the end of the Cold War opened a new era of globalisation and interconnectivity. To cope with the resultant mounting human mobility, Member States felt the need to coordinate migration, asylum, and external border management into the EU framework, giving "Brussels" a formal say over matters that were previously guarded by national sovereignty.

In 2015, unprecedented irregular migration pressure from Sub-Saharan Africa, and the MENA and Levant regions (notably Syria), showed that the existing EU migration and asylum system did not work. Practical national border controls proved incapable of stemming the daily arrivals of large groups of refugees and irregular migrants. The Commission seized this opportunity to propose a major overhaul of EU migration and asylum governance, and (in May 2015) launched its European Agenda for Migration (EAM). Rather than protecting EU borders, the EAM suggests that the "immediate imperative is the duty to protect those in need."⁵⁶ However, overall the EAM called for a

53 Peers, *EU Justice and Home Affairs Law*, 68–70.

54 TEC, art. 61(a) and 62(2).

55 Cavedes, "Governance of Migration," 557.

56 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration [COM(2015) 240 final]* (Brussels: European Commission, May 2015): 2.

major boost of the EU's authority to manage borders in order to increase border security, as well as for Member States to facilitate relocation from Italy and Greece (in the name of EU-wide "solidarity").

Third, the continual Europeanisation of migration and asylum governance is not only driven by (economic) globalisation and migration pressures, but also by national political actors (or activists) deliberately (and effectively) circumventing domestic political policy arenas. NGO's and political activists have successfully side-stepped domestic judicial constraints (including popular and parliamentary opposition), and pushed their progressive agenda within an EU context. This process, generally called "venue-shopping,"⁵⁷ is conducted by so-called "policy entrepreneurs" who aim to decouple national debates from EU policymaking.⁵⁸

Fourth, the European Commission should not be overlooked as a policy entrepreneur in migration and asylum matters. Principal-agent theories suggest that agents may develop and pursue their own interests, gain an informative advantage over the principal and pursue ever higher budgets and competencies. The way the European Commission acts in the field of migration is a prime example, seizing on the "window of opportunity" provided by the 2015 migration crisis to propose more Europeanisation of the governance field, amongst others by strengthening Frontex and the EASO. This fits well with the theory that the Commission does not necessarily represent the interests of the Community, but in practice is purposefully opportunistic, engaging in partisan behaviour such as favouring European solutions over national ones.⁵⁹

Sovereignty concerns

Over the past two decades, the continued relevance of national sovereignty concerns is borne out on many occasions. Most notably, (some) EU Member States have secured opt-outs from JHA matters due to concerns about sovereignty. For example, Denmark opted out of the Maastricht Treaty's so-called "third pillar". The United Kingdom (UK) and Ireland, who were not original signatories of the Schengen Agreement, opted out of Schengen when it was incorporated into the EU (with the Treaty of Amsterdam), meaning Justice and Home affairs can be considered a field of flexible integration.

57 See for the seminal work on this concept: Virginie Guiraudon, "European integration and Migration Policy: Vertical Policy-making as Venue Shopping," *Journal of Common Market Studies* 38, no. 2 (December 2002): 251-71.

58 Marion Panizzon and Micheline van Riemsdijk, "Introduction to Special issue: 'Migration governance in an era of large movements: A multilevel approach,'" *Journal of Ethnic and Migration Studies* 45, no. 8 (April 2018): 4.

59 Hussein Kassim and Anand Menon, "The principal-agent approach and the study of the European Union: Promise unfulfilled?" *Journal of European Public Policy* 10, no. 1 (2003): 128.

More recently, Commission proposals to boost the EU's role on migration and asylum (including the EAM) were blocked by several Member States, including the so-called "Visegrad Four" (the Czech Republic, Hungary, Poland, and Slovakia). Hungary, Slovakia and the Czech Republic furthermore decided not to comply with the EU's emergency relocation scheme – an instrument adopted in 2015 to relieve migration pressure on Italy and Greece by temporarily deviating from the first-entry principle,⁶⁰ thereby defying EU law.⁶¹ As a result, the Commission launched so-called "infringement procedures" against these countries. Unilateral policies of Member States that have encouraged irregular migration (notably Germany's invitation to "wave through" refugees and migrants under the *Wir Schaffen Das*-motto), have not been reprimanded by Brussels. Still, it is clear that in both cases, unilateral actions had considerable centrifugal effects on other Member States, further hampering the potential of Commission-proposed EU-wide solutions under the EAM. These examples make clear that despite the ongoing process of communitarisation, Member States tend to perceive their interests in the field of (irregular) migration and asylum through a national lens. They furthermore raise questions about the adequacy of supervision of EU regulation by the Commission in the past decades.

The effectiveness of the EU's governance system on migration and asylum assessed

Despite the driving forces of Europeanisation in the field, EU Member States are still in control of the most pivotal issue of migration and asylum governance, as they ultimately retain the right to decide how many migrants (from outside the EU) they will admit. Moreover, on labour migration and family reunion matters from outside the EU, the EU has worked towards procedural harmonisation without little obligations imposed on Member States. In the field of irregular migration and asylum policies, supranationalisation has been made stronger through secondary legislation, case law, and the introduction (and growing impact) of EU agencies.⁶² It can therefore be concluded that, over the decades, a multilevel governance model has emerged combining a formally strong EU role with "intergovernmental practices resting upon loose cooperation rather than concrete hierarchically prescribed standards."⁶³ The result is a hybrid (or "transgovernmental") model of EU migration and asylum policy, maintaining a precarious balance between EU ambitions to create a EU-level migration and asylum policy, and the wish of (most) Member States to maintain (at least a semblance) of national sovereignty over key migration and asylum questions (e.g., who may enter, stay and/or work in a country).

60 On the basis of an emergency provision introduced first in the treaty of Amsterdam: See: TEC, art. 64.

61 See: European Parliament, "Legislative Train Schedule – Towards a New Policy on Migration," accessed May 25, 2019, <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-1st-emergency-relocation-scheme>.

62 Caviedes, "Governance of Migration," 563.

63 Ibid., 554.

The past years have shown that the precarious balance between sovereignty and EU ambitions is still subject to much controversy and debate. As the analysis shows, the European Commission seeks to follow the community method, but in doing so clashes with the political reality of how Member States perceive their interests when it comes to migration and asylum – namely, mostly through a national lens. While a Europeanisation of the field has continued when it comes to shifting competencies and the supranationalisation of decision-making, the real-world effectiveness of these developments has not yet been proven. The question is whether that is the case because European integration has not been all-encompassing, or because the most viable level to deal with migration and asylum is not the European but the Member State level. In other words, is the Commission trying to forge integration in a field so close to national sovereignty that it is an inviable objective to do so? Or do Member States unrightfully try to retain national control over an issue that overarches their borders? Depending on their backgrounds, scholars and politicians have strongly diverging answers to these questions. But the fact that deadlock in the Council is continuous and the EU-Turkey migration deal alone does not offer a sustainable long-term solution to continued migration pressures shows that the migration governance system remains fragmented and should be considered “unfinished”. It is specifically questionable whether it was really the Turkey deal that caused the decrease in arrivals of asylum seekers, given that “it coincided with the closure of the Western Balkans route, coverage of poor reception conditions in Greece, and the introduction of internal border checks by some EU countries,” and that those numbers had already been decreasing prior to the agreement.⁶⁴ It is furthermore recognised that the increase in arrivals in 2015 was not a root cause but a trigger of crisis, uncovering “persistent dysfunctionalities and shortcomings of the Common European Asylum System,” and leading to the partial suspension of the Dublin system.⁶⁵ The essential elements – or “building blocks” – of a sustainable system of migration and asylum such as identified during the Valletta Summit are still not fully in place, meaning a comprehensive and sustainable EU approach to migration and asylum is still missing – regardless of whether it is being managed on a European or national level. These issues, together with the partial suspension of the Dublin system in 2015, beg major questions about the effectiveness of the governance system as it is today.

Policy Actors in European Migration and Asylum: A (Modest) Power Audit

This section offers a concise “power audit” of the various institutions active in the field of migration and asylum, and assesses relations between them, with the aim to examine current governance structures in further detail. The assessment is limited to

64 Arne Niemann and Natascha Zaun, “EU Refugee Policies and Politics in Times of Crisis: Theoretical and Empirical Perspectives,” *Journal of Common Market Studies* 56, no. 1 (December 2017): 8.

65 Niemann and Zaun, “EU Refugee Policies,” 3.

the European Commission (the involved DGs), the various EU agencies involved, the European Council, the Council and Member States, as well as the EP and ECJ. For each of these actors, their formal power base, policy objectives, role and power in practice in subfields, and relations with other actors are briefly discussed.

The European Council defines (on the basis of consensus), as the TFEU holds, “the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.”⁶⁶ In practice, this role has indeed been accepted by other institutions like the Commission, as exemplified by the major influence of the Tampere (1999), The Hague (2004), and Stockholm (2009) European Council conclusions on the development of European migration and asylum governance, as well as the 2016 EU-Turkey deal.⁶⁷ In the European Council (like in the Council of the EU), policy objectives on migration and asylum have increasingly become subject to contestation.

The Commission has come to play a central role in the development of migration and asylum policies, amongst others as a result of its exclusive power to initiate legislation in the field. Within the Commission, a dedicated DG – Migration and Home Affairs, or HOME – is in charge of developing and enforcing EU policies. However, other DG’s also regularly deal with migration issues, such as DG NEAR (European Neighbourhood Policy and Enlargement Negotiations), and DG EMPL (Employment, Social Affairs and Inclusion). The Commission has oversight capacity in migration and asylum policies, and can hence launch infringement procedures against Member States, which can result in intervention by the ECJ. The ECJ has played a key role in interpreting EU legislation and has thereby frequently limited Member States’ competences (e.g., on Member State discretion in the Dublin Regulation).⁶⁸

The Commission is furthermore assisted by a number of agencies. The most important of those is Frontex, or the European Border and Coast Guard, which “contributes to and coordinates national border guards’ work” through coordinating operational cooperation between Member States, assisting them in training, performing risk assessments, and importantly, providing operational assistance for Member States in need.⁶⁹ The latter means that, e.g., in the case of Greece, over 600 Frontex officers perform border surveillance and assist in the identification and registration of arriving irregular migrants.⁷⁰ Questions of subsidiarity arise here, especially since the Commission proposed (in 2018) to increase the number of operational Frontex staff to 10.000 by

66 TFEU art. 68.

67 Peers, *EU Justice and Home Affairs Law*, 22.

68 Caviedes, “Governance of Migration,” 558.

69 Peers, *EU Justice and Home Affairs Law*, 22, 151.

70 See Frontex website: <https://frontex.europa.eu/along-eu-borders/main-operations/operation-poseidon-greece-/>.

2020.⁷¹ This would further diminish the operational control of Member States over the EU's external borders. In the field of asylum, the European Asylum Support Office (EASO) performs a similar role, providing training, information, as well as emergency support to Member States. The same subsidiarity issues have arisen here, as the agency has a key operational role in emergency asylum application centres known as "hotspots." Also for EASO, the Commission has proposed an overhaul to create a full-fledged European Union Agency on Asylum. Such a move would be the next step in the incremental development from *ad hoc* support activities to full EU-coordinated implementation that can be witnessed since the agency's creation in 2010.⁷² Other agencies active in the field facilitate technical cooperation like data sharing (eu-LISA), or provide expert advice to EU institutions and Member States on the rights of third-country nationals at borders and in irregular migration and asylum contexts (European Union Agency for Fundamental Rights (FRA)). Their activities are less problematic from a subsidiarity point of view.

Both the EP and the Council (In the JHA configuration) act as co-legislators on virtually all issues related to migration and asylum, and have considerable power in amending or blocking legislation. For example, the earlier mentioned emergency relocation scheme proposal by the Commission aimed for mandatory relocation, but was transformed into a voluntary scheme in the Council.⁷³ Whereas the Council has been traditionally central in migration policies but has steadily lost powers to the Commission, the EP has only strengthened its role through gaining legislative powers. The EP has thereby mostly taken a position in favour of European solutions (in line with the EC) and progressive stance, e.g. when it comes to legal pathways for refugees to reach the EU.⁷⁴ However, the fact that a major overhaul of the EU's Common European Asylum System (CEAS)⁷⁵ has

71 See: European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action no. 98/700/JHA, Regulation (EU) no. 1052/2013 of the European Parliament and of the Council and Regulation (EU) no. 2016/1624 of the European Parliament and of the Council [COM/2018/631 final]* (Brussels: European Commission, September 2018).

72 Evangelia Tsourdi, "Bottom-up Salvation? From Practical Cooperation Towards Joint Implementation Through the European Asylum Support Office," *European Papers* 1, no. 3 (2016): 997.

73 See: European Parliament, "Legislative Train Schedule – Towards a New Policy on Migration," accessed May 25, 2019, <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-1st-emergency-relocation-scheme>.

74 Willemijn Tiekstra and Wouter Zweers, "Innovation in EU migration policy: Towards a truly comprehensive approach to migration," *Clingendael* (September 2018), 12.

75 The CEAS includes all EU secondary regulation on immigration and asylum, with the exception of the Family Reunification Directive, Long-term Residents Directive, and Returns Directive. See: European Asylum Support Office (EASO), *An Introduction to the Common European Asylum System for Courts and Tribunals: A Judicial Analysis* (Valletta: EASO, August 2016): 18.

been deadlocked in the Council since the Commission proposed it in 2015, shows that the Council is still key in the legislative process.⁷⁶

Lastly, the Member States remain key actors in migration and asylum governance. The areas where Member States have retained full autonomy to legislate are a) in the determination of volumes of admission with regards to legal migration;⁷⁷ b) with regard to the geographical demarcation of their borders (in line with international law);⁷⁸ and c) on integration of third-country nationals.⁷⁹ Moreover, Member States advance their national positions in the European Council and in the Council. As discussed earlier, such national policy objectives diverge considerably, and migration has become a key bone of contention that has dominated elections in many Member States. In some Member States, the EASO and Frontex have come to play an important operational role in asylum and border controls.

Lessons Learned for EU Governance?

As with defence, migration and asylum challenges are external in nature and largely originate outside the EU's borders. Both defence (the "monopoly of violence") and migration ("who can enter the country"), are key elements of state sovereignty. What lessons – if any? – can be learned from the EU's increasing authority and competencies on migration and asylum, now that the Commission (for the first time) claims a key role for itself to construct an EDU? Arguably, the same three driving forces are at play: (economic) globalisation; real-world (geopolitical) events; and "integration-by-stealth."

First, the European Commission's "standard mode" of communitarising governance has so far not been capable of establishing a functioning sustainable migration and asylum governance system. As a result of Member State objections following nationally perceived interests, the enforcement of EU rules remains a major problem. Whatever direction the development of migration and asylum governance will take, policy makers

76 The proposed overhaul includes further reform of the Dublin regulations (COM/2016/0270 final, Procedure 2016/0133/COD), a reform of the EASO to create a full-fledged European Union Agency for Asylum (COM/2016/0271 final, Procedure 2016/0131/COD), and EURODAC reform. None of these proposals have been adopted and enacted due to a lack of consensus in the Council. Before the end of the term of the Juncker Commission, only on the more technical dossiers (like Eurodac reform) consensus may be reached. See for a full overview of the state of play: Presidency of the Council of the EU, *Progress Report: Reform of the Common European Asylum System and Resettlement 6600/19* (Brussels: Presidency of the Council of the EU, February 2019), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_6600_2019_INIT&from=EN.

77 TFEU, art. 79(5).

78 TFEU, art. 77(4).

79 TFEU, art. 79 (4).

should realise that today's fragmented system is by no means effective or sustainable. The European Commission would do good to acknowledge that better governance does not always mean "more Europe." Especially in the field of migration and asylum, implementation and enforcement will also in the future continue to rely on the Member States.

Second, the relevance of flexibility (based on initiatives by core groups) stands out, given the opt-outs of several Member States from Justice and Home Affairs issues. As Andrew Geddes argues: "Flexibility is [...] a potentially least-worst solution to the practical problems of co-operation and integration in contentious areas that has been particularly evident in areas defined as related to internal security, including migration. [...] It could be construed as a threat to the 'traditional Community model', but actually creates the possibility for attainment of objectives in areas of 'high politics' while also providing scope for the reluctant and recalcitrant to opt-in to those measures they feel able to support."⁸⁰

Third, as the analysis has shown, the development of European migration and asylum governance has been haphazard as a result of two groups of opposite drivers. Interestingly, whereas in the past external migration pressure provided an important driving force for the supranationalisation of migration and asylum governance, since 2015 it has had an opposite effect, hampering further reforms. This, as well as the intense public debate on irregular migration that the migration crisis has sparked, may be a sign of the limits of Europeanisation in a field with such strong political salience.

Strengthening the euro – but how?

Historical background

The euro project was initiated in Maastricht (December 1991), following a set of historical developments that included the unification of Germany, consequent desires to cement the new Germany within the EU, and a tactical manoeuvre by Andreotti (IT) and Mitterrand (FR) to put a date of 1999 on the introduction. The date 1999 effectively sidelined Member States that first wanted convergence (*Krönungstheorie*). The euro was introduced as coin in 2002. Because the Member States had not been able to agree on the governance of the euro there was no acceptance – nor agreement on the need – to "complete" the "political" or "economic" union. The hope was that market forces would ensure convergence under the pressures of fluctuating interest rates. Financial markets would punish bad and reward good policies (policy competition). Hence, the market

80 Andrew Geddes, "The Transformation of European Migration Governance," *KFG Working Paper 56* (November 2013): 9-10.

emerged, initially, as the key governance instrument. The eurocrisis then underlined the limited effectiveness and even perverse effects of market forces as primary governance tool. Currently, new ways of introducing the market mechanism are being explored through risk-pricing of sovereign debt – even though in particular Italy is against this notion for understandable reasons related to fears of higher interest rates.

Elaboration of the governance tool box: the enduring discussion of the SGP

German fears that the euro would not be on par with the strong DM resulted in the formulation of the Maastricht criteria with a view to joining the euro project: 3% budget deficit and 60% national debt rules (levels comparable to the French level at the time of the negotiations). Yet more countries joined the euro than expected, due to accounting tricks and political pressures. Greece had to be accepted in view of the desirable effects this would have on its political stability and as a result Cyprus could not be left out. France insisted on including Italy because Italy's weaknesses would make France look stronger. The start of the euro underscores the ways in which rules are applied when high politics are on the agenda. During the 1990s, the first generation of the Stability and Growth Pact (SGP) was agreed to, prescribing limited public deficits after joining the euro (below 3% budget deficit and 60% public debt).

In 2003 the first sinners were Germany (as a result of its investments in the newly re-joined *Länder*), France, and Portugal. Measures only followed for Portugal, due to difficulties in monitoring and enforcement and because of political pressures within the Council. Until 2019, France only succeeded in respecting the Maastricht criteria in a limited number of years. At the start of 2019, even after a period of economic upswing, only 7 of the 19 Eurozone countries adhere to the fiscal rules (6 countries are close to, or far above, the 60%: e.g., France with 99,7%, or Belgium with 103%). The breaking of the rules resulted in complaints, e.g. from former Commission president Prodi, that the rules were "stupid", and first flexibilities were introduced in the reforms of 2005. In 2001, an ambitious OMC mechanism was created (the Lisbon Process), but this process is largely regarded as a failure. The Kok-reforms in 2004 did not solve the problems of the Lisbon Process. In addition, major additional rules have been added, particularly in the form of the 2 and 6-pack and the fiscal compact.⁸¹

After many revisions, the governance system for the euro now includes a vast set of rules and procedures. As a result, the current SGP is unclear, due to the many interpretation issues and flexibilities,⁸² so that discussions are now taking place for

81 European Fiscal Board, *Annual Report 2018* (Brussels: European Commission, 2018).

82 E.g., Zsolt Darvas, Philippe Martin and Xavier Ragot, "European fiscal rules require a major overhaul," *Les notes du conseil d'analyse économique* 47 (October 2018).

simplifying the rules and for pushing the responsibilities back to the Member States.⁸³ The earlier path to attempt to fine-tune supervision rules is in the process of being complemented – or even to be partly replaced – by expecting Member States to institutionalise their own fiscal stability cultures. The hope now seems to be placed on a system based less on rules and more on independent fiscal and economic agencies (comparable to the CPB and Raad van State in the Netherlands). One problem with this new approach is that only a limited number of Member States are equipped with such stability institutions and that the Commission has little appetite and a limited perception of its legal room for manoeuvre to press or stimulate Member States to create effective bodies (the Commission is not keen to operate as manager). As a result, the Eurozone is likely to be locked into the current DG Ecfm construction as a half-way house between political and independent economic supervision.⁸⁴ Yet, outside the Commission, the transnational Economic Stability Mechanism (ESM) has increased in importance due to, among other factors, its support budget in case Member States run into difficulties.

Persistent political differences and expectations

The current debate is characterised by major differences between France (and the Commission) and Germany (and the Hanseatic League). The French-German Meseberg Declaration⁸⁵ in 2018 displayed the renewed German reluctance to engage with France in “completing” the EMU. As it seems, the debates about deepening or reforming the EMU are stalled. This underlines a moderate success for the Member States (i.e. the Hanseatic League) concerned with a transfer union and the future of the no-bail-out clause in the Treaty.

Countries have remained far apart in terms of the objectives of the monetary union. As a result, the euro has been incomplete from the start. Broadly speaking, Northern Member States first wanted economic convergence whereas Southern countries wanted a political union including solidarity. In this context, the Netherlands has had an active voice, also at official level, by linking EU support to market competition and demanding reforms (with the possibility of allowing financial support as long as it comes from the

83 E.g., Charles Wyplosz, 2019, “Fiscal Discipline: From Theory to Practice,” Paper presented at *First Workshop organized by the European Fiscal Board on Independent Fiscal Institutions in the EU Fiscal Framework*, Brussels, February 28, 2019, https://docs.wixstatic.com/ugd/60d1ea_ebc6db9e9ffa4023a9467634d31e0f52.pdf.

84 Christian Schwieter and Adriaan Schout, “National Fiscal Councils, the European Fiscal Board and National Productivity Boards: New EMU independent bodies without much prospect,” in *Clingendael State of the Union 2018: Towards better European integration* (The Hague: Clingendael, January 2018): 32-39.

85 Archiv der Bundesregierung Deutschland, *Meseberg Declaration: Renewing Europe's promises of security and prosperity*, Press release 214, June 19, 2018 (Meseberg: Deutsche Bundesregierung, 2018), <https://archiv.bundesregierung.de/archiv-de/meta/startseite/meseberg-declaration-1140806>.

existing EU budget and is based on conditionality). This conflict between solidarity and solidity still has not been settled, although there is some ground to assume that the solidity group has the upper hand due to shifts in the German position within the French-German axis. So far, the Commission has been in favour of deepening integration based on a fully fledged monetary and political union. In December 2017, the Commission proposed a Eurozone budget headed by a European Minister of Finance, and a European Monetary Fund. Similarly, the Commission has been proposing smaller measures (such as a small fund for voluntary balance of trade support without stringent obligations to reform) to pre-empt tasks being executed via the ESM. Moreover, in line with Commission thinking, Macron proposed a Eurozone budget of several hundred billion euro. In addition, there are disagreements over European taxation to support the Eurozone budget. Furthermore, there are discussions over a European social model (even though it is unclear what it involves precisely and proposals have been circulated for some forms of European rainy fund, *et cetera*).

Relatedly, measures to deepen the banking union are being negotiated, including a European deposit guarantee mechanism for failing banks and for the insurance of savings (European deposit insurance system – EDIS). Here we see the same stalemate between solidity and solidarity that has characterised the development of the euro project from the beginning. The enduring difference between solidity and solidarity can be linked to the difference between a more centralised federal monetary union and an EMU based on strong Member States (as repeatedly stressed by the Netherlands – also phrased as European cooperation compared to European integration).

Appraisal

Euro-related policies belong to high politics. There are major differences between Member States concerning the future of Eurozone governance. This has been the case from the beginning and, despite the many modifications in Eurozone governance, the Eurozone has remained transgovernmental. Even more, the ESM and the location of banking tasks outside the EU Commission (in the ECB and in dedicated *sui generis* agencies) underlines the persistent transgovernmental nature of Eurozone governance.

Governance has been an area of persistent crisis. Pragmatically, new tools have been developed and revisions of governance have remained high on the agenda. Even though some areas (in particular banking) have been strengthened on the basis of rules, the euro area has not been stabilised and has remained highly dependent on the low interest rate policy of the ECB. The banking union has remained incomplete (there is no agreement on the financing of risk or the debt overhang, nor of the guarantees savings) and implementation and enforcement in terms of economic reforms and fiscal policy have remained problematic (see the case of persistent French and Italian excessive deficits and public banking interventions in Italy).

Table 1 Classification of tools of governance and application to the three case studies

	Space	Migration and Asylum	EMU
Agreement over objectives	Requires further study	No	No – EU institutions/Commission: Political Union – Largely a North-South Division
Legal basis	Requires further study	– JHA field is a shared competence between MS and EU. – National competencies: determination of volumes of admission with regards to legal migration, geographical demarcation of borders, integration of third-country nationals	– national competencies (economic policies) – exclusive EU competency (monetary policy – ECB) – shared competencies (supervision fiscal policy)
Rules and regulation	No Legislation Operates on financial programmes (shared funding EU budget + Member States)	On border control, visa regulations, asylum, irregular and regular (legal) migration. The Treaties foresee a full common policy in most of these fields but so far Commission proposals have been deadlocked in the Council, meaning the regulatory framework remains fragmented.	– the original criteria of 3% budget deficit and 60% state debt. Current discussions (again) about replacing these EU-defined targets by national ownership.
Enforcement	Not Relevant	Difficulties: Member States take unilateral actions, going against EU law with regard to accepting asylum seekers. Asylum and border control regulations not adequately implemented over past decades by some member states, leading to EU agencies / Commission taking over (e.g. Greece).	Major difficulties: rules are complex and can be interpreted in different ways; political pressures on the Commission (Juncker/Moscovici more inclined to be political than the Budget Tsar Rehn); and the Council reluctant to endorse country specific recommendations of the Commission. A major enforcement problem was however created by admitting weak Member States.
OMC-type arrangements	ESA is a non-EU multi-national arrangement with its own ESA Council.	– Opt-outs from UK, Ireland and Denmark lead to multi-speed governance system, but no recent OMC-type experiments. Emergency relocation system based on voluntary cooperation. No actual OMC-type arrangements	– repeated efforts for (many) learning indicators. E.g. Lisbon Process and its reforms. Currently being abandoned.

Table 1 Classification of tools of governance and application to the three case studies (part 2)

	Space	Migration and Asylum	EMU
Emerging network of national and European agencies (leaving aside whether there is a useful subsidiarity-based distribution of tasks)	<ul style="list-style-type: none"> - ESA, space research & development; executes programmes - EDA, coordinates Member States in defining common military requirements for space programmes - National Space Agencies, conducting research & development programmes not carried out by ESA 	<ul style="list-style-type: none"> - Frontex and EASO have operated relatively independently and have wide mandates. - Commission proposals to further enhance their operational capacities are on the table. 	<ul style="list-style-type: none"> - DG Ecfm not designed as agency nor as network organisation - EFB remains small. Functionally and budgetary small - IFIs and NPBs successful in only a limited number of countries
Does EU Commission see itself as a network manager	No, but it sees itself as a potential contender for a central role in the relevant networks	+/-	To some extent but with little drive
EU Budget	<ul style="list-style-type: none"> - yes (50-50%) 	<ul style="list-style-type: none"> - In 2014-2020 cycle, EUR 3.137 billion is reserved for the Asylum, Migration and Integration Fund (AMIF). - Discussions for the new MFF are ongoing on whether cohesion funds should be made conditional upon cooperation on migration / asylum issues. 	<ul style="list-style-type: none"> - Limited (so far). Back-up mechanisms have been created outside traditional EU framework (e.g., ESM) and can be used on conditions of strict conditionality. A limited EU-budget line is likely to support convergence. - Southern countries would like to create EU budget including EU taxes.
Reliance on market forces	NA	NA	<p>Debate over whether market forces do not work or that market forces have not been allowed to work sufficiently.</p> <p>Current debate about risk pricing of sovereign debt (indebted countries are against).</p>
Effectiveness	Becoming less effective due to the complexity of the governance structure. Still very effective in output terms (space programmes)	Numbers of arrivals have strongly decreased and EU muddled through migration crisis but a sustainable migration and asylum system able of bearing high arrival numbers is not yet in place. Current system is perceived by most stakeholders (whatever their position) as “unfinished.”	Unclear at this stage. Greece remained within the €. Yet the € is not yet stabilised.

6 Case study hypotheses: Patterns in governance

All three case studies exhibit some common patterns in governance:

1. There is genuine interest in broadening European cooperation (but maybe not European integration), based on the recognition that Member States individually lack power and resources.
2. Major progress has been made in setting up transgovernmental structures. For example, borders and migration flows are managed to a (much) higher degree than before and the EU is an active player in space policy and programmes. Often, this transgovernmental progress is manifest in idiosyncratic arrangements that seem to be able coordinate EU business in areas of high politics. Idiosyncratic bodies in these case studies include among others the ESA, Frontex, EASO and ESM, and EFB, and their related coordination and decision-making structures.
3. Over time, governance deepens along the transgovernmental line, but hardly shifts towards more communitarisation. Hence, there seems little ground for assuming that governance patterns will converge toward one broadly shared preference for the Ordinary method. It may well be that differences in governance between technical and high-politics areas are here to stay. As a corollary, one might question whether the persistence of the Commission for initiatives leading towards communitarisation is realistic. Indeed, there is a move away from the Community method as Ordinary method as well as a power struggle between the Commission and Member States. In the case studies' areas of high politics, Member States seem to be reluctant – or unconvinced – of the need to give up decision-making powers and responsibilities. Member States seem to accept centralisation or deeper integration, as in the case of border control, though for the most part only when it concerns disciplining other countries.
4. Through changing patterns of governance, the EU's toolbox has been filled with more and more overlapping instruments. Although not necessarily related to the traditional Community method (Ordinary method), the Commission is involved in almost all areas as either legislator, financier, coordinator, or enforcer. While this underlines the growing richness of EU governance, it also leads to questions as to whether these tasks are compatible within one organisation. Some instruments have proven to be less effective (OMC) or have only been haphazardly implemented, such as EU agencies (e.g. due to resistance from the Commission to place tasks outside the Commission and fear on the part of Member States to dilute sovereignty). Complex and overlapping governance structures can lead to friction and may pose serious barriers to the success and efficiency of (space) policy. The importance, as

well as the undefined nature, of EU agencies and their national network demands closer attention from policy makers. While developments seem to be pragmatic and spontaneous, there are common themes (most notably transgovernmental arrangements, as elaborated above). Agencies and other *sui generis* bodies have arisen, but it is unclear, as also appears from interviews done for other projects, how the relevant national and EU bodies are, or should be, interconnected.

Furthermore, the case studies in EMU and migration and asylum policy show the following pattern:

5. The role of the Commission in any case has remained to provide legal frameworks (right of initiative of the Commission). Besides its legal role, it appears that the Commission is much less active as a capacity builder. This less developed role as capacity builder/manager seems incompatible in the EU's multilevel set-up in which national institutions are of central importance. The Commission also has budgetary responsibilities, but EU financing plays less of a role (except maybe in space).

Finally, the case study in migration and asylum policy exhibits the following particularity:

6. As migratory events intensify, which in the past may have led to deepening integration in the policy field of migration along supranational or intergovernmental lines, they now often lead to more transgovernmentalism and flexibility for Member States, as they push back against challenges to their sovereignty.

7 Implications of the case studies for the EU's defence policy

After some false starts, dating back to the 1950s, defence was first introduced in the EU under the European Security and Defence Policy (ESDP) in 2000. It was fully intergovernmental and hence required unanimity in Council decision-making. The original focus was on crisis management missions and operations, both military and civil. Since the establishment of the European Defence Agency (EDA) in 2004, the focus has increasingly shifted towards (military) capability development. The 2009 Lisbon Treaty further enhanced EU defence governance, in particular through the introduction of the dual-hatted High Representative/Vice President (HR/VP), who is also the Head of EDA, but the real change came in 2016 with the launch of the Commission's European Defence Action Plan (EDAP). The Commission is now an active player in defence research as well as in industrial development of military equipment, financed by the Union budget in the context of the European Defence Fund. The governance of military capability development has now become a multi-layered combination involving the Council (in the Foreign Affairs Council configuration with participation of Defence Ministers), the EDA Steering Board and the Commission-Council-European Parliament trilogue for projects/programmes financed under the European Defence Fund (EDF) (which is part of the Union budget).

While all of these governance patterns are still evolving, it is clear that EDA, and current EU defence governance more generally, is more than an intergovernmental body. Due to established contacts and specific bodies and arrangements, some of which are discussed above, defence can be classified as a transgovernmental⁸⁶ EU area, as also underlined by the existence of EDA's Steering Board, which takes decisions by Qualified Majority Voting (although as applies to the EU more generally, striving for consensus is the norm).

How should this intricate mix of transgovernmental and traditional European governance (based on the Community method) best function, what changes might be needed and what can we learn from the governance in other sectors? The patterns detected in the

86 Helen Wallace and William Wallace, "Overview: The European Union, Politics and Policy-Making," in *The SAGE Handbook of European Union Politics*, ed. Knud Erik Jørgensen, Mark A. Pollack and Ben Rosamond (London: SAGE Publications Ltd, 2006): 339-358.

three high political case studies may hold valuable lessons for the future trajectory of defence policy. The following are implications for defence drawn from the conclusions of the case studies. While they fall well short of predictions, there is reason to believe that the models and patterns of governance found in the three case studies chosen for this analysis are relevant for EU defence policy.

The following implications can be gleaned from all three case studies:

1. The case studies suggest that there may be continued interest in broadening European cooperation in defence policy, as defence is a policy area where Member States may lack resources, underscoring the need or even necessity to “do it together.”
2. European cooperation in defence policy may proceed further along transgovernmental lines, making use of idiosyncratic arrangements.⁸⁷
3. The case studies suggest that European cooperation in defence policy is unlikely to shift towards communitarisation. Rather, it appears that Member States, unwilling to give up decision-making powers and responsibilities, would push back against Commission ambitions towards more centralisation or will attempt to influence Commission decision-making.
4. There is a chance that complex and overlapping governance structures may further grow in defence policy, as is the case in other high politics policy areas, which may lead to friction.

Furthermore, the case studies in EMU and migration and asylum policy offer the following implication:

5. If European cooperation in defence matters develops further in a transgovernmental fashion, the European Commission will likely play a part in defence governance (for example as provider of legal frameworks), though not along the lines of the pivotal role the Commission plays in policy areas governed by the Community method.

Finally, the case study in migration and asylum policy alone exhibits the following implication:

1. Should significant defence-related shocks occur, it remains an open question whether Member States would increasingly prefer flexibility and sovereignty, or deepening integration.

⁸⁷ Idiosyncratic arrangements that were covered in this paper include among others the ESA, Frontex, EASO and ESM, and EFB, and their related coordination and decision-making structures.