

## **ANU Centre for European Studies Briefing Paper Series**

### **The European Union and Infectious Diseases: Explanations for Policy and Legal Reform**

*Nicholas Simoes da Silva*



**Vol.9 No.1 (January 2018)**  
**ISSN 1838-0379**

### **The ANU Centre for European Studies Briefing Paper Series**

is an interdisciplinary series that aims to provide a concise overview of the latest research promoting greater understanding of issues relating to Europe, the European Union and the Europe–Australia relationship.

The Papers serve as a summary of these issues, and as a ready information source for the preparation of submissions, media releases or reports for use by university students, government departments, diplomats and other interested parties, as well as the general public.

The Briefing Papers also showcase the work of the Centre, providing an avenue of public outreach for the broad range of workshops, seminars, public lectures and conferences that form the Centre's work program.

They showcase, too, the research projects supported by the Centre through its appointment of highly qualified scholars as staff members, postdoctoral research fellows, adjuncts and associates, and by its competitive visiting fellowship program.

All ANUCES Briefing Papers can be viewed on our website:  
<http://politicsir.cass.anu.edu.au/centres/ces/research/publications/briefing-paper>

### **Recent Briefing Papers**

*ANUCES/ABC Big Ideas – Magna Carta at 800* | Nicholas Simoes da Silva and Katarzyna Williams | January 2018 | Volume 9 Number 1

*Is the Australian Offshore Processing System a Model for Europe?* | Camilla Ioli | November 2017 | Volume 8 Number 4

*Schuman Lecture Series – Schuman's Vision in the Age of Disarray: Whither Europe and the West?* | David Ritchie AO | August 2017 | Volume 8 Number 3

*Poland and the New World Disorder* | John Besemeres | July 2017 | Volume 8 Number 2

*ANUCES/ABC's Big Ideas – Exploring Brexit* | January 2017 | Volume 8 Number 1

*Preparatory Approaches to Overcoming Regulatory NTBs in an EU–Australia FTA* | Andrew Charles Willcocks and Anne McNaughton | June 2015 | Volume 7 Number 4

*Religious Freedom and the Principles of Subsidiarity and Margin of Appreciation: The Jurisdictional Responsibilities and Interrelationships of the European Court of Justice and the European Court of Human Rights* | Raphaela Thynne | October 2016 | Volume 7 Number 3

*Equality and Convergence in Nordic Societies in the Long Run: Europe and Other Comparative Mirrors* | Jari Eloranta, Jari Ojala, Jaakko Pehkonen and Lars Christian Bruno | July 2016 | Volume 7 Number 2

*The Italian Patient in 2016: Weak But Not Poor* | Heribert Dieter | June 2016 | Volume 7 Number 1

*European Trade Treaties: Key Intellectual Property Demands* | Hazel V.J. Moir | December 2015 | Volume 6 Number 4

*ANUCES Roundtable Summary – Russia: What's Next?* | Richard Rigby, Peter Rutland | June 2015 | Volume 6 Number 3

*Sino Russian Relations under Putin and Xi Jinping* | Kyle Wilson, Stephen Fortescue and Rebecca Fabrizi | May 2015 | Volume 6 Number 2

*Australia–European Cooperative Security in a New Strategic Environment* | March 2015 | Volume 6 Number 1

---

### **The Australian National University Centre for European Studies (ANUCES)**

1 Liversidge Street, Building #67C  
Canberra ACT 2601, Australia

T +61 2 6125 9896

E [europe@anu.edu.au](mailto:europe@anu.edu.au)

W <http://ces.anu.edu.au>

# **The European Union and Infectious Diseases: Explanations for Policy and Legal Reform**

**Nicholas Simoes da Silva**

## **Introduction**

Over the past two decades, infectious disease control and prevention increasingly have become a part of the European Union's competences and it has developed numerous policies and institutions in the field. This 'Europeanization' of infectious diseases, whilst implicitly accepted in much of the scholarship, has been historically largely unexplored and under-explained.<sup>1</sup> This paper seeks to contribute to the growing body of research into the explanations for European integration and policymaking in the sphere of infectious diseases. The paper utilises punctuated equilibrium theory (PET) to explain what drives EU action and integration in communicable diseases. PET is a useful theory in this area because it offers an explanation not only of why policy and legal change occurs when it does, but also why it occurs at particular levels of government, a key issue in the EU and its relationship with member states. The paper also draws on securitisation and spillover theories as complementary theories that, in the EU context, lead to a stronger use of PET. The paper seeks to achieve three aims. First, to explore what drives the EU's policymaking in the field of infectious disease control. Second, to examine why the EU, as well as member states, became an institutional locus

---

<sup>1</sup> See Wulf H. Reiners, *The Institutionalisation of Infectious Disease Control in the European Union – The Effects of the Securitisation of BSE/TSEs and SARS* (PhD Thesis, University of Köln, 2015), 4; Scott L. Greer and Margitta Mätzke, 'Bacteria without Borders: Communicable Disease Politics in Europe' (2012) 37(6) *Journal of Health Politics, Policy and Law* 887, 887; Scott L. Greer, 'The European Centre for Disease Prevention and Control: Hub or Hollow Core?' (2012) 37(6) *Journal of Health Politics, Policy and Law* 1003, 1017.

for law and policy reform in this area. Lastly, to explore the implications of the findings for predicting future developments in this field and for the application of PET to the EU.

Section 1 of the paper explains PET and the selection of case studies. The paper then applies PET to two case studies to explain the evolving role of the EU in infectious disease control and prevention. Section 2 examines the 2003–04 outbreak of Severe Acute Respiratory Syndrome (SARS). Section 3 looks at the 2014–16 Ebola outbreak. Section 4 assesses the usefulness of PET in predicting the EU’s future role in infectious disease policy, and provides a brief summary of suggested changes that PET should incorporate in the context of the EU.

## **Section 1: Theory**

Punctuated Equilibrium Theory is premised on the fact that decision makers have limited attention spans, and focus only on a few issues at once. It starts from the assumption that there is generally stability, or an equilibrium, in policymaking and law reform.<sup>2</sup> This stability is periodically ‘punctuated’ by ‘outbursts of policy activity and radical change.’<sup>3</sup> The theory suggests that both these states, stability and rapid change, are part of the same process.<sup>4</sup> F.R. Baumgartner, the theory’s progenitor, argues that this process is driven by ‘the interaction of beliefs and values concerning a particular policy, which we term the policy image, with the existing set of political institutions – the venues of policy action.’<sup>5</sup> Thus, in PET there are two key concepts: venues and policy images. The venues are the ‘institutional loci where authoritative decisions on a given

---

<sup>2</sup> Sebastian Princen, ‘Punctuated equilibrium theory and the European Union’ (2013) 20(6) *Journal of European Public Policy* 854, 854.

<sup>3</sup> Ibid.

<sup>4</sup> Frank R. Baumgartner and Bryan D. Jones, ‘Agenda Dynamics and Policy Subsystems’ (1991) 53(4) *The Journal of Politics* 1044, 1045.

<sup>5</sup> Ibid.

policy are taken.’ Generally, these institutions are comprised of experts and specialists, referred to as ‘policy subsystems.’ These policy subsystems respond to issues based on existing policies, and thus maintain the status quo.<sup>6</sup> However, when an issue gains particular salience, it can move outside these subsystems into other venues where approaches change, leading to rapid policy change. This, PET posits, occurs because of a shift in policy image. Policy image refers to how a policy is conceptualised by policymakers. For policy change to occur a policy image must itself transform, in that the way it is seen by policymakers is altered. As long as the venues and policy image remain stable, change will be minimal as the ‘basic presumptions underlying existing policies will be taken for granted,’<sup>7</sup> and ‘signals that do not fit the dominant set of policies’ will be ignored.<sup>8</sup>

In European infectious disease policy, the principal venues are domestic public health bodies, and particularly the competent bodies for infectious diseases in each member state.<sup>9</sup> Since 2005, the European Centres for Disease Control and Prevention has been the sole EU venue dedicated to the area. These institutional loci reflect the policy image of infectious disease control as being a specialised area, associated primarily with routine public health protection. In particular, infectious disease policy and public health generally are largely invisible most of the time, a key feature of its policy image.<sup>10</sup> As shown below, the policy image of infectious disease can change rapidly to be reframed as an issue of security or as a cross-border crisis or humanitarian

---

<sup>6</sup> Princen, above n 2, 856.

<sup>7</sup> Ibid.

<sup>8</sup> J.L. True, B.D. Jones and F.R. Baumgartner, ‘Punctuated –equilibrium theory: explaining stability and change in public policymaking’, in P.A. Sabatier (ed.), *Theories of the Policy Process* (Westview Press: 2007) 155, 160

<sup>9</sup> ECDC, *Competent Bodies*, European Centres for Disease Control and Prevention, [http://ecdc.europa.eu/en/aboutus/governance/competent-bodies/Pages/Competent\\_bodies.aspx](http://ecdc.europa.eu/en/aboutus/governance/competent-bodies/Pages/Competent_bodies.aspx).

<sup>10</sup> Greer and Matzke, above n 1, 901.

issue. This rapidly shifting policy image is a key feature of infectious disease policy, and makes the application of PET to the area particularly useful.

This paper could use any number of cases, including BSE,<sup>11</sup> H5N1 or H1N1. Indeed, this research builds on previous case study analyses, namely Steffan's work on the EU and AIDS, and Martin and Conseil's study of the EU and pandemic influenza. However, both these studies grappled with the challenge of charting the shifting roles of the numerous member states and the EU institutions, compounded by the scope of each crisis. AIDS has been ongoing for 40 years, and influenza pandemics include multiple different and complex scenarios which also include significant speculation.<sup>12</sup> This paper seeks to avoid these issues by focusing on a limited number of important reforms that occurred in brief periods of time, and resulted in increased EU engagement in infectious diseases, and to ask to what extent PET can explain their origins.

## **Section 2: SARS**

The 2003–04 outbreak of SARS was the first global epidemic of the 21<sup>st</sup> Century, seizing the world's attention.<sup>13</sup> It is thus an interesting case study for testing the effect it had on infectious disease policy in the EU and its member states. SARS is a respiratory virus, triggered by the SARS coronavirus.<sup>14</sup> It is fatal in 11% of cases, significantly above most common viruses.<sup>15</sup> It is an airborne virus spread by droplets, and is generally only transmissible through close contact, a factor that fortuitously limited its

---

<sup>11</sup> Bovine spongiform encephalopathy, known as Mad Cow Disease. There was a substantial outbreak of BSE in the EU during the 1990s and early 2000s.

<sup>12</sup> Taylor provides a detailed critique of both studies, though justifiably commending both for their contribution to explanations of Europeanization in infectious diseases (Rosemary C. R. Taylor, 'Public Health in a Transnational Context: Explaining Europe's Role' (2012) 37(6) *Journal of Health Politics, Policy and Law* 1111).

<sup>13</sup> Thomas Abraham, *Twenty-First Century Plague: The Story of SARS* (Hong Kong University Press, 2004), 3

<sup>14</sup> Reiners, above n 1, 150.

<sup>15</sup> Abraham, above n 12, 14.

spread.<sup>16</sup> The outbreak originated in China, in early 2002, before rapidly spreading after March 2003. In just two months it infected 8000 people in 32 countries. However, these numbers do not reflect the potency of the disease, which manifested in the fear it created, closing transport networks and costing \$30 billion dollars to the global economy.<sup>17</sup> In the EU, the disease infected less than 100 people, yet its consequences for policy were significant. Indeed, out of this period came the two most significant developments in European infectious disease policy: the Constitutional Treaty Article III-278, which provided for a strengthened public health Article, and the creation of the European Centres for Disease Control and Prevention (ECDC). Applying PET to SARS partly explains why and how these developments occurred, particularly as we trace the shift in policy image and venue for infectious disease control.

Infectious diseases are traditionally seen as a highly technical and specialised public health concern. However, this policy image underwent rapid change as a result of the SARS crisis, taking on a number of new dimensions. A shift had been occurring slowly for several years, as infectious diseases increasingly became associated with bioterrorism, particularly after anthrax attacks in the US.<sup>18</sup> SARS accelerated this change in policy image, and was reflected in the burst of Commission communications in the aftermath of SARS, one of which discussed ‘threats to human health’ such as pandemics in the same sentence as the 2004 Madrid and 2005 London terrorist attacks.<sup>19</sup> A member of the European Parliament described SARS as the ‘the new plague of the third millennium,’<sup>20</sup> and Hong Kong’s head of hospitals compared SARS

---

<sup>16</sup> Ibid.

<sup>17</sup> Ibid, 15.

<sup>18</sup> Greer, above n 1, 1009.

<sup>19</sup> COM (2005) 662: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Commission provisions on “ARGUS” general rapid alert system [2005] OJ C 49/23, [1].

<sup>20</sup> Written Question E-2098/03 by Sebastiano Musumeci (UEN) to the Commission. SARS emergency: preventive measures [2004] OJ C 33 E/217.

(‘the enemy’) to the attack on Pearl Harbour.<sup>21</sup> Securitisation, the process by which an issue can be constructed or reframed as an ‘existential threat’,<sup>22</sup> offers a useful approach for explaining this aspect of the change in policy image. Reiners has convincingly charted the securitisation of SARS by EU institutions and member states,<sup>23</sup> and combining his findings with PET explains how the policy image of infectious diseases so rapidly took on a security threat aspect. Scholars have concluded a similar process led to the creation of the US Centres for Disease Control and Prevention.<sup>24</sup> A more important change was reflected in the insertion of the EU as an actor into the debate. The policy image of infectious diseases is traditionally seen as inextricably linked to national sovereignty.<sup>25</sup> Yet SARS triggered a rapid image evolution that recognised that infectious diseases have important implications for the single market and European integration.<sup>26</sup> Steffan, though offering other explanations for the Europeanization of infectious diseases, acknowledged this rapid acceptance of ‘cross-border disease management’ among policymakers.<sup>27</sup> These two shifts in policy image reconceptualised infectious diseases for decision makers, opening up a range of new venues in which policy and law reform could be initiated.

The altered policy image of infectious disease control now opened new venues for policy and law-making. PET theorists have observed that there are two types of ‘venue-shopping’ that can occur: vertical, which means a move from local to state for

---

<sup>21</sup> Abraham, above n 12, 2.

<sup>22</sup> Barry Buzan, Ole Waever and Jaap de Wilde, *Security: A New Framework for Analysis* (Lynne Reiner Publishers, 1998) 24.

<sup>23</sup> Reiners, above n 1, 172-175.

<sup>24</sup> Margitta Mätzke, ‘Institutional Resources for Communicable Disease Control in Europe: Diversity across Time and Place’ (2012) 37(6) *Journal of Health Politics, Policy and Law* 967, 971-973.

<sup>25</sup> Heather A. Elliott, David K. Jones and Scott L. Greer, ‘Mapping Communicable Disease Control in the European Union’ (2012) 37(6) *Journal of Health Politics, Policy and Law* 935, 936.

<sup>26</sup> Reiners, above n 1, 97.

<sup>27</sup> Monika Steffen, ‘The Europeanization of Public Health: How does it work? The Seminal Role of the AIDS Case’ (2012) 37(6) *Journal of Health Politics, Policy and Law* 1057, 1084-1085.



example, or horizontal, referring to a move within a level of government.<sup>28</sup> Due to the lack of EU institutions that dealt with infectious diseases, horizontal movement was largely precluded. However, a vertical shift occurred, from the member states and their respective specialist health agencies to the EU level. For example, EU Health Ministers convened an Extraordinary Council of European Union Meeting on 6 May 2003 to coordinate SARS policy. They met again on 2 June 2003 and ordered the Commission to prepare ‘generic plans on public health emergencies’.<sup>29</sup> The Commission and the EU generally thus became a new venue in infectious disease control. This shift was reflected in the creation of the ECDC and the Constitutional Treaty Article III-278’s section on Serious Cross-Border Threats to Health,<sup>30</sup> the two key infectious disease policy developments that emerged from the SARS crisis. The introduction of Article III-278 marked a swift shift in venue from the member states to the EU as an institution, and emerged from the altered policy image that recognised that infectious diseases are fundamentally a cross-border, European issue. Shifts in policy image and venues proved particularly important for the creation of the ECDC. Proposals for an EU Centre had been around for several years prior to SARS. Yet, they had been largely ignored by domestic health professionals and organisations, in favour of strengthening existing policies and platforms based around intergovernmental approaches.<sup>31</sup> It took the altered policy image that emerged from SARS to shift the available venues from specialised medical networks and authorities to the Parliament, Council and Commission, who all took an active interest in the area. This resulted in Regulation 851/2004, which created

---

<sup>28</sup> Princen, above n 2, 859.

<sup>29</sup> COM/2005/605 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on strengthening coordination on generic preparedness planning for public health emergencies at EU level [2005] OJ C 49/23, [1].

<sup>30</sup> The Constitutional Treaty’s Article III-278 would go on to become Article 168 of the Lisbon Treaty after the abandonment of the former treaty.

<sup>31</sup> Greer, above n 1, 1009.

the ECDC. The ECDC marked a substantial development in the centralisation of the EU's role in infectious diseases, moving away from a solely network-oriented approach to the field.<sup>32</sup> As these two developments illustrate, PET and its emphasis on shifting policy images and venues can explain why a policy or legal reform occurs at a given time, also allowing us to predict when future reforms may occur. However, it is also necessary to ask why the EU became an accepted venue for infectious disease control, rather than reform being confined to member states.

The idea of crisis-driven policymaking is a well noted one,<sup>33</sup> in disease policy reflected in the concept of a 'good epidemic' that encourages effective policy and law reform.<sup>34</sup> However whilst this observation is arguably intuitive, in itself it offers little explanation for why the EU as well as member states became an institutional locus for rapid law and policy reform. The answer to this question lies in the changing policy image of infectious diseases and its interplay with EU institutions. The shifting policy image of infectious disease control was partly built on the idea of 'spillover'.<sup>35</sup> If the EU allows for free movement of people and goods, so too does it allow for the free movement of infectious diseases, thence the framing the EU's role in the area. However, such an assumption only works if EU institutions are willing to take up the issue and develop its policy image, which here they did. The shift in venue also reinforces the shift in policy image, a dynamic that has been identified in the scholarship.<sup>36</sup> For example, communications from the Commission increasingly emphasised the importance of the EU dimension in infectious diseases,<sup>37</sup> a result of the SARS epidemic.

---

<sup>32</sup> Reiners, above n 1, 149.

<sup>33</sup> Steffen, above n 26, 1060.

<sup>34</sup> Greer and Matzke, above n 1, 902.

<sup>35</sup> Ibid, 900.

<sup>36</sup> Princen, above n 2, 861.

<sup>37</sup> COM/2005/605 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on strengthening

Indeed, scholars have noted that the EU Commission is not only a venue but can also act as an ‘image-venue entrepreneur’, meaning it can also push for an altered policy image and to create new venues at the EU-level to allow for policy change on issues.<sup>38</sup> The creation of the ECDC is a clear example of this, creating a new venue and in doing so reinforcing the new transnational element of the infectious disease policy image, as did a number of other reforms.<sup>39</sup> Likewise, the Parliament was important in framing the transnational dimension of the issue, with one MP claiming the ‘virus is... spreading within Europe in a way which threatens everyone’s health.’<sup>40</sup> Thus, the availability of receptive venues such as the Commission and Parliament who were willing to emphasise the EU’s role in infectious diseases was essential to development of an EU-inclusive policy image for infectious diseases.

### **Section 3: Ebola**

After SARS and the multiple influenzas of the period from 2005–09, infectious disease policy returned to an equilibrium, though one of a fundamentally different nature because of the SARS-related reforms. The EU was now an established actor in the field, through the ECDC and the Directorate-General for Health and Food Safety (DG SANTE), though both had only risk-assessment roles rather than real control or

---

coordination on generic preparedness planning for public health emergencies at EU level [2005] OJ C 49/23, [2].

<sup>38</sup> Princen, above n 2, 860.

<sup>39</sup> For example, see Decision 2004/858/EC setting up an executive agency, the ‘Executive Agency for the Public Health Programme’, for the management of Community action in the field of public health [2004] OJ L 369/7; COM (2005) 662: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Commission provisions on “ARGUS” general rapid alert system [2005] OJ C 49/23; COM/2005/605 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on strengthening coordination on generic preparedness planning for public health emergencies at EU level [2005] OJ C 49/23. All proposed new policies as a result of the SARS crisis.

<sup>40</sup> Written Question E-1521/03 by Mario Borghezio (NI) to the Commission. Illegal immigration and the spread of the SARS virus [2003] OJ C 280 E/174. Reiners, above n 1, has prepared a table containing all SARS-related written questions from the European Parliament, with several dozen being prepared throughout the epidemic (262-263).

prevention powers.<sup>41</sup> Nonetheless, infectious diseases receded from view and the policy image returned to one associated with specialists and routine public health management. In March 2014 however, a virus began spreading in West Africa.<sup>42</sup> Later identified as the Ebola virus disease, this outbreak went on to be the largest of its kind, infecting over thirty thousand people with a fatality rate of over 50%.<sup>43</sup> Largely confined geographically to West Africa, the Ebola epidemic was perceived as ‘unprecedented’ in scope and as having reshaped the European public’s view of the disease.<sup>44</sup> The crisis is an important case study of the application of PET to infectious diseases in the EU, illustrating horizontal venue shopping and why particular venues are chosen for policy change. It also powerfully demonstrates the increasing influence of the EU as a policy image entrepreneur, deliberately attempting to alter policy images so as to increase the scope for EU involvement.

As in SARS, the policy image of infectious diseases underwent rapid change as the Ebola epidemic developed, with it quickly becoming an issue of European security. Securitisation theory helps explain this development, as the high mortality of Ebola and its incredible infectiousness were seized upon to reframe the policy image of infectious diseases as a security and cross-border challenge. This was reflected in the EU’s Health Security Committee (HSC), a recently strengthened EU body to coordinate responses to public health issues,<sup>45</sup> taking up infectious disease control in relation to Ebola. The cross-border element of the crisis was emphasised by members of the Commission,

---

<sup>41</sup> Greer, above n 1, 1013-1014.

<sup>42</sup> WHO, *Ebola Fact sheet* (January 2016) World Health Organization, <http://www.who.int/mediacentre/factsheets/fs103/en/>.

<sup>43</sup> Gian Luca Quaglio, Charles Goerens, Giovanni Putoto, Paul Rübig, Pierre Lafaye, Theodoros Karapiperis, Claudio Dario, Paul Delaunois, Rony Zachariah, ‘Ebola: lessons learned and future challenges for Europe’ (2016) 16 *The Lancet Infectious Diseases* 259, 259.

<sup>44</sup> *Ibid*, 259-260.

<sup>45</sup> Decision No 1082/2013/EE of the European Parliament and of the Council on serious cross-border threats to health [2013] OJ L 293/1.

including work on a ‘European-wide response to the Ebola epidemic’.<sup>46</sup> In this, the policy developments of the SARS period were vital. The ECDC offered a ‘normative and scientific frame’ through which to see infectious diseases, as, by design, all its surveillance and epidemiological reports frame new diseases as a European issue.<sup>47</sup> Thus, European solutions and European institutions easily fit into the response to the Ebola epidemic, and made the cross-border element of infectious diseases easier to convey and revive as part of the policy image. The new emphasis on European security was most clearly demonstrated by the European Council’s action in this period. Arguably the EU’s most important institution, the EC contributed to infectious disease policy with the appointment in September 2014 of an EU Ebola Coordinator who oversaw the EU’s Emergency Response Coordination Centre (ERCC).<sup>48</sup> The Council of the EU also engaged with the policy area, releasing conclusions on ‘Lessons learned for Public Health from the Ebola outbreak in West Africa — Health Security in the European Union’.<sup>49</sup> Thus, even more so than SARS, the newly introduced security element of the infectious disease policy image resulted in rapid shifts in venue. In particular, horizontal shifts were prominent, with a range of EU institutions outside of the ECDC engaging in policy development.

These horizontal shifts in venue were the product of another newly introduced element of the infectious disease policy image, the reframing of infectious disease policy as a potential humanitarian disaster, with Ebola defined as a ‘humanitarian

---

<sup>46</sup> European Commission Statement on a European-wide response to the Ebola epidemic [2014] Statement/14/278 .

<sup>47</sup> Greer, above n 1, 1023.

<sup>48</sup> European Commission’s Humanitarian Aid and Civil Protection Department (ECHO), *EU Response to the Ebola epidemic in West Africa. ECHO factsheet* (March 2016), Europa.eu, [http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/wa\\_ebola\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/wa_ebola_en.pdf), 1.

<sup>49</sup> Council conclusions on ‘Lessons learned for Public Health from the Ebola outbreak in West Africa — Health Security in the European Union’ [2015] OJ C 421/04.

medical crisis.<sup>50</sup> The European Parliament was central in this transformation, again illustrating the potential of EU institutions to act as policy image entrepreneurs, deliberately attempting to alter policy images so as to increase the scope for EU involvement. Scholars have noted that the Parliament quickly and influentially raised the Ebola crisis, sending multiple questions to the Commission.<sup>51</sup> The Parliament's Development Committee took an active role in policy regarding the distribution of aid and support to affected countries.<sup>52</sup> By placing the EP's Development Committee as the primary Committee for Ebola, the Parliament enabled other EU institutions to follow suit. In particular, the Commission managed Ebola not only through DG SANTE, which oversees the ECDC and many public health policies, but also the Directorate-Generals for International Cooperation and Development (DG DEVO) and Humanitarian Aid and Civil Protection (DG ECHO).<sup>53</sup> In doing so, the EU mobilised a far larger range of policy tools and legal bases than simply public health.<sup>54</sup> For example, the Commission provided almost 700 million euros to the affected West African states, and created two teams to assist in patient diagnosis and treatment (the EUWAM-Labs).<sup>55</sup> Vertical venue changes also occurred, with the EU Civil Protection Mechanism, based on a firmer legal basis in the TFEU,<sup>56</sup> co-ordinating and providing resources gathered from EU member states.<sup>57</sup> These actions were possible because, in moving the legal bases upon which action was taken, the EU was able to act in a more international capacity. Indeed, the

---

<sup>50</sup> Quaglio et al, above n 42, 259.

<sup>51</sup> Ibid, 260.

<sup>52</sup> Quaglio et al, above n 42, 260.

<sup>53</sup> Ibid 260.

<sup>54</sup> The Public Health legal basis in the TFEU (below n 55) is contained Article 168. It is highly circumscribed and is a complementary article.

<sup>55</sup> Quaglio et al, above n 42, 260.

<sup>56</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01 (entered into force 1 December 2009). The Mechanism is based in Articles 196 and 214. Article 196 provides that '[t]he Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters.' Article 214 allows for the provision of humanitarian aid to third countries and the conclusion of international agreements to facilitate this.

<sup>57</sup> Quaglio et al, above n 42, 260.

Commission concluded that Ebola marked the first major use of the EU's so called 'health diplomacy'.<sup>58</sup> The new humanitarian element in the policy image of infectious diseases also overcame the issue of subsidiarity, which holds that action should occur at the lowest possible level. As humanitarian issues are firmly accepted as EU areas, far more so than public health protection, the EU could introduce further policies to address infectious diseases and particularly Ebola. Thus, as PET posits, rapid policy change resulted from a shift in the policy image which allowed for changed venues, which occurred both horizontally and vertically. EU institutions actively reshaped infectious disease policy images and facilitated moves in venue to encourage different policy tools.

Ebola is a powerful case study in the effects of an altered policy image on the availability and choice of venues. It is clear throughout this discussion that transformed policy images open new venues for policymaking. Consequently, these new venues often reinforce the altered policy image by engaging with the policy area on the legal and policy bases that the venue has available. Lastly, the evolution in infectious disease policy image was remarkably fast as a result of Ebola. Scholars have noted that shifts in policy images are particularly noticeable in complex areas. Baumgartner observed early that public attention can shift rapidly with 'only a small change in environment,' resulting in non-specialists focusing only on the negatives of an issue and thus giving it greater importance.<sup>59</sup> The rapidity of policy image change is particularly pronounced in the EU because the Union is characterised by a vast number of potential policy making venues, such as the Commission, Parliament or numerous agencies and committees,<sup>60</sup>

---

<sup>58</sup> Commission Staff Working Document: Global Health – Responding to the Challenges of Globalisation [2010] SEC 380 final, 28.

<sup>59</sup> Baumgartner and Jones, above n 4, 1047.

<sup>60</sup> Princen, above n 2, 861.

any of which may choose to pick up on a new scandal or crisis to strengthen its powers, gain attention, or test experimentalist governance.<sup>61</sup>

#### **Section 4: The Future of the EU's Role in Infectious Diseases**

It is clear that PET explains many of the developments in EU infectious disease policy over the past two decades. In doing so, it also allows scholars to make predictions and generalisations about future developments in this area. Firstly, as new diseases emerge and spread they are likely to drive further Europeanization of policy and law in this area. Indications of this are already evident in the EU's handling of the emerging Zika virus, and its potential effect on the EU. Secondly, EU institutions play an essential role in the process of Europeanization, acting not as 'passive receivers of claims from other political actors such as interest groups or member state governments,'<sup>62</sup> but instead actively shaping policy images and acting as receptive venues for policymaking, frequently outside of traditional venues for disease control and prevention. This will continue, as new venues mature and become increasingly empowered by regulations and directives that grant them greater policymaking power under the TFEU. Institutions such as the ERCC and ECDC have great capacity, with Greer arguing that the ECDC is 'well positioned to become a hub' for European disease control and prevention.<sup>63</sup> Thus, as scholars seek to predict EU and member state action in infectious disease policy and law, PET offers a useful predictive and explanatory power, especially in explaining why particular venues took a policy issue up and why they did so at a particular time.

Despite PET's applicability to the EU, a number of qualifications and adjustments must be made due to the nature of the institution. The steady developments

---

<sup>61</sup> Greer and Matzke, above n 1, 903.

<sup>62</sup> Princen, above n 2, 861.

<sup>63</sup> Greer, above n 1, 1003.



that have occurred in the space of EU infectious disease control and prevention since the late 1990s, traced by other scholars,<sup>64</sup> suggest that the EU may have a more consistent and gradual policymaking process than PET allows for. Indeed, whilst there has certainly been a punctuated equilibrium, the steady development of policy in the area since Maastricht first introduced a public health article suggests that the baseline policy equilibrium is more active in producing policy change. Furthermore, punctuations may be less dramatic because the EU as a regulatory state and sui generis actor is less suited to rapid policy changes. As health scholars have noted, ‘the sheer size of the EU – and the resulting problem of reaching consensus with a large number of stakeholders – poses... challenges to effective EU-wide coordination, especially in the middle of a crisis.’<sup>65</sup> Compounding this is the vagueness of the legal bases for EU intervention in the area of infectious disease,<sup>66</sup> which is based on several treaty provisions, none of which explicitly mention infectious diseases. Even when reform is proposed it can take several years to occur, as the SARS (2004) and Lisbon Treaty (2009) experience demonstrates. Likewise, the ECDC came after the crisis despite having been mooted for several years prior. This delay is not necessarily undesirable as it reflects the EU’s more conciliatory and cooperative approach to policymaking. However, it does effect the applicability of PET theory, which in the context of the EU should have a longer time period for reference.

---

<sup>64</sup> Reiners, above n 1, 98.

<sup>65</sup> Marco Liverani and Richard Coker, ‘Protecting Europe from Diseases: From the International Sanitary Conferences to the ECDC’ (2012) 37(6) *Journal of Health Politics, Policy and Law* 916, 928.

<sup>66</sup> *Ibid*, 930.

## Conclusion

Assessing and examining European infectious disease control and prevention is not only useful for developing theories such as PET, or for explaining what drives policy development in the European Union and the complex relationships between EU institutions and member states. That PET can explain the evolution of the EU's role in infectious disease prevention and control is arguably worrying. PET is premised on reactive decision-making and the limited attention spans of policymakers.<sup>67</sup> Effective prevention and control of cross-border infectious diseases, and public health crises more broadly, requires anticipating structures and policies to be in place already if harm is to be mitigated most effectively. As climate change and increased migration increase the risk of global epidemics, the EU and its member states will face increasing challenges from infectious diseases. According to PET, these challenges will drive further integration and EU policymaking in this field. Yet, as the EU and its member states face these challenges, they must ensure that punctuated equilibrium theory does not apply to their work any longer. Until then, the theory has unfortunately potent explanatory and predictive value.

---

<sup>67</sup> Princen, above n 2, 855.

## Bibliography

### A. ARTICLES/BOOKS/REPORTS

- Abraham, Thomas, *Twenty-First Century Plague: The Story of SARS* (Hong Kong University Press, 2004).
- Baumgartner, Frank R. and Bryan D. Jones, 'Agenda Dynamics and Policy Subsystems' (1991) 53(4) *The Journal of Politics* 1044.
- Buzan, Barry, Ole Waever and Jaap de Wilde, *Security: A New Framework for Analysis* (Lynne Reiner Publishers, 1998).
- Elliott, Heather A., David K. Jones and Scott L. Greer, 'Mapping Communicable Disease Control in the European Union' (2012) 37(6) *Journal of Health Politics, Policy and Law* 935.
- Fox, Daniel M., 'The Governance of Disease Control in Europe' (2012) 37(6) *Journal of Health Politics, Policy and Law* 1121.
- Garrett, Laurie, 'Ebola's Lessons' (2015) 94 *Foreign Affairs* 80.
- Greer, Scott L. and Margitta Mätzke, 'Bacteria without Borders: Communicable Disease Politics in Europe' (2012) 37(6) *Journal of Health Politics, Policy and Law* 887.
- Greer, Scott L., 'The European Centre for Disease Prevention and Control: Hub or Hollow Core?' (2012) 37(6) *Journal of Health Politics, Policy and Law* 1003.
- Greer, Scott L., Tamara K Hervey, Johan P Mackenbach, Martin McKee, 'Health law and policy in the European Union' (2013) 381 *The Lancet* 1135.
- Liverani, Marco and Richard Coker, 'Protecting Europe from Diseases: From the International Sanitary Conferences to the ECDC' (2012) 37(6) *Journal of Health Politics, Policy and Law* 916.
- Martin, Robyn and Alexandra Conseil, 'Public Health Policy and law for Pandemic Influenza: A Case for European Harmonization?' (2012) 37(6) *Journal of Health Politics, Policy and Law* 1091.
- Mätzke, Margitta, 'Institutional Resources for Communicable Disease Control in Europe: Diversity across Time and Place' (2012) 37(6) *Journal of Health Politics, Policy and Law* 967.
- Princen, Sebastian, 'Punctuated equilibrium theory and the European Union' (2013) 20(6) *Journal of European Public Policy* 854.
- Quaglio, Gian Luca, Charles Goerens, Giovanni Putoto, Paul Rübig, Pierre Lafaye, Theodoros Karapiperis, Claudio Dario, Paul Delaunois, Rony Zachariah, 'Ebola:

lessons learned and future challenges for Europe' (2016) 16 *The Lancet Infectious Diseases* 259.

Reiners, Wulf H., *The Institutionalisation of Infectious Disease Control in the European Union – The Effects of the Securitisation of BSE/TSEs and SARS* (PhD Thesis, University of Köln, 2015).

Steffen, Monika, 'The Europeanization of Public Health: How does it work? The Seminal Role of the AIDS Case' (2012) 37(6) *Journal of Health Politics, Policy and Law* 1057.

Taylor, Rosemary C. R., 'Public Health in a Transnational Context: Explaining Europe's Role' (2012) 37(6) *Journal of Health Politics, Policy and Law* 1111.

True, J.L., B.D. Jones and F.R. Baumgartner, 'Punctuated –equilibrium theory: explaining stability and change in public policymaking', in P.A. Sabatier (ed.), *Theories of the Policy Process* (Westview Press: 2007) 155.

## B. TREATIES

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01 (entered into force 1 December 2009).

## C. OTHER

COM (2005) 662: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Commission provisions on "ARGUS" general rapid alert system [2005] OJ C 49/23.

COM/2005/605 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on strengthening coordination on generic preparedness planning for public health emergencies at EU level [2005] OJ C 49/23.

Commission Staff Working Document: Global Health – Responding to the Challenges of Globalisation [2010] SEC 380 final.

Council conclusions on 'Lessons learned for Public Health from the Ebola outbreak in West Africa — Health Security in the European Union' [2015] OJ C 421/04.

Decision 2004/858/EC setting up an executive agency, the 'Executive Agency for the Public Health Programme', for the management of Community action in the field of public health [2004] OJ L 369/73.

Decision No 1082/2013/EE of the European Parliament and of the Council on serious cross-border threats to health [2013] OJ L 293/1.

ECDC, *Competent Bodies*, European Centres for Disease Control and Prevention,  
[http://ecdc.europa.eu/en/aboutus/governance/competent-bodies/Pages/Competent\\_bodies.aspx](http://ecdc.europa.eu/en/aboutus/governance/competent-bodies/Pages/Competent_bodies.aspx).

European Commission Statement on a European-wide response to the Ebola epidemic [2014] Statement/14/278.

European Commission's Humanitarian Aid and Civil Protection Department (ECHO), *EU Response to the Ebola epidemic in West Africa. ECHO factsheet* (March 2016), Europa.eu,  
[http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/wa\\_ebola\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/wa_ebola_en.pdf).

WHO, *Ebola Fact sheet* (January 2016) World Health Organization,  
<http://www.who.int/mediacentre/factsheets/fs103/en/>.

Written Question E-1521/03 by Mario Borghezio (NI) to the Commission. Illegal immigration and the spread of the SARS virus [2003] OJ C 280 E/174.

Written Question E-2098/03 by Sebastiano Musumeci (UEN) to the Commission. SARS emergency: preventive measures [2004] OJ C 33 E/217.