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Frontex and the Evolution of Cooperation on European Border Controls

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Thesis Submitted for the Degree of Doctor of Philosophy in Politics

University of Sussex

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Statement

I hereby declare that this thesis has not been and will not be, submitted in whole or in part to another University for the award of any other degree.

Signature:

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UNIVERSITY OF SUSSEXSATOKO HORII, DOCTOR OF PHILOSOPHY IN POLITICSFRONTEX AND THE EVOLUTION OF COOPERATION ON EUROPEAN
BORDER CONTROLS**Summary**

This dissertation explores the role of the EU agency Frontex in the EU border regime. Contrary to the mainstream formulation in academic research which views that Frontex is a mere tool of EU member states and did not change the intergovernmental cooperation, this dissertation has pursued the agency's potential in bringing integrative effect on the regime. To this aim, this dissertation has used the sociological institutionalist approach as it provides a theoretical basis for defining the EU border regime and explaining the nature and mechanisms that Frontex has exercised to influence the regime.

By looking at Frontex's activities in mobilisation of state border agencies, promotion of common standards and producing risk analysis at external borders, this research has found that Frontex has had integrative effects on the regime with certain limitations. Empirical analyses have shown that a set of procedures and mechanisms that Frontex has developed have increased the participation of state border agencies in EU's border guard activities, which implies the shift of the initial intergovernmental cooperation to a more structured form of cooperation. It has also found that, although the outcome has been unevenly spread in Europe, Frontex has acted as an agent of transfer in promoting common standards for border guard training curriculums and automated border control systems. Moreover, Frontex has effectively transformed the politically defined "risks" at the EU's external border to measureable terms at an operational level, which has enabled the classification of the EU member states. This dissertation has observed the effect of the agency's risk analysis in the policy makers' decisions.

These findings conclude that, although it is still of a hybrid nature that has derived from contradicting elements between state-centric and supranational forces, Frontex has certainly changed the regime towards integration. In this context, this dissertation has enriched the understanding of institutional and organisational dynamics in a EU policy field and the role that EU agencies can play in it.

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List of Abbreviations

ABC: Automated Border Control

ACT: Ad Hoc Centre for Border Guard Training

AFSJ: Area of Freedom, Security and Justice

CEN: European Committee for Standardisation

CEPOL: European Police College

CIRAM: Common Integrated Risk Analysis Model

Common Unit: External borders practitioners common unit

COREPER: the Council of Ministers and the Committee of Permanent Representatives

CRATE: Centralised Record of Available Technical Equipment

DG: Directorate-General

EASO: European Asylum Support Office

EBGT: European Border Guard Teams

EU: European Union

EURATOM: European Atomic Agency Community

FRA: Fundamental Rights Agency

FRAN: Frontex Risk Analysis Network

Frontex: European agency for the Management of Operational Cooperation at the
External Borders of the Member States of the European Union

IATA: International Air Traffic Association

IBM: Integrated Border Management

ICAO: International Civil Aviation Organization

ICMPD: International Centre for Migration Policy Development

IOM: International Organization for Migration

ISO: International Organization for Standardization

JHA: Justice and Home Affairs

LIBE: Committee on Civil Liberties, Justice and Home Affairs

OECD: Organisation for Economic Co-operation and Development

OPERA: Operational Resources Management System

OSCE: Organization for Security and Co-operation in Europe

RABIT: Rapid Border Intervention Teams

RDU: Research and Development Unit of Frontex

SCIFA: Strategic Committee on Immigration, Frontier and Asylum

SNE: Seconded National Expert

SIS: Schengen Information System

SQF: Sectoral Qualifications Framework

UKBA: United Kingdom Border Agency

UNHCR: United Nations High Commissioner for Refugees

VIS: Visa Information System

VISA: Visa Control Investigation in Schengen Airports

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Chapter 1: Introduction

1.1. Field of Research

On 27 August 2014, the EU Commissioner for Home Affairs, Cecilia Malmström, announced that the EU would assist an Italian border operation, “Mare Nostrum (Our Sea)”, by organising an EU-level large-scale border operation. The Italian authority had implemented Mare Nostrum on the Mediterranean Sea in order to handle a sudden and huge inflow of irregular migrants in Lampedusa, off the coast of Italy (European Commission 2014a). It is estimated that more than 63,000 “boat people” arrived in Lampedusa, an island of 5,000 inhabitants, in the first half of 2014 alone. This figure exceeded that of the whole year of 2011 (62,000), which number was by then a record figure in Lampedusa (*EurActiv* 2014). The EU-wide operation, which was codenamed “Triton”, has been coordinated by the EU border agency Frontex.

It is not the first time that Frontex has taken a leading role in an EU-level response to irregular migration at the EU’s external borders. Frontex (“the European agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union”) is an agency created in 2004 to facilitate cooperation between EU member states. The agency has conducted a variety of tasks that includes organisation of joint border operations in which multiple member states participate by sending their border guards and equipment, conducting risk analysis of the external borders, and developing common border guard training curricula (European Parliament and the Council 2011). For example, when Greece called for EU assistance during its “asylum crisis” in 2010, Frontex coordinated the large-scale emergency Operation “Rapid Border Intervention Teams (RABIT)”, the framework of which was later merged with the “European Border Guard Teams (EBGT)” in 2011 (*idem.*). Frontex mobilised almost all of the EU member states and also the Schengen member states for this Operation at the Greek borders with Turkey (European Commission 2011a). When Spain’s Canary Islands were the main port of entry for irregular migrants in the mid-2000s, Frontex organised Operation “HERA” (Carrera 2007). As these examples show, irregular migration at the EU’s external borders has become a matter of cooperation by EU member states. This cooperation has been increasingly coordinated by Frontex, while the principle that the responsibility to control borders lies with member states has

not changed.

The EU response to irregular migration reflects the fact that this issue is a Europe-wide concern. Although European countries had long experienced migratory movements in their history, there has been a drastic increase of immigrants since the early 1990s, after the collapse of Communist rule in Eastern Europe, and from the 2000s onwards. As a result, Europe has emerged as the largest recipient of immigrants in the world in 2013. According to Organisation for Economic Co-operation and Development (OECD) (2013), Europe¹ received 72.4 million of immigrants in 2013, whereas Asia and Northern America received 70.8 million and 53.1 million, respectively. Eurostat data (European Commission 2015) has shown that there were 51.4 million immigrants² in the EU 28 member states as of 1 January 2014. Scholars have determined that a sharp rise in migrants has had considerable impacts on the economy, society and politics of the receiving countries in Europe (see, for example, Castles et al. 2014).

The concern about migration is not only due to its numerical impact but also its diversified and complex nature. Irregular migration and asylum are such examples. Though no universally accepted definition has been developed for irregular migrants (IOM 2014), they are commonly understood to have a wide variety of statuses. They can be visa-overstayers, foreign employees without a working permit, or those who cross or intend to cross a national border without a valid passport or other relevant travel documents (IOM 2011).³ Many of these irregular migrants are from African countries such as Eritrea and Somalia, Middle Eastern countries including Syria and Afghanistan, and South Eastern European countries like Albania (Frontex 2014a: 70; Morehouse and Blomfield 2011: 12). In 2008, 1.9 to 3.8 million irregular migrants (incl. asylum seekers) were said to have lived in all 27 member states, according to the Clandestino Project (2009: 12). Asylum seekers are those who flee from their home

¹ In the OECD's report non-EU countries such as Russian Federation, Albania and Serbia were included.

² The figure includes 17.9 million people who had been born in a different EU member state from the one where they were resident.

³ In this dissertation, "migrants" refers to both asylum seekers and other types of immigrants. "Irregular migrants" is also used to highlight "irregularity", in that they crossed or attempted to cross a national border without designated procedures by a receiving nation state. Thus irregular migrants include asylum seekers.

countries to seek international protection. They are often dealt with as irregular migrants, because the routes of entry may be those rendered “illegal” by the receiving states’ policies (Geddes 2008: 171). Governments have to treat irregular migrants, especially asylum seekers, carefully, as the state handling of human rights has increasingly been a subject of public concern, especially from pro-migrant organisations. Simultaneously, governments have to show a “tough stance” on irregular migrants in order to calm down their citizens.

Tightening the border to keep irregular migrants and asylum seekers out of the territory is the trend of the EU and of member states, as many scholars have observed that most EU member states’ governments regard both types of migrants as an administrative and political challenge (see for example, Guild 2009; Hampshire 2013; Léonard 2009; Zaiotti 2011). Since the EU acquired its competence in these matters with the Treaty of Maastricht in 1993 and the Treaty of Amsterdam in 1999, the EU is developing a common asylum and migration policy as a Treaty objective. Especially since the creation of the border-free Schengen area with the incorporation of the Schengen *acquis* with the Treaty of Amsterdam in 1999, member states⁴ have a shared interest in the security of external border management (Hampshire 2013). The member states’ commitment to cooperate in this matter has been confirmed in the European Council meetings in Tampere in 1999 and Laeken in 2001 (European Council 1999, 2001a). External border control has gained political salience as the EU’s “external shield” with the Treaty of Lisbon, as it has defined the achievement of an Area of Freedom, Security and Justice as the EU’s objective (Treaty on the European Union 2009: Art 3 (2)).

As a consequence, a number of measures have been set up for external border management. Such measures include the “Visa Information System” (European Parliament and Council 2008), the EU-wide database for sharing visa data, the “Schengen Borders Code” which offers a set of rules for border guards compliance (European Parliament and Council 2006) and the “External Borders Fund” that provides financial assistance to improve border checks and surveillance (European Parliament and Council 2007a). The Schengen Information System (SIS) I, which issued alerts on

⁴ It should be noted that not all EU member states have joined Schengen. As of January 2015, Bulgaria, Croatia, Cyprus, Ireland, Romania and the UK are not, or not yet, part of Schengen.

persons who might have been involved in serious crimes, was set up as part of the compensatory measures for the abolition of the internal border control. Its successor SIS II serves primarily for internal security but also works for external border management purposes (Council 2007a). For all these measures, Frontex has played a role in materialising the operational cooperation of EU member states. That is, Frontex facilitates, promotes and strengthens coordination of operational actions of the authorities of the Member States in the field of the EU's external border management.

In light of its important role, Frontex is today an increasingly popular area of academic research (see for example, Carrera 2007, 2010; Guild 2009; Léonard 2009, 2011; Monar 2006, 2014; Neal 2009; Parkin 2012; Pollack and Slominski 2009; Zaiotti 2011). Scholars have discussed the creation-process of Frontex, the institutional environments in which it has been located and the changing nature of state border control through Frontex's activities. The establishment of Frontex is considered important by most interested scholars. For Monar (2006: 205), for example, the establishment of Frontex is "an important step towards a more integrated and institutionalised management of external borders". Wolff (2012: 143) has also argued that the creation of Frontex has meant the "institutionalisation of European border management", representing the principles of burden-sharing, solidarity and mutual trust between member states.

Nonetheless, scholars have generally viewed Frontex as having a very limited impact on changing the ways borders are managed because of its "loose mandate of coordination" and its heavy dependence "on the willingness of Member [*sic*] states to share their border management equipment communally" (Wolff 2012: 147). Such accounts refer to the constraints within which Frontex coordinates operational cooperation. Before its creation, there were two models that the European Commission proposed for border cooperation (European Commission 2002a). One was an inter-governmental body, the "External Borders Practitioners Common Unit", as part of the Council working party; the other was a more integrated model, the "European Corps of Border Guards", which would be equipped with its own border guards. The formerly mentioned Common Unit was implemented but soon revealed its ineffectiveness, while the latter European Corps idea was opposed by the member states. The Frontex model was thus created as a political compromise to balance the two: it is organisationally separate from the Council but is dependent on member states to undertake operational activities. Pollack and

Slominski (2009) have claimed that Frontex will not add much to the state-centric border management policy unless material and human resources are properly provided to it. Pollack and Slominski (2009: 920) have added:

At first glance, the establishment of Frontex shows the willingness of the member states to experiment in developing a common border management. However, given the delicate nature of the task, they agreed on an approach which combines contradictory elements. On the one hand, Frontex has to operate in a legally insufficiently specified environment. This is due to the unwillingness of some member states to install a fully-fledged European border guard (...) On the other hand, member states agreed to provide Frontex with the necessary autonomy (in terms of staff and budget) in order to ensure the minimum requirement of operational autonomy. However, in terms of material resources and support, Frontex is entirely dependent on the willingness of the member states.

Through her analysis of border management in the Mediterranean region, Wolff (2012: 147) has also claimed that, in reality, “there is still an important role for Member states” in that border management is largely driven by member states and cooperation with neighbouring third countries is very much based on bilateral cooperation. In this regard, Frontex is “merely a platform” for member states cooperation (*idem.*). Rijpma (2012: 99) has mentioned that “Frontex could play an important role in facilitating improved training, exchange of information and interoperability of technical means, as well as a more frequent and binding evaluation of member states’ implementation of the Schengen borders *acquis*”. However, an empirical and theoretical basis is lacking and, at this juncture, it needs further investigation. This dissertation contributes to the academic understanding of Frontex by examining different dimensions of its actual activities to assess their impact on the EU border regime. By so doing, this dissertation begins to fill a gap in the literature, which at present lacks studies on the impact of Frontex beyond its legally defined role.

1.2. Research Questions, Aims and Contributions

Consequently, this dissertation addresses the following questions.

*Has Frontex transformed the EU border regime?
If it has transformed the regime, how has it done so?*

Contrary to the mainstream arguments on Frontex in the existing literature, this dissertation argues that Frontex has not just been a passive element of the EU's border regime but has actively changed the regime through its activities. This is because Frontex-coordinating activities such as common training, technology development and joint border operations increase the interaction and convergence of, traditionally, nationally fragmented customs and practices and thus may have brought the field of border management towards integration.

In pursuing these questions, a sociological institutionalist approach has been adopted. As explained in Chapter Two, sociological institutionalism is an approach to new institutionalism in political science, which entails a set of theoretical ideas concerning the relations between institutional characteristics and political agencies that explain political actions (March and Olsen 2006: 4). This approach has been taken in this dissertation because it provides a theoretical basis for defining the EU border regime and explaining the nature and mechanisms that Frontex may have exercised to influence the regime.

The specific focus of this dissertation is in the fields of European political studies and migration studies, and contributes to the empirical and theoretical themes in the literature. Firstly, it contributes to empirical knowledge of Frontex and its potential for bringing political significance to bear beyond what is suggested in the legal mandate. Frontex is not a policy-making actor or state actor, but it primarily works at a policy-implementing level and is treated as an administrative EU agency. Hence its role in wider EU policy making is viewed as highly limited in the existing research. As discussed in the following chapter, Wolff (2012) has argued that Frontex is not more than a mere platform for cooperation and that its performance is entirely up to member states. Pollak and Slominski (2009: 904) have also argued that Frontex "may only succeed" if all member states provide appropriate and steady support to it. Contrary to this mainstream formulation, this dissertation looks at Frontex as a regime-changing actor. It also looks at the functioning of Frontex, not just as a unitary actor or as a "black box". This dissertation underlines how actors inside Frontex shape its day-to-day work, operational standards and risk assessments, and how this has a broader impact on EU policy making.

Secondly, this dissertation adds to the theoretical basis of the literature by looking into the impact of both formal and informal institutional change. According to March and Olsen (1989: 52), actors' behaviour is affected by institutional environments that determine what is deemed "appropriate" behaviour in a given situation. Institutional environments are not solely identified by regulations but also by a network of routines and unwritten rules (Hall and Taylor 1996: 15). Having these in mind, this dissertation has conceptualised the EU border regime as a set of working principles and rules which guide actions of actors involved in border management. Sociological institutionalist arguments, especially within the concept of *organisational field*, have enabled this research to interpret the regime not only through the presence of legal settings but also through informal working procedures and the day-to-day practices of border guards. Moreover, private firms, NGOs and international organisations are also considered in terms of the organisational dynamics they bring into the regime. Such a perspective is beneficial in grasping the ways in which Frontex can influence the regime.

Related to the above-mentioned theoretical dimension, it also contributes to the literature by analysing the nature and mechanism of the change that may have been brought by Frontex. This dissertation postulates that certain mechanisms such as policy transfer bring institutional change as they change the adopted practices and rules. Based on this approach, this dissertation examines three mechanisms of Frontex: in facilitating cooperation; developing common standards, and managing data in the form of risk analysis. To begin with, it addresses Frontex's role in facilitating the participation of member states in joint border operations coordinated by Frontex. State-centric theoretical assumptions provide no reason to expect such initiatives of Frontex. However, the sociological institutionalist approach describes how operational rules such as the monitoring system, which Frontex has developed as a result of pursuing its mission, have increased state participation in combination with legally binding regulations. This dissertation also intends to understand Frontex as the facilitator of common standards. According to Berry and Berry (1999), developing a particular set of rules and practices to be shared among actors is already instrumental to changing a social system. With this in mind, Frontex's role in developing training curricula and introducing advanced technologies is explored.

Furthermore, the sociological institutionalist approach can shed light on the ways in

which knowledge may influence the actors' actions (see for example, Barnett and Finnemore 2004; Boswell 2012). Using this approach to their research in the discipline of international relations, Barnett and Finnemore (2004: 7) have shown that international organisations use “their knowledge” and “regulate the social world, altering the behaviour of states and nonstate actors by changing incentives for their decisions”. Frontex's risk analysis can be investigated from this perspective. In its analysis, the EU external borders are classified by risk level. Its risk analysis report demonstrates the extent to which member states' borders are “porous” against irregular migration, thus also showing which member states meet the expectations of other member states in managing borders. Risk analysis by Frontex, as a particular form of knowledge, may have influenced the decision-making process as well as operational activities at national and European levels. The potential outcome of these mechanisms is a convergent change. This is a change by which existing patterns are diffused (Scott 2001: 114) and a mutual awareness among actors that they are involved in a common enterprise is reinforced (DiMaggio and Powell 1983; Scott 2001). With the application of this formulation, it is possible to hypothesise that Frontex has had an integrative effect on the EU border regime in its own right. Having an integrative effect in this dissertation refers to the situation in which Frontex's activities lead to the creation of a single command and control system by converging national border practices.

The topic of this dissertation bears, in addition, another important theoretical contribution. By providing a new insight into the role of Frontex, it offers a basis for a reconceptualisation of Frontex and, more broadly, of EU agencies. With the rapid increase of EU agencies⁵ in the last three decades, researchers have paid much attention to this “agencification” phenomenon in EU institutional development. Researchers have thoroughly investigated motivations behind the demand for EU agencies across different policy fields. DeHousse (2008: 791) and Léonard (2009: 273) have analysed that EU institutions and member states create EU agencies to improve the performance of the

⁵ The European Community had only two agencies until the 1980s: European Centre for the Development of Vocational Training and European Foundation for the Improvement of Living and Working Conditions, both of which were established in 1975. As of August 2014, 44 EU agencies have been established. Those agencies are divided into four groups: 35 decentralised agencies, which include Frontex; six executive agencies; two EURATOM agencies, and the European Institute of Innovation and Technology (European Commission 2014b).

policy making and implementation. As expert agencies, EU agencies often have missions to collect information and provide data relevant to respective policy fields. By referring to data issued by EU agencies, policy makers can increase the credibility of decisions they make. However, as Busuioc et al. (2012: 5) have argued, much work in EU agency research has focused on “*de jure* arrangements as provided for in the agencies’ basic acts without delving into the *de facto* operation of such arrangements”. That is, the roles and impacts of EU agencies have been examined within the range of what the legal competences and formal design features can suggest. Ongaro et al. (2012: 407) have also argued:

[I]t appears sensible to estimate that their [EU agencies’] prospective influence on European public policy is likely to grow. Certainly in terms of the number of policy fields in which an EU agency plays a role - although the latter profile requires further research.

These accounts have clearly pointed out a lack of empirical examination in view of the broadening of the potential impact of EU agencies. Egeberg and Trondal (2011: 868) have analysed the extent to which EU agencies have transformed “the existing European political-administrative order” by asking whether “they bring this order further away from the inherited intergovernmental order, or do they, on the contrary, actually contribute to sustaining patterns of this order by being vehicles for nation-state control”. Based on the survey of 16 EU agencies, Egeberg and Trondal (2011: 882) have concluded that EU agencies can transform the European political-administrative order “to the extent that they are able to act relatively independently of national governments or the Council”. Although their findings are helpful for this dissertation, their focus is mostly on the “regulatory agencies” whose mandates regulate the acts of actors including member states (Barbieri and Ongalo 2008; Coen and Thatcher 2008). The European Medical Agency, for instance, is tasked to conduct evaluation and supervise medical products for the purpose of protecting public and animal health. The literature on EU agencies like Frontex, whose main tasks are collecting data and facilitating networks and cooperation, is increasing; however, no research has been conducted with a specific focus on the impact of “non-regulatory agencies” on a regime of respective policy fields. This dissertation deepens our understanding of how EU agencies, especially with no regulatory power, can be important in association with integration in respective policy areas in the EU institutional architecture.

1.3. Outline of the Dissertation

The dissertation explores the impact of Frontex on the EU border regime in the following order. The next chapter (Chapter Two) presents the theoretical and methodological foundations of this dissertation. The chapter firstly identifies key concepts, approaches and debates about Frontex observed in the literature. After reviewing the literature, the chapter explains the advantages of the chosen theories and concepts, in terms of explaining the definition of the European border control regime and the mechanisms that Frontex may have developed through its activities with a set of working hypotheses developed to explore the answers to the research questions. The methodology and methods to operationalise the research are also explained.

Chapter Three examines the political dynamics within which Frontex was established. It begins by explaining the historical context in order to reveal how European level cooperation has emerged since the late 20th century, with a particular focus on the period from the late 1990s to the early 2000s. This was when the pressure to set up a cooperation framework was heightened due to the enlargement of the EU, which was anticipated in 2004 and in 2007, as well as the terrorist attacks in the USA. In the process of examining how and why Frontex was established, this chapter argues that there were competing forces that pursued different forms of cooperation and that the EU agency model (Frontex) was a product of a political compromise between those forces. Comparing with two other cooperation models, the Common Unit and the European Corps of Border Guards, this chapter discusses the ways in which the organisational and institutional structure given to Frontex was in between those two models. Frontex was given limited resources and power to conduct the mission whilst it gained its own staff and office separate from the EU institutions with a legal framework.

Empirical analyses are undertaken from Chapter Four to Chapter Six. Chapter Four examines Frontex as a cooperation facilitator, especially through the coordination of joint border operations. It traces the ways Frontex has developed tools that have increased the contribution of member states to joint operations, despite the unchanged voluntary basis of such contributions. As a result, an initially state-centric, intergovernmental cooperation framework has been transformed into a much tighter and regulated framework by earmarking both border guards and equipment according to the

needs of Frontex-coordinating border operations. This chapter also points out Frontex's role in facilitating cooperation with third countries' authorities for the EU's external border management. The chapter shows that Frontex has actively cooperated with third country authorities not only through bilateral agreements entered into by EU member states but also by having a working arrangement directly with counterpart authorities of third countries. This chapter also identifies that the agency's action has had a political effect in terms of externalising EU border management by bringing third countries into cooperation with EU operational activities. Taken together, Frontex has consolidated the regime by increasing and formalising state participation. In sum, Frontex has shifted the locus of border management "up" to the supranational level and "out" beyond where the external borders are physically located.

Chapter Five examines the impact of Frontex in developing common border guarding standards in the EU. It does so by discussing two cases in which Frontex has played a central role in developing common standards for the national border agencies of the EU member states. One is the curricula for the border guard training and the other is the best practices for the automated border control systems at international airports. This chapter explains how the need for common standards has emerged in both cases with the analysis of different motivations of member states and EU institutions, as well as other stakeholders' roles such as private firms and international organisations. It also traces the ways in which Frontex has reacted to changing needs and has expanded its role in both cases. This chapter identifies that certain factors such as technical uncertainty and institutional requirements have pushed Frontex to develop common standards in border guard training and automated border control systems. The chapter also analyses a convergent change in the regime and reveals that such change has been, so far, observed in an uneven manner.

Chapter Six considers the impact that Frontex's risk analysis function has had on the regime. It starts by clarifying the historical background in which the need for an EU-level common risk analysis arose and the ways in which the development of the EU common risk analysis has been tasked to Frontex. Consequently, one of Frontex's impacts is identified as having translated the politically defined "risk" into a technical and operational concept, so that the member states' borders are classified by risk level in association with irregular migration. The chapter then looks at two cases (EU funding

distribution and the member states' compliance with the Schengen provisions) to examine whether risk analysis has not only influenced operational activities, as discussed in the existing literature, but also influenced decision-making on the matter of border management. The chapter provides positive findings with evidence of an increased integration of Frontex's risk analysis in some important decision-making processes. It also analyses that there is a symbolic effect insofar as risk analysis gives credibility to the decisions of policy-makers. Although the effect is limited in the sense that Frontex is not the ultimate decision-taker in those processes, the chapter highlights that today's decisions concerning EU external border management have been influenced by what Frontex's risk analysis identifies as risk.

The concluding chapter (Chapter Seven) synthesises the key research findings that this dissertation has identified through the examination of the mechanisms of Frontex. Firstly, the main hypothesis "Frontex has had an integrative effect on the regime" is assessed by discussing the research results taken from the empirical chapters. It suggests that facilitating the cooperation of member states and third country authorities, developing common standards, and handling information in the form of risk analysis, have brought convergence in operational rules and organisational structures for EU border guarding. Also, Frontex activities have increased interaction among actors at different levels, including national border agencies, international organisations, private firms and civil society organisations. There is an expanded information load and shared understanding about border checks and surveillance through risk analysis, training, and day-to-day interactions, which has reinforced the mutual awareness of all actors currently participating in EU level external border management. These outcomes are vital elements for the integration of the regime, thus the chapter argues that Frontex has brought an integrative effect on the regime. However, the chapter adds that this does not mean that the existing regime is constructed or shaped by Frontex in its own right. Frontex has rather helped to consolidate the regime. Although the regime is far from being viewed as "supranational", the findings of the chapter change the understanding of the role of Frontex. It may be a tool of member states, but at the same time it has brought changes in the regime in its own right. This chapter then considers the applicability of these findings in a wider common migration and asylum policy and in other areas of study such as EU agency studies. Finally, it acknowledges the limitations of the dissertation in terms of research design, operationalisation and analysis, which is

followed by identification of the need of further research.

Chapter 2: Literature Review, Theoretical and Methodological Frameworks

2.1. Introduction

This chapter discusses the existing literature and explains the theoretical and methodological frameworks in order to explore the research questions of this dissertation: “Has Frontex transformed the EU border regime, and if so, how has it done so?” The investigation of these research questions puts special emphasis on the defining features of the EU border regime and the mechanisms of change that Frontex may have exerted on the regime. Therefore it is important to review how these issues are discussed in the existing research and to develop analytical tools that enable this dissertation to examine the regime’s construction, and changes within that construction, and to capture Frontex as an influential actor on its own right. This dissertation has taken sociological institutionalism as the primary theoretical framework for analysis, although some concepts in political science and international relations have also aided this dissertation.

This chapter is organised as follows. Firstly, existing literature is reviewed with the aim of situating Frontex in the academic debates, so that what is known and what is missing in the literature are recognised. This section places a particular focus on the assessment by scholars of the impact of Frontex on the EU external border management. This section argues that Frontex has not been studied as an influential actor in its own right, and thus researching the agency from a different theoretical perspective serves to enrich the literature.

Secondly, the theoretical framework for this dissertation, sociological institutionalism, is introduced. Sociological institutionalism is a strand of the broader theoretical approach of new institutionalism in political science. The chapter provides the overview of new institutionalism, with a few major variants within this theory. This chapter then offers the reasons why this dissertation can gain from the sociological institutionalist approach, which is followed by an explanation of the working definition of the EU border regime. After defining the EU border regime, it sets out a set of hypotheses that are tested in the empirical chapters to examine the impact of Frontex on the EU border

regime.

Thirdly, the chapter presents the methodological framework of this dissertation and explains how the research question is operationalised. In this part, the process-tracing is presented as the main methodology of this research, and then the chapter outlines the reasons for choosing document analysis and interviews as the two principal data collection methods, combined with a participant observation method.

2.2. Academic Debates on Frontex's Impact on the Regime

In this section the research literature is reviewed to situate Frontex in the academic debates. The purpose of this section is to identify the major findings and gaps in existing research in exploring the research questions of this dissertation. Frontex has been generally assessed as a result of member states' decisions or as just one element in the developing common migration and asylum policy in the EU. Hence it can be asserted that considerable gaps are found in assessing the political significance of Frontex and that there is a need to analyse Frontex as a factor of change beyond its official institutional designs and legal mandate.

Since its establishment in 2004, Frontex has attracted increasing attention from scholars across different disciplines; Jeandesboz (2008), Marenin (2010), Pollack and Slominski (2009), Vaughan-Williams (2008) and Zaiotti (2011) in political science; Guild (2009), Léonard (2009, 2011) and Neal (2009) in international relations; and Carrera (2007, 2010), Hobbing (2005), Jorry (2007), Monar (2006, 2012), Parkin (2012) and Rijpma (2010) in law. Scholars have discussed Frontex's historical roots, institutional environments, and consequences for the European migration and policy processes. Different approaches have been used for these discussions and divergent views have emerged, particularly in relation to the impact of Frontex on the EU border regime, the research question of this dissertation.

The creation of Frontex for operational cooperation among EU member states has been generally assessed as an important facet of EU policy on migration and asylum. For Hampshire (2013), Frontex is one of the core elements in the growing international cooperation on migration in the EU in general and on external border control and Schengen provisions in particular. He has argued that external borders are "increasingly

coordinated by Frontex” and that, although “nation-states and domestic politics are where most of the action is”, “ignoring international and supranational developments would be a mistake” (Hampshire 2013: 103, 106). Although the importance of the supranational dimension does not directly mean that Frontex is therefore significant, Frontex has been a popular subject of analysis on migration and border issues at the EU level. Geddes (2008) has argued that what is new in EU migration and asylum policy is “the attempt to relate and co-ordinate action at EU level and formulate common policies”, one of which comprises the efforts to tighten external frontier controls managed by Frontex (Geddes 2008: 170-171).

The studies on the EU’s internal security have placed Frontex as an indication of a growth in the external border management that is a part of the “Area of Freedom, Security and Justice (AFSJ)”. AFSJ was introduced with the Treaty of Amsterdam, which came into force in 1999. It covers a wide range of matters from counter-terrorism to policing, asylum, migration and border management, internally and externally, which were previously dealt with in the policy domain of “Justice and Home Affairs” (Kaunert 2010). Kaunert et al. (2014: 39) have argued that AFSJ has “experienced tremendous development, making it one of the most dynamic areas of European integration”. As a consequence, the supranational governance has been reinforced in this area (*idem.*). This has been observed in the increased influence of supranational EU institutions, the European Commission, the European Parliament and the Court of Justice of the EU, in policy-making processes. The number of EU agencies has risen since around the 2000s. In 1999 European Police Office (Europol) became fully operational and European Judicial Cooperation Unit (Eurojust) for police and judicial cooperation was created in 2002 after a provisional Unit had been set up in 2001. The Fundamental Rights Agency (FRA), European Police College (CEPOL) and European Asylum Support Office (EASO) were also set up in addition to Frontex in the area of AFSJ. Monar (2014: 149) has claimed that the creation of such agencies as Europol, Eurojust and Frontex emphasises “a growth of the rationale, possibilities and needs for EU external action” in AFSJ. From this point of view, with particular focus on the EU border management policy, Monar (2006), Jorry (2007) and Wolff (2012) have expressed similar views that the creation of Frontex is an “important step towards a more integrated and ‘institutionalised’ management of external borders” (Monar 2006: 205), which “allows for the prospect of evolution” (Jorry 2007: 26).

From “securitisation” perspectives, scholars have researched the establishment of Frontex to understand the migration-security nexus in Europe. Securitisation theory is an approach to the study of security originally developed by the Copenhagen School of International Relations (Bigo 2001, 2002; Bigo and Guild 2005; Bigo et al. 2007; Buzan et al. 1997; Carrera 2007, 2010; Guild 2009; Huysmans 2000; Léonard 2011; Neal 2009; Wæver 1995, 1998, 2004). Wæver, the founder of this School, has stated that initially a non-security issue becomes an existential security threat when the power holders label it as a security issue through a process called a speech act (Wæver 1995: 55). Whereas scholars of the Copenhagen School retain the emphasis on the role of discourses in securitisation processes, other scholars led by Bigo (2001) have developed different approaches which emphasise the importance of practices in securitisation processes. Instead of focusing on power holders who conduct speech acts, this group explores how a sense of “unease” is generated among people. It is argued that the impossibility of knowing where and against whom to fight back has led to growing unease about the identity and the location of the enemy (Bigo et al. 2007: 6-7). This justifies the government in suspecting others, something which Bigo called the “governmentality of unease” (Bigo 2002: 63).

In the studies of securitisation, Frontex has been critically assessed as part of the tightening of border controls against irregular migrants and asylum seekers. Guild (2009), who analyses the rhetoric and normative content of the EU’s securitisation discourse, has argued that as a result of Frontex’s action a number of migrants have become unable to present themselves at the EU’s borders, which raises normative questions on the migrants’ rights. Taking into consideration Frontex’s activities as part of the governments’ measures, Guild (2009: 190) has added that “the relationship of sovereignty, security, borders and people is undergoing substantial change in the EU (...) While the uniforms of the officials who are carrying out border controls have not changed, what they do and where they do it has”. Using the securitisation approach, Neal (2009) has asked whether the establishment of Frontex was an outcome of securitising effects in response to the September 11th terrorist attacks, as often assumed in the literature. He has claimed that Frontex is not a product of securitising effects but represents the normalisation of the EU’s technologies and regulations which should have been accepted only in exceptional or exceptional situations. Frontex should be

conceived as a “new state apparatus”, a component of the vast governmental network to manage migration (Neal 2009: 349).

While Neal has focused on the origins of Frontex, Léonard (2011) has discussed the securitisation effect of Frontex with a focus on the agency’s activities. By applying a sociological approach to the study of securitisation processes, she has examined the extent to which Frontex’s activities could be interpreted as securitising practices. Her findings include the observation that, although Frontex is not necessarily a securitising actor in its own right, its activities have contributed to the development of the securitisation of asylum and migration in the EU (*idem.*). As these show, the creation and activities of Frontex have been conceived as an important indication of the consolidation of the migration-security nexus. Nonetheless, when it comes to the question of the extent to which Frontex’s activities have actually changed the traditional state-centric border management, scholars’ views become sceptical, or at best, nuanced (see, for example, Pollack and Slominski 2009; Rijpma 2012; Wolff 2012). Such scholars’ views mainly derive from two aspects. One explanation is that the state-predominant Frontex-creation process has brought considerable limits to its organisational and institutional capacity, which has led scholars to view Frontex as unable to bring significant impact to bear on the EU border regime. As explained in the introductory chapter, there were two other cooperation models for EU’s external border management prior to the EU agency model (Frontex) being adopted. One was an intergovernmental body, “External Borders Practitioners Common Unit (Common Unit)”: the other was an integrated force model, “European Corps of Border Guards (European Corps)”. The Common Unit was established and implemented; however it revealed its ineffectiveness and was eventually replaced by Frontex. The European Corps was dismissed due to the member states’ objections. Member states opposed this integrated force model as they did not want to give up their autonomy on borders but wanted a EU body in a supportive role only, under their ultimate control.

Consequently, although it was established as a separate body from the Council with its own budget, office and staff, most scholars have concluded that Frontex was not set up to possess essential resources for operational activities. Frontex has to rely on member states’ border guards and technical equipment for joint operations, and the supply of these resources is up to member states’ willingness. This means that Frontex has to

negotiate with member states for every operation. Moreover, during an operation, Frontex is not given command and control functions. In light of this, Bertozzi (2008) has portrayed the reactions of national border officers to the establishment of Frontex. According to his work, Frontex was viewed as “another ineffective and superfluous tool incapable of delivering the services really needed by governments” (Bertozzi 2008: 14). Wolff (2012: 147) has also argued that Frontex is “merely a platform” in which its capacity to organise joint operations is entirely up to the willingness of member states to cooperate.

Based on the institutional environment where Frontex has been placed, scholarly works in general have concluded that operational cooperation coordinated by Frontex was not devised to substantially change the predefined form of cooperation. One exception was the work of Léonard (2011) who claimed significance in the activities of Frontex by researching Frontex’s activities (e.g. risk analysis and joint operations) and considering the agency’s securitising practices. Meanwhile, scholars like Rijpma (2012) have speculated on possible Frontex impact through such activities as training and information exchange. However, whether and how Frontex has actually influenced European border management has not been fully empirically investigated as it is not the focus of these studies.

Another reason that Frontex has not been viewed as an effective enforcement institution in its own right is that scholars have considered Frontex only as a product of political decisions and not as an influential actor on politics. This is notable in the studies of delegation and accountability to administrative actors at the EU level. Some scholars have investigated Frontex to analyse how the member states and the European Commission have delegated their power to Frontex and have kept control over Frontex’s activities (Curtin 2007; Léonard 2009; Menz 2014; Pollack and Slominski 2009). A typical theoretical basis for these studies is the principal-agent approach. This approach conceptualises the member states and EU institutions (especially the European Commission) as “principal”, which choose the extent to which delegation and specific powers are given to their “agent”, which is Frontex in this case. The basic idea is that principals always maintain controls over agents by means of appointments, budgetary and human resources, and by the ability to overturn agents’ decisions, so that they can minimize “agency loss” such as agents’ actions against the preferences of the principal

(Coen and Thatcher 2008: 53). From this point of view, the main concern is the measures which member states and EU institutions utilise to monitor and control Frontex. Hence scholars' focus is on the legal mandate and formal institutional designs, while the possible impacts of the "agent" beyond the mandate and institutional designs rarely become the subject of study.⁶

These existing academic debates show the considerable gaps despite extensive research on Frontex. Academic works on EU migration and asylum policy, as well as the AFSJ, have generally bestowed significance on the creation of Frontex because it illustrates the institutionalisation of operational cooperation. However, the potential of Frontex to change the ways member states cooperate and borders are managed has been under-researched or has not been pursued. If the risk analysis of Frontex has effected change, in what way has this happened? If joint operations have changed how the border control field looks, how have they done so? Mechanisms through which Frontex might influence the EU border regime have been left unexplored.

There is a need to analyse and assess Frontex not only as a result of the member states' interests and decisions nor as a functional element of the regime that they have put into place, but as a factor of change in this regime itself, which the literature has yet to address. This dissertation, in its attempt to fill the gap regarding the role of Frontex, adopts the sociological institutionalist approach as the main theoretical framework of its analysis. The following section introduces this approach and other key conceptual frameworks and explains how it helps to explore the research questions of the dissertation.

2.3. Theoretical Framework: Sociological Institutionalism

2.3.1. New institutionalism

This section provides an overview of new institutionalism and introduces sociological institutionalism in comparison with the other main approaches within new institutionalism: rational choice institutionalism, and historical institutionalism. It

⁶ As mentioned in the introduction chapter, the lack of insight into agency practices has been pointed out by Busuioc et al. (2012) who have studied EU agencies from a comparative perspective.

explains that the sociological institutionalist approach is the only lens through which the relevant mechanisms which make Frontex an effective enforcement institution can be explicated and explored.

New institutionalism is a set of theoretical ideas concerning the relations between institutional characteristics and political agency that explain political actions (March and Olsen 2006: 4). New institutionalism emerged in the late 20th century after the “behavioural revolution”, which attempted to convey a more “scientific” approach, criticising the traditional institutionalism which focused largely on the description of government institutions. Reflecting lessons from both “old” institutionalism and behaviourism (and rational choice theories), new institutionalism has acquired “a more expansive definition of its subject matter and with more explicit theoretical frameworks” (Lowndes 2010: 61). Unlike old institutionalists, an “institution” is not only equated to an organisation such as a government body but also embodies values and norms in new institutionalism (March and Olsen 1989). Moreover, new institutionalism focuses upon informal conventions as well as formal rules, whilst old institutionalists only considered the formal rules (Lowndes 2010: 67). Taking the example of British local government, Lowndes (2010: 68) has argued that “the informal rules of political life” are “hard to research” but can be “every bit as important in shaping actors’ behaviour as formally agreed procedures” and that “informal conventions may reinforce formal rules”. In other words, while traditional institutionalism was characterised by its emphasis on formal rules, organisations, and official structures of government, new institutionalism can also shed light on informal conventions and broader institutional networks of governance (Stoker 2010: 15) and interaction between institutions and actors (Lowndes 2010: 71).

2.3.2. Choice of Sociological Institutionalism

Keeping the general features of new institutionalism, there have been a number of approaches⁷ developed within this theory, of which the most developed and recognised approaches are rational choice institutionalism, sociological institutionalism and

⁷ Apart from rational choice institutionalism, sociological institutionalism, and historical institutionalism, the following sub-groups are also identified within new institutionalism: normative; empirical; international; network; constructivist, and feminist institutionalisms (Lowndes 2010: 65).

historical institutionalism. It is important to understand the differences between them because the images they present of the political world are not identical and each displays characteristic strengths and weaknesses (Hall and Taylor 1996: 17).

Firstly, rational choice institutionalism is characterised by two key assumptions: rationality and self-interest (Hindmoor 2010: 42). Individuals are conceived as acting in ways which best secure their goals and that these goals reflect their self-interests (*idem.*). When this assumption is applied to analysis of state actors at the international level, nation states are taken as unitary, rational and gain-maximising actors. In this theoretical strand scholars conceive institutions as “the rules of the game”, or “external mechanisms that individuals create to structure and order the environment” (North 1994: 361, 363). The main subject of study is the behaviour of state actors, such as their efforts and strategies in bargaining. Moreover, state actors are usually given the highest and most central importance, and non-state actors are given a secondary role. Rational choice institutionalism is considered incompatible with sociological institutionalism due to different origins and ontological understandings on actors and institutions (Hall and Taylor 1996: 13).

For sociological institutionalists, institutions are not “rules of the game” that state actors set up, as rational choice institutionalists assume, but are “systems of rules and structures of meaning” (March and Olsen 1989: 52), which determine what is deemed “appropriate” behaviour in a given situation. This is known as “the logic of appropriateness” (March and Olsen 1989: 160). The logic of appropriateness is often contrasted with “the logic of consequentiality,” in which actors’ behaviour is considered to be driven by preferences and expectations about consequences, thus explaining the rational choice institutionalist assumption (*idem.*). In the logic of consequentiality, an institutional environment is no more than a context that does not influence actors’ preferences. On the other hand, in the logic of appropriateness, institutional environment can influence actors’ preferences as the environment includes rules and norms, which shape actors’ understandings of where their interests lie. Collective understandings and inter-subjective meanings structure the ways in which actors define their goals and what they perceive as rational actions (March and Olsen 1989: 161).

Sociological institutionalists particularly emphasise the role of informal rules and

conventions, in contrast to rational choice institutionalism. Hall and Taylor (1996: 15) have also formulated the following important definition for institutions:

An institution does not simply affect the strategic calculations of individuals, as rational choice institutionalists contend, but also their most basic preferences and very identity. The self-images and identities of social actors are said to be constituted from the institutional forms, images and signs provided by social life.

The definitions of institutions and international regimes have commonly emphasised the expectation of convergence and routine actions and practices, both of which are important in analysing Frontex's potential impact on the regime. Repeated actions in everyday work, although they may not be formal or legal norms or written principles, may "regulate the relations of individuals to each other" and affect "what the relations of individuals ought to be" under the logics of appropriateness (Parsons 1990: 327).

In contrast, historical institutionalism places the emphasis on sequencing and timing of events (Hall and Taylor 1996: 9). Understanding institutions as "relatively persistent features of the historical landscape and one of the central factors pushing historical development along a set path" (Hall and Taylor 1996: 6), historical institutionalists provide a wide, historical perspective by stressing that "what has happened at an earlier point in time will affect the possible outcomes of a sequence of events occurring at a later point in time" (Sewell 1996: 262-263). This concept, known as path dependency, is not a mere assertion that history matters. What historical institutionalists suggest by this is that preceding steps in a particular direction induce further movement in the same direction because the relative benefits of the current activity compared with other possible options increase over time (Hansen 2002: 269; Levi 1997: 27; Pierson 2000: 252). Such perspective is important in the sense that the EU border control policy has evolved within the context of the wider framework of EU integration. Moreover, the concept of "policy feedback" (Pierson 1993: 595) is beneficial to this dissertation. Pierson (*idem.*) has argued that scholars conventionally treat policy as the result of political forces (the dependent variable), but rarely as the cause of those forces (the independent variable). With the concept of policy feedback, however, he claims that policies can produce politics in a wide range of circumstances and in numerous ways (Pierson 1993: 624).

Although rational choice and historical approaches can be useful, the sociological institutionalist approach especially works as a reference point for this dissertation. Rational choice institutionalism may help explain why member states created Frontex, yet this approach is limited especially in analysing the initiatives that Frontex may have taken and its unexpected effects on the EU border regime. This limitation partly derives from the understanding of rationality that is taken here. As Hindmoor (2010: 51) has indicated, actors do not always have all the information they need to make the best possible decision or do not always know what the consequences of their actions are going to be. Yet, rational choice institutionalists continue to assume that actors always make the best possible use of the information they do have and assume that they have perfect and complete information, so that they can select the best possible means to achieve their goals (*idem.*). The empirical findings of this research demonstrate that some decisions, and indeed the behaviours of member states, are not rationally explicable (e.g. offering more powers to Frontex) and thus the rational choice institutionalist approach cannot answer why this is so. A further limitation of the rational choice institutionalist approach is the tendency to prioritise formal institutional settings rather than institutional development through informal network development and best practices. Furthermore, EU agencies are treated as passive, functional agents of member states. From such a point of view, Frontex cannot be adequately studied as an active, driving agent of institutional change.

As for historical institutionalism, this approach may offer an important insight related to concepts such as path dependency, as discussed earlier. However, this approach has also shown some weaknesses as identified by Hall and Taylor (1996: 17):

[H]istorical institutionalism has devoted less attention than the other schools [rational choice institutionalism and sociological institutionalism] to developing a sophisticated understanding of exactly how institutions affect behaviour, and some of its works are less careful than they should be about specifying the precise causal chain through which the institutions they identify as important are affecting the behaviour they are meant to explain.

Hall and Taylor's point is that the historical institutionalist approach contains an inherent epistemological flaw, in that it struggles to explain the causal chain through which institutions are meant to influence political action. Pierson similarly highlights the limitations of historical institutionalism. He says that, whilst recent scholarship has

emphasised that past policies themselves influence political struggles, moving from this general statement to more specific propositions about how policy structures matter has proven to be difficult (Pierson 1993: 597). In this regard the emphasis on path dependency has inevitably led to challenges in explaining changes, as historical institutionalists have adopted either the cultural approach which is closer to sociological institutionalism or the calculus approach which is closer to rational choice institutionalism. This approach needs support from other approaches to determine precisely how, when and where particular effects are likely to occur.

The sociological institutionalist approach enables this dissertation to analyse non-state actors and the effects of non-compulsory mechanisms, which are important and necessary perspectives for the research of Frontex. Unlike EU institutions, Frontex is not a policy-making actor, thus it is not enough to examine only the relevant legislative processes or laws. Rather Frontex's impacts are more usefully observed in the ways operational standards or best practices are created and spread throughout the EU. Although these "best practices" are usually not legally binding they can be a powerful integrative force. It should be mentioned that historical institutionalism certainly allows the research to examine non-state actors; yet it does not provide the necessary analytical tools, as discussed above by Hall and Taylor (1996). Rational choice institutionalism does not place emphasis on non-state actors. Given these limitations, the approach of sociological institutionalism is therefore helpful. In the next sections, the ways in which sociological institutionalist formulations can benefit exploration of the research questions of this dissertation are discussed.

2.3.3. Defining the European Border Control Regime

This dissertation has conceptualised the EU border regime based on "institutions" in new institutionalism as well as "regimes" in international relations. However, an advantage of adopting sociological institutionalism is that it helps in understanding the nature and constituent elements of the EU border regime within the concept of "organisational fields". In this section, the academic debate on "regimes" is explored to identify the extent to which it is beneficial for regime definition, followed by the introduction of the concept of "organisational fields".

2.3.3.1. *Regimes*

The concept of the “regime” has been developed by researchers in international relations (see, for instance, Bull 1977: 54, Haas 1980: 553; Keohane and Nye 1977: 19; Krasner 1983: 1; Young 1982: 277). Krasner, whose definition is commonly cited, has claimed that a regime is a set of “implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area” (Krasner 1983: 1). In his view, norms and principles are distinguished from rules and decision-making procedures. Norms and principles are regime-defining factors. If they change, the regime itself changes. On the other hand, rules and policy-making procedures are about how a regime functions, thus changes in rules and policy-making are changes within the regime.

Krasner (1983) has also identified five necessary factors for a regime to arise. The first factor is egoistic self-interest. This refers to the desire to maximise one’s own utility function where that function does not include the utility of another party (Krasner 1983: 11). From this interest-oriented perspective, the behaviour of others is concerned only insofar as that behaviour can affect the egoist’s utility. To put it another way, a state is willing to cooperate with other states when benefits for its own state are clearly evident. The second factor for the development of a regime is political power (Krasner 1983: 13). It concerns a situation in which a powerful state sets up a regime in the service of a common good, from which everyone benefits, in order to counteract market inefficiency. It can be also the case that a powerful state forces other states to join a regime that works primarily in that powerful state’s own interest. Thirdly, a regime can be developed because of exogenous factors of norms and principles (Krasner 1983: 16). Although norms and principles are defining factors of a regime, a regime can be also caused by norms and principles that exist outside of the regime.

The fourth factor turns to look at endogenous factors; regular patterns of behaviour and long standing practices (Krasner 1983: 18). That is, the routine behaviour of actors can lead to shared expectations, and these shared expectations over time can become infused with principles and norms. This fourth factor has been also emphasised in Yong’s regime definition (Yong 1982: 277). He has claimed that regimes are social institutions that are the recognised patterns of behaviour or practices around which expectations

converge. The last explanatory factor for a regime's emergence is knowledge. This is because knowledge can create a basis for cooperation by illuminating complex interconnections that were not previously understood (Krasner 1983: 19). Knowledge enhances the prospect for convergent state behaviour. For knowledge to have an independent impact in a regime, "it must be widely accepted by policy makers (...)" Stein points out that rules concerning health, such as quarantine regulations, were radically altered by new scientific knowledge such as the discovery of the microbe that causes cholera" (*idem.*). Once a regime emerges from these five factors, that regime tends to last long term. This is contrasted with an "agreement", which could be *ad hoc* and short term (Krasner 1983: 3).

Discussions around the concept "regime" provide an important framework for the EU border regime. Krasner's definition embraces both the constituting elements of a regime, principles and norms, and the elements for a regime to function, rules and decision-making procedures. The EU-level legislation for border guarding, such as the Schengen Borders Code (2006) and the Treaty of Lisbon (2009), can provide the norms that member states are expected to follow. The changes of these foundations may in fact bring the change in the basis of operational cooperation within which Frontex's role resides. Rules and decision-making procedures can be operational rules and procedures that border guards comply with in mission. Customs and unwritten rules may be guiding decision-takers and border guards. This distinction is helpful in analysing the type of influence Frontex may have exercised. That is to ask whether Frontex is contributing to the constituting elements for a functioning regime or to the changes within those elements. If Frontex is changing a principle, this means that Frontex is changing the regime itself. If the latter, Frontex's impact on the change is changes within the regime. Academic debates on the regime have also offered wide ranging factors that explain how a regime can be brought about, from the self-interest of member states to recurrent practices and knowledge. For neo-realists like Waltz (1979), a regime is formed when nation states can maximise their relative gains and power is the main variable for the regime formation. On the other hand neoliberals such as Keohane and Nye (1977) have emphasised the role of networks, norms and institutions for a regime to be formed. These help in considering the ways in which Frontex may have brought changes to the EU border regime.

However, Krasner's regime definition is not sufficient in itself to apply to the EU border regime, which is part of the reason that the concepts of institutions and organisational fields have been integrated for the regime definition in this dissertation. For one thing, a mainstream assumption in international relations is not directly applied to illustrate the EU border regime. While nation states are assumed to be in an anarchical international system in international relations, EU member states have been already embedded in the cooperation framework through the process of European integration. For another, the logics of power politics, which is one of the central factors of regime formation in international relations, do not easily explain the regime emergence in one policy field (i.e. the EU border regime) *within* the context of European integration.

In this sense, sociological institutionalists' approach is helpful as it intends to capture a regime (or an institution) as a network of routines and assumes that an institution can affect behaviour of actors, for example, through socialisation. Actors who interact recurrently internalise the norms associated with their roles in a given context. Within this process a regime (or an institution) is said to affect behaviour.

2.3.3.2. *Organisational Fields*

In addition to institutions and regimes, the concept of "organisational field" plays a vital role for this dissertation. This concept has been developed in organisational theory in sociology (see, for instance, Machado-da-Silva et al. 2006: 33-34; Oliver 1988: 546), and has been integrated in to sociological institutionalist studies. According to DiMaggio and Powell (1983: 148), an organisational field is "a set of organisations that, in the aggregate, constitute a recognised area of institutional life; key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products". In this light, organisational fields represent the totality of actors which share systems of common meaning and interact among themselves, thus constituting a recognised area (Machado-da-Silva et al. 2006: 34). The concept of organisational field has developed under the influence of institutionalists, hence the emphasis on the existence of common meaning.

The concept of the organisational field can add to the analysis of the EU border regime insofar as it can capture how EU agencies can be related to the regime change. EU agencies are not state actors or policy making actors and thus are hardly conceived as

regime-changing actors. However, as discussed above, the organisational field entails actors that produce similar services, that is, in this case, border guarding. If we conceive regimes and institutions as a top-down framework for the EU border regime, organisational fields are bottom-up.

An organisational field is particularly characterised by four aspects: increased interaction among actors; emerging inter-organisational structures of cooperation; increased information load with which actors contend, and development of mutual awareness among actors that they are part of a common enterprise (adopted from DiMaggio and Powell 1983: 148). All of these four steps may have been observed since the establishment of Frontex. Frontex coordinating activities, joint operations, training programmes and other activities have created a number of opportunities for national border police officers and officers in administration for interacting with each other. The pattern of cooperation may be shaped by Frontex coordination. The information load may have been increased, in particular, by the work of the risk analysis unit of Frontex. Before Frontex was established, such a function was mostly found at the national level. Yet today, Frontex collects data by itself and also receives data from national border agencies (Frontex 2014a).⁸ Frontex may be influencing how the recipients of information - the national border agencies - perceive the situations of the EU's external borders. Increased interaction, shared information and patterned cooperation have developed common awareness among actors: they are not the enemy, but decent human being to work together with (UKBA official, interview, 22 July 2011).⁹ In sum, the EU border regime is not only identified by the presence of legal settings such as the Schengen Borders Code (2006) but also is viewed by how actors, including non-policy-making administrative agencies, interact with each other and identify their positions in the regime in relation to others.

Finally, it should be noted why the term “regime”, not “organisational field” or “institution”, is applied for the European border control “regime”. Firstly, the term

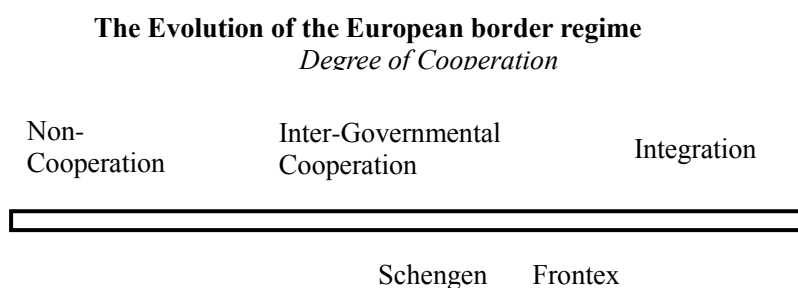
⁸ Frontex gathers and collates information not only from national border agencies, but also from partner countries beyond the EU's borders, as well as from open sources such as academic publications and the press (Frontex 2014a).

⁹ A senior UKBA officer referring to the effect has stated the effect of Frontex on the identity of national border guards.

regime is used more often than the other two terms by the disciplines related to this dissertation (e.g. studies of EU border control, EU migration, and EU integration theories). This is probably because activities and behaviours on which scholars focus are not domestic but across national boundaries, and involve actions with an impact on more than one state. Secondly, an organisational field is a term mainly used for analysing certain industries or local communities (see, for instance, Mazza and Pedersen 2004) rather than the field of policy making. Consequently, existing literature applying organisational field is micro-research oriented and not as helpful for this dissertation as the regime and institution literature. It should be noted, however, that the originality of the dissertation is grounded in the incorporation of the notion of organisational dynamics, which traditional regime definitions have rarely explicitly taken into consideration. This research overcomes the limitations inherent in the conceptualisation of regime definitions by synthesising approaches to take account of the organisational and often micro dynamics that shape such regimes. The attempts to combine such approaches help to explain political actions in transnational institutions like Frontex.

2.3.4. Regime Changes

In investigating the impact of Frontex on the regime change, one of the key aspects to observing the change is the mode of cooperation of member states.



The spectrum above shows the evolution of cooperation in the EU border control regime. The interaction becomes deeper from left to right and the degree of cooperation is categorised from non-cooperation, to intergovernmental cooperation, and then integration. Non-cooperation refers to a situation in which each member state protects its own national border with its own forces. In this situation, governments would not need to worry about politically sensitive issues such as giving non-nationals executive power in order for them to conduct their missions in conjunction with national border

guards on an equal footing. Neither would governments need to harmonise their domestic standards with EU common policy. In reality, there are some forms of cooperation most of the time,¹⁰ and thus non-cooperation can be understood more as an analytical category.

In intergovernmental cooperation, member states cooperate to protect their borders on a bilateral or multilateral basis. Often, this type of cooperation is of an ad hoc nature, and has permitted the member states to join and leave at their pleasure. Within this scenario, the degree to which cooperating states would adjust their means would depend on the scope of the agreements into which they enter. National border guards might work together, but their status would not represent more than their own national directives. Equipment might be provided for joint forces and shared among them, but only temporarily. An example to be found in this category is Germany, which has concluded bilateral agreements with countries such as Switzerland in 1999 and Poland in 2002 (Hobbing 2005: 17), and the UK and France who also have had agreements of cooperation on controls in the Channel area (Monar 2006: 194).

There is no single agreed definition for “integration” in studies of European integration, but a helpful definition has been provided by Balassa (1961). In his analysis on economic integration, he has illustrated that the integration is a process leading to abolishing barriers between countries and creating a new single system through the merging of previously existing systems (*idem*). This concept has been widely applied by scholars of European Studies such as Monar (2010) in his study on the EU’s Area of Freedom, Security and Justice and Mongelli et al. (2005) in their study on trade integration. Following this understanding, the integration in the EU border regime can be also regarded as a process towards creating a single system by converging national practices of border control. Once the extent of cooperation reaches this level, there may be a common command structure with shared operating standards and an EU budget to cover the cost of the activities.

There are two empirical instances, Schengen and Frontex, which mark the evolution of

¹⁰ One example is the Trevi working group established in 1975. It was an early instance of creating an organisational form to cooperate in the area associated with border control (Geddes 2008: 76).

the EU border regime. As for Schengen, the cooperation framework can be considered more than inter-governmental because it has triggered member states to cooperate for their external borders especially after being incorporated into the EU legal framework. Evidence has been observed in development of the Schengen Border Codes, the Schengen Information System and other formal rules to manage the borders. Such development can be considered beyond intergovernmental cooperation. Yet, it is still far from the state of integration because a single, overarching system was not established. Frontex is placed closer to integration than Schengen, as this dissertation has hypothesised that the degree of cooperation has moved further towards integration although no single control system has been established with Frontex.

Then a question is *how* the mode of cooperation moves towards integration. Scholarly views on this question have been broadly divided into two ground theories of European integration: neo-functionalism and intergovernmentalism. According to the neo-functionalists, integration is a process whereby political actors are persuaded to shift their loyalties, expectations, and political activities toward a new and larger centre, whose institutions possess or demand jurisdiction over the pre-existing national states (Haas 1961: 366-367). Scholars adopting this school of thought give weight to the role played by supranational actors such as the European Commission and the European Court of Justice, by highlighting a path-dependent and bureaucracy-led process fuelled by the effect of functional spill-over (Haas 1958: 297). An important claim made by neo-functionalists is that once a process towards integration starts in one area, it is self-reinforcing and it leads to the need for integration in other areas in order to satisfy the needs in that area. In the present case, once cooperation is established in the area of border control, it may become difficult to avoid the need for further cooperation because of the spill-over effect (Betts 2009: 173; Lu 1999: 9).

On the other hand, the development of EU-level cooperation is a result of the convergence of national preferences for intergovernmentalists, regarded as a rational attempt to achieve a restrictive policy, and thus to strengthen rather than weaken individual state sovereignty. Negotiations are driven by the member states, and the main EU institutions are intergovernmental institutions. By intergovernmental institutions it

means the European Council, which offers a forum for national representatives and has become an Institution in its own right after the Treaty of Lisbon, and the Council of Ministers and the Committee of Permanent Representatives (COREPER) which manage day-to-day matters. This rational choice based approach resembles the principal-agent model in the sense that the function of the EU is to “increase the efficiency of bargaining by providing a set of passive, transaction-cost reducing rules” (Moravcsik 1993: 517). For intergovernmentalists, member states may only agree to pool sovereignty and achieve a new single system, in Balassa’s terms, when the state preferences converge in that situation as a result of interstate bargaining (Moravcsik 2008: 159). In other words, convergence of national preferences is a precondition (Lu 1999: 2).

In reality, however, the EU member states can reach an agreement for other reasons than those which intergovernmentalists have assumed. As explained in Chapter Three, some EU member states such as Belgium pursued a full blown European border force while other EU member states like Sweden and Denmark showed less interest in such attempts. Despite the different attitudes toward the EU level cooperation, Frontex was established. This is because the culture of compromise inherent in the negotiations in the Council of Ministers might have led the EU member states to accept the setting up of Frontex. This implies that the convergence of national preferences is not necessarily a precondition unlike the intergovernmentalist assumption. This dissertation does not take the neo-functionalists’ position either. It can shed light on the role of non-state supranational actors, including EU agencies, and its assumption may fit the main hypothesis of this dissertation, which is the regime moving towards further integration. However, unlike neo-functionalists, the shift toward integration does not necessarily mean that the regime is inevitably shifting.

It should be also noted that the dissertation does not assume that Frontex is at the heart of the whole EU border regime’s construction, either. The outset of the regime can date back at least to the 1990s, when the Schengen zone was created. The abolition of internal borders’ controls accompanied the creation of the Schengen zone and necessitated securing the EU’s external borders. This led the member states and EU institutions to begin searching for a proper model to achieve EU level cooperation. This

process accelerated in 2001, when the officials of the Directorate-General for Justice and Home Affairs (DG JHA)¹¹ of the European Commission officially addressed the needs of developing a European level solution (European Commission 2002a). Furthermore, there has been legislation and some initiatives other than Frontex which have shaped the EU border regime as listed in the beginning of the introductory chapter.

Nevertheless, studying Frontex may enable us to gain a notion of the direction which the development of the European migration regime is taking, as Kasparek (2010: 136) has argued. Frontex was established as an instrument to support cooperation between the EU member states; yet in its activities, Frontex has promoted norm sharing and converged actors' visions, perceptions, and ways of managing the borders. In this regard it can be hypothesised that Frontex has influenced the regime towards integration. .

2.3.5. Hypotheses

Consequently, this dissertation proposes the following hypothesis for investigation.

Despite its limited formal power, Frontex has had an integrative effect on the EU border control regime. This has transformed the regime from an inter-governmental cooperation model towards an integration model.

This hypothesis is a direct reflection of the main research question, which is whether and how Frontex has influenced the EU border regime. As explained in the introduction chapter, Frontex was established as a mere support instrument of member states. However, through its activities, Frontex may have changed the dynamics of actors, transferred best practices and developed risk analysis functions, all of which have political effects, leading the regime towards integration.

The question is how to examine the main hypothesis. In this dissertation, the analysis is organised around three sub-hypotheses:

H1: Frontex has effectively mobilised border agencies of EU member states and third

¹¹ DG JHA was renamed to DG Justice, Freedom and Security in 2004, which was again altered with DG Migration and Home Affairs (DG Home) in 2010.

countries in EU's external border control;

H2: Promotion of common standards by Frontex has encouraged imitation between border agencies, with an integrative effect on border guarding procedures and practices; and

H3: Border agencies' understanding and perception of what constitutes risk and what course of actions border agencies should take are influenced by the risk analysis produced by Frontex.

Firstly, the dissertation looks at Frontex's role in mobilising national border agencies of EU member states and third countries. Although promoting the cooperation of EU member states is in the agency's mandate, how Frontex has done this, and its impact on the EU border management remain unclear. Indeed, scholars have taken the view that the agency has brought a "far less" integrated border regime than had been expected by practitioners supporting further integration. Pollack and Slominski (2009: 915) have argued that Frontex did not fundamentally change the member states' "pick-and-choose" approach to operations. In other words, the conventional intergovernmental approach to cooperation has not been changed by Frontex. The first hypothesis (H1) examines Frontex's activities from a different perspective; Frontex may have integrated state actors in its framework, so that the regime has become more consolidated. This hypothesis stems from a sociological institutionalist assumption that the development of operational rules and tools as well as the institutionalisation of interaction are important explanatory factors to shape the behaviour of actors.

This dissertation also considers the agency's role in mobilising third countries. Whilst scholars have pointed out that governments are shifting the locus of migration control outside their territory (see, for example, Boswell 2003; Lavenex 2006), Frontex has been hardly considered to play a role in this phenomena. Such formulations stem from the fact that Frontex, which is not an international organisation, is unable to conclude an international agreement. Yet Frontex has explored and expanded the network of cooperation with third country border agencies through the technical cooperation framework, which may have changed the ways the EU's external border management is exercised.

The implication of examining the H1 is the possible shifting “up” and “out” of national border control practices by Frontex. The recent literature of border and migration has stated that the location of border control has shifted; “border” is no longer managed solely by national border agencies *at* borders. Border control has moved “up”, “down” and “out”, with a greater role played by a variety of actors (Geddes 2005: 789). The “Up” dimension is about border control practices being conducted by international and regional organisations. In the European context, this upwards shift refers to centralisation of border control at the EU level. This is discussed in relation to supranationalisation of immigration and border policies, although the transfer of sovereignty in those areas has been limited (Boswell 2003; Lavenex 2006). The function of border control has shifted “downward” to elected local authorities (Lahav and Guiraudon 2000: 164) and to other domestic national and local actors such as courts and migrant aid organisations (Lavenex 2006). Guiraudon and Lahav (2000: 164) have investigated the ways in which private actors (e.g. airline carriers, shipping companies, employers and private security agencies) have played a part in border management. “Shifting out” of border control is identified by several actors as this is most related to the countries of destination of migration from outside Europe. This outward dimension has been discussed in the “externalisation” studies. Lavenex (2006: 334) has argued that this is about the shifting locus of border control further afield from the territory. Tracing the processes of the ways Frontex integrates member states and third countries enables this dissertation to examine the agency’s impact in shifting up and out of the border control function.

Secondly, it looks at the agency’s role of developing and diffusing common standards. Since Frontex was established, particular rules, practices and technologies have been developed and adopted by national border agencies as common standards or best practices. This dissertation argues that the role of Frontex can be identified as an agent of common standard transfer. This is an important institutional change and has been examined in studies of policy diffusion and policy transfer. Policy diffusion is a “process by which an innovation is communicated through certain channels over time among members of a social system” (Berry and Berry 1999: 171). Such innovation can include policies, institutions, ideologies, attitudes and ideas and negative lessons and can be conducted through various means (e.g. learning, emulation and legislation)

according to Stone, a scholar of policy transfer (Stone 2004: 545).¹² At the heart of policy transfer is learning and borrowing ideas from other actors, and thus policy transfer is understood as a process of institutional change with new rules, norms and practices becoming incorporated and altering those already existing in a regime (Scott 2001: 114). Studying Frontex's role in common standards development also contributes to examining the integrative effect of the agency on the regime. This is because it is about the process reinforcing a particular, regular pattern among actors. In fact, most institutional theory and research emphasises the process of transfer because of its implications to incremental (convergent) change of institutions (*idem.*). This dissertation traces two cases where Frontex has promoted best practices: common border guard training, and the automated border control system for air borders. It assesses how and to what extent Frontex has developed and tried to disseminate those new practices and techniques to national border agencies. Doing this enables this dissertation to examine the extent to which Frontex can be a factor for incremental change of the regime.

Thirdly, the impact of Frontex's risk analysis is examined in defining risks at external borders and in influencing decision-making processes for the EU border management. The agency collects and organises information and analyses what is deemed to be a "risk" for EU external borders. Frontex expresses risk analysis as the "driver" of all operational activities, stating that the whole planning and implementation processes refer to the assessment of risk analysis (Peers et al. 2012: 14). Frontex's risk analysis can be considered a regime changing factor from a sociological institutionalist perspective for two reasons. For one thing, through this function Frontex is specifically analysing irregular migration as a "risk". The term "risk" gives a negative connotation to what is being analysed. Scholars have discussed how migration has become identified as a subject of threat/risk to society, and there are increasing numbers of studies looking at the role of Frontex in this context. Some of the few studies shedding light on the risk analysis function have claimed that Frontex has contributed to supporting the process of securitisation (see, for example, Léonard 2011; Chillaud 2012). However, those studies have failed to ask questions such as: on whose data is the analysis based; who is involved in the analysis; and to what extent does Frontex produce risk analysis in its

¹² Stone (2004) has differentiated policy transfer from policy diffusion. For the sake of simplification, this dissertation takes them together.

own right? By answering these questions, this dissertation firstly examines the influence of Frontex on the construction of the risk in EU border management.

This dissertation further examines the effect of Frontex's risk analysis on EU-level decision-making for border management. Frontex's risk analysis may have done so by classifying which member states' external borders are more at risk against migration. Classification of risk is an important function for its political and practical significance. Barnett and Finnemore (2004) have argued that non-state actors shape the behaviour of state agencies by gathering data and conducting analysis.¹³ This dissertation analyses how the result of the classification of risk can affect the ability of states to get access to funding opportunities as well as the perceptions on the member states' performance on the application of the Schengen *acquis*. Both may shape the behaviour of member states. Against this impact, even though Frontex does not exercise formal decision-making power, it may have guided the course of action of actors.

This research has taken the following indicators as part of the efforts to measure the integrative effects illustrated in the hypotheses. For the first hypothesis, this dissertation looks at the number of member states which have participated in joint operations during the period 2005-13. This figure is used to assess how effectively Frontex has mobilised member states. This research also counts the number of joint operations held and that of deployed national border guards. In addition, it looks at the development of the legal framework. In analysing the second hypothesis, this dissertation assesses the number of member states which have integrated Frontex's common standards and the extent to which member states have integrated them. In addition, it analyses the extent to which the legal framework has been developed in order to ensure the use of Frontex's common standards at the national level. Furthermore, the establishment of the formal and informal networks by Frontex is studied to measure the common standard transfer. As regards the third hypothesis, the increased emphasis made for Frontex's risk analysis in

¹³ It should be noted that the analysis of international organisations may not be directly applicable to that of EU agencies. For one thing, relation with member states and the EU institutions has relatively higher density than international organisations may have with the UN member states. As this dissertation discovers, for example, member states and the European Commission have been deeply involved in the process of Frontex's risk analysis. For another, the level of autonomy of EU agencies is generally less than that of international organisations.

decision-making processes is studied as an indicator.

Testing these three hypotheses about the role of the agency offers important conclusions concerning the EU border regime. There are other factors that shape the EU border regime, however. The cooperation with the EU's Eastern Neighbourhood, including Russia, for example, has influenced the ways the national border agencies interact with their counterpart agencies of the neighbouring countries (Sagrera 2013). Political instability of non-EU countries and refugee flows are perhaps other factors that influence the regime. For example, the Libyan political situation has led to the initiation of EU-Libya cooperation on migration, which has inevitably affected the ways the borders are managed in relation to Libya (Hamood 2008). Another crucial factor to be mentioned is institutional design and power balance among member states as well as between member states and EU institutions. Thielemann (2003) has analysed the development of the policy in the area of forced migration by looking at cost-benefit and norm-based factors, arguing that the latter has offered a powerful account to explain the ways member states share burdens and cooperate (Thielemann 2003). The work of Lahav (2004) has identified domestic politics and public opinions as crucial factors shaping the EU border regime. These are still more factors that may shape the regime. However, this does not reduce the relevance of studying Frontex's role, rather this dissertation adds new insight to the ways in which border management evolves.

2.4. Methodological Framework

This section explains the methodological framework for this dissertation. Firstly, it explains the concept of a process-tracing methodology, which will be the main methodology of the dissertation. Secondly, it moves to the question of how activities of Frontex will be selected to test the hypotheses with the application of that methodology. Thirdly, this section introduces the main methods used in this research, namely semi-structured interviews, participant observation and document analysis. Finally, it outlines the data sources on which the dissertation will be based.

2.4.1. Process-Tracing

The dissertation adopts a process-tracing methodology, which is an analytical approach used to identify the causal chain and causal mechanism between an independent variable and the outcome of the dependent variable (George and Bennett 2005: 206).

Unlike other methodologies such as statistical analysis, which highlight correlations of data across cases, it looks at sequential processes within a particular historical case (George and Bennett 2005: 13). By so doing, this methodology allows examination of whether the causal process, which a theory hypothesises or implies in a case, is in fact evident in the sequence and values of the intervening variables of that case (George and Bennett 2005: 6).¹⁴

There are three reasons explaining the use of this methodology for this research. Firstly, it allows the identification of Frontex's unquantifiable impacts. Effects of Frontex in developing best practices, facilitating cooperation between member states and third countries and manipulating information are not always best evaluated by numerical and statistical approaches but rather identified by reconstructing processes in which the agency played a role. Secondly, process-tracing is capable of dealing with processes which hold complex sets of variables. It has "a dynamic quality which would not be explored using static methods of observation that concentrate on one point in time" (Kingdon 1995: 241) and is "well-suited to test theories in a world marked by multiple interaction" (Hall 2000: 18). These accounts are valid since the development of the EU border regime, especially its link with Frontex's activities, may not be studied through a few statistically analysable elements. Process-tracing, which offers an in-depth understanding of the processes involved, may then better fit this research. Thirdly, process-tracing is compatible with the theory of sociological institutionalism. The advantage of this methodology is recognised by the proponents. They have stated that process-tracing can show how certain ideas inform certain actions (Parsons 2010: 91) and also, by gathering data sets on the links of network between individuals or organisations, it can demonstrate how changing patterns over time reflect the diffusion of certain social constructs rather than patterns of technical competition or material sources (Powell and DiMaggio 1991: 147). Furthermore, process-tracing enables this research to use other methodologies such as case studies and document analysis (Checkel 200: 2008).

¹⁴ Process-tracing stems from the rational choice institutionalism if strictly applied, because the mechanisms are assumed to be always structural. Contrarily, the sociological institutionalist approach is more constructivism-oriented and less structural. Thus in this dissertation, process-tracing is not taken to mean its strict original form so that it can be compatible with more agency-based approaches.

Among various types of process-tracing which George and Bennett have identified (2005: 210-212),¹⁵ this dissertation adopts an “analytical explanation” form of process-tracing. This type of process-tracing is substantially different from others, such as narrative process-tracing, in the way that it converts a historical narrative into an analytical causal explanation couched in explicit theoretical forms (George and Bennett 2005: 211). Selection of a “process”, or historical instances and events, “may be deliberately selective, focusing on what are thought to be particularly important parts of an adequate or parsimonious explanation” (*idem.*).

2.4.2. Selection of Activities

Although it is not a case-comparison study, this dissertation selects a few activities¹⁶ of Frontex to operationalise the process-tracing methodology so that the dissertation can test the hypotheses. For this purpose, the selection of activities was made on the basis of carefully established criteria, so that chosen activities will be undertaken with a specific research objective and an appropriate theoretical focus for that objective (George and Bennett 2005: 70, 83). At least the following points will be considered in determining the activities:

Selected activities should be also well-documented and readily available, or expected to be complemented by the interview method if the documents are insufficient. Considering this aspect is important because the management of borders is a matter of state security, which is highly sensitive for the member states and EU institutions. Hence many aspects of the works of Frontex are surrounded by protective secrecy. This tendency is most evident in the field of intelligence and training. The Risk Analysis unit does not reveal, for instance, how it actually conducts its analysis, and the content of the

¹⁵ Other identified types are a “detailed narrative” and a “more general explanation” (George and Bennett 2005: 210-211). The former takes a form of detailed narrative or story presented in the form of a chronicle which purports to throw light on how an event came about. Such a narrative is highly specific and makes no explicit use of theory (*ibid.*). The latter is used not to focus on the individual decision-making level of analysis but to apply to the explanation of macro-phenomena, as it often is in the field of economics, as well as to micro-processes (*ibid.*).

¹⁶ Activity may be understood as “an instance of a class of events” which is a concept that George and Bennett have used to define a case (2005: 17). Activity is not equal to case; however, since the process of activity and case selection to apply to research is similar, and because the author understands that activities must be selected based on scientific interests and be analytically useful to research, that definition has been adopted for this dissertation.

training manuals has also not been made public. The question on the timing, when activities took place, will be another point in selecting activities. For one thing, if a specific activity was conducted far back in time, interviewees may have a limited knowledge/understanding of the said activity. This may be easily understood by solely considering the number of joint operations. As mentioned in the section discussing hypotheses on mechanisms, Frontex has conducted more than sixty joint operations. Moreover, because it is a new agency born just six years ago, Frontex needs to hire new staff year by year as its organisational size increases, and such newly employed staff are very unlikely to have first-hand experience of past activities. It should be noted that one-quarter of the staff consists of seconded national experts who work for Frontex for a specific period (Frontex 2013: 75). Therefore, it may be desirable to avoid selecting activities too far back in time.

2.4.3. Data Collection Methods

For data collection, two methods were mainly used in this dissertation: document analysis and semi-structured interviews, the latter of which was supported by a participatory observation method. It should be noted here that the author's research internship for Frontex in Warsaw, Poland, has immensely contributed for data collection. The internship was held for three months from September to December 2012. The author was assigned to work for a team handling relations with the EU and international organisations. The primary task was to assist the head of the team in collecting information, drafting policy papers and organising events. The author was allowed to take part in the team meetings as well as the meetings with other teams and units within Frontex. Moreover, the author observed the newly established Fundamental Rights Consultative Forum and the bilateral annual negotiation meeting that defined the level of member states' contribution for Frontex operational activities in 2013. The author attended an international conference on automated border control held in Warsaw and an annual meeting for border guard training in Madrid, Spain, which Frontex organised by inviting the stakeholders. The internship experience has enabled the author to understand the everyday work of Frontex officials, internal dynamics of the agency and the relations with external bodies such as other JHA agencies. Furthermore, the author was also allowed to contact Frontex officials for research purposes and, during the research intern, twenty-three Frontex officials agreed to speak to the author. Their positions varied from the Executive Director to a risk analysis officer, which covered

important activities to know for this research. In addition to the interviews, pamphlets, conference programmes and proceedings were collected, most of which were not available on the Internet.

2.4.3.1. By Analysing Documents

Document analysis has provided essential primary data¹⁷ to reconstruct the processes and to identify where, when and how what is being examined occurred (Vromen 2010: 263). Of a variety of information sources, the most extensively referred to sources are the publications by the main EU institutions, i.e. the JHA Council of Ministers, European Parliament, especially its Civil Liberties, Justice and Home Affairs (LIBE) Committee, the European Commission, and other EU bodies such as Europol¹⁸. Therefore, through the interviews with Europol personnel working on Frontex, the author may be able to find out how the Risk Analysis function of Frontex might have been perceived and, in turn, impacted on the policy development.

The dissertation has also used the documents issued by the national Interior/Home Affairs ministries, border agencies and immigration offices of national governments. Because border management falls into the category of national security, not all information is publically available; however, a useful amount of data has been collected through interviews, particularly during the research internship in order to complement the primary data. For example, guidelines for using the common integrated risk analysis model, and brochures for conferences where Frontex invited national authorities, international organisations and private firms in mainly the security and information technology sectors have been valuable sources of information and have been collected from Frontex officers or by attending conferences.

Secondary data, academic literature, media articles and non-governmental organisations' (NGOs) reports have helped to complement the primary data, especially

¹⁷ Primary data are official texts which reflect a position of an actor but do not have analysis in them (c.f. secondary data scholarly journal articles (Vromen 2010: 261-262).

¹⁸ Frontex has established a close and active cooperation relationship with Europol in the area of intelligence, which has resulted in such publications as reports based on Europol Organised Crime Threat Assessment (OCTA) and Terrorism Situation and trend Report (TE-SAT) and Frontex Annual Risk Analysis (Europol 2010: 2).

as official texts are not always available as matters of national security. For the media articles, Nexis, the online database of more than 20,000 global news sources, has been used to search for relevant articles. Reports published by NGOs (e.g. Amnesty International) have been consulted, too.

2.4.3.2. By Conducting Semi-Structured Interviews

A semi-structured interview is another data collection tool used in this dissertation. This interview technique is widely used because it allows a certain degree of flexibility and allows for the pursuit of unexpected lines of enquiry during the interview (Grix 2001: 76). Researchers can thus gather rich detail about key players' thoughts and subjective experiences on central issues and capture meaning, process and context (Devine 2002: 199; Tansey 2007: 766).

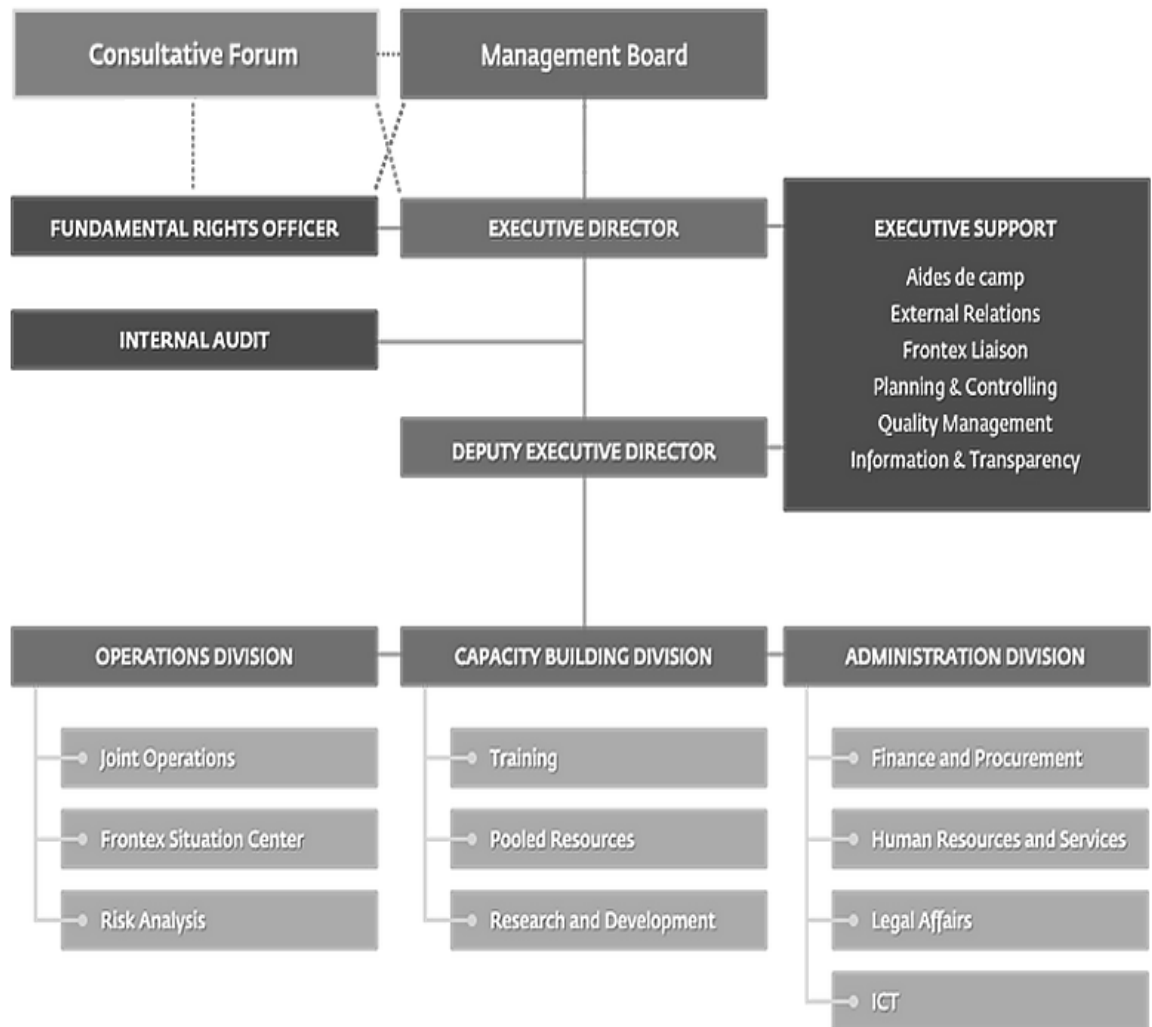
The open-ended semi-structured interview as a research tool for data collection has the capacity to offer indispensable information needed for this sociological institutionalism based research. Questions such as what pressures and benefits national officers feel they have from Frontex, or under what constraints Frontex officers believe they have to operate in order to achieve their missions, are barely obtainable from official texts. Likewise, border guards' perceptions on irregular migrants or on other member states' border guards are not available in official texts either. The semi-structured interview facilitates capturing the norms, rules and informal practices which define political actions in the field of border management. It also enables understanding of how officers make sense of the agency's mission and their own works in the case of Frontex officers. Moreover, interviews provide in-depth knowledge of the background stories behind factual events and the decisions made in the events. This could be simply obtained through the official documents, however because border management is sensitive and central to national security, even some facts such as the number of border guards that participated in each joint border operation are not entirely available in the primary data. The interview method is not a solution to clarify what is needed for the research, but it has given the author critical data to complete this dissertation.

Concerning the subject of the interviews, the elements of "elites" interviews have been integrated. Elites in this context are "individuals prominent in politics, public service, business, or who are activists or commentators in the public sphere" (Vromen 2010:

258). At least four advantages of this method have been identified by Tansey (2007: 766-767). Firstly, elite interviews help understand how political decisions and actions are made. Secondly, interviews with key players can corroborate the findings in an initial overview of the events or issues provided by official texts or in media articles. Collected data can even be cross-checked, which increases the findings' robustness. Thirdly, they can provide new information that may advance research. Lastly, interviews can produce inferences about the beliefs or actions of a wider group without interviewing everyone. In sum, elite interviewing can bring out hidden elements of action that are not clear from outcomes or primary sources, and guide researchers for identifying new findings or new perspectives. This method should enable the dissertation to reconstruct Frontex's activities, for instance the preparation and implementation of a joint operation. In order to avoid the inevitable bias which interviewees offer, the data is safeguarded by the triangulation against documents and a wide sample of interviewees. In this dissertation, policy-makers engaged in the management of the EU external borders, in particular in the activities of Frontex (e.g. European Commission officials, representatives of national border agencies and senior Frontex officers) could be categorised as the elites. However, as well as these officers in senior positions or in policy-making processes, this dissertation has placed emphasis on those engaged in the implementation of border management, such as national border guards and Frontex officers because of their important roles from a sociological institutionalist point of view.

Throughout the research process, forty-two officers were interviewed (see the list of interviews). Most interviews were conducted with the use of face-to-face interview, and a few were undertaken by telephone. The main source of interview has been Frontex during the author's internship for that organisation in 2012. Of more than 300 officers, those engaged in specific departments relevant for research purposes were interviewed with the aid of a snowballing effect. That is, officers in four main sections, namely Departments of Operations (Joint Operations unit, Frontex Situation Centre and Risk Analysis unit); Capacity Building (Training unit, Pooled Resources unit and Research and Development unit); Administration (Legal Affairs unit); and those who are in Executive Support (External Relations team and Information and Transparency (Press)) in addition the Executive Director and Deputy Executive Director have been interviewed for this dissertation. By so doing this dissertation has covered most

activities and functions central to Frontex. Chart 1 “Frontex Organisational Structure” shows a few sections (i.e. “Management Board” and “Consultative Forum”) and positions (e.g. “Internal Audit” and “Fundamental Rights Officer”) that have not been covered by interview. Most important for the purpose of this dissertation was the Management Board. Although opportunities to directly approach the representatives in the Management Board were not given, this was mitigated by document analysis and interviews with those who attended the Management Board meetings to support the represented members.

Chart 1 : Frontex Organisational Structure

Source: Frontex (2014) *Structure*. Available from: <<http://frontex.europa.eu/about-frontex/organisation/structure>> (accessed 27 March 2014).

Interviews have been conducted with officers of national border agencies and the European Commission as insights from those bodies are important in analysing the impact of Frontex. Contacting national border agencies of all member states was not practically possible, especially because not all member states were willing to speak about their activities to the author. Using the snowball effect, access was obtained to interview officers of Poland, Greece and the UK, including those who had already left the organisation. The positions of interviewees varied. Some were in senior managerial positions involved in policy-making processes for the EU's external as well as national border management, border guard trainers and those who conduct border checks and surveillance on the ground. Concerning the EU institutions, an interview with a

European Commission DG Home official, who handles the issues on external border management, was most helpful in analysing the impact of Frontex, as the European Commission is the only EU institution directly involved in the agency's activities, including the Management Board of the agency. Needless to say, the European Council, the Council of Ministers and the European Parliament are also important for the purpose of this dissertation. However, access was limited and the author was not able to interview officials from those institutions. Integrating h insights of those institutions into analysis would be the requirement of future research. .

Interviewing the representative of the United Nations High Commissioner for Refugees (UNHCR) was a considerable help too. This is because the UNHCR is the most deeply involved non-EU organisation in Frontex activities. As of writing (2014), UNHCR has been the only international organisation having an official liaison officer position in Warsaw, Poland, in which Frontex headquarters are located, and it has been involved in the operational activities of Frontex. The substantial involvement of the UNHCR in Frontex activities has meant that Frontex “can prepare an office space for the UNHCR liaison officer in the Frontex headquarters, if UNHCR wants” (Frontex official C, interview, 22 July 2011).¹⁹ Interviews with the UNHCR officer has enabled understanding of their views about Frontex impacts on the EU border regime and the input the UNHCR intended to put into border management in Europe.

2.4.3.3. By Conducting Participant Observation

A participant observation method has enriched the data for this dissertation other than simply by establishing access for the interviews. One such benefit was to observe day-to-day work in and around Frontex. Obtaining this kind of data is very important, because questions such as how the initially expected role of Frontex has changed need the complementary data of interviewing. The motivations Frontex and other actors have for certain activities, which are crucial to this dissertation, are hardly explored solely by reading the official texts. Rather these personal assessments and beliefs are more effectively taken by observing their work and approaching them for interview.

¹⁹ So far the UNHCR has not gained a seat in Frontex in order to keep distance from Frontex as an external, non-EU organisation.

According to Burnham et al. (2008: 265), this is a participant observation, or “a research strategy whereby the researcher becomes involved in a social situation for the purpose of understanding the behaviour of those engaged in the setting”. This method has been most applied in anthropology, sociology and other social science disciplines that mainly take a qualitative research approach. The use of participant observation in political science as a research strategy has been used less often, but is becoming more frequent (Burnham et al. 2008: 266).

Moreover, understanding what public officers think about Frontex activities, how their operational work has changed since Frontex was established, is important from a sociological institutionalist perspective. As outlined in the theoretical framework section, this dissertation has intended to identify how Frontex develops best practices, manipulates information and consolidates cooperation of national (European and non-European) border agencies. All these are barely stated in written official texts but data has been obtained through the observation of their activities. As Burnham et al. (*idem.*) have added in their definition for participant observation, the researcher may “collect additional evidence through formal or informal interviews”. Lofland et al. (2005: 18) have also stated that participant observation usually involves “the interweaving of looking and listening, of participating and asking, and some of the listening and asking may be identical to involve repeated contact between researchers and informants”. This has given answers to several important questions for this dissertation, such as why the agency has reacted to particular cases (e.g. why Frontex draws particular conclusions), how and when the agency interacts with national border agencies and the European Commission (and other EU institutions), who the stakeholders are in the decision-making process, and to what extent Frontex brings initiatives in their coordination activities.

This dissertation has paid attention to avoiding adverse effects by integrating a method of participant observation in the research process. As Burnham et al. (2008: 269) have argued, this method requires researchers to “immerse” themselves into the subject of the study and hence it is “important to maintain a degree of detachment so as to maintain the role of observer and researcher. Otherwise there is the risk of complete integration into the group” (*idem.*). Therefore, in this dissertation, conscious efforts have been made in order to stay distanced from the agency as a neutral observer.

2.5. Conclusion

This chapter has demonstrated the gaps in the research literature and introduced the theoretical and methodological frameworks that have served for the analysis in this dissertation. As discussed, there is a growing scholarly body on Frontex, and indeed Frontex has become a popular subject of research for scholars who are interested in policy development and cooperation in the field of borders and migration in Europe. Nonetheless, there is still room to develop the analytical framework that can situate Frontex's role in a wider picture of EU external border management. Thus this dissertation has taken the sociological institutionalist approach, which is the only lens which can explicate and explore the relevant mechanisms which make Frontex an effective actor in relation to the EU border regime. Finally, this chapter has explained the operationalisation of the research questions. It introduced and discussed the main methodology of process-tracing as well as the research methods that allowed this research to effectively collect data. The next chapter sets out the scene of this dissertation by discussing the historical background of the creation of Frontex, which is necessary in order to understand the political dynamics between member states and EU institutions in search of a cooperation model for EU's external border management.

Chapter 3: Setting the Context: In Search of the EU Border Cooperation Model

3.1. Introduction

The aim of this chapter is to explain the political dynamics that established Frontex. While some scholarly works have discussed why and how it was established (see, for example, Léonard 2009; Monar 2006; Pollack and Slominski 2009; Rijpma 2012), exploration of this question is still relevant to this dissertation, given its significant influence on Frontex's institutional environments and legal competence. This question is also pressing as nation states have retained exclusive sovereignty over the area of border management while cooperating with other countries in this matter is often associated with a transfer of exclusive sovereign power. As Guiraudon and Lahav (2000: 55) have argued, "control over who enters and exits one's territory has long been associated with the prerogatives of the modern nation-state, an essential component of the post-Westphalian concept of national sovereignty". It should be acknowledged that this notion can be questioned in the EU since the Treaty of Lisbon of which Article 4 has declared that AFSJ is an area of shared competence. Based on this change, the recent European Commission has submitted such proposals as the "smart borders package"²⁰ (European Commission 2011b). Once these proposals are adopted, the EU may exercise the competence on border management issues. Hence the border management in reality can be changing and different from that in theory. Nonetheless, it is still relevant to ask how member states and EU institutions reached a consensus for further cooperation at the EU level in the field of border management. Is the creation of the agency indeed a "decisive step forward" (Jorry 2007) towards a more integrated and institutionalised management of the EU's external borders, as some scholars have evaluated? Answers to these questions cannot be suggested without a careful examination of the process of creating the agency. In other words, the "politics of institutionalisation" (Léonard 2009: 372) in the field of EU external border management need to be scrutinised.

²⁰ The smart borders package consists of the proposals on Entry/Exit system, a Frequent Traveller's Programme and the changes to the Schengen Borders Code.

In assessing the creation of Frontex, it is crucial to understand the kind of model member states and EU institutions wanted, because this framed the institutional and organisational features Frontex was given. The debate on the model of cooperation had already been ongoing in the late 1990s. This has been observed in the text adopted by the JHA Council (Council 1999), which had included measures related to external border management. As this chapter discusses, different interests existed among member states and EU institutions in the process of creating the agency. There were “minimalists”, those who stressed individual member states’ prerogatives and intended to avoid delegating their rights to the EU. On the other hand, there were “maximalists”, who pursued a more harmonised approach for better managing external borders, even though this might mean the shifting of national competence to the EU level. The situation was complicated as the traditional divide between member states and the Council as minimalists and the European Commission and the European Parliament as maximalists was not directly applied to this case. Different attitudes were observed among member states; some member states were more in favour of a harmonised approach whereas others were cautious about it. For example, Hobbing (2005: 18) has argued that Belgium was in favour of having a single command and control structure like the United Nation’s Peace Keeping Operation, while other member states such as Denmark and Sweden (*EurActiv* 2001) were not initially interested in cooperation on border management. Corresponding to the competing positions, two institutional models were proposed before the EU agency model — Frontex — was presented.

Conscious of the lack of a meaningful examination of the history of the institution of Frontex, this chapter asks why and how Frontex was established. In analysing this, it is helpful to learn from the creation process of other EU agencies. Indeed, the number of EU agencies is over 44 as of August 2014 (European Commission 2014b) and this agency phenomenon has become characteristic of today’s EU governance system. Majone (1997: 1) has stated:

While agencies are certainly not a new feature of public administration in Europe, their importance has grown so much in recent years that they can no longer be treated as marginal additions to more traditional administrative structures. Rather, they should be seen as key elements of a new mode of governance that relies less on the power of taxing and spending — the very foundation of the Keynesian welfare state — and more on the power of making and enforcing rules.

Scholars have identified three factors to explain why EU institutions and member states have preferred to create the agency model: balance between retention of sovereignty and effectiveness; specialised knowledge, and delegation. This chapter argues that these factors are relevant to the case of Frontex, but that the context also mattered. That is to say that there were other competing models (the Common Unit and the European Border Force), both of which proved unconvincing and made Frontex appear most appropriate. In other words, Frontex was established as a compromise between supporters of a more integrated structure at the EU level and those who preferred to pursue an intergovernmental approach, which has framed the competence and limitations of the agency. The creation of Frontex is an indicator of change in the EU approach to borders.

The outline of this chapter is as follows. Firstly, this dissertation analyses the process of establishing Frontex by tracing a series of historical events, with a focus on the period from the late 1990s to 2005. It then identifies the emergence of the need for an EU level cooperation model due to the change in institutional contexts. It is followed by an outline of the competing preferences of EU institutions and member states. This chapter analyses how these actors responded to the proposed cooperation models. Following this, it also looks at the ways the Frontex model emerged and how its organisational features were developed over the course of negotiations. Finally, this chapter illustrates the main characteristics of Frontex resulting from these processes.

3.2. Explaining the EU Agency Model

Why have the EU agencies been established? Most scholarly works have approached this question using the principal agent methodology from rational choice theory. The principal agent approach was first developed in American political science to explain the relationship between the US Congress and the bureaucracy. The conventional application of this approach in the EU context is by regarding member states as “principal”, an actor possessing an authority to delegate, and the European Commission, the Court of Justice of the EU and other EU institutions as “agent”, which are delegated certain authority from the principal to implement policies. However, in analysing EU agencies, the point of argument becomes why “principals”, the member states and the main EU institutions, established the EU agencies, which are the “agent”.

Existing research has identified two explanatory factors for the agency phenomenon. Firstly, scholars have pointed out the expectation to improve the performance of policy making and implementation by creating expert agencies (Léonard 2009: 374). These agencies can offer scientific data to EU institutions and member states. By referring to data gathered by the agencies, EU institutions and member states can expect to increase the credibility of their policies. Credibility can increase because of as Majone (1997: 5) has stated, “a reduction in the principal’s decision-making costs (since he does not have to spend time on the technical details of regulation), greater expertise, and greater policy credibility”. Moreover, EU agencies are free from partisan political consideration (Majone 1992: 2). This means that EU agencies can have longer-term commitment to policies. National governments which are constrained by domestic conditions have a time limit imposed by the requirements of elections at regular intervals. This is a powerful constraint on the arbitrary use by the winners of the electoral contest of the powers entrusted to them by the voters (*idem.*).

Secondly, the agency model is convenient for both member states and the European Commission. For the former, it is a way to avoid giving more tasks with competence to the European Commission. Ongalo et al. (2012: 401) have argued that member states tend to avoid situations which increase the influence of the European Commission over member states’ authorities. For this purpose, delegating authority to a technical EU body appeared satisfactory as an alternative (*idem.*). For the European Commission, too, the agency model is convenient because the tasks given to these bodies, such as information gathering and facilitation of policy implementation, are not the main tasks of the European Commission. By delegating to agencies, the European Commission is able to focus on its core tasks of proposing legislations and ensuring that EU law is correctly applied (Majone 1997: 2; Ongalo et al. 2012: 401).

In addition to the expert knowledge and the institutional balance provided by EU agencies, as mentioned above, both member states and EU institutions can control the behaviour of EU agencies. Control is an important concept in the principal agent approach, in order to avoid ineffective resource distribution because of moral hazard. The European Commission and member states have developed processes for monitoring and checking the behavior of agencies; these include obliging the submission of activity reports and sending their representatives to the agencies’ decision-making body

(Dehousse 2008: 800).

A problem in creating agencies is found in the divergent preferences of principals (Dehousse 2008; Kelemen 2002). Dehousse has argued that the EU governance system has been designed to avoid concentration of power in one institution. Therefore, there is no clear, sole principal but multiple principals representing different interests: the Council of Ministers (and member states), the European Commission, and the European Parliament (Kelemen 2002: 95). These principals do not always have shared interest in the EU agencies, thus trying to input their own influences on the agencies and to minimise the influences of other principals. As a natural consequence, the organisational characteristics of EU agencies are largely shaped by power struggles between the principals. Léonard (2009: 374-375), who has examined Frontex in the context of existing research on other EU agencies, has argued that “the analysis of the process of agency creation needs to take into account the political struggles amongst policy-makers in order to fully account for the delegation of functions in the EU”. In light of these arguments in the research literature, the following section traces the process of creating Frontex to explain how the EU agency model was chosen in preference to other competing models.

3.3. The Process of Creating Frontex

3.3.1. Emerging Need for Cooperation on Border Management in Europe

Until the middle of the 1980s, European level cooperation in the area of border management hardly existed. There were some intergovernmental forums such as the Trevi working group established in 1975, composed of national officials from Ministries of Justice and the Interior in the European Community (EC), and the European Commission occasionally attempted to bring aspects of these policies under EC control, but the Council rebuffed these attempts (Geddes 2008: 76).

The European common policy experienced important developments during the 1990s. The first of these was the Treaty of Maastricht signed in 1992 (TEU 1992), which created a pillared structure. The central and largest was the first pillar where the community measures were applied across a range of policy sectors. Under this pillar EC law had direct effect, the European Court of Justice held jurisdiction, qualified majority

voting applied to more policy areas and the European Commission and the European Parliament were closely associated with policy development. The second and third pillars were built upon the intergovernmental cooperation method. The issues of Justice and Home Affairs were incorporated into the third pillar. By so doing, the Treaty of Maastricht formalised political cooperation and collaboration in the area of immigration, asylum and border control policy at the EU level, which had been excluded from the Treaties of Rome in 1957 (Treaties of Rome 1957). However, unlike the policies entailed in the first pillar in which supranational decision-making was dominant, the form of cooperation was intergovernmental and the role of EU institutions such as the European Parliament was severely constrained (Geddes 2008: 95; Puntsher Riekmann 2008: 21). Nonetheless, this is understood by some scholars as indicative of supranationalisation of border management, since the mode of governance on border management moved closer to integration and the networks of administrative actions began to be consolidated (Geddes 2008: 89).

A seminal factor which accelerated cooperation on border management was Schengen. Five European countries: Belgium; Luxembourg; The Netherlands; Germany, and France, concluded the Schengen Agreement in 1985 to create a border-free “Schengen area” by abolishing border functions of the borders between participating member states (Schengen Agreement 1985). The Schengen Agreement has been put into practice since 1995. In order to ensure freedom of movement in the Schengen area, the role of the borders with non-Schengen countries emerged as an important issue. As “compensatory” measures, the Schengen members adopted a number of provisions, aimed at achieving “an equal degree of control” at external borders by promoting the harmonisation of working methods for border control and surveillance (Schengen Convention 1990, Art. 6). Such measures included the Schengen Information System I and II (Council 2007a) and the Visa Information System (European Parliament and Council 2008).²¹ It should be noted that the Schengen *acquis* clearly identified that the responsibility of borders lies with member states owning those external borders. It should be also noted that the cooperation framework given by Schengen was

²¹ Though not strictly in the context of Schengen, the EU has developed other systems such as the EU asylum fingerprint database (Eurodac), and the newly created EU IT Agency is in charge of managing these systems.

intergovernmental, separate from the EU, until 1999.

Further development was made by the Treaty of Amsterdam, which was adopted in 1997 and came into force in 1999 (Treaty of Amsterdam 1997). The Treaty defined the EU as an “area of freedom, security and justice”, in which the issues of JHA appeared as the central features characterising the EU. By so doing, most of the issues in JHA, especially related to free movement, immigration, asylum and border management, were transferred from the third to the first pillar.

An important development with the Treaty of Amsterdam is the incorporation of the Schengen *acquis* into the EU legal framework. This is important because it is a precondition for the creation of Frontex. The incorporation of Schengen meant that the Schengen area was by extension applied to EU member states after meeting a set of criteria, unless one chooses to opt out, as the UK and Ireland did. The incorporation of Schengen emphasised the importance of external borders for the internal security of the EU. Article 61 of the Treaty of Amsterdam in fact stipulated that the Council had to adopt measures on external border controls within a five-year time period after the entry into force of the Treaty. The Action Plan adopted by the JHA Council to implement the Treaty of Amsterdam also emphasised the need of closer cooperation and mutual technical assistance between national border authorities (Council 1999). Whereas the UK and Ireland refused to open their borders for the border-free Schengen area, they intended to take a limited part in the issues related to Schengen. In the JHA Council in March 1999, the then British Home Secretary Jack Straw expressed the UK’s willingness to join the framework as regards arrangements to tackle cross-border crime, asylum and irregular migration, “which do not conflict with our frontiers control” (Council 1999: 16). The request was approved by the Council Decision in 2000, and the Irish also joined in 2002 (Council 2000; Council 2002a).²² This has subsequently given the UK and Ireland a reason to cooperate with Frontex’s activities.

The Tampere European Council meeting held in October 1999 also facilitated

²² According to the Council Conclusion, other member states welcomed this announcement and expressed the hope that the UK would gradually come to participate in all areas of the Schengen *acquis* (Council 1999: 9).

cooperation on border management (European Council 1999). The EU political leaders showed their commitment to the common EU migration and asylum policy with an emphasis on external borders. In the Council they also called for closer cooperation and mutual technical assistance between national border authorities, especially with the “rapid inclusion” of the accession member states in mind (European Council 1999: 5). “As a consequence of the integration of the Schengen acquis into the Union, the candidate countries must accept in full that acquis and further measures building upon it” (*idem.*). However, at the time of the Tampere European Council, member states did not have clear ideas on the institutional model for such cooperation. The Council Conclusion only listed examples “such as exchange programmes and technology transfer, especially on maritime borders” and stressed “the importance of the effective control of the Union’s future external borders by specialised trained professionals” (*idem.*).

Two years later, the Laeken European Council of December 2001 also highlighted the external dimension of policy-making and the externalisation of EU action (European Council 2001a). It echoed the concerns over the “fight against terrorism”, which was ignited by the terrorist attacks of September 11th in the USA (European Council 2001a: 12). Frontex’s Executive Director has stated that “September 11th was absolutely the cornerstone [toward EU level cooperation], in addition to enlargement and other factors. I was in Brussels at that time and I could see it” (Ilkka Laitinen, Executive Director of Frontex, interview, 14 November 2012). In the European Council conclusion, member states declared that their makeshift attempts to tighten controls were unable to cope with the need for coordinated and common management of the external borders (Bertozzi 2008: 8). In order to tighten border security, they asked the Council and the European Commission to “work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common service to control external borders could be created” (European Council 2001a: 12).

Besides discussion on the European political level, some member states in favour of the idea of the European border guard started to test a joint border force in the early 2000s. For instance, Greece and Italy had an agreement with Albania, a non-EU country, in October 2000 to set up a centre in Albania to combat the prevalent forms of trafficking.

Those states plus Germany also agreed to hold joint exercises for a possible future European border police (Migration Dialogue 2000).²³ Italy also took leadership in elaborating the Feasibility Study on the Creation of a European Border Police, in cooperation with Belgium, France, Germany and Spain in 2002, backed by the European Commission and financed under the EU Odysseus Programme (Monar 2006: 4). Another working group coordinated by Austrian, Belgian and Finnish authorities undertook the “Workshop on Police and Border Security” in November 2001. This Workshop identified 12 areas that should be developed within the EU structures under the direction of the heads of member states’ respective border guards (UK House of Lords 2003: 11). According to Frontex’s Executive Director, the DG JHA of the European Commission took these study papers and sketched an institutional model for border management cooperation (Ilkka Laitinen, Executive Director of Frontex, interview, 14 November 2012).

Summarising these events from the 1990s to the early 2000s, two factors could be highlighted in the intensification of cooperation on border management. There were, first of all, the concerns of member states on the EU’s enlargement and Schengen incorporation. In the beginning of the 2000s, the entry of ten countries into the EU was anticipated. The anticipated countries were Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, the Czech Republic and Slovenia. This was assumed to be the largest enlargement in the history of EU integration and was predicted to change the shape of the EU significantly, particularly on the eastern side of the EU, in addition to the extension of the border to the Mediterranean Sea by integrating Malta and Cyprus into the EU. Bulgaria and Romania were also on the pathway to accession, as well. With the entry of these countries, it was anticipated that the location of the large part of the external borders would shift to the national borders of these new countries. For example, Germany’s eastern land border had constituted an eastern side of external borders, managed by its Federal Police. With the enlargement however, Germany’s land borders would become internal EU borders and Poland and other new member countries

²³ Migration Dialogue also noted that Germany and Italy were expected to exchange border troops to serve as a vanguard of an EU-wide integrated border police in 2001. Beginning 1 January 2000, German border police would go to Puglia on Italy’s Adriatic coast and Italian officials would travel to the frontiers of Poland. Germany would have 40,000 federal border police, and up to 10,000 would be committed to a joint EU border patrol (Migration Dialogue 2000).

would comprise external borders. A shared concern among the existing member states was the level of security with respect to border management. It was important for them to make sure that border guards and equipment had reached the Schengen standard. As Frontex's Deputy Executive Director has stated that "enlargement was seriously affecting to the member states' stance on this issue [of cooperation on border management]" (Gil Arias-Fernández, Deputy Executive Director of Frontex, interview, 14 November 2012). As a consequence, member states and Schengen associated countries shared interests in fostering cooperation by establishing common standards and procedures on external border management. This was addressed, for instance, in the Tampere Council Conclusion (European Council 1999: 4).

Secondly, security concerns over irregular migration, terrorism and cross-border organised crime increased proportionally with the EU enlargement. Irregular migration, especially coming via the Mediterranean Sea, drew attention and motivated policy-makers to implement EU level cooperation (Geddes 2008: 37). Regarding terrorism and organised crime, September 11th legitimated the heightening of border control. Scholars have debated the extent to which the event fostered the securitisation of immigration policy in the EU (see for example, Boswell 2007a; Neal 2009). Yet the EU explicitly linked the discourse of the "fight against terrorism" with the matter of border management and speeded up the implementation process. In the extraordinary European Council meeting on 21 September 2001, political leaders confirmed the need to "analyse the international situation following the terrorist attacks in the US" and "impart the necessary impetus to the actions of the EU" (European Council 2001b: 1). They added that the fight against terrorism would be an EU priority objective and that the EU would act in concert in all circumstances (*idem.*). Indeed, in *the EU Action Plan to Combat Terrorism*, the JHA Council has specifically addressed the "strengthening of external border checks" as a measure to combat terrorism (Council 2002b: 34).

3.3.2. The Proposal for the Common Unit and the European Corps

At the request of the Laeken European Council in December 2001, the European Commission submitted to the Council and the European Parliament a communication paper entitled *Towards Integrated Management of the External Borders of the member states of the European Union*, in May 2002 (European Commission 2002a). In this

document the Commission DG JHA officials intended to meet the demands of those who wanted a more integrated model, and those who preferred to simply have a coordinator with no centralisation of authority (*idem.*). The European Commission stated that security of EU borders had been hindered by minimal coordination between member states. Therefore, claimed the European Commission, a common policy on management of external borders was needed to improve the situation. The European Commission also proposed in this communication paper to create the “External Borders Practitioners Common Unit (Common Unit)” in the short term and the “European Corps of Border Guards (European Corps)” in the long term and as an ultimate objective (European Commission 2002a: 5).

The idea of the Common Unit sprang from the belief that it was important to institutionalise a permanent structure that would enable senior officials of national border authorities to meet regularly. By so doing, it was assumed that those officials could better coordinate operational actions within the framework of integrated border management. In the proposal, the European Commission gave a “full multidisciplinary and horizontal” role to the Common Unit. That is, to give the Common Unit a role “as a head (...) to carry out common integrated risk analysis”; “as a leader (...) to coordinate and control the operational projects on the ground, in particular in crisis situations”; “as a manager and strategist (...) to ensure greater convergence between national policies in the field of personnel and equipment”, and “as an inspector (...) to exercise a form of power of inspection and to take over the mandate of the Standing Committee on the evaluation and implementation of Schengen” (European Commission 2002a: 13). The UK House of Lords criticised that these “operational powers” (UK House of Lords 2003: 19) did not have a clear legal base and that they were not subject to scrutiny by the European Parliament nor national parliaments (*idem.*).

Related to the point made by the House of Lords of the UK, the largest concern of the European Commission DG JHA officials as stated in the communication paper in 2002 was the source of authority of the Common Unit, or the possibility of the EU institution being the main supervisor. The European Commission’s suggestion was that the Common Unit “should most probably” form the Council’s Working Party “Strategic

Committee on Immigration, Frontier and Asylum (SCIFA)” (European Commission 2002a: 14).²⁴ Being a part of the Council emphasised the intergovernmental-oriented nature of the Common Unit. In the meantime, however, the European Commission did not forget to state that such an intergovernmental structure “would rapidly prove insufficient to ensure that this unit could be truly multidisciplinary”. Hence the Common Unit should “progressively extend its activities” especially when “the creation of a European Corps of Border Guards gave rise to a need for a permanent headquarters staff structure charged with its operational command, the management of its personnel and equipment” (European Commission 2002a: 14-15). These statements show that, while proposing an intergovernmental model for an immediate future, the European Commission was inputting its preference for setting up a more integrated model.

The European Commission’s ambition was even clearer regarding the European Corps. The European Corps was envisioned as a separate multinational border guard for the region. The European Commission proposed this model as a way to achieve financial and operational burden sharing between member states (European Commission 2002a: 20). The burden sharing is usually implemented in financial terms. However, through the European Corps, the European Commission proposed to materialise an operational burden sharing.

Unlike the Common Unit, the European Corps explicitly embraced a supranational aspect in its institutional structure. First of all, the European Corps was supposed to have a permanent office and staff and receive a single command and control structure from the Common Unit (European Commission 2002a). Another, and perhaps the most innovative, point was that the European Corps would eventually have its own border guards, although they would become member states’ national border agencies (*idem.*). This would have serious constitutional challenge implications: can the responsibility of border management be given to a border guard who is not a national of the member state in which he or she is deployed?

²⁴ SCIFA is a preparatory body of the Council of Ministers. It gathers senior level officials of the member states to deal at a strategic level with various matters on migration, asylum and borders. According to Geddes (2008: 125), SCIFA plays a central role as a basis for intensive collaboration on migration, asylum and borders in the shielded executive forums that have become the hallmark of EU action on asylum.

While the European Commission stated that it was not intended to alter national border guard composition, the European Corps was clearly designed to have substantial power to fulfil its task of border control and surveillance. The European Commission also claimed that the border guards of the European Corps would have “full prerogatives of public authority needed to perform these functions, irrespective of their nationality and their place of deployment (...) under the operational command” of the Common Unit (European Commission 2002a: 21). This meant that, for instance, a task such as apprehending a person crossing a border would require the European Corps to exercise parallel authority with the national border guard of a member state in which the European Corps was at that time deployed. The European Commission recommended that the European Corps began with surveillance functions at the external borders by joint multinational teams, probably with maritime borders and, subsequently, the checks at border crossing points (European Commission 2002a: 20-21). The European Commission stated that this was a “fundamental question on constitutional grounds” (European Commission 2002a: 21). This could prove a difficult point to obtain a political consensus among member states and thus it was not certain whether member states would surrender a prerogative of public authority to the European Corps (*idem.*).

Another possible issue concerned the ways the border guards of the European Corps could be recruited and the kind of regulations that would apply to them. As mentioned earlier, the European Commission assumed that an option was to hire national border guards of member states on a temporary basis. For this the European Commission proposed to create a new human resource pooling system, so that national border guards “can be mobilised at short notice” (*idem.*). The procurement and ownership of equipment for the European Corps also came under scrutiny. The European Commission proposed that acquisitions be covered by the Community budget in order to avoid a conflict of interest on the part of the Common Unit, who would comprise the nucleus of the European Corps, and whose members would otherwise have to perform a delicate balancing between national and EU priorities (European Commission 2002a: 20).

Reactions from member states and EU institutions

The European Commission’s proposal received varying receptions from member states,

ranging from supportive to critical (Berrozzi 2008: 9; Hobbing 2005: 15; Jorry 2007: 8; UK House of Lords 2003: 11). Several member states such as Italy, Belgium, Germany and France, those which had explored the potential of regional cooperation on border management, reacted positively. *EUobserver* reported that the Italian Minister of the Interior, Enzo Bianco, had proposed the creation of a common EU border police financed by the EU budget in February 2001 (Kirk 2001). According to this media report, the Italian Minister had discussions with the German Federal Minister of the Interior, Otto Schily, in the JHA Council meeting to further the proposal. France has also been said to have welcomed “the posting of French police forces at all borders of the Schengen-zone” (*idem.*).

Another media source has reported that, in October 2001, Belgium, which then held the EU Presidency, organised a meeting with Spain, France, Germany, Italy, Austria and Finland to discuss the possible creation of a common European border police (*EurActiv* 2001). Belgium was seen as a supporter of EU level cooperation. As Hobbing (2005: 18) has pointed out, it had in mind a “blue helmet” border force like the United Nations peacekeepers. According to *EurActiv*, they were concerned about the situation that the EU’s “future members in Central and Eastern Europe will not be able to ensure effective control of what is to become the Union’s future external border”, therefore “the EU will become more vulnerable to illegal immigration when it expands by a dozen new member states in Central and Eastern Europe” (*idem.*). *EurActiv* has also identified that Sweden, Denmark, Portugal and Greece showed no interest in discussions on joint border police and that the UK and Ireland were not invited to the meeting as they chose to remain outside the Schengen area.

It appears that the “frontline” member states such as Spain and Italy generally adopted a positive stance towards the European Commission’s proposal. As a UKBA official stated, the frontline member states resented that they were “consuming more money and deploying more border guards than the inland member states do” (UKBA official, 30 March 2010). Hence they perceived the proposal as a way to reduce their financial and operational burdens for border management. Such a view was also shared by a European Commission DG Home official working on the matter related to Frontex. The official stated that “southern countries were less reluctant for the solidarity. That’s for sure” (European Commission official, interview, 29 April 2010).

Several other member states were critical of the idea, however. The sentiment was captured by a Polish Colonel who gave his view to the UK House of Lords on the concept of joint border patrols. He bluntly stated that “I believe each one should try to protect their own borders” (UK House of Lords 2003: 17). Likewise, a senior officer of the Ministry of the Interior of Finland highlighted the importance of “trust with neighbouring non-EU countries” rather than the EU project (UK House of Lords 2003: 17). Raising the example of Finnish-Russian border cooperation, the Minister of the Interior stated that cooperation was based on a high level of trust between the Finnish and Russian border guards at the local level (*idem.*). This statement matches the behaviour of Finland and Sweden in the Seville European Council in 2002, where the respective Prime Ministers blocked an attempt to go further in the direction of a common border service (UK House of Lords 2003: 12). It should be noted that these episodes do not necessarily represent the formal position of Finland (and Sweden): Finland was involved in the discussion of the European Police. However, these accounts do reveal the perceptions of the more sceptical side of the debate.

The views of member states on the European Commission’s proposal were reflected in the JHA Council’s document²⁵ during the Danish Presidency, *the Plan for the management of the external borders of the member states of the European Union* (Action Plan) in June 2002 (Council 2002c). In the Action Plan the JHA Council approved the establishment of the Common Unit, supporting its multidisciplinary role of the “head”, “leader” and “manager and strategist” (Council 2002c: 12). The JHA Council also supported the view that “the functions exercised by the common unit would include activities to improve the effective implementation of Union law”, however “they would involve no legislative proposals”. The first challenge for the

²⁵ The divergent views were already observed in drafting of the plan (Council 2002c). According to the discussion that the Council’s Frontiers Working Party and Mixed Committee held in June 2002 (Council 2002d: 3), in general, member states agreed with the concept of the Common Unit, as long as it was composed of the heads of national border authorities within the framework of SCIFA. However, at the operational level, the German delegation, supported by the French and Italian delegations, suggested the network structure of centres, whilst various delegations opposed the creation of a new structure. The Finnish delegation recalled that the original European management concept referred to meetings of the heads of national border authorities within SCIFA (*ibid.*). As for the European Corps, various member states suggested to create a section on it, in association with the concept of the European Border Police, which was discussed in a feasibility study (*ibid.*).

Common Unit, claimed the Council, would be to launch its work systematically and to gain the respect and trust of the parties involved (Council 2002c: 13). The Council took a supportive position on the Common Unit because it “would also be the best forum to gradually receive the new states applying for accession to the Union” (*idem.*). By having such an intergovernmental forum, the Council’s idea was that the “new Member States would be able to proceed at the same rhythm as the implementation by each Member State” (*idem.*). The Council thus allowed the establishment of the Common Unit and organisation of joint border operations. The set-up of various *ad hoc* centres to develop necessary functions for border management at the European level was also advocated therein (Council 2002c: 14).

With respect to the European Corps however, the Council took a more cautious stance on the creation. While the Council stated that “a genuine sharing of the financial burden in terms of equipment and human resources should be established at EU level” (Council 2002c: 27), the European Corps was not considered as an enabling mechanism for this purpose. Instead, the Council merely stated that “an assessment of the different options (...) should be undertaken” (*idem.*). The setting up of the European Corps was, for the Council, a “possible decision” in the future. The Council stated (*idem.*):

further institutional steps could be considered, if appropriate, following an in-depth legal study addressing the question of the legal basis and identifying the instruments which would be necessary. Such steps could include a possible decision on the setting up of a European Corps of Border Guards, composed of joint teams, which would have the function of supporting the national services of the member states, but not replacing them.

By adopting this position, the JHA Council shelved the concept, though it was not rejected outright. In the Seville European Council which took place in the week after the publication of the Action Plan, EU political leaders “applauded” the Action Plan and asked for the introduction “without delay, within the framework of the Council, of the common unit” (European Council 2002: 9). It listed the items to be achieved, targeting specific dates (e.g. “joint operations at external borders before the end of 2002”), but the term “European Corps” did not appear.

The LIBE Committee of the European Parliament, which had taken a positive view on the European Commission’s proposal, went so far as to “regret” the Council’s stance on

the European Corps in the report the Committee drafted during the fifth Parliamentary term (European Parliament 2002: 8). Reflecting the European Commission's proposals and the Action Plan by the Council, the LIBE Committee emphasised the measures at the European level. Although security at external borders must be managed at the national level, "increased efficacy of border protection may be achieved principally by means of measures taken at European level", as 'the EU may provide its citizens with greater security than that which may be achieved by purely national measures' (European Parliament 2002: 6). It hence supported the European Commission's proposals in general and the idea of the European Corps in particular. The proposal was convincing to the LIBE Committee as it would increase the role of the EU in border management. Therefore the LIBE Committee was critical of the fact that the Council had "said very little about the idea of a European Corps" (European Parliament 2002: 8).

Following the Council's Action Plan, SCIFA established the Common Unit in the so-called SCIFA+ (SCIFA plus) formation.²⁶ Whilst member states were represented by high ranking officials in the SCIFA meetings and the main discussion issues in these meetings were strategic matters of immigration and border management, SCIFA+ or the Common Unit was composed of the heads of member states' border agencies and dealt with operational matters. After its activities began in June 2002, the Common Unit tested its performance by organising a variety of projects. These included the development of a common risk analysis model and a common core curriculum for border guard training, the coordination of *ad hoc* specialised centres and the conduct of pilot projects and joint border operations (Council 2003a).

However, the Common Unit was evaluated critically in the Presidency report to SCIFA (Council 2003). Although some projects such as the common risk analysis model and the common core curriculum for border guard training were considered a "success" (Council 2003a: 4), the report based on the discussions of the Council's Frontier Working Party and Mixed Committee found several limitations in the organisation of joint border operations. For example, the Common Unit had carried out four sea border

²⁶ SCIFA+ was later replaced by Frontex.

operations, one land border operation and one air border operation (Council 2003a: 3).²⁷ Analysing the result of the land border operation conducted with the support of Europol, this Presidency report concluded that “the main aims and objectives (...) were not achieved”. This was because “some of the participating member states showed a low level of commitment by not forwarding on time and properly the requested data to Europol for analysis of the operational result” (Council 2003a: 12). Although member states confirmed they would take part in the operations and “Germany, Finland, Greece, Hungary and Bulgaria appeared to be the most effective”, in the report it was observed that not all of the confirmed member states supported the operation actively or properly (*idem.*). The Presidency report further pointed to the lack of a follow-up mechanism in the Common Unit. According to the report, no special attention was paid and no discussion was conducted on the problems raised on the basis of the operational experiences (*idem.*).

In the Presidency report the example of the Joint Operation “Visa Control Investigation in Schengen Airports (VISA)” was also cited, which critically assessed the joint air border operation by the Common Unit. VISA was the operation initiated with 17 member states at 22 airports in order to investigate the possible misuse of visas (Council 2003a: 13). The Presidency report stated that “the aims and objectives (...) were not entirely met during the course of the operation, nor was it possible to assess the threat posed to the EU by this type of visa abuse” (*idem.*). This failure stemmed “partly” from “the fact that there were discrepancies in the data forwarded to Europol” from member states, which did not “permit the drawing of any well-founded conclusions” (*idem.*).

Overall, the Presidency report identified five “serious problems” in the operational functions of the Common Unit (Council 2003a: 14). They were: the lack of planning and preparation; the lack of central operational coordination; the lack of adequate handling of difficulties during the implementation period; the lack of legal basis for

²⁷ The Presidency report only had a positive evaluation to the Joint Operation Triton operating in the Mediterranean. Triton had four participating member states (Greece, Italy, France and Spain) and five observer member states (Germany, Finland, UK, Cyprus and Malta). Within four days in March 2003, the operation checked more than 200 ships and 200 irregular migrants and arrested 6 facilitators (Council 2003a: 21). The report was concluded that Triton provided “a shared operational basis” and that this was “certainly one way of translating EU policy into practice and moving from a reactive mode to a more proactive mode of operation” (*ibid.*).

carrying out common operations, and the participating member states not fully meeting their obligations under the programme. In view of these problems, it was concluded that “the upgrading of the coordination and operational role of SCIFA+ [Common Unit] is a precondition for the successful development of similar programmes in the future” (Council 2003a: 15).

Some officers of the UKBA and Frontex have pointed out a further obstacle in the institutional structure of the Common Unit and four *ad hoc* specialised centres, which were established according to the following border guarding specialisations: border guard training (Austria); land border operations (Germany); risk analysis (Finland), and the centre of excellence (UK). These *ad hoc* centres operated their tasks on the basis of guidelines approved by the Common Unit (Council 2003a: 5). A UKBA senior officer who works on the EU relations has stated that there were critical flaws in this structure. The officer has identified that the Common Unit was not more than a monthly meeting forum of the heads of national border authorities, which was ill-equipped to take care of day-to-day operations (UKBA official, interview, 30 March 2010). Moreover, the structure of the multiple *ad hoc* centres under the supervision of the Common Unit did not work, as it made the border guarding functions “geographically, operationally and politically separated” (UKBA official, interview, 30 March 2010). A Frontex senior external relations officer has supported this view, stating that the Common Unit was composed of high level representatives who were “relatively policy makers”, therefore it was not the body that “would do daily follow up of the operational activities” (Frontex official A, interview, 4 May 2010). A Frontex seconded national expert who worked for the Frontex pooled resources section recalls that the representatives of the Common Unit were “too busy” to oversee the operational activities (Frontex official B (SNE), interview, 5 May 2010). Scholarly evaluation also revealed that there was a severe lack of proper monitoring and an inadequate supervisory system (Monar 2007: 6).

The view of the Council in the Greek Presidency Report was also shared by the Commission DG JHA officials, who pointed more critically to the institutional aspects of the Common Unit in a Commission Communication published in 2003 (European Commission 2003a: 7). In the Communication the European Commission showed its view on the development of a common policy on migration and borders since the Action

Plan addressed during the Danish Presidency and the updates made by the Greek Presidency (*idem.*). According to the European Commission, the Common Unit members, or the heads of member states' border guards, met just once a month as part of the two-day SCIFA meeting. Such monthly meetings were not enough to establish a close rapport (*idem.*). It was thus regarded a natural consequence that the Common Unit failed to facilitate a sufficient exchange of information. Moreover, the Common Unit dealt with a wide agenda, thus members were not allowed to focus only on the objectives set for the Common Unit. Furthermore, as representatives of their own national agencies, the priorities of the Common Unit's members tended to be set according to their respective member states' interests. Other than these structural problems, the Common Unit was assessed to be unable to establish its presence. In theory, the Common Unit played a central role in joint border operations as the Action Plan stipulated. However, in practice, it was national border agencies who took the initiative in the operations (*idem.*).

Drawing on the unsuccessful experience of the Common Unit, the European Commission DG JHA officials considered that coordination requiring daily follow-up at an operational level could only be achieved by a properly funded and equipped body instituted by the Community as expressed in the Commission Communication on a common policy on borders and migration as well as by a DG Home official (European Commission 2003a: 3; European Commission official, interview, 29 April 2010). Consequently, the European Commission's new initiative proposed that, whereas strategic tasks remained with SCIFA, operational tasks would predominantly be entrusted to a new, permanent Community structure. This Community body, it was suggested, would exercise day-to-day management and coordination activities, as well as respond in a timely way to emergency situations (European Commission 2003a: 8). The European Parliament's LIBE Committee showed its full support for the European Commission's view, arguing that the uniform security standards would be an important step toward a common border policy and that the EU level institutional measures could offer citizens an added value vis-à-vis national measures (European Parliament 2003: 6). The LIBE Committee also argued that the European Corps would be a culmination of this operational Community structure; the European Commission, meanwhile, had hardly mentioned the European Corps at this stage. Although "the time is not yet ripe for such a body", the LIBE Committee fully expected the creation of the European

Corps “in the not too distant future” (European Parliament 2003: 7, 12-13). To this end, the new Community structure should be established as a precursor to the European Corps from the LIBE Committee’s point of view. This Community body might be composed of national forces, but could be financed by the EU and coordinated by the European Commission rather than being set up within the Council (*idem.*).

In the Thessaloniki European Council held in October 2003, while recognising the progress made by the Common Unit, member states invited the European Commission to examine the necessity of creating new institutional mechanisms, “drawing on experiences of the Common Unit activities, including the possible creation of a Community operational structure” (European Council 2003: 4). The DG JHA officials of the European Commission, in response, submitted a renewed proposal, of which details are discussed in the next section.

3.3.3. The Proposal for the Agency Model

The European Commission presented its *Proposal for a Council Regulation establishing a European agency for the Management of Operational Co-operation at the External Borders* in November 2003 (European Commission 2003b). The European Commission proposed the agency model because it would “render more effective implementation” of the Community policy on border management (European Commission 2003b: 4). The agency model was considered “effective” in the understanding of the European Commission because EU agencies are “expert organisations”, such tasks as data collection and analysis are conducted by a group of experts, which would be a comparative advantage to this information management task, conducted by the European Commission. In fact, as Majone (1997) has pointed out, the incorporation of EU agencies as part of EU governance had previously been advocated by the European Commission, especially since the late 1990s, which has also been observed in several publications including *European Governance: A White Paper* (European Commission 2001) and a communication entitled *the Operating framework for the European Regulatory agency* (European Commission 2002b). The added values of the agency model were found in its “coordination and co-operation” function, which was “not just at local or regional, but at European level” (European Commission 2002b: 6).

In comparison to the proposal for the Common Unit, the European Commission adopted

a more moderate tone to explain the role of Frontex. Such terms as “leader”, “head”, “manager and strategist” or “inspector”, all of which were used to describe the role of the Common Unit, disappeared. On the contrary, Frontex “shall simply assist member states” and its activities “will be purely supplementary to those of the national services of member states” (European Commission 2003b: 4).

Continuing in this moderate vein, the European Commission proposed that Frontex would have the following tasks: coordinating joint operations; providing training to border guards; carrying out risk analysis; following up research and development; rendering operational and technical assistance to a member state in need of it, and coordinating removal of third country nationals irregularly residing in member states (European Commission 2003b: 20). The tasks given to Frontex were similar to those of the Common Unit, apart from the task of removal of third country nationals. The European Commission justified the addition of this task (removal of third country nationals) by explaining that the task would fall under the competencies of border agencies in most member states, thus Frontex would have reason to assist them (European Commission 2003b: 20).

The European Commission designed Frontex’s institutional structure in ways that would, nevertheless, be strongly opposed by member states. Frontex was envisioned to have its own headquarters and its own staff, which would include national officers seconded by member states (“Seconded National Experts”). The projected sources of these revenues were expected to comprise a subsidy from the Community budget and voluntary contributions from member states. In terms of its institutional belonging, Frontex was proposed to be placed outside the framework of SCIFA, a Council Working Party. However the Frontex Management Board, the highest internal decision-making body of Frontex, was to be composed of twelve members appointed by the Council and two representatives of the European Commission. This meant that the Council, or member states, would still be steering and monitoring the work of Frontex. To this Management Board the head of Frontex (the Executive Director) was defined as being accountable for the agency’s activities. Indeed, the Executive Director’s competence was also to be exercised within the range that the Management Board approved as beneficial. In this way, the organisational structure and remit of Frontex were defined more clearly compared to those of the Common Unit, but they were less supranational

than those of the European Corps.

In the JHA Council meeting held in November 2003, EU member states' Interior/Home ministers in principle welcomed the European Commission's proposal on Frontex (Council 2003b). While "considering that the responsibility for the management of the external borders lies with the member states", stated the Council in its meeting, "the creation of an agency is the most appropriate way to organise and develop the indispensable coordination of operational cooperation at the external borders" (Council 2003b: 9). The Council agreed on the tasks defined for Frontex. The Council claimed that the agency would learn from its predecessors' tasks and experiences, such as those of the Common Unit and the *ad hoc* specialised centres. The new task of assistance on the removal of third country nationals was particularly favourably received. The Council even referred to "possible extensions of the tasks" (Council 2003b: 10).

A point of disagreement arose over the composition of the Management Board. The JHA Council demanded that each member state should be given a seat (Council 2003b: 11), which would mean at least 15 existing member states as of 2003 and many more seats for the then accession countries from Central and Eastern and Central Europe. The total allocation for member states by the Council was twice as many as the proposal of the Commission (12 seats). The Council also stressed the "voluntary" participation principle for joint border operations and other joint activities (Council 2003b: 6). Thus the Council's statecentric logic on cooperation was made clear.

There was a tension between Spain and the UK over the British and Irish membership of the agency. According to Jorry (2007) and the letter from the Government of Gibraltar sent to the UK House of Lords (2008), Spain blocked the UK from participating in the Frontex Regulation due to the disputes that they had over Gibraltar, a British territory in the Iberian Peninsula. In the same JHA Council meeting held in November 2003, the position of the UK and Ireland were defined to be "determined in the context of the negotiation of the Regulation" (Council 2003b: 11). An agreement was later reached to include the UK and Ireland under a condition that Gibraltar borders would be excluded from Frontex activities (European Parliament and Council 2011: 5).

When it comes to the European Parliament, the LIBE Committee supported the European Commission's proposal, according to the opinions that it delivered in February 2004 during the fifth Parliamentary term (European Parliament 2004).²⁸ Its favourable opinions stemmed from the expectation of "increasing the fragmentation of the executive power of the EU" by transferring the tasks "up until today fulfilled by member states" to Frontex (European Parliament 2004: 30). In fact the LIBE Committee showed its interest in this agency model, stating that the creation of Frontex would be a step forward for border management being dealt with at the European level (European Parliament 2004: 29). Moreover, having a separate body from the EU institutions would remedy institutional shortcomings that were identified in the case of the Common Unit (European Parliament 2004: 30).

Furthermore, the LIBE Committee of the European Parliament requested a number of amendments. Its central contention was that the nature of Frontex was still "intergovernmental" and it should have a "more communitarian" character. For the LIBE Committee, this was assumed to be the only way that the agency would be "effectively controlled and be held accountable" (European Parliament 2004: 30). The LIBE Committee sought consequently to increase its own role and that of the European Commission, in contrast to the view of the JHA Council.

The new task of removal of third country nationals, which the JHA Council had welcomed, was another bone of contention. From the perspective of the LIBE Committee, there was "a clear risk that the agency gets the character of an 'expulsion agency'", and that organising joint return operations, at a time when the harmonised standards on immigration and asylum (e.g. a common definition of a refugee) had yet to be agreed, appeared premature (European Parliament 2004: 12, 31). Instead, it

²⁸ At the request of the Council in December 2003, the European Economic and Social Committee also issued its opinion in April 2004 (European Economic and Social Committee 2004). The European Economic and Social Committee demanded that the Agency respect the right of asylum and the principle of non-refoulement, which prohibits the expulsion of a person who has fear of persecution and torture to his/her country, by including humanitarian law in the border guards' training and tasking the coordination of rescue services. The European Economic and Social Committee did not totally disagree with the task of joint return operations, however it warned that it was an "extreme measure" and irregular immigrants should remain unaffected (European Economic and Social Committee 2004: 2). The European Economic and Social Committee also commented on Frontex's internal structure, stressing the importance of cooperation with international organisations and the independence of the Management Board (European Economic and Social Committee 2004).

suggested a feasibility study of the need for the setting up of a European Border Guard (European Parliament 2004: 12).

As for the composition of the Management Board, on which the JHA Council had requested an amendment, the LIBE Committee proposed to increase the seats of the European Commission to six and decrease the number of representatives of the Council to six, so that both sides would comprise equal numbers in the proposed Frontex internal governing body. Moreover, the LIBE Committee argued that the chairmanship of the Management Board, which was to be taken by member states in rotation in the European Commission's original proposal, agreed by the Council, should be taken by the European Commission representatives (European Parliament 2004: 18).

Criticism was also made by the LIBE Committee of the use of seconded national experts as part of Frontex personnel. Those national officers were supposed to work for an EU body, not for their home countries' authorities, during their secondment.²⁹ Receiving/sending seconded national experts between EU bodies and national agencies is in fact an established mechanism in the exchange of human resources. Nonetheless, it has been controversial among scholars as regards the impacts of national backgrounds in their work in the EU bodies in conflict with, for example, loyalties to the EU bodies (see, for example, Herrmann and Brewer 2004; Trondal 2006).

For the LIBE Committee the presence of seconded national experts was seen as one of many aspects that represented a "rather intergovernmental" nature in the agency model (European Parliament 2004: 30). Thus the LIBE Committee opposed it, referring to the fact that such EU agencies as the European Railway agency and the European Maritime Safety agency did not have provisions on the use of seconded national experts (European Parliament 2004: 30).

There were further diverse opinions given by individual members and other Committees of the European Parliament. Some members of the EU Left/Nordic Green Left such as Giuseppe Di Lello and Ole Krarup warned of the risk of having a European "police

²⁹ This is considered to be the difference between seconded national experts and liaison officers, who keep their institutional affiliations to their home member states.

force” like Frontex, because this may end up causing more suffering for refugees and migrants (European Parliament 2004: 32). The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy on the other hand insisted that an intergovernmental nature must be maintained in Frontex, a position in sharp contrast to the LIBE Committee’s position as a whole (European Parliament 2004: 41).

3.4. Frontex: Its Institutional and Organisational Characteristics

It was in October 2004 that a consensus was achieved among EU institutions and member states about Frontex’s institutional designs. The result was shown in the publication of the *Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*, which is now called the “Frontex Regulation” (Council 2004a). In the Regulation the agency was mandated to facilitate cooperation and render more effective application of existing and future Community measures of border management (Council 2004a: Art.1). For this purpose, the agency was given the tasks of coordinating joint operations; assisting training; assessing the risk; follow up research on external borders; providing technical and operational assistance, and organising joint return operations (Council 2004a: Art.2).

Its tasks and organisational characteristics show that Frontex was designed very much in accordance with member states’ demands. This was observed in the fact that, while the amendment requests by the JHA Council were adopted, the European Parliament’s suggestions were generally neglected. For example, the task of removing third country nationals remained in the Regulation (“organisation of joint return operations”). Frontex’s role in assisting joint return operations remained because of the strong and general demand of member states. As a senior UKBA official in the European team (UKBA official, interview, 30 March 2010) has stated, the financial burden to operate a return operation is “immense”; the expenses for chartering an aircraft, crew, security guards³⁰ and other professionals are not affordable for small-size member states. Yet an operation can be possible if several member states do this jointly, by chartering an aircraft and crew together because the financial burden of each of member states would

³⁰ Commercial flights are also used to deport irregular migrants; however this involves a few limitations such as maximum numbers.

obviously be correspondingly decreased. Moreover, by having an EU agency, member states could expect to use the agency's budget, funded from the Community budget. This exemplified how member states' interests were prioritised over the concerns of the European Parliament that the agency would be labelled as an "expulsion agency".

Member states also kept the control over Frontex from inside through the Management Board. All member states gained a seat on the Management Board, and each of them gained a veto power in decision-making. Despite non-EU membership, Norway and Iceland were recognised as members of the Management Board with limited voting rights. On the contrary, the UK and Ireland were only given the status of "invitees", hence no voting rights. Their participation in the operational activities of Frontex was fully accepted. The European Commission kept its presence in this state-dominant Management Board, too, with two seats. The number of seats was much fewer than they had originally proposed (12 seats), and was also less than the demand of the LIBE Committee, which was that member states and the European Commission should each appoint six members (European Parliament 2004: 18). The allocation of the Management Board demonstrates that member states have secured their say in the decision-making process while minimising the voice of the European Commission.

The state-centric, intergovernmental structure was identified in the staff composition as well. Despite the point made by the LIBE Committee, Article 17 of the Frontex Regulation clearly stipulated that the agency staff consists of "a sufficient number of officials and of national experts" (Council 2004a).³¹ It transpired that, when the agency was established, Frontex officers were, without exception, national officers seconded from various member states, apart from the supporting administrative staff. Frontex justified this by emphasising the necessity of experts for a quick start-up (Frontex 2006a: 20). Frontex internally had discussions about rebalancing its own employees, including increasing its own staff, as Frontex could better expect continuity in work from its own staff than from seconded national experts who would leave after a few years (Frontex 2006a: 20). The percentage of seconded national experts had dropped to

³¹ "Frontex officials" are those who hold the status of temporary agent and contract agent. Temporary agents conduct substantial work and the term of contract is normally five years, renewable for a further five years. Contract agents are usually engaged in administration. The term of contract varies but is often two years.

one-quarter of the total staff number by 2013 (Frontex 2013: 75). Yet, their presence is still relatively high compared to other EU JHA agencies. For example, the proportion of seconded national experts is 15.6% in Europol³² and 17% in the European Asylum Support Office (European Asylum Support Office 2014: 35). Of about 350 officers, Eurojust has 28 prosecutors ('National Members') who are seconded by each of 28 member states and there are more officers seconded by member states as prosecutors and administrative staff of about 350 in total (Eurojust 2014: 13).

Member states' control over Frontex-coordinating activities was made clear also in the management of technical equipment for joint border operations. Article 7 of the Frontex Regulation stipulated that the agency would have a mechanism to "monitor" the state contribution on equipment, but no enforceable provisions were included and it was left to the discretion of member states regarding the extent to which they would contribute (Council 2004a).

In sum, Frontex, or the agency model, can be placed in the middle of two precedent models, the Common Unit and the European Corps, as summarised in Chart 2 "Characteristics of the Cooperation Models for the EU border regime" (see pages 80-81 for the chart). The Common Unit was more intergovernmental than Frontex in the sense that the Common Unit was created as a component of the Council that represented the interests of member states with no permanent office. Hence the members of the Common Unit had communication problems and tended to protect their home member states' preferences, which significantly weakened attempts at more cohesive forms of cooperation. Moreover, it lacked a legal framework to define its role, which resulted in ambiguity in competence. The European Commission proposal had proposed to place the Common Unit as the command and control body of the European Corps of Border Guards once it was established and became operational; however, this did not happen.

On the other hand, the European Corps was designed in order to bring about a more integrated form of cooperation. The main advocates were the European Commission's DG JHA and the European Parliament's LIBE Committee and a few member states.

³² Europol has 143 officers seconded by EU member states ('liaison officers') out of 912 staff in total as of December 2014 (Europol 2014).

Details were not consolidated compared to the Common Unit, because the European Corps was not established in the end. It was, however, assumed to be aiming for management of borders, not only facilitating cooperation, and to have a permanent basis for the pooled border guards. The border guards of the European Corps were also assumed to work under the single command and control of the Common Unit with equal competence with national border guards. The centralisation of border management at the EU level was actually conceived in this model.

Chart 2: Characteristics of the Cooperation Models for the EU border regime

Cooperation coordinated by	External Borders Practitioners Common Unit	Frontex	European Corps of Border Guards
Institutional nature	Inter-governmental	Intergovernmental (but less so than the Common Unit)	Integrated
Organisational Structure	Regular meetings	Standing organisation	Not specified
Organisational characteristics	<ul style="list-style-type: none"> • Internal Decision-Making Body: Member states' representatives 	<ul style="list-style-type: none"> • Internal Decision-Making Body: Member states and the European Commission • Staff composition: Directly hired staff and Seconded National Experts • Border guards: Member states' voluntary contribution • Equipment: Member states' voluntary contribution 	<ul style="list-style-type: none"> • Internal Decision-Making Body: Not specified • Joint multi-national border guards as Corps' border guards • Its own equipment with the use of the Community budget

Chart 2: Characteristics of the Cooperation Models for the EU border regime (cont.)

Cooperation coordinated by	External Borders Practitioners Common Unit	Frontex	European Corps of Border Guards
Legal framework	None (as part of the Council Working Party)	Council Regulation (2004) as amended later by Council Regulation (2011)	Not specified
Command and control function in joint border operations	<ul style="list-style-type: none"> • Give command and control when the European Corps are mobilised 	<ul style="list-style-type: none"> • No command and control power is given • Deployed border guards exercise equal competence with a hosting member state's border guards 	<ul style="list-style-type: none"> • Command and control are given by the Common Unit • Exercise equal competence with an operation- hosting member state's border guards

Frontex might be created with limited resources and less autonomy compared to the European Corps; however it is still less intergovernmental than the Common Unit was, in the sense that Frontex was established as a standing organisation with its own staff and office, separate from EU institutions and member states. Moreover, Frontex was created in the first pillar within the Treaty of Amsterdam.³³ While member states remained in effective control of the agency in reality, the agency in theory belonged to the communitarised policy area, although the supranational logic was no longer strong by this time. The “Frontex as a ‘hybrid’ nature” theory derives from these contradictory elements in the Frontex-creation process (Berg and Ehin 2006: 53; Monar 2006: 763; Puntischer Riekman 2008: 29).

3.5. Conclusion

This chapter has analysed why and how Frontex was established. By tracing the specific historical paths to choosing one of the various competing models that were discussed among member states and EU institutions, it examined the institutional advantages and limitations of the agency model. This chapter began by explaining that, in the field of EU border management, there was an emerging need for the cooperation model at the EU level in the 2000s. More specifically, a set of important environmental changes, including incorporation of the Schengen *acquis* into EU law, the EU enlargement, security concerns and irregular migration as a highly charged political issue, motivated member states. Different reactions from member states against the Common Unit and the European Corps indicate that, without exception, member states are cautious about the delegation of power to supranational organisations for the EU’s external border management. While the Common Unit was generally accepted by member states, the proposal of the European Corps was received with marked reluctance by most member states, although the European Parliament supported this integrated model.

Choosing the agency structure was therefore a best possible outcome for member states, with its role limited purely to coordination, with no delegated powers. As Bertozzi (2008: 12) has argued, Frontex appeared as a sensible and available option to most parties. Frontex’s creation process may well fit the formulation of the principal-agent

³³ The pillar system was abolished with the Treaty of Lisbon in 2009.

theory, in that the “principals (member states)” effectively set up the institutional designs of their “agent (Frontex)”, so that member states can control and monitor the behaviour of Frontex. Therefore the agency model has a better institutional balance that satisfies member states. These findings do not necessarily exclude other explanations as regards how and why the model agreed for Frontex entailed limited formal powers. Giving Frontex formal power might have caused constitutional problems to member states, for example. If Frontex had gained formal power while border control remains core to national sovereignty, competence would have conflicted between national border authorities and Frontex. National border guards would have had to perform two roles (“double-hatting”) under the two different command structures³⁴, which would also cause a constitutional problem.

Importantly, this state-dominant institutional design for Frontex has resulted in narrowing down the ways researchers have conceptualised the role of Frontex in the wider EU border regime. That is, existing research has lacked a perspective to explore Frontex as a possible agent with transformative effects. Frontex has, rather, been hypothesised as a result of the political decisions. As Pierson (1993:624) has proposed, policies or outcomes of political decisions can restructure politics. State actors may have “a major influence on social relations through an unquantifiable but pervasive set of prohibitions and requirements” but political scientists should also incorporate a perspective that allows for the possibility that policies or outcomes of political decisions can also reshape politics (Pierson 1993: 595). Such arguments suggest that studies relying on the principal-agent approach are limited to exploring unexpected consequences of the “agent (Frontex)”. By interpreting learning effects on the policy implementing actors, such as the day-to-day interactions between border guards, for example, which existing approaches have often lacked, the transformative potential of the role of Frontex can be investigated. This claim is applied empirically in the next three chapters of this dissertation, which analyse different dimensions of Frontex in order to explore its potential effects, which have brought important changes in the EU border regime.

³⁴ This has been observed in the context of the negotiations of the European Public Prosecutor’s Office where a supranational body with formal powers is being proposed by the European Commission.

Chapter 4: Mobilisation Within and Beyond Europe

4.1. Introduction

This chapter analyses the effect of Frontex in facilitating border control cooperation within and beyond Europe. Although promoting the cooperation between member states is in the agency's mandate, the extent to which Frontex has mobilised member states in its operational activities has been controversial and is still unclear. Especially at the time of its creation, scholars were of the opinion that the agency brought a far less integrated border management regime than had been expected, as Frontex did not appear to have changed the member states' "pick-and-choose" approach to cooperation (Pollack and Slominski 2009: 915). Frontex-organised activities, especially joint border operations, rely on the voluntary commitment of the EU member states. The EU member states join and leave Frontex's activities whenever expedient. This leads to the assumption that Frontex's operational output can "only be exploited if the member states are willing to invest time and resources" (*idem.*). Scholars have also argued Frontex lacks effective planning from a longer term perspective because joint border operations are organised as demand arises from the EU member states (Carrera 2007; Wolff 2012). This chapter aims to show that this intergovernmental approach to cooperation has changed. Certain legislative changes, as well as new working customs among border agencies, have gradually increased the member states' involvement in joint border operations, in which process Frontex has played a central role.

This chapter also demonstrates that Frontex has emerged as an effective institution in facilitating the cooperation of third countries with the EU member states. Existing research on Frontex has paid little attention to the role of Frontex as regards third country cooperation because of its presumed role and legal status. That is, Frontex is considered to be an actor playing *at*, not *beyond* the borders. Moreover, Frontex is not an international body in international legal terms, therefore it cannot be a player in external relations. Although Frontex in fact concludes working arrangements with the authorities of third countries, these are at technical and administrative levels, thus no politically meaningful effects are assumed. However, this chapter explains that this "low-level" network between Frontex and third country authorities has had significant impact on the EU border regime.

This chapter is organised as follows. The next section looks at the role of Frontex as an effective enforcement institution in mobilising the EU member states' border agencies. It firstly introduces a broad picture of the externalisation phenomena of border and migration control in Europe, referring to the relevant academic literature. This is followed by analysis of the factors that have shaped state participation in Frontex's activities, with a focus on joint border operations. By tracing the process in which the framework for joint border operations has developed, it is then explained that the "pick-and-choose" approach of the EU member states has changed and Frontex can now expect a more consolidated commitment from the EU member states for its activities.

The third section considers Frontex's role in mobilising the border guards of third countries. This section also begins with a general overview of the recent trends in the EU member states and the EU in "shifting out" of their border control functions. A discussion follows of the ways in which Frontex has exercised its initiatives to scrutinise its potential cooperation partners despite several restrictions on acting in external fields, and has emerged as a broker of cooperation between the EU member states and third countries.

Finally, this chapter analyses the extent to which Frontex has effectively mobilised the EU member states and third countries in the EU border regime, which is the first hypothesis (H1) of this dissertation. It argues that, with certain limitations, Frontex has mobilised those state actors. This is based on the findings of the consolidation of state cooperation at the operational level and the expansion of the EU border regime with third country partners, both of which have important implications for the EU border regime.

4.2. Mobilising the EU Member States for the EU's External Border Control

"The key [for Frontex] is that member states believe in us" (Ilkka Laitinen, Executive Director of Frontex, interview, 14 November 2012). The phrase articulated by the then Frontex executive director, Ilkka Laitinen, precisely expresses the position of Frontex in relation to the EU member states. Given the agency's dependency on member states, the

agency's *raison d'être* has consequently relied very much on member states' attitudes towards the agency. Of many activities, this dependency has most clearly been observed in joint border operations. Organising joint border operations is certainly the main task given to Frontex and also the most widely reported activity of Frontex in the media. Joint border operations are part of the wider trend of supranationalisation of border control practices. As border control is closely related to national sovereignty, the states' intergovernmental commitment to cooperation is considered to remain firmly held. This section firstly introduces the general trend of supranationalisation of border control practices (a "move upwards") and analyses the underlying motivations for participation in Frontex's joint border operations. The section then explains the legislative changes and informal arrangements made in order to consolidate the states' participation.

4.2.1. The Move "Upwards" of Border and Migration Management in Europe

In the last decades, governments have sought to "externalise" conventionally national practices of border control (Boswell 2003). This usually emphasises cooperation with migrant-sending and transit countries (*idem.*). In the European context, this process is more precisely explained by the move of shifting "up" and "out" of border control. According to Geddes (2005: 789), borders are no longer managed solely by national border agencies *at* borders. The border control function has moved "up", "down" and "out", with a greater role played by a variety of actors. The "up" dimension is about border control practices being conducted by the EU through the centralisation or supranationalisation of border control; all the while the transfer of national sovereignty in terms of border control has been limited (Lavenex 2006). The function of border control has shifted "downward" to the elected local authorities (Guiraudon and Lahav 2000: 164) and to other domestic national and local actors such as courts and migrant-aid organisations (Lavenex 2006). Guiraudon and Lahav (2000: 164) have carried out an investigation into the ways private actors (e.g. airline carriers, shipping companies, employers and private security agencies) have played a part in border management. "Shifting out" of border control refers to the delegating of border control functions to third countries, as mentioned earlier. In Lavenex's terms (2006: 334), this is about the shifting locus of border control further afield from the territory.

Why do governments shift their border control function, especially if cooperation is associated with loss of state autonomy and transfers of sovereignty? Lavenex (2006)

and Wolf (1999) have argued that externalisation does not necessary mean the giving up of state autonomy: rather, it can reinforce it. This is because “it can strengthen the executive by establishing an additional political arena” (Wolf 1999: 336). This intergovernmental political arena is dominated by government representatives and, according to Lavenex (2006: 331), this strengthens the autonomy of the government:

Government representatives gain autonomy because their action at the intergovernmental level is shielded from the pluralistic domestic arena, where they compete with other actors on the “right” interpretation of social problems and possible policy solutions. (...) Usually gathering representatives from the same ministries, intergovernmental cooperation frameworks are often relatively homogeneous, and thus favour particular policy options over others.

From this perspective, the EU member states appear highly strategic actors that “upwards” their agenda such as border and migration management at the EU level, for reasons that are not confined to purely searching for better solutions. It also implies that cooperation does not necessarily mean that the EU member states *want* to centralise their border control function at the EU level, for example, through the initiatives of Frontex. The EU member states may have agreed to have operational cooperation for tightening border management, so escaping from criticisms that the executives may receive from their rivals in domestic politics. However there are other multiple factors when explaining the degree of state commitment to Frontex’s joint border operations. Both functional and political considerations come into play in this case.

There are at least two functional or practical factors that explain state participation. Frontex’s Deputy Executive Director, a UKBA European team senior official, and the COWI’s evaluation report have each confirmed that difficulties in ensuring sufficient national border guards and equipment for joint border operations can arise from the mismatch of needs and supply (COWI 2010: 36; UKBA official, interview, 22 July 2011; Gil Arias-Fernández, Deputy Executive Director of Frontex, interview, 14 November 2012). There is a variety of skills and qualifications for border control that is unique to each border locality. This means that the required skills and experiences of border guards vary according to where a joint border operation is launched, and also in terms of the objectives of joint border operations. Some operations focus on identification of detected migrants’ nationality, in which case the expertise needed is that of interrogation and knowledge of languages and the socio-political backgrounds of

sending countries. Skills to detect forged documents may be emphasised in some other joint border operations. The same can be said for equipment. Sea border operations will obviously need vessels while land border operations require vehicles. Even when a member state's border agency is willing to cooperate, sending their personnel would not be of much help if personnel with the requested skills were not available to send. Thus it is not surprising that southern member states may have taken part more often in joint operations in the Mediterranean Sea, while member states located at or closer to eastern land borders have participated most in land border operations. "Inland" member states such as the Netherlands, Belgium and the UK, meanwhile, have invested most in joint air operations.³⁵ As a result, there may be some imbalance in terms of state contribution.

Another functional factor is to view the member states as a problem solver: an actor seeking ways to reduce irregular migration. Interviews with national and Frontex officers have revealed that member states tend to participate in joint operations that may effectively reduce irregular migrants passing through or coming to their own territories. Map 1 "Routes of Irregular Migration to Europe" (see page 89) indicates some routes of irregular migration to Europe identified by the International Centre for Migration Policy Development (ICMPD) (ICMPD 2014).

One route of irregular migration, for instance, passes through Istanbul and moves to Bulgaria, Romania and Hungary and then finally reaches France. In the UK and northern Europe, meanwhile, Afghans are shown to comprise the highest number of irregular migrants. An account of a Polish senior border official explains how the concern of national border agencies revolves around the national levels, though it is not the only concern:

We consider how sensitive that border is, how much it [a joint operation] helps to protect the EU (...) to help Polish citizens. In addition, in an informal way, other member states ask Poland to join. If there are Polish-speaking people involved, then it makes sense that Polish-speaking officers are there (Polish border agency senior official, interview, 8 September 2011).

³⁵ This tendency is identified by the author based on the data available in Frontex Annual Reports from 2005 to 2013.

Map 1: Routes of Irregular Migration to Europe



(ICMPD 2014)

It should thus follow that the Polish border agency has participated in all joint operations for eastern and central land borders, while its involvement in sea operations is limited (Frontex 2013: 57-59).

Speaking of political factors, the domestic politics of each member state affects the degree of state participation in joint border operations (Lahav 2004). This applies in cases where the executives cannot “escape from domestic politics”, and yield to their opponents’ views on participation. It can happen, for example, when the public does not support their state’s involvement in joint border operations. Then the national border agency of a concerned state may well be hesitant to take part in joint operations. A national police officer of a member state has observed the unwillingness of some other member states’ border agencies for this reason (Greek Coast Guard official, interview, 2 April 2012). A senior Frontex official who worked for the Spanish police before joining

Frontex has also recognised a few such cases in the past, stating that “some member states do not participate because of domestic opposition” based on his experience in negotiating with member states, though the clear evidence of such an impact is not presented (Frontex official P, interview, 14 November 2012).

It has also appeared that the informal peer pressure from the EU member states and the EU institutions have shaped the decisions of the EU member states as to the joint operations in which they should participate. This arises from considerations of the kinds of behaviour seen as “appropriate”. A senior Frontex Operational Office officer has stated that it is “absolutely normal” that EU member states are more interested in participating in joint operations that influence the migration flow heading for their countries. However, EU member states can still contribute to joint operations that do not directly affect their countries for solidarity reasons. The officer referred to Latvia, Estonia and Lithuania as example states because those member states have had “really strong contribution” to the joint operations at the Greek-Turkish borders, although the migration flow passing the Greek-Turkish border have not directly influenced Baltic countries (Frontex Operational Office official, interview, 2 April 2012). This has been confirmed by the aforementioned senior officer of the Greek Coast Guard. According to the officer, larger member states are not always the biggest contributors. In the case of Joint Operation Poseidon that covers Greek borders, again, Latvia and Lithuania appeared as the main contributors from the officer’s point of view (Greek Coast Guard senior official, interview, 2 April 2012). This Greek officer has added that this derives from “political rather than operational reasons” (*idem.*). As these interviewees’ experience shows, some member states have regarded the participation in Frontex’s operational activities as a convenient way to show their commitment to EU projects. This factor has most applied to the newly entered member states such as Baltic states and also Croatia, Romania and Bulgaria, which are still in the process of accessing to the Schengen agreement and therefore need to show their “Europeanness” to their peer member states and the EU institutions. Romania was one of the most committed participants in joint border operations during the period 2005-2013,³⁶ and such motivations have been recognised by a Romanian police officer who served a joint

³⁶ Based on the data available in Frontex Annual Reports from 2005 to 2013.

operation in Greece as a coordinator (Frontex guest officer from Romania, interview, 4 April 2012). A French seconded national expert for the Frontex air border sector has explained how such informal pressure can be a motivating factor for participating in Frontex joint border operations:

[The level of contribution] is not always according to size and population of member states. Romania and Baltic countries have been good contributors of Frontex operations. It is clear for Romania that it is a way to show its commitment as a Schengen accession country. Baltic countries may be the same [that they participate in order to show their commitment] (French official I (SNE), interview, 30 October 2012).

These complex factors have made it difficult for Frontex to predict the level of participation in each joint operation and mobilise member states to secure the border guards and equipment they need.

4.2.2. Frontex Joint Border Operation and State Participation

As explained in the previous section, Frontex's organisation of joint operations is up to the member states, for which commitment could vary due to different factors. The result of this voluntary participation has turned out to be positive. Since Frontex has begun its operational activities, joint border operations have rapidly increased. Starting from only one single land operation in 2005, the number of joint operations increased to 23 in 2014 (Frontex 2014: 47-50).³⁷ The joint operations now cover the major EU external border areas, from western Mediterranean borders to eastern land borders and major international airports in Europe. Joint operations called "Jupiter" and "Neptune" cover the central and eastern land borders and "Hera", "Minerva" and "Poseidon" cover southern sea borders, to name a few. For these border operations, all member states have participated more than once.

In 2014, 28 member states including non-EU Schengen member states such as Switzerland contributed to sea, land and air border operations (*idem.*). The number of border guards deployed by the member states has been more than 1,500 a year, at least since 2009 when the figure became available to the public (Frontex 2009, 2010a, 2011d,

³⁷ The number excludes pilot projects and joint return operations.

2012f, 2013a). Member states sent over 2,500 border guards in 2011 in response to the emergency operation RABIT that was launched to assist the Greek border authorities. These figures have shown that Frontex has gained a stable commitment in border guards provided by member states, which is itself a significant development, particularly when no sanction measures have been formally devised for non-participation.

However, the member states' commitment was not ensured from the beginning. In fact, Frontex suffered from a lack of border guards, equipment, and other resources due to the unwillingness of other member states and has encountered several difficult moments when launching joint operations. According to *EUobserver* (Goldirova 2007), Frontex received fewer resources than had been promised by member states for Joint Operation Nautilus in 2007, which was set up to patrol the Maltese sea borders. It has been reported that Frontex had only secured 20 boats and four helicopters, when 115 boats, 25 helicopters, 23 aircrafts and other equipment had been supposedly deployed from member states (*idem.*). Researchers have analysed the arising disagreement among member states on who would take responsibility for the migrants saved at sea, in the case of Joint Operation Nautilus (Baldaccini 2010: 240). The European Parliament, a proponent of the centralisation of border management at the EU level, expressed its deep regret at this result. It argued that member states “failed to honour their undertakings to provide logistic and human support for its operations” and Frontex “must have the resources that are necessary for its actions” (European Parliament 2007: 10).

In light of these difficulties, Wolff (2012: 147) has argued that Frontex joint operations are “emergency operations, launched on a short-term basis at the request of member states”. Her argument continues:

despite that embodiment of EU external border management by Frontex, there is still an important role for member states, which are responsible for the implementation of border management, in the absence of European border guards. The agency is merely a platform that coordinates the operations of the member states.

From this point of view, the process of mobilising the member states was indeed chaotic, characterised by struggles over the conflicting preferences of member states

(Wolff 2012: 129).

4.2.2.1. Creation of the Rapid Border Intervention Team

Frontex has, however, acquired several mechanisms that have improved its organisational capacity. An initial major change was the introduction of the rapid border intervention team (RABIT) in 2007 (European Parliament and Council 2007b). RABIT is a mechanism for emergency situations. When a member state is “facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of the Member State illegally”, that member state can request Frontex to send a rapid border intervention team (European Parliament and Council 2007b: Art. 1). The important change with this rule is that member states “must” make their border guards available upon the request of Frontex (European Parliament and Council 2007b: Art. 4). Before the adoption of the rapid border intervention mechanism, cases of irregular border crossings in the Mediterranean Sea borders were already increasing. Spain, Italy, Malta and Greece had been most affected and there was an accepted need among member states which share a border free zone to “respond immediately to crisis situations, in particular through speedy coordination procedures with member states participating in Frontex operations” (Council 2006a: 15).

When a member state sends a request to Frontex for an emergency operation, the Frontex Executive Director firstly decides whether to deploy a team. If the Executive Director decides to deploy a team, member states “immediately communicate the number, names and profiles of border guards from their national pool which they are able to make available within five days to be members of a team” (European Parliament and Council 2007b: Art. 8b). Upon the nomination of the available border guards by member states, the Frontex Management Board approves the competences of border guards that are requested for the operation³⁸, and also the overall number of border guards that each member state is requested to contribute (Peers 2012: 139-140). Frontex

³⁸ Nominated border guards for the rapid border intervention team are requested to have several years of border control experience at international airports, external sea and land borders and knowledge of English. The core competences also include knowledge of surveillance, border checks, second line interviewing, threat and risk analysis and advanced document expertise. Optional skills are leadership, profiling of risk travelers, detection of stolen cars, dog handling, radar operation, etc. (Peers 2012: 140).

and a RABIT-requesting member state together draft a detailed plan of the operation (“operational plan”), taking into consideration the availability and skills of the border guards. Once the plan is made, the border guards have to be swiftly mobilised as the deployment is supposed to take place no later than five working days after the agreement of the plan between Frontex’s Executive Director and the requesting member state (*idem.*).

Although the mechanism of the rapid border intervention team was replaced with the European Border Guard Teams (EBGTs) by the legislative amendment in 2011, the rapid border intervention mechanism is important as, for the first time, this formally obliged member states to commit to a specific joint border operation. It made the role of Frontex visible under the emergency situations. Besides, it introduced the compulsory participation element for the first time in border operations at the EU level, to which member states are generally opposed. Monar (2008: 116), for instance, described it as the “new solidarity instrument”. Baldaccini (2010: 235) has named this the “compulsory solidarity” mechanism. The LIBE Committee also evaluated this mechanism by stating that it “for the first time, made solidarity in the area of immigration compulsory rather than optional” in its report during the 6th Parliamentary term in 2007 (European Parliament 2007: 10).

In the rapid border intervention mechanism, Frontex appeared as a decision-taker in joint operations as well as the EU member states and the European Commission. In terms of the research aims of this dissertation, looking at how Frontex’s role is defined in the Regulation is important in analysing the development of the agency’s competence as a regime changing actor. The Regulation stipulated that the Frontex Executive Director was the actor who interprets the “situation of urgent and exceptional pressure” at an external border of a member state in order to decide the deployment. According to Beckett (2013: 86), the power to declare “an emergency (...) grants expanded powers to the executive branch of government and allows certain actions to be carried out without legislative debate or deliberation”. This account refers to the case of nation states’ executive function, and correctly recognises the importance of being able to interpret and address the emergency situations. Although it is only “on paper” and member states and the European Commission are as involved in this decision-making process as the representatives of the Frontex Management Board, the decision addressed by the

Executive Director cannot easily be ignored as it is included in the Regulation (European Parliament and Council 2007b).

Another important development is that the border guards deployed as part of Frontex joint operations (so-called “guest officers”) have acquired the ability to “perform all tasks and exercise all powers for border checks or border surveillance” (European Parliament and Council 2007b: Art.10) with the exception of one critical power. This power is about authority to reject people crossing a border. This is considered critical since such power is only referred to national officers of an operation-hosting member state, according to a Frontex external relations officer (Frontex official A, interview, 4 May 2010). In fact, the Schengen Borders Code has defined that the entry may only be refused by an authority empowered by national law (European Parliament and Council 2006). McDonough and Tsourdi have empirically identified that, in the Greek joint operations, guest officers were acting only in the presence and under the command of the Hellenic (Greek) Police (McDonough and Tsourdi 2012: 78). In spite of this critical difference between guest officers and joint operation-hosting border guards, the guest officers have almost the same powers with national border guards and hence have a quite substantial influence in the country of the operation.

The guest officers’ competence was initially unspecified in the Frontex Regulation of 2004. However the RABIT Regulation has given the legal back-up to the guest officers by clarifying what they can do and cannot do. This legal back-up was applied to those who are deployed for normal joint operations. This provision has therefore enabled the team of border guards that Frontex organises to play a substantial role on the ground. In sum, that guest officers have acquired almost equal competence with national border guards indicates the shift-up of border control to the European level.

It should be noted that, although the rapid border intervention mechanism brought the compulsory involvement of member states, member states successfully inserted “safeguarding clauses” in the Regulation (European Parliament and Council 2007b) so that they could be exempted from this obligation. Article 4 ensures that member states do not have to commit to the rapid border intervention operations if they are experiencing an exceptional situation that would substantially affect the discharge of national tasks. Furthermore, member states retained autonomy over the selection of staff

and the duration of deployment (Peers 2012: 140).³⁹

The first and only implementation of the rapid border intervention mechanism took place in Greece in 2010-2011. By the late 2000s, the Greek land and sea borders had emerged as the main route of irregular migration to Europe. As a senior Greek Coast Guard official has stated, “migrants identified it [Greece] a weak security point or an opportunity for them” (Greek Coast Guard senior official, interview, 2 April 2012): the Greek borders were recognised as the “porous” borders. For one thing, a complicated geographical shape with a number of small islands had made it difficult to conduct effective border surveillance. The Greek land border is no easier than its sea borders. The River Evros, dividing Greece and Turkey, can change its route and depth by the season. For another Turkey has become the main “transit country” of irregular migration to Europe in the last decades, partly due to its generous visa policy towards countries such as Syria and Libya. Nationals of these countries thus go to Turkey and then head for the EU. In the midst of the severe financial crisis, the Greek border authority had a tight budget to run its mission (*idem.*). Incapability to manage its border led Greece to call for emergency help from Frontex.

Frontex’s Executive Director sent a positive reply the following day. Within five days of the decision, 175 national border guards and technical equipment were made available by member states (Human Rights Watch 2011: 1). What enabled the Executive Director to make a decision in such a short time was the consensus already reached among member states, the European Commission (DG Home) and Frontex. Several interviews have indicated it was not a surprise that the deployment of the first rapid border intervention team was to Greece. As explained earlier, it appeared clear for some border guards like a senior Frontex pooled resources officer that the Greek borders were “porous” and irregular border crossings had concentrated on their borders and that the authorities had little financial back-up (Frontex official B (SNE), interview, 2010). A Polish senior border official in the international cooperation bureau has stated that “we were ready for it [deployment]” (Polish border agency senior official, interview, 8

³⁹ Another country-specific exemption was applied for by the UK and Ireland. As non-Schengen member states, they were not included in this emergency operation mechanism at all (European Parliament and Council 2007: Preamble 23, 24).

September 2011).

The rapid border intervention operation in Greece showed that the compulsory commitment of national border agencies worked. All EU member states and Schengen Associated Countries (Norway, Iceland and Switzerland) immediately responded to the call from Frontex and Greece, with the exception of the UK and Ireland which, as non-Schengen members, were not invited. On this occasion the pattern of cooperation was clearly more structured than previous joint border operations.

4.2.2.2. Creation of the European Border Guard Team and other enforcement mechanisms

An amendment made to the Frontex Regulation in 2011 has also brought several significant changes (European Parliament and Council 2011), which has showed the further “shift up” of border control to the EU level. It applied the compulsory contribution rule to member states for other regular joint border operations. The new Regulation abolished the divide between joint border operations and rapid border intervention operations in terms of the resource (border guards) supply, and created the “European Border Guard Team (EBGT)” pool. Member states must ensure an agreed number of their border guards are available for both types of operations at the disposal of Frontex’s planning (European Parliament and Council 2011). Because joint border operations are under operation throughout the EU’s external borders throughout the year, member states are required to make a regular commitment. The burden is inevitably higher than was the case with the rapid border intervention mechanism, thus this change has led to the consolidation of a more tightly regulated EU level border management system.

Despite relatively little attention, the creation of a new post, “seconded guest officers”, is also important, as this has enabled Frontex to use national border guards in its own way in joint border operations. Seconded guest officers, like guest officers, work in joint border operations. The difference is that, while guest officers are sent by member states only to serve for a specific joint operation, seconded guest officers are sent by member states for a specific period of time. This means that Frontex can relocate a border guard from one operation to another as his or her skills are required, without having to draw consent from his or her home state each time for every relocation according to a

German seconded national expert for Frontex, who manages the human resources for joint operations (Frontex official T (SNE), interview, 30 November 2012). This has increased Frontex's capability to coordinate joint operations using its own initiative.

The regular commitment of member states has been ensured on technical equipment as well. In 2011 Frontex renewed the monitoring system for available equipment of member states for the use of joint border operations, from "Centralised Record of Available Technical Equipment (CRATE)" to "Operational Resources Management System (OPERA)". The mechanism needed to change so that the "new solidarity instrument", in Monar's terms, could also be used for equipment. COWI, the private research institute tasked by the European Commission to evaluate the performance of Frontex, criticised the performance of CRATE by identifying that equipment listed in CRATE was "not automatically deployable" (COWI 2009: 55-56). This was because member states did not always deliver equipment due to the cost of leasing it (*idem.*). This has caused the situations in which "the most appropriate equipment or assets are not actually made available by the Member State as planned" (COWI 2009: 54). A Frontex operational resources officer has also confirmed this flaw in CRATE (Frontex official T (SNE), interview, 30 November 2012). The succeeding model OPERA was built with the aim of making state equipment available. Frontex did so by setting out the minimum compulsory contribution and, in return, ensuring the reimbursement of the cost of deploying equipment, which has resulted in increasing the commitment of member states (Gil Arias-Fernández, Deputy Executive Director of Frontex, interview, 14 November 2012). Frontex's Executive Director has described CRATE as "an e-shop, you can watch it on your screen and decide what you need, then order it and pay for it" (Laitinen 2014).

In parallel, Frontex has acquired the competence to "acquire, itself or in co-ownership with a Member State, or lease equipment for joint operations" (European Parliament and Council 2011: Art. 7). Gaining (co-)ownership of equipment is innovative for non-national organisations like Frontex. As a senior Frontex official in the legal section has observed, this is because Frontex would "have more say" to member states about the use of equipment, which had previously been totally up to the willingness of member states (Frontex official K, interview, 5 November 2012). For this, the legal concern of Frontex, that international law requires that equipment such as a vessel be registered in

a country and be given a nationality (“flag state”), was removed by opening up the possibility of co-ownership with a member state.

All these changes in legislation and working rules show that the member states’ decisions as to whether, and the extent to which, they participate in joint border operations are determined not only by resource availability and domestic politics but also by institutional rules at the EU level. These legislations and working rules are now embedded as part of the competence of Frontex. This fact is important for Frontex in terms of the persistence of change in institutional environments.

Last but not least, Frontex has developed “annual bilateral negotiations”, which have shaped a pattern of cooperation among the member states. This is a meeting held every October at Frontex headquarters in order to discuss the number and type of border guards and equipment needed for joint border operations planned for the next year. This is an occasion in which national border officials in charge and Frontex officials gather and “negotiate” to reach a consensus. Since the beginning of its operations, Frontex had communications with national border agencies for resources, but only on an *ad hoc* basis, taking place for every operation, and the formalised procedure did not exist. The consensus reached in this negotiation meeting may change, as Frontex seconded national experts of the air border section and of the operational resources have confirmed, if, for example, the domestic financial situation of a member state changed and border guards or equipment were no longer available (Frontex official I (SNE), interview, 30 October 2012; Frontex official T (SNE), interview, 30 November 2012). However, the set-up of the bilateral annual negotiations has enabled Frontex to estimate the expected contribution for the next year overall.

The institutionalisation of the regular meetings places informal pressure on national border agencies for participation in joint border operations, although leeway is given to national border agencies to decide the extent to which they contribute. However there is an opportunity for Frontex to draw concessions as well (*idem.*). Frontex may request a maximum contribution from each national border agency, while national border agencies may wish to make a more moderate offer. Moreover, ensuring the participation of the member states and foreknowledge of the number and type of resources implies the increased ability of Frontex to organise joint border operations on its own initiative.

This changes the nature of joint border operations from what has been criticised as “emergency-driven” (Carrera 2007) to more strategy-driven operations. This eventually brings an inter-organisational structure of cooperation by the member states, as the pattern of joint border operations is no longer sporadic but based on the prior planning by Frontex officials in consultation with member states’ officers.

4.2.2.3. Increased interaction and shaping inter-organisational cooperation

Member states may be the main supplier of resources for joint border operations, and Frontex has continued to be dependent on their contributions. However the asymmetrical relation between Frontex and member states has gradually changed. Frontex has gained room to exercise its initiatives to plan and implement joint border operations. Frontex has had an integrative effect on the EU border regime by ensuring more committed resource sharing by national border authorities of member states.

This section has analysed the role of Frontex in changing the state approach to cooperation through the development of joint border operations. Contrary to the agency’s allegedly complete dependency on the EU member states for resources and so far putting forward no initiatives of its own to increase the state commitment, there have been a number of mechanisms, formal and informal, that have increased the state commitment. At the same time, these institutionalised frameworks have brought about regular interaction between national border agencies and Frontex, which has influenced the shape of the inter-organisational cooperation pattern. This illustrates the agency’s impact in the shifting up of the European border control through the integration of the member states’ border agencies in a more consistent and regular way. In the next section, the role of Frontex in mobilising third country authorities is analysed.

4.3. Frontex as a cooperation broker beyond the EU

Third country cooperation by Frontex has had a significant impact on the EU border regime, with a “shifting out” of border control beyond EU territory. Although there is arguably a political consequence, Frontex’s role in third country cooperation has not been fully discussed. Two main reasons can be identified. One is that Frontex is considered to be acting *at*, not beyond the EU’s external borders. The other is that Frontex establishes partnerships with third country authorities by concluding “working arrangements”, and the “working arrangement” is regarded as a simple technical and

administrative arrangement, thus no political significance is expected. Contrary to these formulations, this section shows that Frontex is active *beyond* the EU's external borders and that the cooperation networks through working arrangements have resulted in diffusion of EU models and standards in border management and in connecting member states and third countries, which might not have been observed without Frontex.

4.3.1. The Move “Outwards” of European Border and Migration Control

Many scholarly works have paid attention to, and discussed the shift “outward” of, the EU member states’ border management by involving “the other side” of the EU’s external borders. According to Lavenex (2006: 334), the main instruments of this “externalisation” of border control include the coordination of visa policies, the introduction of carrier liability and the placing of national liaison officers from the ministry of home affairs at airports in countries of origin in order to check that documentation was thoroughly examined. Another device is the mobilisation of third countries in the control of migration flows to Europe, mainly through the adoption of the “safe third country” rule (*idem.*). The safe third country rule is the legal standard set out by the EU and member states. It is aimed at member states “shifting responsibility for refugees to third countries (...) provided that the principle of *non-refoulement* be respected” there (Gil-Bazo 2006: 595). Asylum seekers who have passed through a country recognised as “safe” before reaching EU territory may be sent back to that safe third country without their asylum claims being considered.

Furthermore, the conclusion of “readmission agreements” has emerged as a popular instrument for member states and the EU to shift out the border management function. This is an international agreement composed of a set of obligations and procedures to send back irregular migrants from an EU member state to a third country. Third countries commit themselves to “readmit” irregular migrants who are their nationals or who had entered the EU member states through their territories (Boswell 2003: 622). The EU member states have identified readmission agreements as an effective instrument for returning irregular migrants. France has concluded a readmission agreement with Tunisia, the Republic of Congo, Gabon, Cameroon, Benin and Senegal. Spain has cooperated with Morocco, Ghana, Burkina Faso, Mali, Guinea, Guinea-Bissau and Senegal under the same framework (Clochard and Rekacewicz 2010).

These instruments are not immune from criticism. Researchers, international organisations and pro-migrant NGOs have blamed EU member states such as Italy for its readmission agreement with third countries like Libya. This is because, in the case of Italy-Libya cooperation, Libya is a non-signatory to the Geneva Refugee Convention and thus the deportees' rights, especially those of *non-refoulement*, are not ensured (Amnesty International 2005; United Nations Office of High Commissioner for Human Rights 2012). Their concern is also that security dimensions are prioritised in readmission agreements rather than the protection of the deported migrants (United Nations Office of High Commissioner for Human Rights 2012). In keeping with Gil-Bazo's definition of the safe third country, mentioned above, these instruments are used by EU member states to avoid their responsibility for refugees (Betts and Milner 2007).

Third country involvement has been increasingly promoted at the EU level, too, in the last decades. Boswell has pointed out that "no settled pattern of cooperation has yet emerged" at the EU level and that "the EU is still struggling to define which forms of cooperation and which policy instruments can best realise the goals of migration policy" (Boswell 2003: 619). This has resulted in mobilising third countries for border control purposes through different policy programmes. "Association Agreements", "Partnership and Cooperation Agreements" and "Framework Agreements", each of which is concluded between the EU, its member states and non EU countries to strengthen cooperation in a wide range of areas, typically have provisions on migration and border management issues. In the Development and Cooperation fields, the EU funds third countries on issues relating to asylum and scope of migration. These have been realised through "financial and technical assistance to third countries in the area of migration and asylum" (European Commission 2004). The EU has emerged as the actor that concludes such settlements as readmission agreements and visa facilitation agreements (European Commission 2014c: 3). The EU member states which assented to the agreements between the EU and third countries would enjoy the removal of irregular migrants outside their territories. In return, third countries which concluded agreements with the EU would usually receive technical and financial assistance from the EU. Morocco and Turkey each signed a readmission agreement with the EU in 2013. These developments indicate that the EU has acted as a facilitator of cooperation between member states and third countries.

4.3.2. Frontex and Third Country Cooperation

Existing research has paid little attention to whether Frontex has played a role in mobilising third countries for the EU's external border management. Contrary to such assumptions, Frontex has established a cooperative relationship with a number of authorities of third countries and regional entities in the world. Frontex has announced that it has had cooperation with the border agencies of 17 third countries and two regional entities by concluding an official working arrangement (Frontex 2014b). They are: Russian Federation, Ukraine, Moldova, Georgia, the former Yugoslav Republic of Macedonia (FYROM), Serbia, Albania, Bosnia and Herzegovina, the USA, Montenegro, Belarus, Canada, Cape Verde, Nigeria, Armenia, Turkey, Azerbaijan, the Commonwealth Independent States (CIS) Border Troop Commanders Council and the Migration, Asylum, Refugees Regional Initiative (MARRI) Regional Centre in the Western Balkans (*idem.*). Frontex is negotiating for cooperation with another seven countries: Libya, Morocco, Senegal, Mauritania, Egypt, Brazil and Tunisia (*idem.*). This list shows that six out of eight EU candidate and potential candidate countries (Albania, FYROM, Serbia, Bosnia and Herzegovina, Montenegro and Turkey) are working with Frontex. It also illustrates that the countries surrounding the EU, such as Belarus and Azerbaijan, as well as migration-sending countries like Cape Verde and Nigeria, are networked with Frontex. Furthermore, Frontex has set up contacts with the USA and Canada, which are strategic partners for Frontex to exchange technology and information. Though no formal arrangements have been concluded, Frontex has established direct contact with the border agencies of the United Arab Emirates, China, Thailand and Hong Kong. These countries have important airport hubs with direct flight connections to Europe, thus Frontex has an interest in exploring practical cooperation (Frontex 2013: 13). Just looking at the list of the partner countries of Frontex makes clear that the network for the EU's external border management is spreading around the EU and to remote areas such as Asia.

Frontex's role in third countries' involvement in the EU border regime is not emphasised solely because of the number of the partner agencies. More importantly, as this section will explain, the activities that Frontex has offered and implemented in cooperation with those third country agencies are an example of how the border regime is being changed in new and novel ways. At the same time as Frontex takes into account

the preferences of member states and the European Commission, it is an active agent that expands and consolidates the network of cooperation in its own right.

4.3.2.1. Capacity Building

To begin with, the agency has exploited mainly two areas of activities in which to work with third country authorities: capacity building and joint border operations. For one thing, Frontex has provided assistance to the partner agencies to improve the level of their border management. This capacity building cooperation focuses on risk analysis and training. Frontex has developed the common integrated risk analysis model (CIRAM) to assess the risk level of specific borders (see Chapter 6 for details). CIRAM uses a set of common definitions and indicators so that the results of analysis are easily compared among the authorities which use the same model. The implementation of CIRAM in third countries has been conducted in the strategic interests of Frontex to gather readable and reliable data produced by these partner agencies. Frontex officers in the risk analysis unit particularly have found the transfer of CIRAM useful because some third countries lack the capacity to produce statistical data.

In fact, Frontex has most enjoyed the cooperation network in the field of risk analysis. The Western Balkans risk analysis network (WB-RAN), Eastern Borders Risk Analysis Network (EB-RAN), and the Africa-Frontex Intelligence Community (AFIC) are examples of the risk analysis network (Frontex 2014c; 2014d; 2014e). Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia cooperate with Frontex in the framework of WB-RAN, Belarus, Ukraine and Moldova do so in EB-RAN, and AFIC includes most northern and western African countries. Through these networks the intelligence officers of Frontex and the partner agencies exchange knowledge in the common language that Frontex has developed. This is advantageous for the Frontex risk analysis unit to have more precise data on the routes of irregular migration *before* migrants reach the EU. Frontex can also be involved in identifying smuggled goods such as tobacco and stolen cars and motorcycles. These analysis-involved activities can increase the quality of Frontex risk analysis products, which may eventually help to gain the trust of member states and the EU institutions.

Frontex has also transferred the common curriculums for border guard training to the

partner border agencies. The common curriculums have been implemented especially in the EU candidate countries because the border guard training to EU standards is considered a preparatory exercise to assess future members' ability to control borders. Other than implementing training tools, Frontex has offered a one-week course for the border guard trainers of third countries (Frontex 2014f) who would be implementing the training standards of the EU in their home countries on behalf of the EU.

The EU member states have recognised the merits of the capacity building of third countries as a preventative instrument against irregular migration, and the amended Frontex Regulation has officially given Frontex the ability to give technical assistance (European Parliament and Council 2011). Article 14 of the Regulation stipulates that the agency “may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation”. Frontex has become an assistance provider for the EU. As this chapter discusses later, an implication of this is that a third country may become involved in EU border management even when it has no direct bilateral agreement with an EU member state or with the EU.

Liaison officers in third countries are among the most recent positions set up for Frontex in the field of third country cooperation (European Parliament and Council 2011). No liaison officer has been deployed by Frontex as of 2014, but they are supposed to establish and maintain contacts with the competent authority in a deployed third country “with a view to contributing to the prevention of and fight against illegal immigration and the return of illegal migrants” (*idem.*). The deployment of liaison officers is typical of the “externalisation” instruments that EU member states have implemented. The potential impact of this new role is huge as this will enable Frontex to regulate the movement of migrants-to-be from the EU's interest perspectives.

4.3.2.2. Joint Border Operations with Third Country Agencies

Frontex joint border operations are another main area of activities that the agency conducts in close cooperation with third countries. Frontex does so because the involvement of the third country officials in the operations is an effective strategy to block irregular border crossings by legitimately acting outside the EU member states' territories. One such operation is Joint Operation Hera. Hera began in 2006 at the request of the Spanish authority concerning its sea borders with the Canary Islands, and

has been participated in by multiple EU member states. Using the bilateral agreement that Spain has concluded with Senegal and Mauritania, the border guards of Hera patrolled the Senegalese sea territory with the cooperation of Senegalese authorities (Bailey 2006). In the patrol, Carrera (2007:22) has argued that at least one Senegalese border official was on board so that an authority of the territory in question was present in order to stop and return migrants inside the Senegalese territorial waters. The subsequent “successful” decrease of irregular migrants from those third countries’ authorities, claims Frontex Executive Director, is a direct result of third country cooperation (Frontex 2007a:4).

In more recent joint border operations, Russian border guard officers have participated in Joint Operation Poseidon in 2010, which was implemented for the management of the Greek-Turkish borders. Those Russian observers were, according to Frontex (2010a: 25), allocated to the border crossing points according to their expertise and profiles (*idem.*). Joint Operation Neptune, operating in the western Balkans in the same year, had Serbian border guards to support the monitoring of the border situations inside Serbia. “Serbian observers [who were inside the EU as part of Neptune] were in constant contact with their mobile patrols [on the Serbian side] in order to prevent illegal border crossings from Serbia to Hungary”, and directly gave “recommendations on possible changes in Serbian mobile patrols” (*idem.*).

Third country officials are invited to Frontex joint border operations and granted observer status,⁴⁰ thus they do not have legal competence for border checks and surveillance. However the significance of their presence in border management is clear, as illustrated by the abovementioned operations. It has enabled the joint border operations to have smooth communication with the border authority on the other side of the border and, in extreme cases, to prevent migrants from crossing borders in advance.

⁴⁰ The Frontex Regulation in 2004 did not have provisions on third country officials’ involvement in Frontex activities. Given the increased importance, the legal basis has been made with the amended Frontex Regulation (European Parliament and Council 2011). Article 14 stipulates that Frontex may have third country officials as observers for its main activities.

4.3.2.3. *Is Frontex an Actor in External Relations?*

The role of Frontex in mobilising third countries is, as this section has showed, not negligible in the debates of “shifting out” of border control in the EU. This has offered the diffusion of the “EU standards” such as CIRAM, the common training curriculums to third countries, and the inclusion of third country border officials for joint operations. Moreover, *via* Frontex, EU member states gain opportunities to work with third countries with which they do not have formal cooperation agreements. For example, multiple EU member states have taken part in Joint Operation Hera to assist with Spanish border management. Consequently, some member states might have initial contacts and working experiences with Senegalese and Mauritanian authorities. Frontex provides opportunities to the member states to have interaction at the operational level. In other words, Frontex plays a role as a cooperation broker between the EU member states and third countries.

Nonetheless, there are a few reservations to viewing Frontex as an autonomous actor in external relations. One is the limited status of Frontex in external relations. Although the amendment of Frontex Regulation in 2011 has reflected the agency’s increased role in third country cooperation by providing greater detail and more assigned roles (e.g. Frontex liaison officers to third countries) to it (European Parliament and Council 2011), Frontex can act only within what is assigned in administrative level agreements (“working arrangement”⁴¹), which the member states and the European Commission check and monitor before those agreements are concluded.

According to Fink (2012: 25), while working arrangements are not strictly legally defined (“unknown in EU law”), it is commonly understood that they are “not meant to be of a political nature but instead are to relate to administrative tasks only”. Indeed working arrangements are different from international agreements and they should not be equally treated with these international agreements. Whereas international agreements are that EU member states or the EU conclude with third countries, working arrangements are technical, administrative arrangements that bind only the government

⁴¹ The Frontex Regulation in 2011 has stipulated that Frontex “may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements” (European Parliament and Council 2011: Art. 14).

body that signed the arrangement. This distinction essentially derives from the fact that Frontex as an EU agency is *not* an international organisation eligible to conclude an international agreement. This has led to the common understanding that Frontex cannot act in its own right in the field of external relations. A member of the European Parliament Gérard Deprez, who was then a LIBE Committee member and who later served as the Committee Chair in 2008-2009, explained in the UK House of Lords inquiry:

It is not the task of Frontex to take into account the fields of foreign policy, development co-operation or human rights. It is not the task of Frontex to say anything on those fields. (...) Foreign policy, development co-operation, human rights policy are the responsibility of the European Union as such. They do not belong to working arrangements between Frontex and other countries (UK House of Lords 2008: 28-29).

This functional understanding of working arrangements is accurate in legal terms, though it may have led to the minimising of the impact of this operational, administrative level cooperation on the EU border regime.

Another reservation when assessing Frontex's initiatives concerns the informal pressures placed on Frontex officials in the process of establishing cooperation with third country authorities. Frontex officers in theory choose their future partner third countries based on the assessments of Frontex's risk analysis. However, in reality, their choice can be strongly influenced by the preferences of EU member states and the European Commission DG Home. This is not just a procedural matter: Frontex needs approval from EU member states and the European Commission in order to start negotiations with a candidate third country authority (Frontex 2006b).⁴² This means

⁴² According to the Frontex Management Board Decision No 11/2006 (Frontex 2006b), Frontex officers of external relations firstly explore potential partners based on the assessment by the risk analysis unit. Upon the request of the Frontex external relations officers, the Frontex Executive Director consults the Management Board and seeks to gain approval ("negotiation mandate") in order to initiate negotiation with the concerned third country authority. Once the negotiation mandate is given, Frontex officers start official talks with their counterparts and draft a working arrangement. Once the draft working arrangement is agreed between the officers of Frontex and the counterpart authority, Frontex's Executive Director consults the European Commission. The European Commission's opinion is submitted, together with the draft working arrangement, to the Frontex Management Board. In the Management Board, the decision is made by an absolute majority. If approved, Frontex and the authority of the concerned third country sign the working arrangement. As this shows, the EU member states and the European Commission are involved throughout the

that the partner third countries can be of less relevance for the purpose of reducing irregular border crossings. Despite the relatively lower level of irregular migration, Frontex has made a working arrangement with Armenia and Azerbaijan. The conclusions with these countries are related to the emphasis placed on the cooperation between eastern and central European countries in the wider EU politics at that time. In addition to the European Neighbourhood Policy, Armenia and Azerbaijan are the subject countries of the EU's Eastern Partnership, both of which are the EU's foreign policy instruments in providing assistance to the subject third countries. Cooperation agreements had already been concluded and implemented in other policy areas with those countries. A Frontex senior external relations official has stated that he felt "We [Frontex] also have to do something with it [Armenia], to grab the momentum" (Frontex official N, interview, 12 November 2012). Frontex's ongoing negotiation with Libya also started with marked interest from the EU member states and, particularly, the European Commission, according to the aforementioned external relations official (Frontex 2007b⁴³; Frontex official N, interview, 12 November 2012). Though these episodes by themselves cannot explain the ways Frontex identifies partner third countries to cooperate with, they show that Frontex's decisions are not made for purely strategic purposes but are shaped in a wider political context.

Finally, the gap between the legal status of Frontex as a non-international organisation and the actual influence of Frontex in involving third countries has resulted in ethical concerns. Statewatch (2012) has observed that the agency's activities with third country authorities have gone beyond mere technical cooperation. Contrary to the conventional assumptions, it has involved EU diplomatic relations and can challenge the democratic process in third country cooperation. Rijpma (2009: 335) has taken the point, arguing that the EU's assistance to "third countries" which have "a less than perfect human

process of negotiations.

⁴³ The European Commission has been seeking operational cooperation with Libya at the EU level since before the creation of Frontex. To this end, the European Commission sent missions twice, in 2004 and 2005, which were in vain however (Frontex 2007b: 6; Frontex official N, interview, 12 November 2012). This task has been delegated to Frontex. According to Frontex's report on the mission to Libya, the then Commission Vice President Franco Frattini wrote to the Frontex Executive Director and requested sending a follow-up mission to Libya (Frontex 2007b: 6). As of 2014, the negotiation has been unsuccessful, a mismatch of interest resulting between Frontex and Libya in terms of technical assistance and transparency (Frontex 2007b: 4; Frontex official N, interview, 12 November 2012).

rights record could be channelled through the agency without implicating the Commission”. The European Council on Refugees and Exiles has warned of the risks of Frontex establishing cooperation with the Libyan authority in the inquiry session by the UK House of Lords (UK House of Lords 2007: 123):

If there is an agreement on working arrangements between Frontex and Libya while the EU has not been able to formalise and agree on its political relationship with Libya, this cannot be seen as two separate things. A Frontex Working Arrangement with Libya by default is part of a political relationship between the EU and Libya and therefore has important political implications, and we are concerned that these Working Arrangements are put forward as very technical, low-level operational agreements, but they do have significant political implications. An arrangement with Frontex would amount to legitimisation of certain practices by the EU, it could perhaps be seen as the EU agreeing that the way Libya treats people as it does on its borders and within its detention centres is acceptable.

This implies that Frontex’s “technical” and “low-level” arrangements can possibly entail the involvement of the EU. It may influence the range of acceptable practices in the EU border regime in relation to third country cooperation. Furthermore, some scholars have made the criticism that, like other externalisation instruments by the EU member states and the EU, Frontex activities with third country authorities do not address the cause of migration. More precisely, they do not change the motivation of migrants to leave their countries (Carling and Hernández-Carretero 2011). Carrera (2007: 24) has also noted that, by involving third country officials, Hera used coercive measures to prevent migrants from leaving, and risked principles of democratic scrutiny and transparency from coming into play at both national and European levels. As these provisos demonstrate, although Frontex’s role is undeniable in shifting outwards the border management of the EU, it acts under the strong preferences of the member states and the European Commission and has generated legal and ethical concerns.

This section illustrates an instance of regime-shaping, in which Frontex has played a role as a “cooperation-broker” between the EU member states and third countries. As scholars have argued, the network Frontex establishes with third countries is at the administrative level, to which only competent authorities are tied to cooperate. However, this shapes a structure of the EU border regime. This is because the regime comprises the totality of organisations acting at different levels to implement border

control (DiMaggio and Powell 1983). The contents of cooperation frameworks between Frontex and third country authorities vary from joint border operations to risk analysis, which has the effect of the spread of “EU standards” in border guarding and leads to homogeneity beyond the EU’s external borders.

4.4. Conclusion

This chapter has examined how effectively Frontex has mobilised national border agencies of EU member states and third countries. It showed that the number of joint border operations, participating member states and deployed national border guards have increased and that tools introduced over time, such as RABIT, EGBT and OPERA, have contributed to the change in the voluntary based commitment of the border agencies of the EU member states. These tools, especially RABIT and subsequently EGBT, are legally binding, but safeguard provisions are provided for the member states. These changes have enabled Frontex to plan operations from a long-range perspective. While the ultimate decisions are the preserve of the member states, it is evident that there is a much tighter and regulated framework for joint border operations. A recent co-ownership of equipment, for example, has even created the possibility by which the member states become dependent on the agency’s supplies for their border control activities. The agency has set arrangements to keep in motion regular talks between the member states’ border guard officials and Frontex officials. The increased, regular interaction has contributed to the integration of the member states by making a steady commitment to joint border operations. These organisational adjustments of the member states to a more institutionalised form of cooperation shed light on an instance of the “shift up” process via Frontex.

Despite the assumed role of Frontex as a frontier control agency, this chapter also argued that Frontex has become an influence in facilitating cooperation between the EU member states and third country authorities. Though Frontex’s activities in relation to third country cooperation are regarded as technical, administrative and non-political, they have changed the picture of the EU border regime. Moreover, the gap between the actual impact of Frontex’s third country cooperation through working arrangements and its alleged non-political nature can bring more controversies in the future, as Frontex’s role as a cooperation broker has become evident.

Taken together, the agency's shifting up and out effect have growing salience. This may not automatically guarantee the creation of a new single system through the merging of several previously separately existing systems as Balassa has meant in his work in 1961. However, Frontex's mobilisation of state actors for cooperation has changed the composition of actors in the regime as well as relationships among them, thus bringing new dynamics within and beyond Europe.

Chapter 5: Frontex as an Agent of Policy Transfer in the EU border regime

5.1. Introduction

This chapter looks at the role of Frontex in developing and transferring “common standards” in EU border management. Since Frontex was established, national border agencies in the EU have increasingly been sharing rules, practices and techniques as common standards or best practices. These rules, practices and techniques can be legally binding, defined in legislation such as Schengen Borders Code, but can be also non-binding, serving as best practice among border guards. What role has Frontex played in these emerging common practices? Has the development of common standards changed the European border guard regime? If so, how has this been achieved? This chapter explores these questions using the following hypothesis: Frontex has promoted common standards, which have encouraged imitation between national border agencies, with an integrative effect on border guarding procedures and practices. The examination is undertaken with two cases on which Frontex has been actively working for common standard development. One is border guard training; the other is automated border control (ABC) systems at airports. By so doing, this chapter assesses whether Frontex contributes to convergence of border guard practices in the EU. By this it refers to the development and transfer of a set of particular practices or techniques in border guarding as “common standards” or “best practice”. Facilitating common standards can bring important changes to a regime from a sociological institutionalist perspective. This is because it shapes the understanding of border guards about appropriate practice and behaviour and also because it directs national border guarding practices towards convergence. By tracing the process of development, this chapter analyses how Frontex has brought such change.

The first case concerns border guard training. Frontex is mandated to establish common training standards and provide joint training activities (European Parliament and Council 2011: Art.5). Border guard training has been highly organised and standardised in the EU since the agency was established. A number of training manuals, tools and systems to deliver common training standards have been developed. By 2011, all member states and Schengen Associated Countries integrated common training

standards into their national training structures and participated in joint training activities (Frontex 2010a: 27). Member states were not obliged to integrate Frontex materials such as the common core curriculum, the basic training tool with a set of texts for all border guards, until this was formalised in the amended Frontex Regulation (European Parliament and Council 2011: Art.5). Nonetheless, the common core curriculum and other manuals, as well as training courses, have been widely adopted by member states. How has Frontex accomplished this and what effect has it had on the EU border regime?

The second case looks at development of best practice regarding automated border control systems for air borders. EU member states have shown interest in adopting ABC at their airports, considering it to be an efficient and cost effective way to facilitate the large number of passengers passing through, while conducting a full range of security checks. For this complex function, ABC is made up of many devices including e-gates and passport-readers, and uses biometric data. A number of private firms have presented and are selling different models to national border agencies. Each of the models is different and it is extremely hard for national border agencies to identify which model works best. Despite the importance of keeping compatibility of technical standards for the smooth cross-national flow of people in the EU, no international or EU-level binding standard has existed so far. Frontex is working on defining, producing and spreading particular technological standards as “best practices” in Europe. ABC has been chosen in this chapter as a case to examine because technology innovation is key to understanding the way the borders are managed. Moreover, working on ABC is not a stated task for Frontex. Frontex began working on it using its own initiatives. Therefore this case helps to examine the role of Frontex as an agent of policy transfer in the areas in which it is not expected to play such a role.

The outline of this chapter is as follows. The following section discusses existing works that are helpful in examining the role of Frontex as a common standards facilitator, particularly focusing on literature in “policy transfer” studies. The two aforementioned case studies are presented in sections three and four. Section three concerns border guard training. The section begins with a historical overview of the development of border guard training at the European level in order to identify where the idea of the common training comes from and how the idea was put into practice. It also clarifies the

limitations of the predecessor of Frontex, and the development made in the Frontex training. Section four deals with the case of automated border control system at airports. It starts with outlining recent EU and national level developments with respect to technological innovation in airport border checks. The final section summarises the findings from these two case studies and considers the integrative effect that they have brought to the EU border regime.

5.2. Policy Transfer and Frontex

The examination of the role of Frontex in developing common standards and its effect is aided by existing studies of policy transfer. Scholars have discussed the defining features of policy transfer, the objects (what is transferred), the process (how the transfer takes place) and the agents (who transfer) (see, for example, Dolowitz and Marsh 1996; 2000; Scott 2001; Stone 2004). The term “policy transfer” refers to the process by which new rules and practices become incorporated into and alter those already existing in one regime (Scott 2001: 114). Because such a process is about institutional change (Scott 2001: 114), policy transfer has been particularly researched from an institutionalist point of view. As for the question of the objects of transfer, scholars have generally considered that a variety of ideational as well as practical means can be transferred. Indeed, “it is wrong to think of policy transfer merely in terms of the successful transfer of policy” (Dolowitz and Marsh 1996: 349). It can include policy goals, policy instruments or administrative techniques, institutions, ideologies, ideas and negative lessons (Dolowitz and Marsh 1996: 350; Stone 2004: 545).

As for how policy transfer takes place, Stone (2004: 545) has categorised the process by the degree of coercion. “Hard” policy transfer takes some form of coercive measures such as government regulations. On the other hand, “soft” policy transfer relies on actors’ voluntary adaptation through copying and social learning, which non-state actors like Frontex most likely exercise. Rose (2002: 3) has discussed that soft policy transfer depends on actors’ attitudes in trying to learn from the successful experience of others in order to improve their own practices. Policymakers, for example, do this by communicating with their counterpart policymakers in other countries. An expected outcome of policy transfer is convergent change in a regime as this is a process that a particular practice is adapted and shared among actors. This is what most institutionalist theory and research emphasise, according to Scott (2001: 114). Stone (2004: 548) has

illustrated an expected outcome of transfer. “Learning”, for example, “can lead to the development of ‘consensual knowledge’” among “specialists and epistemic communities”.⁴⁴ This is because actors build consensus among themselves in process of sharing particular practices.

It should be noted, however, that convergence is not regarded as a taken-for-granted result of policy transfer. This particularly applies to the case of soft policy transfer, because copying and social learning do not force actors to adopt a particular practice. As Rose has argued, “learners are not passive pupils” (2002: 3). Rather, learners actively formulate what they have learned in ways that fit the context in which they are situated. Actors “pick and mix lessons” (*idem.*). A similar point has been addressed by Stone who has argued that learning outcomes can be “uneven and imperfect across different actors within a policy network” (Stone 2004: 549). This is because actors have different capacities to adopt practices, and different motivations. An actor may learn and adopt a practice for symbolic reasons and others may do it as a strategic device to secure political support. Acknowledging this point is important for this dissertation, in suggesting that Frontex may or may not have had the claimed integrative effect even though Frontex has promoted common standards.

Concerning the agents of policy transfer, existing research tends to focus on dynamics within states and comparison of such sovereign units (Stone 2004: 549), but policy transfer can take place through agencies outside and between states. In the European context, the EU has been researched as a promoter of convergence of member states’ policies (Stone 2004: 553). Some are coercive in the form of legislation, and others are voluntary, motivated by financial aids such as EU funds. Radaelli (2000) has argued that EU institutions stimulate policy transfer by catalysing isomorphic processes among professional networks of officials. As EU agencies have emerged as a component of the EU policy processes across different policies in the 2000s, a few scholars have begun paying attention to EU agencies as an agent of transfer (Coen and Thatcher 2008). Groenleer et al. (2010) have argued that EU agencies can also play a role in application

⁴⁴ The term has been defined by Haas (1989: 384) as “a specific community of experts sharing a belief in a common set of cause-and-effect relations as well as common values to which policies governing these relationships will be applied”.

and enforcement of EU rules by stimulating mutual learning processes among national regulatory authorities. They have added that:

[EU] agencies may serve as learning platforms for European and national stakeholders. By organizing workshops and training for national inspection professionals, agencies, as nodes in transnational networks, facilitate the diffusion of implementation practices across Europe, thereby contributing to the way rules are applied and enforced across the Union (Groenleer et al. 2000: 1227-1228).

These discussions are useful to analyse the role of Frontex as an agent of policy transfer in the rapidly developing EU border regime. There have been important legislative pieces that have encouraged the harmonisation of EU rules since the 1990s. Yet the harmonisation of practices and technologies emerged as an agenda much later, in the late 2000s. This chapter thus analyses how Frontex developed a particular practice as a common standard by discussing important aspects, including who were involved in the process of development and transfer, and how Frontex interacted with those involved. The following section discusses the first case of border guard training.

5.3. The Case of Training

5.3.1. The Origins

The idea of common border guard training is not in itself new. In the early 1990s governments had already begun to consider possible cooperation at an operational level, including common training. The construction of the area of free movement by abolishing those borders comprising what is named as the Schengen area was one of the first events to trigger these considerations. Article 17 of the Schengen Agreement of 1985 stipulated the legislative harmonisation for border checks and surveillance necessary to create the Schengen area (Schengen Agreement 1985). The subsequent Schengen Convention (1990) has sought the harmonisation of operational activities. The Convention stated that the Schengen member states “shall as far as possible harmonise *instructions* given to the authorities responsible for checks and shall promote *standard basic and further training* of officers manning checkpoints” (Schengen Convention 1990: Art. 7, italics added).

A standardised EU-wide border guard training emerged particularly as an important theme when these Schengen-related provisions were incorporated into the EU legal

framework with the Treaty of Amsterdam in 1999. This is because the incorporation of the Schengen provisions in to the EU law meant that EU member states would be automatically considered to be the members of the Schengen area unless a state decided to opt out. It also meant that the EU enlargement would become about the enlargement of the Schengen area, thus the EU external borders being the dividing line between the Schengen area and the non-Schengen area. In the late 1990s, the EU had foreseen the most substantial enlargement arising from Central and Eastern Europe. Being insecure about the level of border security of new EU member states, existing EU member states expressed their anxiety about the operational quality of border management in the Tampere European Council in 1999 (European Council 1999: 4) and, more clearly, in the Laeken European Council in December 2001 (European Council 2001a: 12).

These two landmark European Councils accelerated cooperation in border management and first introduced the concept of “integrated border management” (IBM). IBM was developed based on the notion that better management of EU external border control would help in the fight against terrorism, irregular migration and trafficking in human beings (Gounev et al. 2011: 31). The need to develop “a common corpus of legislation” was recognised in the concept, as it would provide border guards with knowledge of the shared legislation among EU member states (*idem.*). The IBM concept covered all activities exercised by national border agencies and since then it has become a guiding principle for border guard officials in Europe.

Political endorsement of common border guard training was given by the Seville European Council in 2002 (European Council 2002: 10). Political leaders from the EU member states asked the Council and the European Commission to start planning towards integrated management, listing the possible measures for improving the security of the EU external borders (European Council 2002: 9). Amongst the listed measures, setting up a common training standard for border guards was highlighted as a measure to reduce “the quantitative and qualitative disparities that are likely to generate security distortions at the external borders” (Council 2002c: 24). The JHA Council concluded that the set-up of the common training standard could be accomplished in several ways, including designing a common training syllabus, organising regular advanced training courses, paying special attention to language training and teaching tasks, and confirming the legal status of border guards as well as the rights and

protection of asylum seekers (*idem.*). As a consequence of the Seville European Council's decision, the project for EU common training proceeded.

The development at that time — before Frontex was established — revealed some important areas of progress. One was the creation of a set of common training standards, or the first “common core curriculum”, with the efforts entailed in its diffusion to all member states. Though not much light has been shed on this in the literature, it is useful for analysis of what Frontex has produced in contrast to this *pre*-Frontex development. As explained later in this section, the institutional and operational limitations were soon identified in the first attempts to apply common training standards. Learning lessons from these past experiences, Frontex has pursued more effective production and dissemination of border guard training.

The creation of the first common core curriculum began under the initiative of Austria and Sweden (Council 2003c).⁴⁵ To develop a common core curriculum for EU national border agencies, the team collected training guidelines and curriculums used by member states and visited some member states so that the team could assess which practices would work and which would not (*idem.*). They also integrated a range of views, not only from member states but also the United Nations High Commissioner for Refugees (UNHCR) and the European Police College (CEPOL). The outcome was compiled as the common core curriculum and this was implemented by the *ad hoc* Centre for Border Guard Training (ACT) created in Austria in October 2003. ACT was established as an umbrella organisation of the Common Unit, directly guided by it and not by Austria or Sweden. As the EU level organisation ACT could subsequently draw on the expertise of different member states — Austria, Germany, Slovenia, Hungary, Italy, Poland and Finland (Council 2005: 10).

This historical background clearly indicates the attempts to set up common standards pre-Frontex. These attempts initiated by national actors and backed up by the Council did not work, however. Two drawbacks explain this failure. Firstly, there was a lack of consideration of national differences in the situations and skills of border guards. This

⁴⁵ According to the Council documents Austria alone later took charge of developing border guard training (Council 2003b).

brought a problem in adopting the method of assessment, which was part of the common core curriculum. For example, the number of courses taken by each border guard was counted as achievement of border guards. This method was not appropriate because different national border agencies had different entrance requirements. Even if they were identical, the skills and knowledge of entry-level border guards were not. Therefore evaluating the progress of border guards purely by quantity of training courses taken turned out to be unfeasible. Given the result, ACT suggested re-establishing a new measurement, which was to evaluate achievement not by number but by competence (*idem.*).

The communication problem was another downside of the first common core curriculum. This was derived from the implementation structure. ACT needed to collaborate with other *ad hoc* centres specialising in different border management areas (e.g. the *ad hoc* centre in Germany specialised in land border management). Those *ad hoc* centres were geographically distanced and operationally separated. This hampered the gathering of sufficient resources and smooth communication between them. More crucially, the *ad hoc* centres found difficulty in establishing regular communication with their responsible decision-making body, the Common Unit. As introduced in Chapter 3, the Common Unit was composed of the heads of national border authorities as part of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) of the Council of Ministers. In this institutional structure, communication was not as smooth as expected, according to a senior seconded national officer of Frontex in the pooled resources section (Frontex official B (SNE), interview, 5 May 2010). This was because the Common Unit was not a permanent centre of coordination. It was not more than a monthly “discussion forum” (*idem.*). The UKBA senior officer in the European team has stated that it was also because the heads of national border agencies were too busy to attend, with the deputy officers attending in their absence, and those representatives prioritised national interests over common interests (UKBA official, interview, 30 March 2010). In sum, this weak institutional structure severely limited the overall work of ACT by causing a slow decision making process and by lacking centralisation of resources. Against this background, Frontex redesigned the ways to develop and diffuse the common training standards discussed in the next section.

5.3.2. Developing the Object of Transfer: Common Training Standards

As Frontex was being created in 2004, the task of the common border guard training was incorporated into its main mission. The Frontex Regulation has stated the task concerning the training is to establish and develop the common core curriculum, to provide training at the European level for instructors of national border agencies and to offer additional training courses and seminars on subjects related to the control and surveillance of external borders and the return of third country nationals (European Parliament and Council 2011: Art.5). The centralisation of the task and resources to Frontex was a “natural consequence” of the failed experience of the Common Unit (UKBA official, interview, 30 March 2010). With this transfer of the task from ACT to Frontex, some experts moved to Frontex and continued their work in this field. This implies that Frontex could learn and reflect on the lessons learnt from ACT’s experiences in its organisational capacity.

Three factors have characterised the common core curriculum developed by Frontex. To begin with, the Frontex training unit avoided the mistakes made in the past attempt. That is, not to evoke negative reactions from the member states’ border agencies. As mentioned earlier, Frontex indeed made use of knowledge and experiences accumulated by the former ACT staff about how and why the first version failed. Frontex did not adopt a top-down approach in disseminating the common core curriculum. Such a stance has been observed in the evaluation, which was re-designed to evaluate the competence acquired by each border guard through training (Frontex 2007c: 16).

Next, Frontex respected the states’ autonomy in disseminating the common core curriculum. Although the EU member states were generally willing to cooperate to introduce the Frontex-led common core curriculum in their national border guard training curriculums, this did not mean that they were to give up their autonomy to decide how and to what extent they would use the common core curriculum.⁴⁶ Frontex highlighted that the objective of common training standards was to rectify the missing skills, techniques and knowledge in national training curriculums, not to take control.

⁴⁶ UKBA does not seem to have used the common training standards, according to interviews with a senior officer and a training officer of UKBA (UKBA officer, interview, 30 March 2010; UKBA former training officer, interview, 28 September 2011).

By so doing the agency tried to avoid the eventuality of member states rejecting the common core curriculum.

Last, Frontex involved different actors which represented different interests: national border agencies' officials in charge of training matters; officials of the EU bodies such as the Fundamental Rights agency; international organisations, most typically UNHCR, NGOs and educational institutes (e.g. Institute for Educational Research in Finland and National Defence University in Hungary) (Frontex 2007c: 8-9). Questions such as which subjects were to be taught in training and which practices could be identified as best practice were developed through discussion with these actors.

What is the effect of involving these actors from different fields? In the first place, Frontex has fulfilled expertise and institutional capacity that it would have lacked if it had been done solely by the Frontex training unit's officials. It was simply too small with insufficient staff to develop and give training to border guards of the member states' national border agencies. Moreover, having external actors has boosted the legitimacy of Frontex's training curriculums. While national border agencies' officials input their interests from their perspectives, UNHCR, the Fundamental Rights agency and NGOs have ensured the quality of the content from migrants' point of view or with the rights-based approach. This has enhanced the legitimacy and credibility of the common training materials.⁴⁷ Indeed, the observation shows that the UN refugee protection agency, UNHCR, has particularly increased its voice in this process. The two organisations formally established a working arrangement in 2008 and UNHCR has provided regular consultations, exchange of information, expertise and experience, and inputs into border officials' training, particularly on international human rights and refugee law (UNHCR 2010: 3). Frontex is a convenient agent for UNHCR, as their input into Frontex training facilitates the dissemination of their norms to multiple EU member states at once.

⁴⁷ Frontex has set up several mechanisms to ensure the protection of rights of asylum seekers and irregular migrants as fundamental rights have been emphasised as the EU objectives in the Treaty of Lisbon in 2009. An example is the Frontex fundamental rights consultative forum (European Parliament and Council 2011: Art. 5). This forum has been composed of EU bodies, international organisations and civil society organisations that concern migrants' human rights.

The content of the common core curriculum covers a wide range of subjects that all border guards should learn as basics. Some subjects concern techniques in identifying the signs of border crimes and the procedures for using coercive measures against threats. Frontex has also inserted some subjects as regards the human rights of migrants and protection of asylum seekers and refugees (Frontex 2007c: 33-42). Other subjects pertain to air, land and sea border management, which courses could be selected according to need (Frontex 2007c: 16). Covering these aspects, the volume of the text has reached beyond 400 pages (Frontex 2007c: 3).

Frontex has developed further training materials and programmes other than the common core curriculum. The “common curriculum for higher education”, for instance, has been developed to give advanced level training to border guards. This advanced level curriculum is considered to be equivalent to Bachelor’s and Master’s degrees, and is given in collaboration with other educational institutions. Another example, which is less a “curriculum” than a set of knowledge and techniques, is the common manual for dog handlers. This manual has been widely accepted as useful, having been quickly spread and implemented among the EU member states.

Two aspects can be pointed out regarding the objects of policy transfer. Firstly, Frontex has developed what is to be transferred — common training standards — not in isolation from other actors but in close cooperation with national border agencies, international organisations, educational institutions and civil society organisations. Common training standards have input from the users, or national border guards, and the evaluators (e.g. human rights organisations). Chances of adoption can be higher than when Frontex develops common standards alone because the content stems from the users’ conventional practices. Another aspect is that Frontex has taken a consensus-based approach to formulating the common training standards, especially with national border agencies. Frontex itself learned valuable lessons from the predecessors’ failure, the most crucial of which has evolved as the principle of respecting the autonomy of member states, even though the amended Frontex Regulation has obliged EU member states to implement the common core curriculum. The next section analyses how Frontex has transferred common training standards.

5.3.3. Transfer Mechanism

5.3.3.1. Means of Transfer

Another question relating to Frontex as an agent of transfer is how Frontex has transferred common training standards. The observation indicates that “soft” policy transfer has been used as the main means of transfer: encouragement of emulation and learning. Frontex has developed an “epistemic community” of border guard professionals, involving key national border guard officials. It has firstly created the post “national training coordinator” in the national border agencies of the EU member states. As the main point of contact for the agency on training matters, national training coordinators promote the implementation of common training standards and hold regular meetings on training matters. Another key actor is national trainers, on whom Frontex has focused because they can be “multipliers”. Given its incapacity to directly provide training courses to all national border guards in Europe, Frontex has intensified its focus on teaching trainers from each member state. National trainers are those who train national border agencies at their home border agencies. If national trainers have learned the common training standards, they will spread what they have learned from Frontex to the border guards of their home member states. Thus Frontex can expect to “multiply” common training standards to the EU member states in a quick and cost-effective manner. In various ways, Frontex has promoted the networking of national trainers, including the exchange programmes which Frontex calls “Erasmus style” (Frontex 2010a: 16).

Another network Frontex established is the system of the Partnership Academy. The agency incorporated national training institutes which voluntarily offered their training capacity to host training courses arranged by the Frontex training unit. Of the partnership academy-affiliated institutions, Frontex decides which institution will host these courses. Extracurricular training programmes have been provided through this system for skills which Frontex considers to be in need of reinforcement. Initially, each institution had a specific subject area. For example, Finland hosted courses on “teachers’ training for the common core curriculum implementation”, Italy hosted “sea border related training” and the UK hosted “detection technology related training” (EAP Panel 2007). However, as the member institutions have increased over time, this demarcation was abolished. As of 2014, Frontex conducts training through the

Partnership Academy institutions without allocating subject areas among them. In addition, conferences and workshops have regularly been held by Frontex to raise awareness of training materials. An example is the annual conference for dog handlers.

As indicated by the above, Frontex has tried to ensure positive attitudes from national border agencies on implementing common training standards by involving the actual individual actors of member states in the process of transfer. Such a process implies the emergence of an “epistemic community” of border guards, in which consensual knowledge is formed at the European level through learning.

5.3.3.2. Influence of Transfer

Frontex has transferred its common standards for border guard training to all EU member states except those which have opted out of the Schengen *acquis* such as the UK and Ireland because of the legal requirement: the amended Frontex Regulation has ensured that all EU member states use Frontex’s common core curriculum. In this regard, Frontex has provided a basis for national border agencies to have similar characteristics in terms of border guarding procedures and practices. However, the outcome has been so far unevenly observed in respect to the extent to which they have integrated Frontex’s common standards. It has appeared that national border agencies of newer member states are more likely to adopt common training standards and redesign national training structures than those of older member states. The Latvian border authority, for instance, has been explicit about their integration of the common core curriculum and about the effect of the curriculum on the career path of Latvian border guards (OSCE 2011: 1-3). The Latvian training programme “Border Guarding” is based on the Frontex common core curriculum, and only those who have completed the programme are qualified as a State Border Guard Inspector (OSCE 2011: 1). In Lithuania, training programmes offered at the Border Guard School are based on the common core curriculum and there Lithuanian border guards are obliged to take at least one course for every two years of service (OSCE 2011: 2).

Romania, which has been recognised as a top contributor to Frontex activities, has addressed its active commitments in the field of training as well, one of which is its full implementation of the common core curriculum and participation in Frontex training (Romania, Ministry of Administration and Interior 2011). Such commitment is also

accepted by a high level Bulgarian official in the Ministry of Interior in an informal conversation with the author as regards the Bulgarian attitude towards participating Frontex-coordinating activities (Bulgarian Ministry of Interior senior official, interview, 22 September 2012). The Romanian government has stated, and a Romanian border guard official who serves as a contact point for Frontex in the Romanian border authority has confirmed, that cooperation with Frontex is a prioritised issue, thus commitment is seen as reasonable (Frontex guest officer from Romania, interview, 4 April 2012; Romania, Ministry of Administration and Interior 2008). Romania and Bulgaria have been pressured to actively contribute to the European project. This may have motivated them to adjust their training structures to the “European standards”, offered in the form of the common core curriculum and examined by the ways in which they participate in Frontex training activities. For newly entered member states such as Latvia and Lithuania, participating in the Frontex training and showing their capacity to meet the standards of the EU is a way to be perceived as good Europeans by other member states (Geddes 2003: 13; Lavenex and Ucarer 2004: 428).

The positive adaptation by the above mentioned member states by no means guarantees that Frontex common standards have been equally adopted by all member states. Particularly, older member states have had different levels of reaction to the adoption of common training standards. The UK Border Agency (UKBA) does not seem to have adopted common core curriculums and other training materials developed, according to the UKBA senior European team official and a former trainer for the British border guard officials (UKBA official, interview, 22 July 2011; UKBA former training officer, interview, 28 September 2011). For them, knowledge and practices delivered by Frontex are based on Schengen-related rules, which are often irrelevant for the UK as a non-Schengen state. The abovementioned UKBA official officer said that “being part or not part of Schengen has so many implications” (UKBA official, interview, 22 July 2011). While maintaining their reluctant stance on adapting Frontex training, it has appeared that they are actively involved in the making of common standards. The UKBA has sent their trainers to Partnership Academy institutions of other member states and has helped in developing the material making. The British explanation of this unbalanced involvement is the language used. English has been assigned as the working language in EU external border management, thus English native trainers are in demand to help with material-making and lecture-giving, in addition to their expertise in non-Schengen

associated knowledge (UKBA official, interview, 22 July 2011). In other words, the UK are uploading their knowledge and experiences, while refusing to download the outcome.

Some other member states have shown a moderate, or pragmatic, stance on adopting common training standards. Although a newly entered member state, a Polish senior border official in the international cooperation bureau has stated that they want to pick up the “best out of the best common standards”, so that they can formulate nationally tailor-made training standards (Polish border agency senior official, interview, 8 September 2011). This does not necessarily contradict the principle of the use of the common core curriculum and other materials. As an experienced officer of the Frontex training unit has stated these have been developed to fill the gaps in skills, techniques and knowledge in each member state’s training (Frontex official F, interview, 19 November 2012).

In fact, national border agencies do not implement all subjects in the common core curriculum or all the manuals and tools that Frontex have developed. Some member states have border management entirely under the remit of one single authority. Austria (“Bundespolizei”) and Denmark (“Danske Politi”) have one single border authority in their respective police forces. In France, the French Navy, three authorities in the Ministry of Interior, and the Ministry of Finance (Carrera 2010: 35-38), have the shared competence of border management. In the latter case, the sea border-related subjects in the common core curriculum may only be necessary for the Navy.

As these examples show, uneven policy transfer has been observed. This is not entirely because of the content of what is transferred; rather, different attitudes towards the implementation of common training standards have effected imperfect influence. “Certain actors may have a greater capacity for learning whereas others may adopt lessons for symbolic purpose or as a strategic device to secure political support rather than as a result of improved understanding” (Stone 2004: 549). Though the amended Frontex Regulation of 2011 has obliged all EU member states to integrate the common core curriculum, and they may have integrated it (European Parliament and Council 2011: Art.5), the newer member states are still the leading actors in adopting common training standards in general.

Another influence of policy transfer is the increased use of accreditations by Frontex, which border guards obtain by taking Frontex-developed training modules. The outcome has been observed during the EU policy making process: the Schengen evaluation and monitoring mechanism. A Frontex training unit official who is working for the common training standards since the period of ACT has stated that, in the past, the experts who evaluated the performance of member states concerning the implementation of the Schengen *acquis* were all former Frontex trainees (Frontex official F, interview, 19 November 2012). The Schengen evaluation experts are chosen from national border officials upon the designation of member states as well as from Commission representatives.⁴⁸ The Schengen evaluation team is sent to member states to assess the ways member states handle border checks and surveillance, including the ways visas are issued and the Schengen Information System is used (Council 2013a). If a member state is evaluated as insufficiently implementing the Schengen *acquis*, other member states may be justified in reinstating border checks against that member state.⁴⁹ Therefore, the judgements of the experts are important. If those experts are selected on the basis of the qualification of Frontex training, it implies that those experts' judgement may be based on knowledge that they gained through Frontex training. Moreover, if such a selection criterion is even informally established, completing Frontex training may represent an extra asset for national border guards who wish to work at the EU level. This is clearly the case giving weight to common training programmes organised by Frontex.

The increased use of the qualification of common training standards or programmes offered by Frontex has two implications. For one thing, member states can be more dependent on Frontex's accreditations to demonstrate that their border guards are qualified at the EU level. Given the increased opportunities of cooperation (e.g. joint

⁴⁸ Before the adoption of the Schengen Governance legislative package in 2013 (Council 2013b), the evaluation was conducted only by national experts under the supervision of the Council Working Group. It was a purely intergovernmental mechanism.

⁴⁹ According to the Council, "where an evaluation report under the Schengen evaluation mechanism concludes that a member state has been seriously neglecting its obligations, putting the overall functioning of the area without internal border controls at risk (...) the Council may (...) recommend that one or more specific member states reintroduce border controls at all or specific parts of the internal borders" (Council 2013b: 3).

border operations) for border management, this is more convenient for member states when they need to deploy their border guards outside their territory for EU level missions.

For another, perhaps more importantly, national border guards of member states are motivated to take the Frontex-coordinating training, considering that it is a way to widen the expertise in which they can be competent, thus increasing their chances of being promoted. The impact on the career orientation of border guards will be even more significant when the time comes to assess the European sectoral qualifications framework (SQF) for border guarding in 2013 (Frontex 2013: 27). This concerns the occupational and training standards, encompassing all levels of qualifications acquired in general, including vocational and academic education and training in the border guard field (Frontex 2012a: 2). With SQF, existing national qualifications will be translated into EU-level recognised qualifications, and certificates given to border guards will be comparable and compatible in the EU (*idem.*). This process brings convergence of the expected experiences, skills and techniques for different positions that are nationally separate at the moment. Success at developing the common training standards with qualifications will consolidate a transnational epistemic community of professionals in border guarding in Europe.

The case of the Frontex common training standards has shed light on several aspects of the role of the EU agency in policy transfer. The needs of common standards emerged to ensure the level of border guards' quality as the EU enlargement process proceeded. Frontex developed by learning lessons from the past, thus it involved member states and other key actors which could increase the legitimacy of the transfer objects, that is, common training standards. It could be said that the content of the transfer object is a result of consensual knowledge of the community of border guard professionals. As regards the level of coercion, Frontex has taken a "soft policy transfer" approach, encouraging social learning and emulation, rather than a forceful top-down approach. It seems that, although the amended Frontex Regulation has obliged member states to integrate the common core curriculum, there has been room for member states to decide the extent to which they integrate the materials. Therefore, the influence of policy transfer has been uneven so far, dependent on the benefits that each member state identifies in the use of Frontex common training standards: some for symbolic reasons

(e.g. Romania and Bulgaria) and others for keeping its influence (e.g. the UK). As March and Olsen have argued, member states make their decisions in certain situations according to rules of appropriateness (*i.e.* what is appropriate in a particular situation) (March and Olsen 1984: 741).

5.4. The Case of Automated Border Control

This section moves to examining the role of Frontex as an agent of policy transfer in developing the automated border control system (ABC) for air borders. Technological standardisation for ABC has emerged as a world-wide salient issue in border management. National border agencies of the EU member states have increasingly been interested in the implementation of ABC. In fact, it has been identified that The Netherlands, Germany, France and the UK had launched ABC in their airports since the early 2000s, much before the time when Frontex began working on this issue (Frontex 2007d). However, technological uncertainty and unclear benefits have blocked the proliferation of ABC, let alone technological and operational standardisation at the EU level. Moreover, a number of competing ABC packages have been presented by private firms, and national border agencies face the challenge of identifying which business model works best for their air borders. The European Commission DG Home is a keen advocate for introducing ABC to the EU, which could have been a driving force to standardise ABC, yet it has not played such a role due to disparate ideas in terms of scope and target users. Technological uncertainty, unclear benefits and the absence of the leading actor at the European level have led to divergence among member states and have resulted in the lack of common ABC standards.

Frontex has increased its role in ABC with the ambition of filling the gaps and solving uncertainty issues. What specifically brought this to fruition that would not have happened otherwise, when there are many intergovernmental and industry forums in which it is hard to assume Frontex to be the key actor? By tracing the process of developing and transferring common ABC standards, this section analyses the extent to which Frontex has played a role as an agent of transfer: it explores the means of transfer used, and the effect it has had on the EU border regime.

5.4.1. Emerging Needs of Common Standards for the Automated Border Control

It is just in the last few years that technological innovation has made the use of ABC for

passenger checks a reality. ABC is composed of automated or semi-automated electronic gates, which are equipped with passport readers, biometric capture devices and other technology based apparatus. Its main function is the verification of passengers' identity and authentication of passports without human intervention.

Introducing ABC is a general world-wide trend, regarded as a solution to handle the increase in cross-border travellers while applying a full range of security checks within a limited budgetary capacity. According to the International Air Traffic Association (IATA), the number of travellers by air is rising annually by 5.8 %, reaching 7.2 billion by 2015 (IATA 2012). The number of people who travel between the EU and non-EU countries is also on the rise. The latest Eurostat figure indicates that 39 million people flew between the EU and non-EU countries in 2011, more than a 10 % increase over the figure for 2010 (Eurostat 2013: 59). The USA, Australia, Hong Kong and Japan and many other states have gradually been introducing ABC at their main international airports.

In the EU, some member states have recognised the usefulness of ABC since its early stages of technological development in the early 2000s.⁵⁰ Some "ABC-advanced" states integrated the system to their border management at airports long before Frontex had begun working on technical standardisation for ABC. For example, The Netherlands had introduced ABC at a set of selected airports in 2002, and the UK had developed an iris-recognition based system in 2004, which was later altered by a new system using e-passports in 2013. IATA (2012) has stated that 12 European countries had set up ABC in 27 airports as of 2012. Frontex's statistical research in the same year has also shown that, though the numbers are not exactly the same, nine member states had launched ABC and eight member states were in a pilot or planning phase (Frontex 2012b: 55-62). A conference held in Copenhagen in 2012 by the Danish Ministry of Justice revealed the proactive stance of France, Finland, Germany and Spain in adopting ABC for smoother border checks at their airports (Denmark, Ministry of Justice 2012).

Two factors have brought differing levels of integration of ABC among member states:

⁵⁰ Wilson (2006: 88) has argued that ABC has most evidently been implemented in the EU.

technological uncertainty and cost. Technological uncertainty has brought divergence among member states. Sweden has questioned the accuracy of e-gates in verifying documents, stating that “the number of wrongly granted entries could rise among persons using falsified documents and among impostors” (Denmark, Ministry of Justice 2012: 18). Switzerland⁵¹ has decided not to install ABC in the near future based on the experiment they conducted at Zurich International Airport. The experiment showed that the “technology is not yet mature enough” (Denmark, Ministry of Justice 2012: 19). The Swiss authority does not reject the idea of ABC but believes “it is better to await the developments and decisions among the Schengen states (...) before important investments are made” (*idem.*).

Member states’ insecurity about technology also relates to the role played by the security industry. ABC is not developed and set up by national authorities themselves. They have to buy the system (e.g. e-gates and other devices) from private firms. ABC is an expensive project and needs huge investment. One single e-gate can easily cost more than 35,000 euros, as estimated by the European Commission (2008: 7). Although DG Justice, Freedom and Security, a principal DG for this matter in the European Commission, claimed that “External Borders Fund could support Member States in relation to purchasing necessary equipment” (*ibid.*: 7), Bulgaria, Denmark, Ireland and Lithuania have found it difficult to generate the budget for ABC. Estonia has stated that ABC is “very expensive and time-consuming”. Sweden and Slovenia have stated that they are not planning to have ABC because handling the passenger flow is manageable without the automation and the cost benefit analysis does not easily justify ABC (Denmark, Ministry of Justice 2012: 14, 16).

Such costly business provides opportunities for private firms to gain large profits. The security industry is indeed a growing market in the EU with a market value of 26 - 36.5 billion euro (European Commission 2012a: 3). Many multinational consulting firms such as Accenture and IBM have developed a number of different ABC models and approached the state agencies to promote their products and win contracts with them. In the competitive market there are “no two ABC systems equal by design” (Frontex

⁵¹ As a Schengen member, Switzerland has been counted as one of the stakeholders.

2012b: 13). It is not a simple task for national border agencies to choose one out of a number of models offered by private firms. In the above mentioned Conference, the Danish authority stated that the largest challenge for them is to resolve uncertainty regarding which products to choose (Denmark, Ministry of Justice 2012: 5). A UKBA senior European team official has added that the UKBA has received mission groups from other member states' border agencies, which aimed to learn the "know-how" of ABC that UKBA has developed, so that they could be more prepared when private firms promote their products (UKBA official, interview, 30 March 2010).

As a result of technological uncertainty and large investments, member states are keen to learn from others' experiences and developed technologies. Member states, particularly Austria, Denmark, Finland and Norway, have demanded EU level common standards (Denmark, Ministry of Justice 2012: 2, 5, 7, 13, 17). This is, for sociological institutionalists, a step toward convergence, as actors have incentives for "emulation" of or "social learning" from the existing successful model. There was an imperative to have shared models among Schengen member states, which had already developed shared data exchange systems such as the Schengen Information System (Council 2007a) and the Visa Information System (European Parliament and Council 2008).

However, there was little "move" to establish shared best practices in the early 2000s. For instance, although the DG Justice, Freedom and Security of the European Commission had been keen to promote ABC based on the outcome of its own impact assessment (European Commission 2008: 7), it was not the prime mover of the situation. The European Commission considered the integration of ABC necessary to achieve smooth and quick passenger checks while maintaining security. Given the expected outcome of introducing ABC,⁵² the "smart borders" package submitted by the European Commission in 2011 regarded ABC as a taken-for-granted component for smooth border checks of third country nationals (European Commission 2011b).

There was a mismatch between the European Commission and member states, however. The European Commission focused on developing policy programmes that use ABC,

⁵² It has promoted ABC stating that the average time to check a passenger can be reduced from "the current 1-2 minutes to below 30 seconds" (European Commission 2011b: 12).

like the smart borders package, and paid little attention to solving the technological uncertainty issues by, for example, developing common ABC standards. As a Frontex research and development official who works on ABC has stated, “I have to negotiate with the Commission as some do not see that ‘there is no business model’ (...) Frontex has to convey the message that there is a problem and need” (Frontex official Q, interview, 14 November 2014). Moreover, the European Commission identified third country nationals as the main users of ABC from the beginning, while member states focused on their own nationals and EU citizens as the main users due to security sensitivity. This meant that the European Commission could play only a limited role as an agent of transfer.

The lack of common standards and the remaining technical uncertainty have led to different stances among member states. During the conference held by the Danish authorities (Denmark, Ministry of Justice 2012), member states declared their positions on ABC: Austria, Bulgaria, Estonia, Hungary, Ireland, Norway and Romania were preparing for operationalising ABC or running a pilot project; Denmark and Poland were assessing its relevance; Lithuania was awaiting the legislative proposal at the EU level so that they could start discussions at the national level; and Cyprus, Malta, Slovenia and Sweden said that they had no plans in the near future to implement the automated border check system. Whilst there are “ABC-advanced” member states, as mentioned earlier, quite a few other member states are “ABC-underdeveloped”: they have only recently started the discussion on the possible use of ABC, or have decided not to implement it.

5.4.2. Developing the Object of Transfer: Best Practice Guidelines for ABC

Developing common standards for ABC is not a stated task for Frontex. It was the Frontex Research and Development unit (RDU) which identified the need for its production. The RDU works to monitor technology development for border management (European Parliament and Council 2011: Art. 6). This is a small unit within Frontex and presently they do not have enough capacity to conduct research by themselves. Frontex RDU staff are communicators and facilitators rather than researchers. They have defined their mission as seeking to link border agencies and the industry and the research community by identifying government needs and following up technological innovation by the industry and the research community.

The Frontex RDU first learned the existing models implemented in the “ABC-advanced” states in order to identify what would work and what would not. Frontex RDU staff visited Schiphol airport in the Netherlands, Frankfurt airport in Germany, Charles de Gaulle airport in France and Heathrow airport in the UK. These airports had different designs, but all required passengers to pre-register to the system. A membership card was issued for those who registered, which was needed to pass an e-gate. The Netherlands, for example, has been running a version of ABC called “Privium” since 2002 (Schiphol Amsterdam Airport 2014). Privium users need a personalised card whereby his or her identity is recognised by iris (Frontex 2007d: 31-32). This is not a free service, as it has been designed to provide frequent flyers with privileged use of the airport facilities (Denmark, Ministry of Justice 2012: 12). The service available at ABC of those airports studied was based on membership, thus it was airport-specific (Frontex 2007d: 75). In light of this, Frontex has concluded, in its study report BIOPASS I, that although ABC is properly functioning at airports, no interoperability was discernible and this would be a serious drawback from the passengers’ point of view (Frontex 2007d).

Learning these lessons, the Frontex aforementioned research and development officer reached the conclusion that, rather than a membership and pre-registration based system such as Privium, an e-passport based system “seemed to be a good solution for better interoperability” (Frontex official Q, interview, 20 November 2012). An e-passport is a combination of a paper passport and biometric data (e.g. face image and fingerprints) and has become a standard travel document since the 2000s. Of several biometric formats, the International Civil Aviation Organization (ICAO) has defined face recognition as the principal globally interoperable verification method and other formats such as fingerprints and iris as secondary, since 2002 (ICAO 2007: 15). Following this standard, the US government, for example, has obliged visa-waiver countries’ citizens to present an e-passport with face images to enter the USA. Other countries in the world are also switching to e-passports with face image from paper passports. Reflecting the global shift, the EU adopted a Regulation in 2004 to set out a rule on e-passports (Council 2004b). Under the Regulation, member states have been obliged to issue e-passports with face images and fingerprints (Frontex 2011a: 4; Gemalto 2007: 3). Observing these trends, Frontex conducted another study, visiting Portugal and also

Australia. Both states are also pioneers of ABC, but differ from the countries Frontex studied in BIOPASS I, as their ABC used e-passports and were open to passengers without pre-registration. The Frontex study report BIOPASS II (Frontex 2010c) claimed that both Portuguese and Australian systems demonstrated accurate or satisfactory performance (Frontex 2010c: 6).

Frontex developed a collection of best practices based on the findings of BIOPASS I and II and also based on regular discussion with experts of national border agencies. In fact, as with the case of common border guard training standards, the horizontal network across national border agencies was an important input to developing common standards for ABC. Frontex RDU also established channels of communication with private firms. The ABC working group was convened regularly, discussing common grounds that could be built upon. Knowledge and experience were particularly inputted from Finland, France, Germany, Netherlands, Portugal, and the UK, all of which were forerunners of ABC. The outcome was made open to the public in March 2011, in the form of “Best Practice Guidelines on the Design, Deployment and Operation of Automated Border Crossing Systems”. This soon needed to be upgraded due to technology development and Frontex published “Best Practice Operational Guidelines for ABC Systems” and the complementary document of “ABC Best Practice Technical Guidelines” in August 2012. The Best Practice Guidelines cover the whole process of ABC, from how to conduct cost benefit analysis and run a pilot project, to establishing an appropriate ABC model and the location of devices as well as the tasks of border guards (Frontex 2012b). For border agencies which have already implemented ABC, it also guides the ways to assess the performance of ABC and to handle such issues as data protection (Frontex 2012c).

These processes of best practice development point to some similarities with the case of training. First of all, Frontex has been an active learner of the existing models which had already been developed by some member states. Related to this point, secondly, although Frontex is not the source of models and practices, it has offered a venue in which those models and practices are collected. An important role Frontex has played in this process is the sorting out of more compatible, workable models, which have become the object of transfer in the best practice guidelines. Thirdly, Frontex RDU has also involved external actors, in the form of member states’ border agencies and private

firms, in the development process. The establishment of the working group with national border officials, for example, well reflects the institutionalisation of epistemic communities and embedded consensual knowledge for standardisation of ABC, as Stone (2004: 553) has argued in the case of international organisations.

5.4.3. Transfer Mechanism

5.4.3.1. Means of Transfer

Unlike the case of common border guard training standards, Frontex has no provisions that ensure the implementation of the best practice guidelines for ABC by member states. This has led Frontex to take other pathways to transferring the guidelines other than the learning through the horizontal network with national border agencies. To this end, Frontex has held and approached international forums on ABC in order to raise awareness of the guidelines amongst international organisations and private firms as well as national border agencies. A Frontex RDU officer has stated that they “travel a lot to convey the messages to different stakeholders” (Frontex official Q, interview, 14 November 2012). Of a number of international organisations, Frontex RDU has established contacts with key “standardisation” organisations such as the European Committee for Standardisation (CEN) and the International Organization for Standardization (ISO), and international organisations working on air border management, including the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA). These organisations have issued recommendations and compliance documents for passenger checks at airports. Their documents are often legally binding or at least considered to be “international standards”, thus governments and private firms are expected to conform to them. Frontex RDU has held an annual conference on ABC in which all the above organisations have participated as well as major private firms (Frontex 2012e).

Establishing the network with international organisations has resulted in the integration of Frontex’s documents into those organisations’ publications. For example, ISO has referred to the ABC best practice guidelines as a key document in developing the standard models of ABC. IATA has also recommended Frontex’s publication as one of the four key frameworks in IATA’s “implementation guide for technology in border management” (IATA 2012). ICAO has taken the ABC best practice guideline by Frontex

as one of the two most noted documents on ABC (ICAO 2012). By being incorporated into other key organisations' documents, Frontex has intended to increase its legitimacy and chances of being referred to by private firms and national border agencies. In addition, the European Commission has also supported the ABC conference Frontex organised in 2012; the Head of Unit of Large-Scale IT Systems and Biometrics of the European Commission has presented its view that "no EU level legal instrument is necessary so far", while recommending the use of Frontex ABC best practice guidelines, stating: "Follow FRONTEX best practice guidelines for maximum harmonisation and interoperability" (European Commission 2012b).

For private firms which supply ABC models, Frontex best practice guidelines have been gradually accepted as a guideline to learn the practices and models identified as "best practices" among the member states' border agencies which are their clients (Accenture 2012). Given the difficulty of gaining such information through the conventional negotiations held by private firms with national border agencies, Frontex's guidelines have been regarded as useful. Also, some companies have used Frontex guidelines to increase the "fitness" of their business models for the recommended compatibility in the EU (Gemalto 2014: 6). However, Frontex's material is still one of many guidelines issued by regional and international organisations, thus it would be an exaggeration to suggest that Frontex's best practice guidelines are universally accepted by the industry as "European common standards".

Another, and perhaps most important means of transfer is the encouragement of national border agencies to learn and copy directly. The working group that Frontex has established for developing the ABC best practice guidelines is the main venue for sharing best practices. National border officials could bring these ideas back to the home agencies and implement models or particular practices that appear workable for that state's air border management. As discussed further in the next section, however, no clear evidence has been traced concerning whether this horizontal network has worked to transfer the best practices for ABC. In sum, there is no hard policy transfer. No coercive means such as regulations have supported the diffusion of Frontex-led common standards to national border agencies.

5.4.3.2. *Influence of Transfer*

Despite some evidence that show positive reactions from international organisations, private firms and the European Commission towards Frontex's common standards on ABC, what has been observed so far is uneven transfer of ABC among member states. For one thing, the Netherlands, Germany, France and the UK, have re-designed ABC in line with the recommendations in the best practice guidelines (Karbauskaitė 2012). While keeping the former system, Privium, the Dutch border agency has launched a new system "No-Q" ("no queue") at the Schiphol airport since March 2012. In contrast to the former system of Privium, No-Q uses facial recognition, not iris, for identification purposes and does not require pre-registration, both of which accord with the standard set out in the best practice guidelines. France has also announced the replacement of the French ABC model "Parafe" at Charles de Gaulle airport with a new model in which, similarly, pre-registration is not needed (Safran 2012).

However there is no clear evidence demonstrating that the "ABC-underdeveloped" states have changed their stance on ABC. Moreover, there is a problem in tracing the influence of Frontex's best practice guidelines on national border agencies. It has been difficult to judge whether the system change in the above stated member states such as the Netherlands and France is due to Frontex's best practice guidelines. Frontex might witness the change of ABC of those member states and reflect such experiences in the best practice guidelines. For one thing, some best practices in the best practice guidelines are also recommended in other organisations' guidelines. The use of facial recognition and fingerprints are part of the "standards" set by ICAO, thus it is not easy to recognise whether the shift from iris to facial recognition is due to Frontex.

For another, the leading member states on ABC changed their systems at almost the same time as Frontex published their best practice guidelines. For instance, when the Frontex ABC working group was drafting the best practice guidelines, Germany was adopting a new model "EasyPASS" with a system similar to the recommendations in the guidelines. EasyPASS has been learned and copied by other member states such as the Czech Republic (Frontex 2012b: 64), thus it cannot be denied that Frontex had input from German experiences through communication. The UK has moved down the same path as Germany, having implemented the new model called "ePassport Gates" already

since 2008, while keeping its older ABC in parallel (UKBA 2012). It may be more appropriate to consider that the Frontex best practice guidelines have been developed through a two-way interactive process with the ABC-advanced member states' officials.

Although some "ABC-underdeveloped" member states have also moved towards implementing ABC, the extent to which this has been influenced by Frontex is vague. Rather, it seems that material factors have driven those member states. Slovenia, for instance, has agreed to implement ABC in 2014 mainly because of the financial back-up secured from the European Commission (European Commission 2013). In the negotiation between the two on the Home Affairs priorities for the Multi-annual Financial Framework 2014-2020, they agreed that Slovenia will prioritise investments related to ABC gates for EU citizens (*idem.*). Further, Bulgaria, Estonia and Hungary have begun introducing ABC (European Migration Network 2014). Behind the move there is a large amount of EU budget invested for developing IT systems and border structure (European Migration Network 2014: 13). On the other hand, Malta has not changed its decision not to introduce ABC, because of budgetary reasons. "The limited movement of persons into and from Malta would not justify, at least at this stage for one to embark on the setting up of ABC points at the local airport and even more at the seaport" (Malta, Ministry for European Affairs and the Implementation of the Electoral Manifesto 2013: 11). The influence of Frontex is so far recognised only in Latvia, which has been supported by Frontex Task Forces to develop ABC. Otherwise, the ways and extent to which these newly ABC-implementing member states have been using Frontex's ABC best practice guidelines is not easily traced.

The case of common ABC standards as developed by Frontex has shed light on three aspects of Frontex as an agent of policy transfer. Firstly, there were triggering factors of transfer in the matter of ABC: technical uncertainty and unclear benefit. DiMaggio and Powell (1983: 156) have argued that when technologies are uncertain, the rate of convergence is greater. Policy transfer through learning from existing successful models is also reasonable if the benefit of introducing ABC is unclear while the cost is huge. This produced a major gap with the European Commission, of which DG Justice, Freedom and Security had little concern with the design of ABC systems but more with using them to facilitate third country nationals. Filling the gap, Frontex was initiated as an EU-level agent of transfer. Secondly, Frontex has no legal backup for transferring

common standards. Unlike the case of training, in which the development of common standards is clearly part of the agency's mandate, Frontex RDU began on its own initiative. This has led the RDU to rely on networking with external "authorities" in air traffic issues and standardisation and with the industries to raise awareness of its best practice guidelines, in addition to the network with national border agencies.

Despite the positive reception of those international organisations and private firms, tracing the direct influence of Frontex as an agent of transfer is problematic. Two reasons should be at least pointed out. Firstly, material rather than ideal factors such as financial support by the European Commission have appeared as a "mover" of member states' decision on introducing ABC. This is different from the case of training in which newly entered member states have tended to implement common training standards to demonstrate their "Europeaness" to other member states and EU institutions. Another reason could be the competing standards in the field. Whereas Frontex's common training standard is established as almost the sole standard in the EU, ABC has other sources of standards produced by international organisations. Moreover, it is possible that member states learn directly from ABC pioneering states. In other words, whether member states have to rely on a single source or whether they are faced with competing sources may have shaped the degree of policy transfer by Frontex.

5.5. Conclusion

This chapter has explored the role of Frontex in transferring common standards in the EU border regime. It hypothesised that the promotion of common standards has encouraged imitation between national border agencies, with an integrative effect on border guarding procedures and practices. To sum up the empirical results, Frontex's role has been identified within limited conditions in terms of an integrated border regime. Because Frontex exercises no coercive measures, the development of a transnational epistemic community of border professionals has been required for the transfer to happen. Frontex has offered a venue in which border guards exchange their understanding of which practices and skills are workable and should be shared with their peer officers in the EU. In the case of ABC, technological uncertainty has led national border agencies to learn from others, thus the transnational network has been vital to identify which member states are leading. In this regard, Frontex has served as a venue creator for soft policy transfer to take place in the process of developing the

common standards.

No coercion has led Frontex officers to be dependent on the mimetic mechanism for the transfer and has caused an uneven and imperfect outcome in both cases in general, and in the case of ABC in particular. In the case of training, it is an institutional requirement for member states to integrate Frontex's common core curriculum. Whereas the original Frontex Regulation did not require member states to adopt Frontex's common core curriculum but only referred to the agency's responsibility (Council 2004: 4), the amended Frontex Regulation in 2011 has emphasised the responsibility of member states (European Parliament and Council 2011: 9). Combined with mechanisms that Frontex has developed, it can be said that this has certainly pushed the transfer to be accelerated.

However, it should be also acknowledged that the degree of integration is up to member states; in this regard symbolic meanings have mattered. As discussed in this chapter, newly entered member states have tended to remodel their national training structures by fully implementing Frontex training standards more readily than older member states have done. On the contrary, the case of ABC has lacked such symbolic meanings as motivation for member states to integrate. Unless member states find material benefits that stand out from competing ABC standards offered by other organisations, Frontex's role will remain small as a main hub of common standards. In sum, Frontex's attempt has, so far, at best brought "à la carte" convergence in the EU border regime. However, such a result should not nullify the potential of Frontex as an agent of transfer. As the increased use of accreditation has shown in the case of training, a particular, regular pattern among EU institutions and member states has been reinforced in some cases, which is clearly an integrative effect on the regime.

Chapter 6: Shaping the “Risk” for Internal and External Borders

6.1. Introduction

This chapter explores the effect of the risk analysis function of Frontex on EU external border management. “Risk analysis”, or analysing risks posed at external borders, is one of the main tasks of Frontex. This is considered to be the “driver” of all of its operational activities (Peers et al. 2012: 143). Although it is the Frontex Management Board that ultimately makes decisions and provides approval, a joint border operation, for example, does not in principle proceed unless the risk analysis unit perceives its necessity (Peers et al. 2012: 133). The external relations team also needs the advice of the unit prior to planning a cooperation agreement with a counterpart border authority of a non-European country (*idem.*). The agency’s risk analysis has been also used in political administrative decisions for EU border management, in addition to operational activities.

This chapter explores the effect of the risk analysis function of Frontex from two angles. Firstly, it examines the agency’s role in constructing the risk for the EU’s external borders. Migration has increasingly become considered a subject of risk to society, and scholars have discussed how migration has been linked to such a risk. A number of studies analyse the role of Frontex in this context, some of which have claimed that Frontex has contributed to supporting the process of “securitisation” (see, for example, Léonard 2011; Chillaud 2012). However, these studies have failed to ask questions such as: on whose data is the analysis based; who is involved in the analysis, and to what extent Frontex has produced risk analysis in its own right. Drawing on sociological institutionalist formulations, this chapter examines the process of defining risk, especially in the operational terms in which Frontex has played a salient role.

Secondly, this chapter examines the effect of risk analysis on the EU decision making process. Lindblom has argued that knowledge is a “well-probed belief, whether empirical or evaluative” (1990: 123). Knowledge specifies what is happening and what will happen, and influences the decisions of political actors. Barnett and Finnemore (1999) have also argued that international organisations do not just facilitate the

cooperation of state actors. “They make rules and, in so doing, they create social knowledge. They deploy this knowledge in ways that define shared international tasks, create new categories of actors, form new interests for actors, and transfer new models of political organization around the world” (Barnett and Finnemore 1999: 699). Particularly, the ability to classify objects is a source of power (*idem.*). This dissertation argues that, although it is not a decision maker in EU policy making, Frontex may exercise influence on the decisions on EU border management with its risk analysis function.

The outline of this chapter is as follows. The following section discusses the contribution of, and weaknesses in, the research literature. Section three begins with an examination of how the need for risk analysis at the EU level emerged. In tracing the historical events, the section focuses on explaining how migration has increasingly become viewed as a security threat in the post-Cold War context in Europe. This is followed by a scrutiny of Frontex risk analysis, which will explain a range of issues including the conceptualisation of risk, the source of data, and the actors involved in the process. Section four discusses how such risk analysis has affected the course of action that national agencies can take with regard to the case of funding distribution and the rules for internal security.

6.2. Migration within the Risk Context

6.2.1. The Literature of Security Studies

A growing body of research has analysed the ways in which migration has become a perceived risk to society. The Copenhagen School of security studies in international relations has characterised this phenomenon as “securitisation”, a process of reconstructing migration into a threat-security discourse (Buzan et al. 1997; Wæver 1995, 1998, 2004). Wæver has explained that an initially non-securitised issue like migration can become a security issue as decision makers label it thus through a process called a speech act (Wæver 1995: 55). The invocation of security opens “the way for the state to mobilise or to take special powers” (Wæver 2004: 8). By so doing, decision makers justify the use of extraordinary measures which are only legitimate when dealing with “security matters”. Heisler and Layton-Henry (1993: 149) have further argued that migration has been considered a security threat against host societies as it

challenges the ability of states to control their borders, which have been traditionally regarded as a fundamental attribute of sovereignty.

Whilst the work by the Copenhagen School has had considerable influence on the academic debates on migration and security, some researchers have criticised this approach because it is “too simple to capture what actually happens empirically” and “too narrow to encompass the full politics of securitization” (Huysmans 2006). The securitisation process is “not reducible to speech acts alone” (Neal 2009: 335). Scholars including Bigo have stressed the actors’ actual practice, claiming that “migration is increasingly interpreted as a security problem (...) this is the result of the creation of a continuum of threats and general unease in which *many different actors exchange their fears and beliefs* in the process of making a risky and dangerous society” (Bigo 2002: 63, italics added). By looking at actual security practices conducted, patterns can be revealed which differ from those found when studying the official discourse (Wæver 2004: 9).

In this practice-emphasising approach, policy-implementing actors that supply statistics and correlate social practices are also as important as decision-making actors. They may not generate the political discourse but “reinforce the political vision of a link between migration and threat” (Bigo 2002: 63). Bigo has called such actors “security actors” (*idem.*), who “benefit from the social construction of a threat that turns immigration into the cause of society’s problems” in order to “boost their budgets and legitimacy” (Bigo 2001: 128). Security actors are often government administrative agencies such as police. They are trained to identify and deal with challenges to public order and the rule of law (Huysmans 2006: 72), and share bureaucratic interests (Bigo 2001: 128).⁵³

Frontex has usually been studied as a security actor in the research literature. Léonard

⁵³ According to Bigo (2001), they can be police, military organisations, border authorities and other actors who conduct policing and regulatory measures in a position of authority. This means that military personnel as well as civilian bodies can fall into this category. Indeed, Bigo has stressed the role of the military in securitisation by suggesting that, in losing the enemy of the Communist regime, national armies and intelligence services had to find new tasks for their missions, not only in terms of interstate conflicts, or the clash of two opposing blocs, but also in anti-terrorist missions, international policing operations against mafia networks and other criminal activities such as irregular migration (Bigo 2001: 128-130).

(2011: 1) has argued that “Frontex was created in a context where the EU asylum and migration policy had already been shaped by a securitization trend for a certain number of years”, thus the contribution of Frontex’s activities to the securitisation of migration “does not automatically make Frontex a significant securitizing actor in its own right” (Léonard 2011: 11). Frontex is, rather, better understood as a security actor which functions to reinforce the existing political discourse. Referring to Frontex’s task of risk analysis, Léonard has commented that the use of such terms as risk, when more neutral terms like “data” or “information” could have been used instead, already strengthens the link between migration and security (Léonard 2011: 4, 21). A similar claim has been made by Chillaud (2012: 47), who has argued that “the process of securitisation of migration is not born *ex nihilo* along with Frontex”.

What is missing in the literature is that, while researchers have tried to specify who constructs security (e.g. political elites, generally states), how they construct security and where they construct security, but have not tried to specify the nature of security and its practices (Neal 2009: 351). In other words, it lacks the scrutiny of the process of constructing the risk, and the activities that Frontex has actually undertaken need to be scrutinised.

It should be clarified here that the security-migration nexus is not the sole driving force utilised by policy makers to “securitise” the issue of migration. The situation of border management has been shaped by a complex set of factors and it can be misleading to argue that policy makers have intentionally linked migration with security concerns. International criminal organisations, for instance, are closely involved in the trafficking of human beings and, in most cases, this should be a real concern for policy makers. Therefore, it would be a misreading of the issues that abound that securitisation alone sheds light on all aspects of policy development with regard to border management. However, it remains useful in comprehending how a particular “risk” perception of migrants has been produced.

6.2.2. *The Origins: Migration as Risk in Europe*

Understandings of migration as a security issue are closely linked to the events surrounding the end of the Cold War (Aradau et al. 2008: 147; Wæver 1993: 185). In the late 1960s and 1970s migration was a subject of public concern but it was mostly

discussed in economic terms. Typically many migrants were categorised as guest workers (Huysmans 2006: 65). In the 1970s there was a change to more restrictive policies, and state control was reasserted. Yet this did not radically change the perception of the public, or policy-makers, with regard to migrants. In the mid-1980s, migration started to become a politicised issue, particularly as asylum claims began to be used as an alternative route for economic migration (Huysmans 2006: 66). Still, this did not translate migration into a security issue (*idem.*). In fact, this was actually an “open border” period and border management was not the centre of attention for officials of member states in handling migrants (*idem.*). The end of the Cold War changed the state-centric and military-focused traditional security perspective. With a new type of migration from the former eastern bloc countries to western European countries, the scope of security was broadened in the perceptions of governments, and migration was incorporated into the debate about security.

The creation of the internal market also brought a dynamic through which the European integration process was implicated in linking migration to security. According to Huysmans (2006: 70), the link between the abolition of internal border control and the strengthening of external border control rests on the assumptions that control of the irregular movement of goods, capital, services and people happens at the border. Border control hence played a key role in the spill-over of the internal market into internal security, which became formally part of the EU policy at the same time with the completion of the EU internal market in 1992. The integration of internal security matters into the EU political agenda was followed by the incorporation of the Schengen *acquis* — provisions on the internal border-free area — into the EU legal framework in 1999.

The creation of the internal market meant a space in which illegal activities committed by terrorists and human trafficking and irregular border crossings by criminal organisations connected migration and security (Huysmans 2006: 71). Of these illegal activities, the most significant incident was the September 11th terrorist attacks in the USA. Although the extent to which it has contributed to securitisation of migration in the EU is controversial (Boswell 2007a; European Commission official, interview, 29

April 2010)⁵⁴, the tone of articulation on the handling of irregular migration has become clearly connected with terrorism and criminal acts in official EU documents since then (see for example, Council 2002; Huysmans 2006: 68).

The increased human movement in size and area, the development of internal security followed by the incorporation of Schengen *acquis*, and the rise in the aforementioned criminal activities have connected the issues of external border control with those of migration. This has justified the EU officials in developing the EU-wide risk analysis of migration as part of the EU's external border management strategy.

6.2.3. The First Common Risk Analysis Model

In June 2002, political leaders of the EU member states articulated their views on the external borders in the JHA Council publication *Plan for the management of the external borders of the member states of the EU*:

The external borders play a key role in defining and protecting the area of freedom, security and justice that we all desire. The control and surveillance of borders (...) help protect our citizens from threats to their security. Besides, they constitute a fundamental element in the fight against illegal immigration. In addition, in an area like Schengen, characterised by the suppression of internal border controls, the surveillance and control of external borders is essential (...) It also serves (...) to combat terrorism, illegal immigration and trafficking in human beings (Council 2002c: 3).

The JHA Council placed emphasis on the management of external borders as the central means to secure the area of “Freedom, Security and Justice”⁵⁵ from “threats”. “Illegal immigration” was framed within the threats together with the more specifically criminal activities such as terrorism and trafficking in human beings. In other words, member states’ political leaders clearly envisioned the issue of migration as a matter of security.

In addition to the articulation of the security-migration nexus, the JHA Council for the

⁵⁴ Whereas Boswell (2007a) has argued that the September 11th terrorist attacks in the USA did not affect much the EU policy making on border management, a Commission DG Home official has stated that the September 11 was “absolutely the cornerstone” to enact the proposal of establishing the Common Unit (European Commission official, interview, 29 April 2010).

⁵⁵ Since 1999 the EU has set itself the goal of gradually creating an Area of Freedom, Security and Justice (AFSJ). In the AFSJ, the EU aims to offer freedom of movement to individuals and a higher level of security through more effective action against criminal acts (EU 2014).

first time introduced the concept of “common integrated risk analysis” as part of the border management strategy in its Plan. The EU-level risk analysis was needed, the Council explained, to harmonise intelligence activities undertaken separately by member states. By introducing a single framework for data collection and analysis, national authorities would be able to “treat their operational objectives on a hierarchical basis and co-ordinate them in European Union terms” (Council 2002b: 10). Moreover, “risk” level would be graded on an EU-wide scale in a uniform fashion (*idem.*). The DG JHA officials expressed in the Presidency report to SCIFA that having an EU-level comprehensive overview through Frontex’s risk analysis is a way for more cost-effective and well-timed border management (Council 2003a: 4).

The JHA Council’s emphasis on risk analysis was further ensured in the Schengen Borders Code (European Parliament and Council 2006). The Schengen Borders Code is the key legislation defining the guiding principles and rules for border management. This has positioned risk analysis as equally important as border checks and surveillance. Border control is “not only checks on persons at border crossing points and surveillance between these border crossing points, but also an analysis of the risks for internal security and analysis of the threats that may affect the security of external borders” (European Parliament and Council 2006: Recital [8]). The Schengen Borders Code has allowed national border agencies to examine passengers in places where this is not normally undertaken (for example, on aircrafts), but only on the “basis of an assessment of the risks” (Council 2006b: 27). In this way, information management was highlighted from the early 2000s to the mid-2000s.

The question at stake was how the common integrated risk analysis should be developed. The JHA Council did not provide a detailed account but instead entrusted the task to the Common Unit established in 2002. As in the case of the common border guard training standards, the Common Unit established an *ad hoc* centre for risk analysis in Helsinki with the voluntary cooperation of Finland. The risk analysis *ad hoc* centre developed the first version of the common risk analysis model and tested its feasibility (Ilkka Laitinen, Executive Director of Frontex, interview, 14 November 2012).

The process of developing the common risk analysis model before the creation of

Frontex is characterised by the linking of information management for border control with “intelligence”. More specifically, EU intelligence agencies such as Europol cooperated with the *ad hoc* centre in Helsinki for the development of the common risk analysis model. Indeed, the JHA Council’s plan of 2002 suggested the Common Unit should cooperate with Europol and the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi) to identify “the type of information that is worth collecting at the external borders” (Council 2002c: 22-23). Establishing working relationships with Europol and Cirefi could mean the incorporation of the “intelligence” culture into the information management for border control and migration. This linkage influenced the establishment of the security-migration nexus at the operational level of border management. This has not been pointed out in scholarly works, apart from by Léonard, who has claimed that Frontex’s risk analysis has intelligence structures within it (and therefore securitising practices) (Léonard 2011: 24). To date, it appears that the Frontex risk analysis unit has a close cooperative relationship with Europol.

6.3. Frontex and the Common Risk Analysis Model

Frontex’s risk analysis unit became operational in 2005. As the Common Unit handed over its tasks to Frontex, the work of the Helsinki *ad hoc* centre for risk analysis was also shifted to that of Frontex. The primary mandate for Frontex on risk analysis was to develop and apply a common integrated risk analysis model and provide “adequate information” for “appropriate measures to be taken or to tackle identified threats and risks” (Council 2004a: Art. 4).⁵⁶ The Frontex Regulation did not articulate the task of risk analysis in direct connection with the issue of migration.⁵⁷ However, the connection was already clear during the development of the Common Unit (Council 2002c).

In fact, some risk analysis officials in the *ad hoc* centre stayed on this task in Frontex, thus it could be said that the common integrated risk analysis model (CIRAM) was

⁵⁶ It should be mentioned that a few member states are said to have had different ideas about the role of Frontex. France, for example, wanted it to be an agency that only facilitated coordination. However, Frontex has evolved differently, with the emphasis being on its intelligence function. Therefore, an interviewee observed, whilst France has supplied among the largest numbers of experts for the operational activities of Frontex the country has been, in general, reluctant to share information (Frontex official I, interview, 30 October 2012).

⁵⁷ An exception was the return of “third-country nationals illegally present in the member states”.

developed on the basis of the model devised by the agency's predecessor. However, a Frontex senior risk analysis official has stated that the CIRAM was not a simple "copy" of the former model. It was adapted to "produce the *intelligence* needed" (Frontex official L, interview, 6 November 2012, italics added), which was a new "conceptual model, methodological toolbox, weighing, collection plan and indicators" (Frontex 2006a: 16). It has appeared that, with CIRAM, Frontex intended to provide a commonality of language and methods between member states and to supply the basic methodology, sets of risk indicators and hardware and software for its practical application, as a Frontex senior risk analysis officer and a seconded national expert in the pooled resources section have understood (Frontex official B (SNE), interview, 7 September 2011; Frontex official L, interview, 6 November 2012).

CIRAM also established the "Intelligence Cycle", or steps that border agencies should take in the process of risk analysis in order to ensure "the efficiency of law enforcement activities through a system of checks and balance" (Frontex 2012d: 16). According to Frontex, such steps comprised tasking, collection, evaluation, collation, analysis and interpretation, reporting, dissemination and review (Frontex 2011b: 38). This intelligence cycle demonstrates the ways in which risk has been defined in connection with migration, and the role of Frontex in the process in relation to other actors in the EU border regime.

6.3.1. Constructing the "Risk"

The first step concerns defining the location of a "risk" and the methods of measuring the risk. This action is supposed to be undertaken by Frontex officials. That is to say that some fundamental questions — the risk to be defined, and which data is assumed to be relevant for the risk analysis — are constructed by Frontex officers.

In establishing the location of the "risk", Frontex has made it clear that irregular migration is central. This was already part of the mandate given by the JHA Council, but was not clearly stated in the Frontex Regulation, therefore it is significant that CIRAM has made it clear in operational terms. CIRAM defined the risk as "the magnitude and likelihood of a threat occurring at the external borders, given the measures in place at the borders and within the EU, which will impact on the EU's internal security, on the security of the external borders, on the optimal flow of regular

passengers or that which would have humanitarian consequences” (Frontex 2012d: 6). This relatively lengthy definition does not specify who, or what is to be considered a risk; however, it lists aspects such as the probability and size of the impact. Important here is that the Frontex analytical process now tries to integrate the “predicted” risks into its framework. As Neal (2009: 349) has pointed out, it is about the subject of analysis being “no longer a case of intercepting the ‘threat’ as it arrives at the border, but of ‘assessing’ the ‘threats’ ‘likely’ to emerge in the future”. To put it another way, a politically defined risk was converted into a technical, operational term.

In the definition of risk, “threat”, “vulnerability” and “impact” have appeared as the key components and it is in this articulation that the linkage made by the agency between migration and risk can be clearly observed. Chart 3 “Risk Analysis Diagram” is a chart developed by Frontex to clarify how risk is identified in CIRAM. “Threat” was defined as “a force or pressure acting upon the external borders” (Frontex 2012d: 19). This definition itself does not directly refer to migration. However, “a force or pressure” was measured by the “magnitude and likelihood” of migration-related factors: irregular migrants’ *modus operandi*; characteristics of individual irregular migrants; trends and predictions; push factors, and routes.

Chart 3: Risk Analysis Diagram

RISK		
Threat	Vulnerability	Impact
Magnitude & Likelihood	Level of vulnerability	Level of impact of the threat
<ul style="list-style-type: none"> • Modus operandi • Who, where, when • Trends and predictions • Push factors • Routes, access to facilitators 	<ul style="list-style-type: none"> • Border permeability • Operational activities • Effectiveness of countermeasures • Pull factors 	<ul style="list-style-type: none"> • Border and internal security • Ability to manage legitimate passengers’ flow at borders • Humanitarian impact

(Source: Frontex 2012b: 14)

Furthermore, Frontex identified itself as an evaluator of the member states’ ability to

respond to irregular migration in producing the concept of “vulnerability”. Vulnerability was defined as the member state’s capacity to mitigate the threat and to be analysed by such factors as border permeability, effectiveness of operational activities conducted at the borders, and pull factors. The last component of the risk was “impact”, which was interpreted as “the potential consequences of the threat” at the borders and in the internal area of the EU, the ability to manage legitimate passenger flow at the borders, and the humanitarian situations (Frontex 2012d: 6, 14, 15).

These detailed accounts on three main concepts, threat, vulnerability and impact, with their indicators, represent the translation by Frontex of the political articulation of the security-migration nexus into the operational language for border management.

6.3.2. Collecting and Organising Data

Data collection established in CIRAM is characterised by the role of external actors, most notably member states’ border agencies, at the borders based on the data provided by member states. CIRAM has established seven key indicators for analysis, all of which is information member states are most likely collecting. They are: detections of illegal border crossing; refusals of entry; detections of illegal stay; asylum applications; detections of facilitators; detections of forged documents, and return decisions and effective returns of illegally staying third-country nationals (Frontex 2014a: 11).

This symbolises the privileged access of Frontex to member states’ data, which other NGOs and private think-tanks cannot usually expect. As Bigo et al. (2010: 54) have stated, “Access is important in the ‘rules of the game’ of the European field of security”. However, this implies the reliance of Frontex on the member states in data collection. Frontex does not have direct access to national databases, so therefore it has to ask member states to provide the information needed for its analysis. This hurdle has been eased by an amendment to the Frontex Regulation in 2011, which now obliges member states to submit “all necessary information” to Frontex (European Parliament and Council 2011). This authority to collect data can be a motivation for policy makers, such as the European Commission, to use Frontex’s risk analysis, perceiving that they are more comprehensive than the reports created by other organisations. The implication of this is that the decisions of the European Commission and member states based on Frontex’s reports inevitably frame migration from a risk perspective.

The Frontex Risk Analysis Network (FRAN) is the core of Frontex's risk analysis activities and the primary communication space for Frontex with member states and other key actors in policy-making, intelligence and migrants' rights. That is, FRAN is composed of members of Frontex's risk analysis unit, national border agencies, the European Commission, Europol and EASO according to a Frontex senior risk analysis officer (Frontex official L, interview, 6 November 2012). They hold regular meetings at Frontex in Warsaw at least four times a year. A Frontex official has stated that "whilst CIRAM provides the framework and overall concept of risk analysis, FRAN covers the practical dimensions" (*idem.*). This means that actual operations of risk analysis are conducted together with these above mentioned actors.

In addition, an Internet-secured platform maintained by the European Commission "ICO-net" connects them virtually all of the time wherever they are (*idem.*). On this interactive virtual platform, Frontex disseminates updated information and member states are expected to upload their information upon request by Frontex. A delay in uploading is visible in the ICO-net system, and Frontex can push member states to provide the necessary data for its analysis (*idem.*). This implies that member states are not only obliged on paper but are also subject to monitoring by Frontex with regard to their compliance in supplying data to Frontex.

Frontex has not only information from member states' national authorities, but also its own operational activities as a source of data for analysis. Making the most of the fact that its joint border operations cover the major "hot spot" border areas, Frontex sends intelligence officers as an integral part of joint border operations to interview detected migrants in detention centres, in cooperation with the border guards of the hosting member state. For example, it has been reported that Frontex carried out the nationality determination interviews with migrants in Greece (Human Rights Watch 2011: 40). Returning migrants are also interviewed by Frontex officials with the assistance of screening officers. Through such face-to-face interviews, Frontex obtains extensive details of irregular migrants' experiences, which the agency may then use for its analysis. Information gathered in the Frontex headquarters is instantly made available by the system in the Situation Centre within Frontex. The Situation Centre has developed a reporting system through which participants in joint border operations are

able to update information. Information such as the number of incidents of illegal border crossing can be logged. The uploaded information is instantly transmitted to the central computer in Frontex's head office, where it is collated and put into a daily "live" situational map that covers the prevailing situations for the whole of the EU external border areas (Frontex 2014g). Frontex's Operational Office in Greece also has personnel who carry out data collection to support its headquarters (Frontex Operational Office official, interview, 2 April 2012). Furthermore, the agency utilises data from sources outside the EU. Using the partnership Frontex has concluded with EU neighbouring countries such as Croatia⁵⁸ and irregular migrant sending countries like Nigeria, the Frontex risk analysis unit obtains data. News articles, think-tanks, NGOs and academic reports are said to be some of these sources (Frontex 2011b: 8).

Information organised through these processes is no longer a simple accumulation of information from member states or crude data sent by Frontex intelligence officers from the site of joint operations. It should be better understood as new sorts of knowledge arising out of interaction with external actors and through a series of information-management activities within Frontex, including the following steps of "validating" and "analysis and interpretation".

Frontex holds a monopoly over the "validating" and "analysis and interpretation" of collected data. Frontex has the ability to assess the quality of the data it receives, by cross-checking the sources' reliability and the validity of the information against a large quantity of data. It can then sift out spurious non-relevant information (Frontex 2012d: 36). On what basis data is identified as "spurious non-relevant information" is not clear to the public. According to a Frontex senior risk analysis official, data submitted by member states or other resources sometimes "lack specific indicators or do not meet the expectations of Frontex" (Frontex official L, interview, 6 November 2012). This indicates that the collected data may not be used as crude data, but is aggregated according to the judgement of Frontex.

The main part of the risk analysis is "analysis and interpretation" (Frontex 2012d: 34).

⁵⁸ Croatia has become the 28th member state of the EU since 2013.

Statistical information, narratives of migrants and reports are used to identify the indicators set out for the three elements constituting the risk: threat; vulnerability, and impact. These three elements are analysed in terms of seven indicators. As mentioned earlier, these are: detections of illegal border crossing, refusals of entry, detections of illegal stay, asylum applications, detections of facilitators, detections of forged documents and return decisions, and effective returns of illegally staying third-country nationals (Frontex 2014: 11). Frontex's main risk analysis reports such as *Annual Risk Analysis* and *FRAN Quarterly* are structured on the basis of these indicators. The findings of the risk analyses are published in the form of periodical reports, which are distributed principally to member states and EU institutions. For example, "Weekly Analytical Brief" is produced for the Frontex Management staff of a particular joint operation, and "Weekly Analytical Report" serves the operational team and hosting authorities of a particular joint operation. On the other hand, "Annual Risk Analysis" and "FRAN Quarterly" provide a more comprehensive overview of the situation of the EU external borders with regard to irregular migration and cross-border crimes in comparison to the previous year, and provide an outlook and recommendations for the future (Frontex 2012d: 43). As the title suggests, these quarterly reports are produced based on the information exchange in FRAN. Through the expert community of risk analysts, Frontex not only receives information but can also await feedback about the analysis from its operations teams and member states (Frontex 2012d: 44).

In addition to these periodical analytical reports, Frontex produces a "tailored risk analysis" showing specific themes and geographical areas that correspond to current EU political discourses and priorities. While the periodical reports tend to follow the defined format based on member states' data, the tailored risk analysis reports are exploratory. Tailored risk analysis is designed to conduct analysis of the suggested field of "risks" by the EU institutions, to expand its field of influence and to directly meet the interests of EU institutions and member states. The trafficking of human beings is an increasingly prioritised issue, for example. Frontex has proposed that "this phenomenon is, by its transnational nature, closely related to the national borders and the work of border guards" (Frontex 2011c: 5-7). Under the aegis of the Council of Ministers and on

request from the European Commission⁵⁹ (European Commission 2010b), Frontex has also conducted a study on the situation of unaccompanied minors (Frontex 2010d: 9). The vested interest displayed by Frontex in expanding its field of influence can be clearly observed in these reports.

6.3.3. The Role of Frontex in CIRAM and Recent Trends of “Fundamental Rights”

Overall, the observation of the “intelligence cycle” established for CIRAM identifies the role of Frontex in constructing the risk for border management. To begin with, Frontex has placed the key term “risk” in an operationally measurable way. In addition, the three risk-constituting concepts, threat, impact and vulnerability, centre on migratory pressure. Given this, migration, despite not being clearly articulated as a main focus in the Frontex Regulation, is embedded throughout the process of analysis. Following the political context, this reinforces the existing link between migration and security.

Moreover, it has been revealed that analysis is conducted in interaction with officials of member states’ border agencies, “intelligence” agencies (e.g. Europol) and rights-based agencies such as EASO. Of these, member states have appeared most influential in risk analysis, partly because the Frontex risk analysis unit relies to a large extent on national data. It has been found that Frontex’s risk analysis unit has a dominant role in establishing the location of the risk at the very beginning of risk analysis and in organising the collected data after the completion of data collection. In this regard, the role of Frontex is considerable.

In addition, the end-products of risk analysis—a number of different types of publications—“objectively” present the situation of borders based on “valid” scientific data, with little consideration for the ways in which risk has been constructed. Because the analysis is conducted within a risk context, the issues covered inevitably reinforce the migration-security nexus.

⁵⁹ The European Commission had released the EU Action Plan on Unaccompanied Minors in the Migration Process, which was endorsed by the JHA Council Conclusions in June 2010 (Council 2010).

Such findings suggest an important difference from the mainstream organisational claim of Frontex. The recent legislative changes, particularly through the adoption of the Treaty of Lisbon (2009) and the Stockholm Programme (European Council 2009), have made clear the shifting official discourse in EU politics to emphasise human rights (or “fundamental rights” in the EU terminology). The Treaty of Lisbon has, for instance, for the first time rendered the Charter of Fundamental Rights of the EU (2009), of which Article 18 ensures the right to asylum to be guaranteed with due respect for the rules of the Geneva Convention (1951), the Protocol relating to the status of refugees (1967) and in accordance with the EU Treaties. Kaunert and Léonard (2012: 17) assert that “the now binding character of the Charter of Fundamental Rights is likely to lead to a strengthening of the rights of asylum seekers in the EU”. Although this shift does not necessarily mean a major shift in emphasis by policy makers, this is influential enough for EU agencies like Frontex to reshape their official statements and organisational structures. Moreover, the Stockholm Programme (European Council 2009)⁶⁰ has underlined the international protection of refugees and asylum seekers. The Programme has asked, for instance, for Frontex to coordinate its activities with the European Asylum Support Office in the reception of migrants at the EU’s external borders (European Council 2009: 26). In addition, the respect of fundamental rights has become a key concern in the European Parliament’s relations with Frontex (Trauner 2012: 795). Trauner (*idem.*) points out that the European Parliament has adopted a legal resolution in order to pressurise Frontex to meet international human rights and refugee protection standards (European Parliament 2008: 3, 5).

These legislative and political pressures have reshaped the organisational and legislative framework of Frontex. In the revised Frontex Regulation of 2011, the main articles explaining the mission and tasks of Frontex were substantially rewritten to bring them more into line with the policy discourse emphasising fundamental rights. The term “fundamental rights” is frequently used in the text, whereas the term never appeared in the Frontex Regulation in 2004 apart from the preface (Council 2004; European Parliament and Council 2011). A new Article, 26a, has asked the agency to develop and implement Fundamental Rights Strategy (European Parliament and Council 2011). The

⁶⁰ The Stockholm Programme provided a five-year (2010-2014) plan with guidelines for the Area of Freedom, Security and Justice of the EU.

same Article has also required Frontex to employ a “Fundamental Rights Officer” and set up a “Consultative Forum”. The Fundamental Rights Officer is designated by the Management Board and acts independently of other units in Frontex in performing his or her duties (*idem.*). In September 2012, Inmaculada A. Fernandez, a Spanish lawyer with fifteen years of experience in fundamental rights, humanitarian law, and international relations and who previously worked for the OSCE for Democratic Institutions and Human Rights, was appointed as the first Frontex Fundamental Rights Officer (Max Planck Institute for Foreign and International Criminal Law 2012: 146). The Officer is expected to monitor the respect for fundamental rights in Frontex’s activities, and is allowed access to all information necessary for this purpose (*idem.*). The Officer then drafts a report and submits it directly to the Management Board and the Consultative Forum (*idem.*).

The Consultative Forum is an additional mechanism to monitor and check Frontex’s activities regarding respect for fundamental rights, by assisting the Executive Director and the Management Board. Frontex has to consult the Forum in developing and implementing the Fundamental Rights Strategy, Code of Conduct and common core curriculums (European Parliament and Council 2011: Art. 26a). The Consultative Forum began functioning in 2012 as well, inviting major migration-protection civil society groups as well as EU agencies and international organisations to become members.⁶¹

These developments indicate that Frontex is integrating the migrant protection mandate according to official EU policy. This may redefine the process of risk analysis that Frontex officials conduct. However, the emphasis has been so far placed on the security dimension. This means that viewing migration from a risk perspective can be still firm in EU policy making, in the process of which Frontex’s risk analysis has been used increasingly.

⁶¹ According to Jesuit Refugee Service Europe (2013:1), the Consultative Forum consists of nine civil society organisations (Amnesty International, Caritas Europa, Churches’ Commission on Migrants in Europe, European Council for Refugees and Exiles, International Commission of Jurists, Jesuit Refugee Service Europe, Platform for International Cooperation on Undocumented Migrants and Red Cross Europe), two EU agencies (Fundamental Rights Agency and European Asylum Support Office) and four international organisations (Council of Europe Migration Coordination, IOM, OSCE and UNHCR).

6.4. The Frontex Risk Analysis as an Explanatory Factor in Decision-Making

This section examines the extent to which Frontex's risk analysis has influenced the EU decision making process on the matter of border management. Two cases are scrutinised: the External Borders Fund and the Schengen governance reform. It identifies that Frontex's risk analysis can be regarded as an explanatory factor of political decisions and that it has increased the legitimacy of EU political actors' decisions, especially the European Commission.

6.4.1. The Resource Distribution in the External Borders Fund

The External Borders Fund (European Parliament and Council 2007a) was a major financial instrument for border management issues between 2007 and 2013 (Rijpma 2009: 128). The External Borders Fund was set up with three other Funds⁶² within the wider financial Programme of "Solidarity and management of migration flows".⁶³ Of all Funds in this Programme this Fund had the highest budget. The aim of the External Borders Fund was to reduce the disproportionate share of financial burdens of particular member states. This was regarded as important, given that member states possessing the external borders had tended to invest more resources in border management than others, due to their location being directly exposed to irregular border crossings. To fulfil this aim, the External Borders Fund covered the expenses to strengthen infrastructure at and between border crossing points by constructing buildings and integrating information technology. Equipment for the Visa Information System (European Parliament and Council 2008) and the Schengen Information System (Council 2007a), and means of transport and communication were budgeted for by the External Borders Fund. The financial resources were also provided for relevant border guard training and secondment of border guards (European Commission 2014d). Given the wide coverage of activities and the large budget, the External Borders Fund was an important financial resource for member states. Moreover, the advantage of the External Borders Fund lay in its direct allocation to member states (European Commission 2014d).

⁶² The other three Funds were the Integration Fund, the European Return Fund and the European Refugee Fund.

⁶³ This Programme was created in 2007 in line with the Hague Programme listing the priority actions in the area of immigration, asylum and borders for the period 2007-2013 (European Commission 2005).

Against this reasonable use of the Fund, the manner of distribution was a concern of member states. According to the Decision establishing the External Borders Fund (European Parliament and Council 2007a: Art. 14), the funding was allocated after a set of steps that were made to identify which EU member states were qualified to receive funding for border management purposes. Firstly, the budget was divided into 30% for external land borders, 35% for external sea borders, 20% for airports and 15% for consular offices. Secondly, 70% of the budget for land and sea border management was distributed according to “the length of their external borders” of the member states.⁶⁴ This “length” was not a direct reflection of the actual length of borders, but was based on a complex set of factors (“weighting factors”), in which Frontex’s risk analysis was utilised as the key for determination.

For one thing, Frontex played a prime role in calculating the “weighting factors”. The “weighting factors” were defined to be measured by “the size of the problem”, which was the migratory pressure, and “the level of the threat posed by it” (European Commission 2011c: 97). Frontex measured them, applying the same indicators as are used for its risk analysis.

For another, Frontex suggested adding extra information (“situational analysis”) on “the political, social and economical [economic] developments in third countries and the neighbouring countries”, so that the allocation of the budgets to member states would better reflect the actual burdens of member states (European Commission 2011c: 99). The combination of weighting factors and situational analysis enabled Frontex to classify the threat level of member states’ external borders, which also integrated the size of the problem. Chart 4 “Classification of threat levels of the external land borders” is an example of the classification of the external land borders. Threat levels are classified from “High” to “Normal” and the table shows that a few land borders such as those of Spain (against Morocco) and Greece (against Albania) were categorised as

⁶⁴ The rest of the 30% for land and sea borders was to be allocated by “the workload at their external land borders” (European Parliament and Council 2007a: Art.14). “Workload” was calculated on the basis of the number of persons crossing the external border, the number of third country nationals refused entry at the external border, and the number of third country nationals apprehended after having crossed the external border illegally (*ibid.*). Therefore there was little room for the risk analysis to change the calculation. Funding for air borders (airports) is based on workload only.

possessing a “high” threat level (European Commission 2011c: 59).

Chart 4: Classification of threat levels of the external land borders

Threat level: High > Medium > Normal N.A. = No Answer						
member states	Bordering with	Budget year 2007	2008	2009	2010	2011
Austria	Lichtenstein	Normal	Normal	Normal	Normal	Normal
	Switzerland	Normal	N.A.	N.A.	N.A.	N.A.
Belgium	UK	Normal	Normal	Normal	Normal	Normal
Bulgaria	FYROM	N.A.	N.A.	N.A.	Normal	Normal
	Greece	N.A.	N.A.	N.A.	Normal	Normal
	Serbia	N.A.	N.A.	N.A.	Normal	Normal
	Turkey	N.A.	N.A.	N.A.	Medium	Medium
Cyprus	Green line	Normal	Normal	High	High	Medium
Estonia	Russia	Normal	Normal	Normal	Normal	Normal
Finland	Russia	Normal	Normal	Normal	Normal	Normal
France	Andorra	Normal	Normal	Normal	Normal	Normal
	UK	Normal	Normal	Normal	Normal	Normal
	Switzerland	Normal	N.A.	N.A.	N.A.	N.A.
Germany	Switzerland	Normal	N.A.	N.A.	N.A.	N.A.
Greece	Albania	High	High	High	High	High
	Bulgaria	Medium	Medium	Medium	Medium	Normal
	FYROM	Medium	Medium	Medium	Medium	Medium
	Turkey	High	High	High	High	High
Hungary	Croatia	Normal	Normal	Normal	Normal	Normal
	Romania	Medium	Medium	Medium	Medium	Medium
	Serbia	Normal	Medium	Medium	Medium	Medium
	Ukraine	Medium	Medium	Medium	Medium	Medium
Italy	Switzerland	Normal	N.A.	N.A.	N.A.	N.A.
Latvia	Belarus	Normal	Normal	Normal	Normal	Normal
	Russia	Normal	Normal	Normal	Normal	Normal
Lithuania	Belarus	Normal	Normal	Normal	Normal	Normal

	Russia	Normal	Normal	Normal	Normal	Normal
Norway	Russia	Normal	Normal	Normal	Normal	Normal
Poland	Belarus	Normal	Normal	Normal	Medium	Medium
	Russia	Normal	Normal	Normal	Normal	Normal
	Ukraine	Medium	Medium	Medium	Medium	Medium
Romania	Hungary	N.A.	N.A.	N.A.	Medium	Medium
	Moldova	N.A.	N.A.	N.A.	Medium	Normal
	Serbia	N.A.	N.A.	N.A.	Normal	Normal
	Ukraine	N.A.	N.A.	N.A.	Normal	Normal
Slovakia	Ukraine	High	Medium	Medium	Medium	Normal
Slovenia	Croatia	High	Medium	Medium	Medium	Medium
Spain	Andorra	Normal	Normal	Normal	Normal	Normal
	Morocco	High	High	High	High	High
	UK	Normal	Normal	Normal	Normal	Normal

(European Commission 2011c: 59-60)

This assessment directly shaped the budget allocation of the External Borders Fund. For example, although Spain only holds about 1% of the total external land borders, it received the second largest share of the funding (14%) in the category of the land borders. The EU executive body, the European Commission, justified this by stating that there was a disproportionately severe situation of irregular migration on its border as assessed by Frontex (European Commission 2011c: 59). Likewise, member states with a “medium” threat label received more funding than those faced with “normal” threat levels. As the above table shows, only a few member states’ borders were categorised by a “high” threat level, regardless of their actual length of external land borders (European Commission 2011c: 65). This logic was also applied in the category of external sea borders. Of 22 member states holding external sea borders, 87% of the financial resources were allocated only to Greece, Italy, Malta and Spain, all of whose borders were labelled a “high” threat (*idem.*). In explaining why only a few member states could receive such a large portion, the European Commission DG Home officials declared in the staff working paper that it was “according to FRONTEX” (European Commission 2011c: 59).

Behind the emphasis of Frontex's risk analysis, there is a strategic calculation of the European Commission DG Home: this executive body needs external data that makes its decisions appear more convincing to member states. Scholars have argued that the decisions of the European Commission are perceived as "weak" by national governments in terms of its democratic representation (see for example, Boswell 2007b; Hooghe 2001). Boswell has defined the European Commission as a "fragile" administrative agency. This is because it is not headed by elected representatives, nor is it tasked with implementing a democratically mandated policy programme (Boswell 2007b: 7). This implies that the European Commission is "operating in a highly unstable organizational field, and thus likely to be constantly striving to enhance its legitimacy" (*idem.*). A similar point is made by Hooghe (2001: 7), who has pointed out that the European Commission is exposed to the criticism for not being elected by citizens. Unelected Commission officials therefore have to "combine limited democratic accountability with authority that rests on expertise, partisan impartiality, and delegated competence" (*idem.*). According to Majone (1997), EU agencies are "expert agencies" which can help EU policy making with specialised knowledge. The incorporation of the analysis made by external organisations such as Frontex, although the EU agencies cannot be considered completely independent of the EU institutions, might be taken to increase the legitimacy of the Commission's judgement.

In particular, the European Commission tends to use such kinds of knowledge produced by EU agencies in order to increase the legitimacy of its decisions. Boswell (2007a: 7) has argued that the European Commission as an administrative agency has issues with its own legitimacy. Unlike the Council or the European Parliament, the Commission officials are not elected, therefore knowledge is drawn upon for symbolic as well as functional purposes to bolster its own validity. Boswell has explained this as follows:

The European Commission is not headed by elected representatives, nor is it tasked with implementing a democratically mandated policy programme. (...) Its role is continually being questioned and its activities subject to demands for justification (...) there is a continuous process of debate and decision-making on the Commission's scope of competence in EU policy-making, and on the distribution of power between the Commission and other institutions. This implies that it is operating in a highly unstable organisational field, and thus likely to be constantly striving to enhance its legitimacy (Boswell 2007a:7).

Furthermore, the European Commission had reason to be more concerned about the

budget allocation of the External Borders Fund than that of the other three Funds on migration (the Integration Fund, the European Return Fund and the European Refugee Fund). The Commission had recognised the “multitude of factors and data to consider” on assessing the situation of external border management and had acknowledged the lack of its own statistical resources for the assessment (European Commission 2011c: 97, 102). The European Commission DG Home has commented that “the statistics are not produced by the Commission *at all* (...) notably in the case of the External Borders Fund” (European Commission 2011c: 102, italics added).

The European Commission’s need for the use of an external organisation for the External Borders Fund is made more notable by the fact that the European Commission involved an EU agency *only* for this Fund.⁶⁵ By so doing, the European Commission justified its budget allocation, its apparent imbalance notwithstanding. “Despite some difficulties” the European Commission could make it “possible to collect the necessary data to apply the risk analysis criteria” so that more resources could be distributed to “the member states with the highest responsibility” (European Commission 2011d: 7).

However, this does not mean that member states passively accepted the distribution of funding by the European Commission. It is, rather, reasonable to assume that member states sought for means to input their interests. Frontex might be identified as a forum for this purpose. As revealed in the previous section, Frontex’s risk analysis unit undertakes analysis in close cooperation with the counterpart officials of member states. It might be possible that member states input the interest through FRAN. If that is the case, the presence of Frontex emerges as one of importance not only for the European Commission but also for member states.

The case of the External Borders Fund has shed light on an aspect of EU decision making that has needed the back-up of Frontex’s risk analysis. The European Commission has its own legitimacy issues, and thus it referred to Frontex for its “valid

⁶⁵ The budget of the other three Funds was allocated more systematically than the External Borders Fund. In the European Integration Fund, each member state receives a fixed amount of EUR 500,000 annually and the remaining available annual resources are allocated by considering the average number of legally residing third country nationals and that of third country nationals who have obtained authorisation to reside in the territory of a member state (European Commission 2011: 93).

and objective” data in order to convince member states that its decision was sound and rigorous.

6.4.2. The Role of Member States in the Governance of Schengen

Today, the creation of the border-free zone, the “Schengen area”, is one of the most significant symbolic principles of European integration. However, the Schengen was challenged in 2011 by some member states which demanded the reinstatement of border checks within the Schengen area in order to protect their territories against irregular migrants, who had entered via the “porous” borders of other member states. By tracing the political negotiations among EU policymakers, this section examines the role of Frontex’s risk analysis in the newly established “Schengen governance package” (Council 2013b).

Creating a border-free “Schengen area” began as an intergovernmental project of five EU countries (Belgium, The Netherlands, Luxembourg, France and Germany). This has become an essential component of the EU and has benefitted over 650 million travellers annually (Brady 2012: 1). France, and some other member states, challenged this principle, the right to the free movement of persons and the abolition of internal border checks, from 2011 to 2012 in order to block the inflow of irregular migrants (Carrera 2012: 1). This happened at a time of severe economic crisis in Europe and political instability in North Africa, when EU political leaders perceived that southern frontier member states were unable to prevent illegal border crossings (Carrera 2012). The image that EU external borders were “out of control” was prominent in the media. In combination with the rise in anti-immigrant far right political movements and parties, the management of external as well as internal border management emerged as the most pressing concern of EU political leaders. The European Council held in February 2013 has listed actions in the areas of external borders and internal security as one of the six top priorities under the multiannual financial framework 2014 – 2020, acknowledging and emphasising the “insular societies who face disproportional migration challenges” (European Council 2013: 37).

The controversy over Schengen is perhaps illustrated most graphically by the French-Italian border disputes in April 2011 (*EurActiv* 2011). After the Arab Spring in 2010,

many Northern Africans fled from their home countries to Europe. Particularly, a number of Tunisians reached the nearest European territory, Lampedusa, an Italian island. Consequently the number of irregular migrants moving to Italy had drastically increased by 2011, making Italy one of the top member states in terms of detected irregular migrants. Whilst calling for help from the EU, the Italian government issued temporary residence permits to these migrants. Residence permits issued by a member state allow people to legally travel within the Schengen area. This act by the Italian government was commonly viewed as a strategic ploy to persuade the migrants to leave Italy. In fact, many Tunisians — who, being from a former protectorate of France, and thus more likely to speak French and find families and friends in France — intended to head for France. This Italian government action outraged the French government (*idem.*). In response France allocated border patrols and stopped rail traffic in order to block the migrants from entering Italy. The tension quickly escalated between the two member states.

The dispute was settled after a bilateral meeting between the then-French President Nicolas Sarkozy and the then-Italian Prime Minister Silvio Berlusconi. In the meeting, they settled the dispute by agreeing to cooperate on joint patrols in the Mediterranean Sea (Traynor and Hooper 2011b). Right after the settlement between Italy and France, in June 2011, Denmark surprised other member states and EU institutions by suddenly declaring its intention to reinstate border checks to regulate the migratory flow to the state. In March 2012, Germany and Austria pressured Greece, stating that they would conduct the unilateral restoration of border control for travellers from Athens (*EurActiv* 2012). These member states' actions were seen as a challenge to the foundation of the Schengen *acquis* by the supranational institutions, most particularly the European Commission (European Commission 2011e: 2).

It is worth noting here that the reintroduction of border control was, in itself, not completely “illegal” in EU law. In the past (2006-2010), there had been at least 22 cases in which member states stated their plans to reintroduce border controls at their internal borders (European Commission 2011e: 4). However, those cases had been undertaken on the grounds established in the Schengen Borders Code (European Parliament and Council 2006). The Schengen Borders Code stipulated that member states are allowed to reinstate internal border checks for a short period, with advance notice to other

member states and EU institutions, where justified. Member states are justified, for example, when a large-scale sporting event or a visit by important persons is expected. Following the rule, Austria carried out border checks during the European Championship football tournament in 2008. Malta also inspected passengers at borders when the Pope visited the state in 2010 (European Commission 2010: 13-14). The Schengen Borders Code has also permitted the reinstatement of internal border checks in the case of a threat to national security. Norway and Sweden reinstated border checks after the terrorist attack in Norway in 2011.

In contrast to the past, the recent cases raised the question of Schengen's fitness for purpose and appropriateness. One salient issue was whether the reinstatement of internal border checks due to (irregular) migratory pressure could be justified under the Schengen Border Code. Carrera (2012: 4) has argued that Tunisian migrants in Italy could hardly be considered to constitute a threat to national security and that the case required neither urgent nor emergency action. However, facing the pressures from some member states, the European Commission began work on revising the Schengen rules which led Frontex's risk analysis unit to play a part.

In September 2011, the European Commission DG Home published legislative proposals called the "Schengen governance package" (European Commission 2011e). The main suggestions were two-fold: a new mechanism to evaluate and monitor the state application of the Schengen *acquis*, and adding exceptional circumstances for the reinstatement of the internal border checks.

Firstly, Frontex's risk analysis was used as an explanatory factor in the proposed Schengen evaluation and monitoring mechanism. This mechanism is important in maintaining "trust" between member states as its oversight function ensures that all Schengen member states apply the rules effectively and correctly. The mechanism itself is not new, as it has already been applied since 1999. The evaluation and monitoring were conducted by the members of the Schengen Evaluation Working Party of the Council. The working party for Schengen evaluation made sure that member states were not placing border controls at the internal borders and that they were conducting appropriate border checks at the external borders, by sending out questionnaires and

deploying an evaluation team to member states. After the evaluation, the working party sent a set of recommendations for improvement, if any was needed.

The European Commission's proposal shifted the responsible body of the evaluation and monitoring from the Council working party to a new forum in which the European Commission and other EU bodies could be involved in the process as well as member states. The rationale, for the European Commission, is that the Working Party consisted purely of member states' representatives, thus the evaluation was not more than "peer-review" and the evaluation was not as strict as it should be. Moreover, the evaluation was made in a closed space between member states; no transparency was guaranteed. These claims sound reasonable, but it had an important implication: there was an intention to change the nature of the mechanism from an exclusive state practice to a supranational practice in which the European Commission would have an increased influence.

The European Commission DG Home thus brought in an "expert" agency, Frontex, to increase its legitimacy in its claims. The DG Home suggested using Frontex's risk analysis to select "target" member states for "unannounced on-site visits". Unannounced on-site visits were a new measure proposed by the European Commission, in which an evaluation team visits a member state without advanced notice and checks the performance of that state's border agency. This measure was meant to prevent member states from preparing and finessing their operations solely in the evaluation team's presence. The European Commission asked Frontex to submit the risk analysis report that lists at least ten specific border sections and another ten specific border-crossing points to be evaluated (Council 2012: 14).⁶⁶ The Council, which in principle did not welcome the European Commission's increasing influence, supported the integration of Frontex's risk analysis into the process (Council 2012: 3). The Council later even emphasised this, telling the European Commission to "notably" take into consideration "the risk analysis provided by Frontex" (Council 2012: 12). As Majone (1997) has argued, the Council's support for the integration of Frontex's risk analysis is its strategy for avoiding the increased role of the European Commission.

⁶⁶ This raises the question of how the Schengen evaluation group selected the "target" member states.

The integration of Frontex's risk analysis has political significance. For one thing, the Schengen evaluation group may perceive that member states with borders listed in the risk analysis report of Frontex would have some concerns about their capacity to apply Schengen rules. For another, if the evaluation team judges that the concerned member states in fact lack the necessary capacity, other member states are justified in installing border checks even within the Schengen states. This was the second suggestion of the European Commission DG Home. As outlined earlier, the Schengen Borders Code allows member states to reinstate border control within certain limited circumstances (European Parliament and Council 2006: Art. 23). Such justifiable circumstances include when a member state has "persistent serious deficiencies" according to the findings of the evaluation and monitoring processes (European Commission 2011e: 10). "Persistent serious deficiencies" were defined as a condition whereby a member state failed to conduct effective measures, therefore other member states would have to mitigate the adverse impact of this failure by reintroducing border control. In this scenario member states may reintroduce the border control for up to two years (European Commission 2011f: 11), much longer than the previous rule of 60 days (European Parliament and Council 2006: Art. 23).

The European Commission's proposal, although some amendments were made, passed and has been adopted as the Schengen governance package since 2013. Notably, the integration of Frontex's risk analysis remained without amendment and was reinforced with the strong support of the Council. Although other EU expert agencies such as Europol and the Fundamental Rights Agency have been mentioned, their role in the process of evaluation and in the criteria for the reinstatement of internal border controls is small and is not as visible as that of Frontex.

As shown, the Schengen evaluation and monitoring mechanism uses the risk analysis report in the process of judging the state performance. This is important because the judgement by the evaluation team may justify member states' reinstatement of Schengen internal border checks for reasons pertaining to migratory movement. Frontex, which was created for the "external" border management, is now becoming a factor influencing the conditions of internal borders, and thus the configuration of the Schengen area.

6.5. Conclusion

What effect has Frontex had on the EU border regime with its risk analysis function? This chapter has highlighted two points in this regard. Firstly, Frontex has made clear a link between migration and security by framing migration as a risk factor in designing an EU common risk analysis model. Given that migration was already associated with security by the time Frontex began its operation, as argued by Léonard (2011) and Chillaud (2012), it is too much of an exaggeration to say that Frontex has generated a “norm” in the regime, in this case the migration-security nexus. It is more reasonable to understand that the agency’s work has embedded and operationalised this norm at policy-implementation level. To put it another way, Frontex has influenced the regime by sustaining the regime’s norm. It is also important to mention the agency’s own interest in risk identification. If no risks exist (or are believed to exist) at borders, no *raison d’être* of Frontex is justified. Thus, self-consciously or otherwise, Frontex inevitably is dependent on the migration-risk connection.

Secondly, this chapter has shown that Frontex’s risk analysis is working as an explanatory factor as regards the states’ ability to access EU funding and the perception of EU policymakers on state capacity to manage borders, both of which comprise critical dimensions of the EU border regime. Frontex’s risk analysis influences the “categorisation” of member states (the risk level of member states’ borders). This has shaped the decisions on the allocation of financial support that member states could receive. In the case of the Schengen governance reform process, a strong emphasis is placed on Frontex’s risk analysis to explain the capacity of member states to manage their borders. The result affects what member states can do concerning the reinstatement of internal border checks, which shapes the configuration of the Schengen area. In sum, this chapter has analysed the processes and motivations behind the use of Frontex’s risk analysis, which has shown that Frontex’s risk analysis has played a larger role than when it was created in both cases.

It should be noted, however, that the effect of Frontex’s risk analysis is limited, especially in policymaking. This stems from the fact that, ultimately, Frontex’s risk analysis is no more than a tool for policymakers to explain how they reached a certain decision. Frontex’s risk analysis does not stand alone as an independent variable for

dependent variables (the results of the funding distribution and that of the Schengen evaluation). Moreover, the finding drawn from two cases cannot be easily generalised to explain other cases. Nonetheless, it has contributed to an important institutional change, in giving credibility to the decisions central to the regime.

This chapter showed that non-state actors like Frontex, albeit indirectly, can have effects on the regime, in this case with “knowledge-creation” in the form of risk analysis. In the process of producing EU-wide risk analysis, information has been translated into knowledge that “shapes social reality and prompts action” (Barnett and Finnemore 2004: 30). Regardless of the objectivity of the analysis, the acts of classifying member states have contributed to the policymakers’ understanding on appropriate decisions. By tracing Frontex’s role in information management, this chapter explained that “those processed and distributed data may affect what issues people think are important for policymakers to address, the lens through which people interpret issues, and what information will prove relevant for social and political judgements” (Frame Works Institute 2002: 5). Frontex does not exercise formal decision-making power, but risk analysis has appeared as a guide affecting the ways in which decisions are made.

Chapter 7: Conclusion

7.1. Introduction

This dissertation has examined the role of Frontex in its different aspects and assessed its integrative effect on the EU border regime in the sense of creating a single system by converging national practices of border control. Frontex was created as a result of a political compromise between two models of cooperation: a more integrated model of the European Corps of Border Guards, and an intergovernmental model of the External Border Practitioners Common Unit. Given its very limited powers and resources, Frontex, as a mere support agency of the EU member states, has hardly been researched as a regime-changing actor. However, the research results of this dissertation have demonstrated that we are witnessing the movement of the mode of cooperation towards a more integrated form of cooperation. Regular and recurrent participation of member states in EU level operational activities has become structured. Recent legislation has also been enacted in such a way that the commitment of member states to Frontex-organised activities is reinforced.

This final chapter is organised to synthesise findings from the empirical research shown in the previous chapters and respond to the main research question of this dissertation: Frontex's integrative effect on the EU border regime. This will enable the further discussion of contributions to the body of academic knowledge, and challenges and suggestions for future research. Therefore this chapter proceeds in the following order. Firstly, it presents the most important findings of the empirical analyses from Chapter Four to Chapter Six. The following section synthesises these findings to discuss the main question of this dissertation: the integrative effect of Frontex on the EU border regime. Thirdly, it develops other theoretical and empirical contributions of this dissertation for a wider research context. The final section discusses major challenges identified during the research process and the suggestions for future research.

7.2. Main Findings

In exploring the role of Frontex in the EU border regime, this dissertation has set out three hypotheses, each of which has shed light on the integrative effect of Frontex from different angles. The empirical study in Chapter Four has tested the first hypothesis

(H1): *Frontex has effectively mobilised border agencies of EU member states and third countries in the EU's external border control.* It has explained that Frontex has mobilised national border agencies more significantly than the literature suggests, and that the initial intergovernmental-oriented cooperation has, to a large extent, shifted to a more structured form of cooperation. An indication of this is an increased degree of commitment. Chapter Four showed the number of joint operations has risen to cover all of the EU's border areas. Moreover, the number of participating member states in joint operations has risen from only eight to almost all member states and the number of deployed border guards has increased.

Another indication of Frontex mobilising national border agencies is the establishment of a set of mechanisms and the legal framework that have ensured state commitment. Although it is still up to national border agencies concerning the extent to which they commit to joint border operations with their border guards and equipment, such mechanisms as EBGT and OPERA have established procedures that make clear that regular and sufficient commitment is expected. The establishment of RABIT enacted in 2007 and later altered with EBGT was the first testing stone for observing the reaction of border agencies of EU member states to mandatory contributions for Greek-Turkish border management. Once it was confirmed as a "success" in terms of the participation of border agencies and of their degree of contribution, RABIT's mechanism of the mandatory contribution was applied to regular joint border operations in the form of EBGT. This has been accompanied by OPERA, which requires the minimum contribution of equipment. Ownership of equipment is, moreover, possible for Frontex, which was out of the question when it was first established. These mechanisms have enabled Frontex to plan joint border operations on a longer-term basis, rather than on a short-term basis at the request of member states. This is illustrative of a different picture from what has been presented in existing research (see, for example, Wolff 2012: 147). However, it is important to mention that there is, even after the Frontex Regulation of 2011, no absolute legal obligation to take part in joint operations.

This dissertation has also discussed Frontex's effective mobilisation of third countries' border agencies for Frontex's activities. With no authority to conclude international agreements with third countries, the agency has sought cooperative relationships

through “working arrangements”, which bind only Frontex and an authority of a third country concerned. This administrative level arrangement is nonetheless influential, ensuring the third country’s participation in a wide range of operational activities, from risk analysis-related cooperation to participation in joint border operations. The agency’s initiatives have increased the interaction between border agencies of both member states and third countries. That is, EU member states have been given an opportunity to cooperate with third countries with which they do not have direct contact or they do not have an interest in establishing bilateral cooperation on a more permanent basis. In this sense, Frontex is a cooperation broker between EU member states and third countries in the field of border management.

The mobilisation of external state border authorities into Frontex’s activities implies that Frontex’s mission, the management of the EU’s *external borders*, has actually gone beyond the physical location of the EU’s external borders. In sum, the first empirical study demonstrates that Frontex has effectively mobilised state border agencies. Consequently, the EU’s border management has shifted “up” from the unilateral approach or, at best, intergovernmental form of cooperation to a more centralised approach under the coordination of Frontex. The locus of the EU’s border management has also shifted “out” of its external borders, involving third countries’ border agencies in Frontex’s activities.

The second empirical study examined Frontex as an agent of policy (common standard) transfer. The hypothesis (H2) tested was: *Promotion of common standards by Frontex has encouraged imitation between border agencies, with an integrative effect on border guarding procedures and practices*. By looking at two cases, border guard training and ABC, it was explained that Frontex has acted as an agent of transfer with a limited impact, primarily by non-coercive means such as encouraging learning, emulation and socialisation. In the case of border guard training, the legal framework has been developed since Frontex’s establishment so that EU member states except non-Schengen member states are legally bound to integrate Frontex’s common training standards. This indicates that the imitation between national border agencies has been promoted in border guarding procedures and practices; yet member states have been given leeway to choose which part of common standards to integrate. In order to

promote further the use of common training standards, Frontex has developed the network of border guard training. This network has also provided a space for national training coordinators and officers who are in charge of training to share their experiences and ideas. Non-coercive measures have been imperative in the case of ABC due to the absence of the legal provisions. The Frontex RDU has sought networking opportunities to make their common standards known not only by national border authorities but also by other actors such as international standardisation organisations. In both cases, an “epistemic community” has been developed via Frontex with increased interactions among national border officials with similar job functions.

Indeed, a characteristic of Frontex’s work for transfer is the integration of international organisations, civil society organisations and private firms into such communities. In the case of border guard training, international organisations and educational institutions have worked on common curriculum making and implementation processes. UNHCR officers, for example, have participated in advising Frontex in constructing the common core curriculum, particularly the sections related to the UNHCR’s mandate (e.g. international protection of asylum seekers). In the case of ABC, Frontex has emphasised the role of private firms like IBM because raising their awareness about Frontex’s role is a way to diffuse Frontex’s ABC guidelines. In addition, Frontex has approached international standardisation organisations such as IATA, ICAO and ISO. Private firms and international organisations are not necessarily involved in the common standard making process or do not participate in the regular meeting networks such as FRAN, but Frontex has clearly targeted them in looking to transfer the outcome material to national border agencies. Having networks with these actors could increase legitimacy and open up chances for the wider use of Frontex’s common standards because educational institutions and international organisations are ultimately evaluators or accreditors in the case of training, and private firms are the developers and suppliers of the ABC technology. Having them on board has made the voluntary-based transfer more effective. The consensual knowledge among actors in border guarding has been developed in both of the examined cases.

However, it should be noted that the voluntary-based transfer by Frontex has resulted in an uneven proliferation in the EU. It has showed that newly entered member states are

more likely to have integrated common standards more thoroughly than older member states. This is because new member states tend to see the benefits of adopting common standards in political or symbolic terms (e.g. to “demonstrate” to other member states and EU institutions that they are “good Europeans” by adopting “European projects” such as Frontex’s common standards). On the other hand, older member states may not see significance in common standards other than at a practical level, thus being more pragmatic in implementing common standards. Nonetheless it is worthwhile to mention that Frontex’s role in disseminating common standards represents “soft governance” impact on the EU border regime as opposed to the “hard governance” of legislative action and enforcement.

The third empirical analysis has demonstrated that Frontex’s impact is not only found in the operational activities but is also recognised in the EU decision-making processes. Such observation has been made by examining the third hypothesis (H3): *Border agencies’ understanding and perception of what constitutes risk and what course of actions border agencies should take are influenced by risk analysis produced by Frontex*. This dissertation has firstly contended that Frontex has relied a great deal on the data produced by EU member states but that its risk analysis is not a simple aggregate of member states’ national data but the application of a particular knowledge with political effects. In this regard, two findings can be highlighted. Firstly, it has transformed a politically defined risk for border management, in which migrants are the subjects, into measurable terms with concrete means at an operational level. Though Frontex may not be “determining” what constitutes risk in broad terms, it has actualised the defined risks in its operations. Moreover, Frontex has categorised the risk level of the borders of each member state. Categorisation “shapes social reality and prompts action” (Barnett and Finnemore 2004: 32), influencing how people perceive others.

This dissertation has also shown that the effect of Frontex’s risk analysis is seen in the policy makers’ decisions. It has explained that the EU institutions and member states, particularly the European Commission DG Home, have increasingly referred to Frontex’s risk analysis to reason their decisions. The widespread notion that integrating analysis produced by a “non-political” agency with relevant expertise makes decisions more rigorous and convincing means that Frontex’s risk analysis has subsequently been used to distribute EU budgets and to assess the performance of border agencies with

respect to the Schengen rules.

What these mean is that Frontex in a sense “substantiates” the political risk perception of the Council through the empirical evidence on risks which it collates and interprets. The European Commission and the Council often refer to and use Frontex’s risk assessments. It implies a circular policy making process. It starts with the Council mandating Frontex to carry out risk analysis, Frontex carries these out in line with the Council’s risk perception and Frontex’s analysis produces the evidence to reinforce the Council’s initial assumption, leading to the justification for more common action. Even though Frontex does not exercise formal decision making power, it plays a role in the policy process.

7.3. Frontex’s Integrative Effect on the Regime

The main findings drawn from empirical analyses have highlighted whether and how Frontex has brought an integrative effect to the EU border regime. In summary, Frontex has had a limited integrative effect on the regime. As discussed in Chapter Two, a regime is composed of norms and principles, which define the regime itself, and of rules and procedures, which concern the functioning of the regime (Krasner 1983). Frontex has redefined operational rules and procedures. Rules and procedures are the basis for the everyday activities of border guards and for the decisions of policy makers. In other words, convergence in working rules, national training structures, and cooperation patterns in EU level activities are the effect of Frontex’s activities, which sociological institutionalists emphasise as factors bringing integration. Also, Frontex has increased the degree of cohesion of national border agencies. Though there is no formal single system for border management at the EU level, it is clear that operational cooperation has brought about the harmonisation of actors’ behaviour and patterns of cooperation.

However, it is important to acknowledge that Frontex’s aforementioned integrative effect does not imply the change of the existing regime itself. The fundamentals of the regime, which are characterised by the predominance of national authorities and their competences, have not changed; however Frontex has reinforced certain aspects of the regime such as the migration-security nexus and made certain aspects of the regime evolve towards integration. This is clearly shown in the ways that Frontex is bound by

the political context in which EU institutions and member states make decisions. On the one hand, the recent trend in EU legislation emphasising the fundamental rights of people, including those who need international protection, has been well adopted in the organisational structure of Frontex and is emphasised in their activities.⁶⁷ On the other hand, the empirical analysis has confirmed that the security-migration nexus, which is another mainstream political discourse in the EU, has been reinforced at the operational level by the agency's risk analysis. Frontex is not a force in changing the existing, dominant norms in the regime.

Chart 5 “Characteristics of the cooperation models in the EU border regime” (see pages 181-182) summarises where Frontex can be positioned in the development process of the EU border regime towards integration. A column “Frontex of today (2014)” has been added in comparison to Chart 2 (see pages 80-81), which has been shown in the conclusion section of Chapter Three. Comparing the institutional characteristics of the models, especially those of Frontex at the time of establishment and those of today (2014), it is clear that Frontex has developed mechanisms and acquired legislative coordination functions to increase state participation in a more constant and recurrent manner. The mechanisms that have increased the commitment of national border agencies and the ownership of equipment are of particular importance in this regard. Moreover, Frontex has increased its autonomous decision making capacity during the operational activities. For example, if a case of violation of the fundamental rights of migrants is recognised by a national border guard deployed for a joint operation, Frontex can cease the operation without the formal approval of all of the participating member states. In the event of rapid intervention, members of EBGT provide short-term assistance, and the decision to deploy the EBGTs is made by the Executive Director of Frontex.

To sum up, Frontex was created with limited power and resources to support member states. Yet all the findings above about Frontex present a different picture. Operational

⁶⁷ After the Treaty of Lisbon (2009) and the Stockholm Programme (European Council 2009), Frontex appointed a Fundamental Rights Officer and set up a Consultative Forum and it stressed the high extent to which the rights of irregular migrants are respected in its operational activities.

cooperation coordinated by Frontex is far from the model of the European Corps of Border Guards, which has never existed even as a proposal on the Council table but constitutes a maximum form of integration. Rather, Frontex is still of a hybrid nature that has derived from contradicting elements between state-centric and supranational forces. However, Frontex's configurations have certainly changed towards a closer resemblance of the European Corps model.

Chart 5: Characteristics of the Cooperation Models in the EU border regime

Cooperation coordinate by	External Borders Practitioners Common Unit	Frontex when established	Frontex today (2014)	European Corps of Border Guards
Institutional nature	Inter-governmental	Intergovernmental (but less so than the Common Unit is)	More integrated (but less than the European Corps of Border Guards)	Integrated
Organisational structure	Regular meetings	Standing organisation	Standing organisation	Not specified
Organisational characteristics	<ul style="list-style-type: none"> • Internal Decision-Making Body EU member states 	<ul style="list-style-type: none"> • Internal Decision-Making Body EU member states and the European Commission • Staff composition Directly hired staff and Seconded National Experts • Not its own border guards • Not its own equipment 	<ul style="list-style-type: none"> • Internal Decision-Making Body EU member states and the Commission • Staff Composition Directly hired staff and Seconded National Experts • Does not possess its own border guards, but has increased capacity to mobilise national border guards for operational cooperation • Semi-ownership of equipment 	<ul style="list-style-type: none"> • Internal Decision-Making Body Not specified • Joint multi-national border guards as Corps' border guards • Its own equipment with the use of the Community budget

Chart 5: Characteristics of the Cooperation Models in the EU border regime (cont.)

Cooperation coordinate by	External Borders Practitioners Common Unit	Frontex when established	Frontex today (2014)	European Corps of Border Guards
Legal framework	Part of the Council Working Party	Council Regulation (2004)	Council Regulation (as amended in 2011)	Not specified
Command and control function during joint border operations	<ul style="list-style-type: none"> • Give command and control when the European Corps are mobilised 	<ul style="list-style-type: none"> • Does not possess command and control function during joint border operations • Deployed border guards exercise equal competence with a hosting member state's border guards 	<ul style="list-style-type: none"> • Does not possess command and control function during joint border operations. However: <ul style="list-style-type: none"> - able to cease an operation in case of violation of fundamental rights violation - able to decide an emergency operation • Deployed border guards exercise equal competence with a hosting member state's border guards 	<ul style="list-style-type: none"> • Command given by the Common Unit • Exercise equal competence with an operation-hosting member state's border guards

7.4. Further Contributions

This dissertation has further contributed to the body of empirical and theoretical knowledge in the fields of European political studies and migration studies. Firstly, it has shown Frontex's role to be politically significant. Highlighting the organisational dynamics from sociological institutionalist perspectives has offered a way to research Frontex not as a "black box" but to look at the workings inside Frontex, which the existing research had hardly considered. For instance, it has shown that Frontex has increased the interaction of actors. Border guards of EU member states and third countries, officials of EU, international bodies such as Europol and UNHCR, and members of private firms have been connected via Frontex's staff. Frontex itself embraces a dynamic flow of personnel, having a large number of national border guards as seconded national experts, in addition to officials directly hired by Frontex.

These officials represent different sectors and interests, and do not usually encounter each other in their day-to-day work. Frontex has offered a space in which these actors meet and exchange their ideas and experiences. Some networks have been formalised (e.g. Frontex Risk Analysis Network [FRAN]), but there are also a number of informal level meetings in which the actors keep connected with each other. Mutual awareness that "they are part of a common enterprise" (DiMaggio and Powell 1983: 148) has been developed among actors across different levels and sectors through Frontex's activities. Although the primary importance of the EU member states and the EU main institutions is undeniable in the policy-making process in border management, this dissertation has shown that other actors like Frontex, which are usually excluded from research as a mere administrative agency, can bring political significance.

Related to this dimension, the dissertation has also sought to shed light on the informal institutional changes. By so doing it has argued that the EU border regime can be identified not only by the presence of legal settings but also by such changes as the increased interaction of actors and the development of shared knowledge and skills.

Moreover, the findings of this dissertation have offered an important implication for the study of EU agencies. EU agencies across different policy areas have become a feature of present-day EU politics. The findings of this dissertation provide some valuable

insights in the roles and potential of, particularly, JHA agencies such as Europol, Eurojust and EASO, which have been positioned in similar institutional contexts to that of Frontex. The discussion for the first hypothesis (Frontex mobilising state authorities), for example, is helpful to consider the potential effect of Eurojust in the area of judicial cooperation. Eurojust organises joint investigation teams (JITs), which consist of judges, prosecutors and law enforcement bodies of member states. The mechanism is similar to that of Frontex as JITs are established for a fixed period and are aimed at investigating a concerned issue in a cooperative manner (Eurojust 2015). A similar move has also been observed in the ways Eurojust has developed a network of JITs to share information and best practices among national practitioners (*idem.*).

A discussion made for the role of Frontex's risk analysis in this dissertation is suggestive of the possible role played by Europol in police cooperation in the EU. Europol regards itself as the "criminal information hub of the EU" (Europol 2015) and its intelligence-led activities involve publication of a series of analytical reports. The "EU Serious and Organised Crime Threat Assessment (SOCTA)", for example, sets the priority serious crimes and the "EU Terrorism Situation and Trend Report (TE-SAT)" informs the main trends of terrorist activities in the EU. These reports may have shaped the perception of policy makers about what the threads consist of. They may have influenced the decision-making processes as well. As for the newest JHA agency EASO, it has been taking a similar path with that of Frontex in terms of tasks given, such as organising emergency operations and creating a pool of national experts for those operations. The implication of this comparative overview is that, although there may be "no such thing as a single model" (Curtin and Dehousse 2012: 193), EU agencies may be similarly influencing respective policy areas. As Egeberg and Trondal (2011) have argued, Frontex amply represents the case in which an EU agency transforms the European political-administrative order in a policy field.

Finally this dissertation has identified the degree to which EU member states may accept an "integrative move" in a particular policy field. Again, Frontex was established with limited powers and resources because EU member states were cautious about such a move. However, Frontex has eventually functioned as a motor of integration, albeit still within a limited range. The findings of this research can serve as a basis to understand the recent study that the European Commission conducted to assess the

feasibility of “full integration” (Commission 2014e). According to the European Commission, full integration means a process leading to the creation of the European System of Border Guards, which would define priorities and manage day-to-day operations. In the study, the European Border Corps which was once dismissed in the early 2000s has resurfaced in the hypothetical transitional period towards full integration and Frontex would remain as the central actor throughout the process. Indeed, the European Commission has claimed that Frontex would become a “true EU and Schengen border control support and coordination agency” (Commission 2014: 37). It is not certain what power such an agency would be given, this dissertation contributes to the body of knowledge that aims to understand the paths that the area of external border management would have in the future.

7.5. Research Challenges and Suggestions for Future Research

The findings and contributions of this research highlight the relevance of a research design that traced selected activities of Frontex and its history through semi-structured interviews, participant observation and documentary analysis from an institutionalist perspective. As a direct consequence of this methodology, this dissertation encountered several limitations and challenges, which need to be considered. One of the main practical limitations was the persistent difficulty in accessing data. Because of the political sensitivity of border issues, not all of the relevant official documents were available. In particular, access to documents issued by national border agencies was strictly limited. This made it difficult to identify the official positions of the EU member states on border management and to understand the level of the member states’ contribution to Frontex’s joint operations (e.g. the number of border guards sent to joint operations⁶⁸).

Attempts to establish contacts with key actors, especially within EU institutions and EU member states had only limited success. An interview with a European Commission official gave useful information to this dissertation. However, valuable insights could have been also gained if interviews had been conducted with officials of other institutions such as the Council (especially the General Secretariat and Presidencies)

⁶⁸ Frontex publishes the total number of deployed border guards, but the number of border guards deployed by each member state is not publicly open.

and the European Parliament. Even with the European Commission, interviews with those who attend the Frontex Management Board could have given the author an opportunity to understand further the dynamics among member states, the European Commission and Frontex. When it comes to member states, opportunities for interviews were strictly limited, which constrained the feasible methods to gain data. For instance, it was not possible to conduct a large-scale study that combined quantitative methods such as questionnaires to EU member states or to design a country-specific comparative case study. Nonetheless, semi-structured interviews with more than forty officials of Frontex, national authorities and the European Commission, and documentary data collection over four years, enabled this dissertation to draw meaningful conclusions. In particular, working as a research intern for Frontex marked a watershed in deepening the author's understanding and improving the access to research subjects.

With respect to the theoretical dimension, analysing Frontex as an endogenous factor of the regime was a challenge. As argued in the academic debate regarding the interplay between structure and agency, Frontex as a part of the regime is influenced by the regime itself. Moreover, the role of “exogenous shocks” such as the unstable political situations in neighbouring countries of the EU or, more widely, international migration and security, in shaping the regime have not been fully investigated. In the light of this, there is a need for more research that investigates both the endogenous and exogenous factors in order to see the processes and the dynamics that bring about regime change. This also implies that the reality is not as clear-cut as it may appear. The processes that have led to the creation of Frontex and the structures in which Frontex plays a role may therefore be comprehensively explored by integrating other institutionalists' perspectives. However, still, it should be said that the choice of sociological institutionalism offered the most effective analytical tools to logically explain the dynamics in the EU border regime with a focus on Frontex. A future research project can also take a comparative study on EU JHA agencies, especially Frontex, Eurojust, Europol and EASO. As discussed, there are certain similarities among them and therefore a comparative study on those agencies will provide a comprehensive picture of the development in policies and institutional architecture of AFSJ in relations to the role played by EU agencies.

To conclude, the findings of this research question the academic assumption of EU

agencies as passive agents by looking at the case of Frontex in the EU border regime. Further integration of the actors within a policy field in the EU can be derived not only by regulations made by policy makers, but also through non-regulatory means by non-policy making or non-state actors such as Frontex. An EU agency born as a result of political dynamics has now become an important factor in further integration, which is an original angle from which to understand the course of European integration. This development, which as yet is unexplored, fully deserves further examination in subsequent research.

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3. European Commission, official, 29 April 2010, Brussels.
4. Frontex, official A, 4 May 2010, Warsaw.
5. Frontex, official B (SNE), 5 May 2010, 7 September 2011, Warsaw.
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8. Frontex, official D, 7 September 2011, Warsaw.
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29. Frontex, official X, 13 December 2012, Warsaw.
30. Frontex, official Y, 14 December 2012, Warsaw.
31. Frontex, official Z, 14 December 2012, Warsaw.
32. Frontex Operational Office, official, 2 April 2012, Piraeus
33. Greek Coast Guard, senior official, 2 April 2012, Piraeus.
34. Laitinen, I., Executive Director of Frontex, 14 November 2012, Warsaw.
35. Poland, Border Guard Agency (Straż Graniczna), senior official, 8 September 2011, Warsaw.
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40. United Kingdom Border Agency, official, 30 March 2010, 22 July 2011, Croydon.
41. United Kingdom Border Agency, former training official, 28 September 2011, Brighton.
42. UNHCR, Frontex liaison official, 5 May 2010, Warsaw, 26 September 2011(telephone).