

# The European Union's Legitimacy as a Crisis Manager

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## Introduction<sup>1</sup>

The European Union (EU) takes an increasingly active role in managing crises. Some crises emanate from external sources, as did the threat of Ebola, while others are linked to the European project itself, such as the Eurozone or migration crises. Whatever the source, dynamic or impact of various crises, EU member states acknowledge the need to coordinate their responses to significant disturbances and threats to European societies. Over the years, this drive has led to a wide array of crisis tools, platforms, standard operation procedures, financial resources, and other crisis management capacities aimed at improving the collective European response to crises. These capacities are normally generated from necessity rather than strategy: an actual crisis demonstrates the weakness of crisis response systems or a lack of preparation. In the aftermath of an actual crises, member states agree to delegate more authority to the European Union level to help assist in all aspects of managing crises: from prevention and preparation to response and recovery. The result is a rich area of policymaking and decision-making—in fact, a new area of European integration—that has largely gone unnoticed by EU scholars.

While the empirical contours of this phenomenon are emerging (see, for instance Boin, Ekengren, & Rhinard, 2013; Rhinard, 2015), it is now time to ask: *on what bases of legitimacy can and does the EU act as a “manager of crises”?* In so doing, this paper

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connects to a growing research agenda on the legitimacy of international organizations—an agenda gathering followers as citizen discontent in global governance increases (Zürn, 2004; Zaum, 2013; Scholte et al. 2011)—and its corollary focus on “legitimation”. Legitimation suggests a more instrumental approach by international organization (IOs) to shape an audience’s beliefs in the organization’s legitimacy. The questions of legitimacy and legitimation are both relevant to the EU as a crisis manager for two reasons. First, although the question of “what bases of legitimacy” for EU cooperation has been asked before (e.g. Scharpf, 1999; Dehousse, 1995; Joerges & Neyer, 1997; Majone, 1996), more specific answers are needed for an area of European cooperation which is increasingly in the public spotlight and which seems to expand on a regular basis. Second, the political and democratic stakes are high: the ability of the EU to manage severe disturbances and threats touches upon individual lives, while it also feeds perceptions of the efficacy of European cooperation in general. When it comes to managing crises, the public is increasingly asking “what is the EU doing?” and “why is it doing it?”, which both speak to the central question of legitimacy and legitimation.

This paper features two central points of inquiry. The first point is to examine the sources of legitimacy that underpin EU activity, generally, and considers whether those sources are still relevant under EU crisis management conditions. It uses a conventional framework for assessing EU policymaking legitimacy—input, throughput, and output based sources of legitimacy – and considers the relevance of these sources against the backdrop of the particularities of decision-making during crises. Yet these normatively derived sources of legitimacy are rather static; they say nothing about perceptions of EU crisis management as appropriate in the eyes of a conferring audience. The second point of inquiry thus turns to the more dynamic (and academically popular) process of *legitimation*, the strategic processes associated with cultivating an audience’s beliefs in an organization’s legitimacy. For the reasons outlined below, this paper takes a skeptical view on strategic legitimation but nevertheless argues that EU legitimation efforts must cultivate two kinds of audiences—member state governments and citizens—and identifies which kinds of legitimacy sources would be most relevant to active mobilization efforts by EU leaders in times of crisis.

## **The EU as Crisis Manager**

Before moving to the analysis, a brief empirical overview of this emerging phenomenon is in order. The EU, long accustomed to taking decisions that lead to slow, incremental steps towards common policies, is increasingly being asked to take urgent, decisive steps during extreme events. In contrast to the early years of the EU, today hardly a day goes by without a news report of EU involvement in what might generically be called a “crisis”: a possible pandemic, a major cross-border flood, a cyber-attack, a looming energy shortage, a civil war, a chemical spill, a volcanic

eruption, or, of late, a debt-driven financial breakdown. These are all very different kinds of events and the EU's involvement varies. But they conform to the generic definition of a crisis as an unexpected, acute disruption to normal societal functions that must be handled quickly and under conditions of uncertainty (Rosenthal, 't Hart, & Kouzmin, 1991). A crisis is intriguing—from a scholarly perspective—because it shines a spotlight on the governance capability of a political-administrative system. It reveals the nature of leadership, the connectedness of government, the distribution of power, the degree of competence, and, ultimately, the quality of relations with citizens. The EU, which was never designed to withstand such "stress tests", is today attempting to do so on a fairly regular basis (Boin, Ekengren and Rhinard, 2013). The EU studies community, however, has largely neglected the study of this empirical phenomenon (Rhinard, 2015), so a brief overview is in order here.

Discussions of the EU and crises used to be dominated by discussions of the "crisis management" missions carried out under the Common Security and Defense Policy (CSDP) banner. More recently, mentioning the EU and "crisis" in the same sentence elicits thoughts of either the Eurozone or the migration crises – two major challenges not only to the EU's ability to manage crises but also to European cooperation itself. Beyond these cases, there are many more situations in which the EU is being asked to make acute decisions under conditions of uncertainty and urgency, ranging from ash clouds to terror attacks to pandemic diseases. Several studies have emerged in recent years providing descriptive inventories of where, when, why and how such decision-making has occurred (Olsson, 2009; Boin, Ekengren and Rhinard, 2013) and official documents, albeit fairly few, have emerged which document the range of crisis-related activities taking place (see, for instance, Commission, 2009). An overview of developments at the levels of policy, operations, treaty/strategic, and institutional illustrates the point.

### ***Crisis Policies***

On the policy side, few EU policy sectors are without some focus on real and potential crises. The language of "all hazards" preparation is trendy (Paton and Jang, 2011), but a closer look reveals a more pragmatic concern to officials: breakdowns. What happens when something goes wrong in a policy sector that the EU has helped to integrate? This question animates new policy attention in virtually all sectors. For instance, the EU has long been active in facilitating Trans-European Transport Networks; more recently, focus in the Commission's DG Transport has included what happens when those networks break down owing to, say, a chemical spill, a recurring road accident, or a bomb in the port of Rotterdam. Regional policy and cohesion policy officials have questioned the sustainability of previous local development initiatives (especially in the light of earthquakes, forest fires and floods in Europe) and instead focus on projects that both help to develop a region and build resilience to disasters and emergencies. The same kind of dynamic operated in the 1990s regarding animal health: having allowed and regulated, through the internal market, the free movement of animal by-products, attention was given to what happens when the system breaks

down: a major disease spread, for instance. Actual disease outbreaks then prompted a substantial “crisis” response and subsequent preparations to manage them more effectively next time. Jumping to a very different example brings us to monetary union. Having built a single currency system to improve transaction costs within (most of) the internal market, some attention – but clearly not enough—was placed on the EU’s role when (not if, as it turned out) that system broke down. We show below how new crisis-oriented policies are emerging from functional breakdowns in regulatory regimes and common policies.

One policy area in which the EU has taken a more deliberate role is civil protection. The EU’s cooperation in civil protection dates back to 1985, when an environmental ministerial meeting in Rome agreed to investigate a Community role for improving member states’ collective response to natural disasters. From that initiative, which mainly involved investigations, studies and research programs, a variety of legal bases and policy instruments have been put into place. In 2001, a Civil Protection Mechanism was created to fortify participation in civil protection cooperation, via four main instruments operated by the Commission: a monitoring and coordination center staffed 24/7 by Commission officials, renamed the European Response Coordination Centre (ERCC) in 2013; a Common Emergency Communication and Information System (CECIS) for reporting contributions and coordination measures; a variety of cross-border training initiatives; and sets of stand-by resources at national levels available for deployment when requested by the Commission and following an official request from a stricken country – stand-by resources that have been reorganized and strengthened since 2008 and that now take the form of multinational “modules” (see Council, 2014). The Civil Protection Mechanism was recast in 2007 and a financial instrument was adopted by the Council that same year, representing a major boost to both the funding and operations of civil protection cooperation in the EU.

The Council, concerned as to how it might make effective decisions in a crisis, has created a set of protocols and procedures for decision-making in times of crisis. The Integrated Political Crisis Response (IPCR) arrangements (previously called the Crisis Coordination Arrangements, but renamed in 2013) directs the Council in how to put itself on a “crisis footing”, including allowing member state ambassadors at the highest level (COREPER II) to make decision on behalf of national governments and requiring them to assemble in Brussels within two hours when triggered the arrangements are tested roughly one a year in a scenario implicating most member states and all the EU institutions. The 2012 and 2013 scenarios were Hurricane Katrina-like events in the Mediterranean, killing thousands and knocking out power supplies to much of Europe, and a hostage situation involving EU diplomats in the Baltic Sea, respectively.

### ***Treaty and Strategic Drivers***

In terms of treaty/strategic developments, the Lisbon Treaty contained several new legal provisions related to the EU’s role in crises. Civil protection (Article 91, TFEU), health security (Article 220, TFEU), and humanitarian aid (Articles 208-214, TFEU) are just some examples.

Moreover, the EU now has a treaty-enshrined “Solidarity Clause” obligating EU member states to: jointly prepare for crises; to come to one another’s aid when asked; and, to coordinate amongst themselves using EU institutions (Article 222, TFEU). The means to be used include both “Union instruments” and national resources (including military means) while the threat envisioned is wide-ranging, including accidents, natural disasters, and terrorism. The Solidarity Clause places several obligations upon member states. First, the Clause establishes a duty of the Union and member states to “act jointly” if an attack or disaster takes place. This obligation stands in contrast to previous references on solidarity within the treaties, and applies to joint action between member states and the EU institutions. Second, the Clause establishes a duty of the Union to “mobilise all instruments at its disposal”. This obligation suggests the EU institutions must be capable of drawing upon instruments in a coherent, coordinated, and effective fashion. Third, the Clause establishes a duty of member states to “assist” a stricken member state. It prescribes that member states make assistance available, in addition to acting jointly (Myrdal and Rhinard, 2010).

The EU’s Internal Security Strategy from 2010 (Council of the European Union, 2010) bears relevance here, too. The ISS suggests mentions a set of “common tools” and a commitment to a long list of normative “principles” including solidarity, inclusion of relevant actors, a commitment to civil liberties, and prevention work in addition to addressing “sources of insecurity”. The text begins with a list of threats and challenges, listed as terrorism, serious and organized crime, cyber-crime, cross-border crime, violent itself, natural and man-made disasters as well as phenomena such as road traffic accidents. It then shows the responses that are taking place – and which ostensibly should take place – such as prevention work, improving response capacities, coordinating EU agencies and roles (such as the Counter-Terrorism Coordinator, a position created in 2007; for more, see Mackenzie et al., 2013) more effectively, improved information sharing based on mutual recognition, and improved evaluation and follow-up activities (Horgby and Rhinard, 2014).

### ***Institutional Tools***

We might also look at the institutional aspects of these developments. There is a rising number of “crisis units” and “coordination centers” in the EU institutions. Most are housed in the Commission where, especially between 2005 and 2010, Directorates-General seemed to be competing to build the most lavish crisis operations room. The earliest and most well-known was the MIC (the Monitoring and Information Centre) in DG Environment, which from 2012 was merged with the crisis room in DG ECHO and is now known as the ERCC (the European Response and Coordination Centre). It contains round-the-clock staff, high-tech information and communication systems, and three operational centers to coordinate the EU’s role in up to three simultaneous events. THE ERCC normally focuses on coordinating the EU’s role in disasters (floods, fires, earthquakes) but officially handles anything (“all-hazards”) both inside and outside of Europe. Other operational centers include DG SANCO’s HEOF (Health Emergencies Operations Facility), which is intended to monitor and respond to pandemic outbreaks,

and DG Home's STAR (Strategic Analysis and Response Centre) for risk assessment and, during an internal security crisis, for situation assessment and response coordination. The European External Action Service has its Situation Room, formerly the Situation Centre in the Council's General Secretariat and the product of a merger with DG RELEX's crisis "platform". Other locations for crises rooms include EU agencies, such as Frontex and Europol. Also of note is a new Crisis Coordination unit in the Commission's Secretariat-General which, since 2005, has been tasked by the Commission President to bring actors across the Commission's DGs to identify overlaps and possible synergies in the emergence of these new Commission competences.

These strategies, policies and institutional tools have been called into action on a variety of bases, including, by way of example, the Mad Cow disease outbreak, Estonia cyber-attacks, forest fires in Southern Europe, the German E. Coli outbreak, a litany of pandemic influenzas, the Madrid train bombings, Ukraine-related energy supply shortages, Austrian electricity breakdowns, and of course the Eurozone financial crisis and migration crisis. There are very few disasters, crises or emergencies that the EU takes no role in (see Boin et al 2013).

The EU's growing role in managing crises, and the fact that managing crises is a "high stakes game", demands an assessment of the legitimacy underpinning this role. We now turn to the that assessment.

## Sources of Legitimacy

The concept of legitimacy encompasses normative, legal, sociological and cultural meanings. Reaching back to Max Weber, it has been seen as a core element in political and governance regimes, reflecting the societal acceptance of a regime and its institutions and shaping the regime's ability to exercise power (and ultimately to exist) (Weber, 1947). Organizational theorists have studied legitimacy longer, and in greater depths, than International Relations scholars (see, for instance, Selznick, 1957, Powell & DiMaggio, 1991). In this paper we use Suchman's classic definition of legitimacy, which capable of straddling both disciplines: "legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (1995: 574).

Students of the EU have traditionally applied normative approaches to studying legitimacy. In other words, they have identified a handful of different sources of legitimacy that—potentially—underpin collective EU action. The most popular way to categorize these sources is the approach used by both Fritz Scharpf and Michael Zürn, who distinguish between input-, throughput-, and output-based sources of legitimacy. *Input legitimacy* refers to the ways in which those being ruled have some say in the process of rule-making itself. It stems from notions of representative democracy, in which citizens must ensure congruence with rulers through mechanisms of representation (regular elections), contestation (based on opposing party platforms), and accountability (rendering explanation and responsibility if congruence is not

broadly achieved). *Throughput legitimacy* concerns the nature of the decision-making process. Put in layman's terms, it refers to what rulers are doing and how they are doing it. Scholars point to such normatively desirable traits such as transparency, rule-of-law based procedures, process mechanisms for inclusion of societal voices, and deliberative decision-making norms. *Output legitimacy* refers to the effectiveness and efficiency of the policy-making process. Do policy outcomes actually work, and make life better for the average citizen? On all three counts, the sources of legitimacy discussion is normative in orientation, in that scholars posit a set of criterion for "what is important" when considering the legitimacy of a polity in the eyes of its people.

These three categories inform a considerable amount of analysis of EU activity, from treaty revisions (Risse & Kleine, 2007) to committee governance (Rhinar, 2002) to individual policy outcomes (Smith, 2008). But there are two problems with this general approach. The first, which we return in the next section, is that these "legitimacy sources" are potential rather than real. Our definition of legitimacy reminds us that legitimacy is something that exists in the eyes of key societal actors and/or the general public. In other words, these sources must be mobilized, explained, justified by those seeking "legitimation". The second problem, to be addressed here, is that these sources apply generically, and may or may not be appropriate when considering legitimacy sources that underpin crisis management *per se*. A reassessment is required if we are to consider the sources of legitimacy available to the EU when it engages—as it increasingly does—in managing crises.

### ***Input Legitimacy***

Starting with *input legitimacy*, studies of EU legitimacy are riven by debate over whether the EU is a state-in-the-making or whether the EU is a glorified intergovernmental organization. If the former, the criteria for input legitimacy closely resembles that required for representative democracy. Rulers, generally speaking, should be chosen by citizens amongst those advocating different ideological priorities. This takes place through regular elections, party platform campaigning, and, if rulers do not abide (generally) by the voters' wishes, they are held accountable (censored or turfed from office). Analyses from this perspective place attention on the various input-related mechanisms available to European citizens. National governments (which in Europe are all democratically elected) are represented in the European Council (heads of state and government) and the Council of Ministers (ministers and their deputies). Another major mechanism is the European Parliament (EP), which, despite low turn-out in elections and academic debates over whether the European people represent a "demos", is a conduit for the people to express their wishes through popular election. Equally important, since the Maastricht Treaty (1992) the EP has a decisive voice in shaping outcomes in EU decision-making processes.<sup>2</sup>

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<sup>2</sup> The importance of democratic *inputs* to a political system emphasizes the ability of citizens to choose, through regular elections, between rival elites and political agendas (Schumpeter 1943; Weber 1942[1918]). Scholars adhering to this approach believe that only this process can lead to

If the EU is seen mainly as a form of intergovernmental cooperation, thus deriving its legitimacy indirectly via national governments (Lord 2013), rulers must be held accountable in ways that do not simply replicate the mechanisms of representative democracy. In this way, as Risse and Klein 2007: 72) argue, input legitimacy and accountability are closely linked. The literature on accountability is voluminous, although from an International Relations perspective it “implies that some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards and to impose sanctions if they determine that these responsibilities have not been met” (Grant and Keohane, 2005: 29). From a public administration perspective, the Utrecht School views accountability as a relationship between, on the one hand an entity that needs to render account on past actions, and, on the other hand, a forum that receives, reviews and accepts (or not) this account, which can lead to sanction or rewards (Bovens, Curtin, & 't Hart, 2010).

Taken together, and applied to crisis management, these perspectives on input legitimacy shed light on *pre hoc* (e.g. elections) and *post hoc* (e.g. accountability) forms of democratic control. When the EU engages in crisis management, very little attention is placed on *pre hoc* forms of input-based legitimacy, since by definition crises are not expected to happen. Response repertoires are marked by a preoccupation with the “here and now” of the situation: the acute threat must be dealt with. The consequences of initial decisions fade into the background. A crisis, however, is a long-term process rather than an event that is clearly demarcated in time. Long after the onset of a crisis, policy-makers are confronted with problems that may take on the form of the “crisis after the crisis.” For instance, in the wake of what may seem a relatively minor disaster – such as an oil spill or a leaking gas station – the long-term effects on a community may prove to be much harder to manage (Erikson, 1994; from Boin, Ekengren and Rhinard, 2006: 27-28).

To examine the legitimacy of the EU as a crisis management requires, we should assess the capability of the system (again, potentially), to undertake two basic tasks. The first is to restore trust in the governing capacity of the institutional structure under threat. Legitimacy can be regained by an active demonstration of a willingness to learn from the events, to reform the system where necessary. This demands a visible effort

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a true “mobilization of bias,” where every individual, regardless of economic and political resources, can participate equally in setting the boundaries of political action. Not surprisingly, this approach privileges familiar, parliamentary-style institutions as the only proper mechanism of democratic legitimacy. Reform proposals usually envision the creation of a dual-chamber European Parliament representing both nations and peoples (Hermann 1994), the strengthening of European political parties to reflect explicit cleavages (Mancini 1998), the parliamentary selection of the Commission to replicate a “formation of government” (King 1981), or the need to convene a constitutional convention tantamount to that held in the United States of America in 1787 (Siedentop 2000). Not only do proponents of majoritarian democracy overestimate the ability of parliaments to secure legitimacy and assure accountability; they also offer solutions with very little utility in the short-to-medium term.

of key decision-makers to engage with these issues. However, these same decision-makers experience pressure of all those tasks and responsibilities demanding attention now the crisis is over. This creates a tension. Many pressures work toward terminating of the crisis management operation (citizens and policy-makers want to move on), but decision-makers always run the risk of being perceived as insensitive and non-caring when they formally bring the operation to an end. Policymakers may then enter a political crisis mode, even if operational activities have ceased. The second task is to learn right lessons. The capacity to learn involves the development of insights on the causes and handling of the crisis. What happened? How did we do? The insights should, where necessary, give rise to the restructuring of rules and procedures or the establishment of new structures and arrangements. The learning capacity of governments tends to be limited, however. They can learn, but, for several reasons, they do not always do so. And even if they do, it is not obvious that they learn the right lessons, i.e. to effectively respond to the immediate and more permanent problems that the crisis uncovered. This problem is exacerbated in the Brussels environment, since the EU can be used as an easy scapegoat by EU governments seeking to avoid blame.

### ***Throughout Legitimacy***

Throughput measures also are taken into account when assessing the various sources of EU legitimacy. Throughput measures concern the functioning of the system and whether it abides by basic standards of procedural governance. Several components stand out in this regard. The first is concerns the legality of undertaking certain *actions*. In a democratic polity, it is generally assumed that rulers only engage in activities that fall within constitutional boundaries. Another aspect concerns the legality of *processes*. Governors must act in accordance with the legal rules regarding how processes should be carried out. By way of example, this could include anything from rules of public procurement to public records laws and the publishing of committee votes. A third aspect of throughput legitimacy concerns *transparency*. According to typical normative arguments, it must be crystal clear who is responsible for taking what decisions at what level. The public should broadly understand what is happening, where.

A fourth, and for our purposes, final component of throughput democracy is the *nature* of the decision process. Here, scholars note that decision-making can follow different “logics”, with proponents of deliberative democracy arguing that logics that include careful argument, reason-giving, and mutual learning—rather than hard-nosed, typically diplomatic/intergovernmental bargaining—are more legitimate (Weale, 1996: 607; Joerges and Neyer, 1997). As Risse and Kleine (2007: 74) put it, the reason is that “arguing and reason-giving provide a mechanism to probe and challenge the normative validity actors” interests as well as to check their empirical facts on which policy choices are based. This presupposes a system in which, firstly, differing conceptions of the public interest are allowed into the policy process, and, secondly, those conceptions are given a fair and thoughtful hearing (Rhinard, 2002). John Stuart Mill captures the importance of adequate deliberation when he states that government

should form “an arena not only of opinions but of that of every section,” in which points of view can “present themselves in full light and challenge discussion to be tested by adverse controversy...where those whose opinion is overruled feel satisfied that it is heard, and set aside not by a mere act of will, but for what are thought to be superior reasons” (Mill, 1972: 239-40).

Throughput sources of legitimacy of the EU are generally viewed as problematic but not impossible. The legality of the EU actions and processes are policed rather closely by the Court of Justice of the European Union (CJEU) as well as the EP. Constant references to “subsidiarity” in policy discussions point to the fact that considerations extend beyond institutional oversight, even if the Commission is fairly known for pushing legal boundaries in the pursuit of collective solutions (Nugent and Rhinard, 2015). Where the EU suffers is largely in transparency and public understanding of processes. No matter how much the EU works to place its proceedings, working papers and legislation on-line, there is fairly little “sunlight” on internal processes. Amongst national governments (mainly their representations in Brussels) there is much greater knowledge and the system seems to “work” (see Brandsma (2013) for a sanguine reading). “Deliberative democracy” offers the greatest hope for the EU, in that, because the EU ostensibly has moved beyond an intergovernmental negotiation platform and instead involves thousands of national officials “puzzling” over policy solutions, legitimacy sources are relatively high here—at least potentially.

In crisis management research, the deliberative nature of decision processes takes center stage—so there is much in common with the *throughput* legitimacy discussion in EU studies. Yet crisis researchers remind us of how very different “normal” decision processes the crisis situation can be. In the words of Boin et al. (2005: 43):

- They are highly consequential: they affect core values and interests of communities and the price of both “right” and “wrong” choices is high – socially, politically, economically and in human terms;
- They are more likely than non-crisis situation to contain genuine dilemmas that can be resolved only through trade-off choices, or “tragic choices”, where all the options open to the decision maker entail net losses;
- They are baffling in that they present leaders with major uncertainties about the nature of the issues, the likelihood of future developments, and the possible impact of various policy options;
- Choices have to be made...quickly: there is time pressure—regardless of whether it is real, perceived, or self-imposed – which means that some of the tried-and-tested methods of preparing, delaying, and political anchoring difficult decisions cannot be applied.

The upshot here is that normal decision-making—whether deliberative or not—is transformed during crisis situations. In many cases, crises generate a centralization of authority, often in the form of small groups of officials and their trusted advisors (George, 1993; Verbeek, 2003) rather than the more expansive, plodding, and inclusive

procedures that may be more conducive to throughput legitimacy (Joerges & Neyer, 1997). Those small groups, in turn, tend to obscure rather than clarify when, where and how decision are made. In this way, transparency suffers and—according to the EU literature—throughput legitimacy suffers as well. The legality of processes also can become problematic during crises, as traditional procedures and checks on decision-making are bypassed under the exigencies of crisis situations which require some degree of improvisation. As Boin et al. (2005: 55) put it:

Crises have the nasty habit of rendering plans and structures irrelevant. When uncertainty lead to bewilderment...the crisis response does not resemble a neatly delineated process of operational and strategic decision-making. Situational imperatives require intense cooperation and improvisation, especially in highly volatile conditions where there is non-negotiable time pressure.

Crises thus combine both small groups of decision-makers together with a tendency to bypass established procedures—a toxic combination for throughput legitimacy. Those small groups, as volumes of political psychology and crisis management research tells us, “have virtues in crisis decision-making, but they can just as easily become a liability. ...The potential advantages of [group decision-making] are easily offset by pathological group dynamics” (Boin et al 2005: 45-6; see also, for instance, Janis, 1982).

### ***Output legitimacy***

Finally, output legitimacy concerns the effectiveness and efficiency of governance processes. Even the most “democratic” of political systems, and even those that score high on input and throughput sources of legitimacy, will be seen as illegitimate if “nothing good comes from them”, to quote an old expression. Outputs of political systems—especially democratic ones—are intended to regulate thorny social issues and resolve, peacefully, political contention. Some authors believe, in fact, that producing effective policy outcomes is the main source of legitimacy for the EU (Scharpf 1999; Majone, 1996) and have gone so far as to argue that output legitimacy should be the sole criterion for evaluating EU legitimacy since the prerequisites for democracy (and thus *input* legitimacy) are lacking.<sup>3</sup> That means that policymakers must strive mainly for positive-sum and pareto-optimal policy outputs in order to secure the public’s consent. While we might not go that far, it is true to say that a major source of the EU’s legitimacy is producing effective and efficient policy decisions—something the EU’s founders hoped would underpin the EU’s legitimacy in the absence of familiar democratic traits (Rhinard 2003).

Considering the EU’s role in crisis management, it is clear that the creation of efficient and effective outcomes is major source of potential legitimacy. If the EU can

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<sup>3</sup> Some authors argue that European governance can only be legitimate if it is ‘non-majoritarian,’ concentrating on output forms of democratic legitimacy (Dehousse 1995; Joerges and Neyer 1997). Corresponding to this approach is the belief that the EU should develop along the lines of a ‘regulatory state’ (Majone 1994, 1996).

demonstrate effective crisis management, regardless of input and throughput elements, legitimacy is likely to be conferred. Yet effective crisis management is elusive – some researchers even call it, to illustrate the trade-offs and challenges, an “impossible job” (Boin & ‘t Hart, 2003). For instance, during crises there are occasions when leaders believe decisions must be made quickly. Yet, as reported in Boin et al. (2005: 45), most studies of crisis decision-making remind us that fast decisions are “not necessarily good decisions”. One comprehensive analysis of US presidential decision-making during international crises reported that the quality of crisis decision-making low or average in a majority of the nineteen cases studied (Herek et al. 1987 in Boin et al. 2005: 45). Officials operating under stress, pressure, and limited and/or biased information (see the literature on “group think”, Janis 1982) tend to make erroneous decisions, thus, from an output legitimacy perspective, harming the effectiveness of decisions. The above example is only one of many difficulties afflicting crisis management generally (see Boin et al., 2005) and crisis management in a complex, multi-level system such as the EU (Boin et al 2013).

Table 1 summarizes the main ingredients of the three different sources of legitimacy.

**Table 1:** *Ingredients of Different Sources of Legitimacy*

<b>Input</b>	<b>Throughput</b>	<b>Output</b>
Pre-hoc mechanisms for democratic control	Legality of initiative	Efficiency
Post-hoc mechanisms for accountability	Legality of processes	Effectiveness
	Transparency of processes	
	Nature of decision-making	

## **Problems and Prospects of Legitimation**

Having presented the various forms of EU legitimacy, adopted for crisis management situations, a major limitation still remains: those sources are rather static and normative. The sources have been defined and measured by scholars, but the exercise may have little bearing on the actual legitimacy of a polity in eyes of a relevant audience. This raises several new questions centered on the notion of “legitimation”. Legitimation, put in layman’s terms, is the translation of *sources* of legitimacy into *actual* perceptions of legitimacy by a conferring audience (Suchman 1995). In scholarly terms, an assessment of sources of legitimacy is a normative approach, while assessing actual perceptions of “rightful rule” is an empirical approach. Connecting the two approaches involves

considering how passive sources of legitimacy (normative sources) intersect with active efforts to shape the beliefs of an audience (empirical beliefs).

However, making the connection between sources of legitimacy and their strategic manipulation to shape an audience's belief systems is easier said than done. Three basic problems come to light. First, there's a deep-running debate over whether legitimacy can be manipulated: for most organizational theorists, legitimacy is so deeply seated in a cultural context that instrument behavior is at best useless and at worst, counter-productive (Suchman 1995). Second, in international organizations, there are likely to be competing legitimation efforts: one from the IO itself and one from the member states that comprise the IO (Zaum 2013). These efforts are likely to, again, at best, cancel one another out. Finally, international organizations face a "many audiences" problem: the audience to confer or remove legitimacy includes both an IOs principals (its member states, which need to perceive an IO as legitimate) and the general public (O'Donovan, 2002). An additional audience could be identified as "organized civil society". This makes strategic legitimation a formidable task.

Nevertheless, it is worth asking what sources of legitimacy are most relevant to different kinds of audiences, if and when EU actors should engage in strategic legitimation. This question is taken up below, after further detail on the key challenges outlined above.

### ***Problems with Strategic Legitimation***

There are conflicting views on whether active efforts to shape audience beliefs, regarding a polity or organization's legitimacy, is possible and even desirable (see Suchman 1995 for an authoritative overview of the debate. One school of thought, stemming mainly from within business and management studies (cf. Ashforth and Gibbs, 1990) but increasingly found in international relations literature (e.g. Tallberg and Zürn, 2015), explores the ways in which organizations can instrumentally manipulate and deploy evocative symbols in order to gain social support. The central notion of these "strategic" approaches (see Suchman, 1995: 572) is that organizations can draw from existing social resources (what might be called "legitimacy repertoires" – akin to what was discussed above) to portray their actions in ways that enhance perceptions of their legitimacy. A different school of thought, found mainly in the study of organizations as sociological institutions, have very different ideas of regarding the role of agency in the accumulation of legitimacy (e.g. DiMaggio and Powell, 1991). These scholars link legitimacy to broad, cultural forces that evade efforts by individuals or even organizations to shift them in preferred ways. Legitimacy, viewed as an audience's general perception of an organization as the "right" and "appropriate" organization to carry out a task, is gained or lost over long periods of time and by deep-seated social changes. These "institutionalist" approaches (Suchman, *ibid.*)—along with the mixed results of studies examining strategic attempts to enhance legitimacy—suggest one should be modest when considering whether normative sources of legitimacy can be mobilized in instrumental ways.

Another issue that should give legitimation scholars pause for thought is what Zaum (2013) calls the Janus-faced nature of IOs. Echoing, but not explicitly mentioning, the debate in EU studies over the EU as both an actor in its own right as well as a platform for member state cooperation, Zaum argues that legitimation is “not only pursued collectively by an international organization as a whole, but also by different members individually...” (2013: 15). Zaum makes a useful distinction between collective legitimation and pluralist legitimation practices. The former describes the efforts of international organizations and their member states, as coherent actors, to improve the normative properties of an IO to defend or sustain authority claims. The latter are conducted by individual states to protect or promote their particular vision of international or regional order (ibid.). Zaum’s arguments are mainly oriented towards an IO such as the UN, however, and needs to be narrowed to help explain legitimation practices in the EU. For the EU, the same kind of cooperative activity (say, crisis management) can be legitimated either by the EU institutions, purportedly including member states in the Council, or by individual member states seeking to legitimate EU activity—albeit in different, and possible conflicting ways, when compared to the efforts of EU institutions. These variations on “collective” vs. “pluralistic” legitimation can clearly work to cross-purposes and impose tensions and constraints on legitimation efforts.

Lastly, a central question concerns the audience – who do we assume is conferring legitimacy upon the EU as a crisis manager? There is much discussion in the literature on the question of the “conferring public” (e.g. O’Donovan 2002), with democratic theorists generally assuming a wider, public body (e.g. Held) in contrast to management theorists who argue that narrower groups of “constituents” (Bansal, 1995) or “stakeholders” (Mitchell et al, 1997) are more important and influential in determining legitimacy. To an extent, this difference corresponds to the entity in question: business firms might be more concerned about having a narrower version of the conferring public, while political systems may need to consider the general public as its conferring audience.

### ***Matching Legitimacy Sources with Audiences***

The three challenges above remind us that any strategic legitimation effort is rife with challenges. At the same time, taken together these challenges point us towards specification of exactly how legitimation efforts might take place, using what authority claims based on which sources of legitimacy. For the sake of clarity, and in this initial draft, the focus is on the EU institutions seeking legitimacy in the eyes of various audiences (rather than member state efforts to cultivate legitimacy, for instance).

To start with, an important distinction in the EU should be made between (a) member state governments, who are both members of the EU but also its enabling “principals”, (b) “stakeholders”, such as civil society representatives or the European Parliament, and, of course, (c) the general public. All of these conferring publics can confer or withdraw legitimacy through their perceptions of EU actions, to draw on Suchman’s definition of legitimacy, as “proper”, “appropriate” or “desirable”. Yet each

is likely to draw on a different sets of legitimacy resources when considering the lending or withdrawing of support. Member state governments, for instance, are more likely to consider whether EU crisis management abides by *throughput* aspects of legitimacy. They would wonder whether crisis management tasks are within the constitutional framework of the EU’s treaties, and whether the Commission (as a major crisis manager within the EU) is overstepping its bounds. They might also wonder whether “normal” procedures are being followed. Stakeholders, including the European Parliament and civil society organizations, would be concerned about the transparency of processes and the quality of decision-making (trying to avoid, for example, hard-nosed, intergovernmental negotiations where they are left out). All three audiences, but especially the general public, consider efficiency and effectiveness crucial – has the EU managed to manage the crisis effectively? Indeed, an effectively managed outcome is no doubt more important in the eyes of the average citizen than the nature of decision-making. If crises are poorly handled, of course, the public will quickly take aim at input-based aspects of legitimacy, such as what accountability mechanisms are available.

Table 2 adapts Table 1 by including regarding which conferring audiences are likely to be most concerned by which sources of legitimacy.

**Table 2: Sources of Legitimacy and Their Respective Conferring Audiences**

<b>Input</b>	<b>Conferring Audience</b>	<b>Throughput</b>	<b>Conferring Audience</b>	<b>Output</b>	<b>Conferring Audience</b>
Pre-hoc mechanisms for democratic control	?	Legality of initiative	Member states	Efficiency	Public
Post-hoc mechanisms for accountability	Public	Legality of processes	Member states	Effectiveness	Public
		Transparency of processes	Stakeholders		
		Nature of decision-making	Stakeholders		

In future versions of this paper, the above table will be used as the basis for developing hypotheses regarding which conferring audiences care about which sources of legitimacy, why, and how these can be evaluated or tested.

## Conclusion

To be completed...

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