



universität
wien

MASTERARBEIT / MASTER'S THESIS

Titel der Masterarbeit / Title of Master's Thesis

“Frontex and fundamental rights protection: between
change and continuity”

verfasst von / submitted by

Veronika Bezinsky BA

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of
Master of Arts (MA)

Wien, 2021 / Vienna 2021

Studienkennzahl lt. Studienblatt /
degree programme code as it appears on
the student record sheet:

A 066 824

Studienrichtung lt. Studienblatt /
degree programme as it appears on
the student record sheet:

Masterstudium Politikwissenschaft

Betreut von / Supervisor:

MMag. Dr. Peter Slominski, Privatdoz.

Table of Contents

ABSTRACT.....	2
ABSTRACT.....	3
CHAPTER ONE: INTRODUCTION	4
CHAPTER TWO: METHODOLOGY.....	6
CHAPTER THREE: THEORETICAL FRAMEWORKS.....	8
3.1. Paradigm shifts, social learning and orders of public policy change – Peter Hall ...	11
3.2. The Advocacy Coalition Framework – Paul Sabatier, Hank Jenkins-Smith.....	14
CHAPTER FOUR: About the European Border and Coast Guard Agency.....	28
4.1. Development of the EU migration and asylum policy and the Area of Freedom, Security and Justice (AFSJ)	28
4.2. Development, structure and activities of the European Border and Coast Guard Agency	35
CHAPTER FIVE: FRONTEX AND FUNDAMENTAL RIGHTS.....	43
5.1. Legal obligations of FRONTEX to international law and human rights	45
CHAPTER SIX: ADVOCACY COALITIONS IN EU BORDER MANAGEMENT – DRIVING FORCES OF CHANGE?	49
6.1. The Protection-First Coalition: non-state actors and grass roots organisations	52
6.2. The Security-First Coalition	61
CHAPTER SEVEN: THE SCOPE OF CHANGE IN FRONTEX POLICIES	71
7.1. The Frontex Fundamental Rights Office and Consultative Forum on Fundamental Rights – hope for a new policy paradigm in border policing?	76
CHAPTER EIGHT: CONCLUSION.....	84
8.1. Limitations and outlook	89
APPENDIX.....	91
Appendix 1.....	91
Appendix 2.....	92
Appendix 3.....	92

ABSTRACT

The present master's thesis examines change and continuity in the operations of European Agency for the Border and Coast Guard Frontex, with regard to the observance of fundamental rights of irregular migrants. In political science, there are numerous theoretical approaches that deal with the explanation of political processes. However, only a few of them explore the causes of political change and reform. In this master's thesis, two research approaches were used to investigate and map the extent of policy change in EU border policy. The Advocacy Coalition Framework by Paul Sabatier is first applied to demonstrate how interactions and dynamics between state and non-state actors influence Frontex policy towards migrants. Another model developed by Peter Hall is then applied to examine the degree of change that these dynamics have evoked. The paper relies in large part on EU regulations, Frontex reports, Frontex risk analyses and press releases, as well as on studies by Moreno-Lax (2017), Perkowski (2018) and Franko Aas & Gundhus (2015). In addition, members of the Consultative Forum were approached for interviews and an interview was conducted with Aydan Iyigüngör, who is currently representing FRA at the Frontex Consultative Forum for Fundamental Rights.

Based on Sabatier's theory, the master's thesis examines the existence of two rationalities that dominate the political debate over EU border control. The thesis first demonstrates the existence of two major coalitions in the border policy subsystem in which Frontex is a major actor - the Protection-First and the Enforcement-First Coalitions. Further research into coalition dynamics reveals that there are possibly two to three coalitions in this policy area. The paper also shows the increased recognition of fundamental rights of migrants in the rhetoric of the organization, particularly following the establishment of the Consultative Forum and the Office for Fundamental Rights (FRO) in 2012. The feedback and participation of the two bodies in Frontex missions enabled slight progress in the implementation of new instruments promoting human rights. However, the introduction of such new instruments and projects in Frontex activities, such as Vega Children and the Complaints Mechanism did not result in profound policy change or paradigm shift in the examined policy area. In fact, these policy instruments have remained rather underdeveloped and continue to have limited application.

ABSTRACT

Die vorliegende Masterarbeit untersucht den Wandel der Einsätze und Maßnahmen der Europäischen Agentur für die Grenz- und Küstenwache Frontex, in Bezug auf die Einhaltung der Grundrechte von irregulären Migrant*innen. In der Politikwissenschaft gibt es zahlreiche theoretische Ansätze, die sich mit der Erklärung von politischen Prozessen befassen. Allerdings erforschen nur wenige davon die Ursachen für politische Reformen und politischen Wandel. In dieser Masterarbeit werden zwei Forschungsansätze angewendet um das Ausmaß des Policy-Wandels in der EU-Grenzpolitik zu untersuchen und aufzuzeigen. Das sogenannte Advocacy Coalition Framework (Advocacy-Koalitionenansatz) von Paul Sabatier wird zuerst angewendet, um zu zeigen, wie und welche staatlichen und nichtstaatlichen Akteur*innen durch koordiniertes Handeln die Frontex-Politik gegenüber Migrant*innen beeinflusst haben. Ein weiteres Modell, das „Drei Ebenen Modell“ entwickelt von Peter Hall wird dann eingesetzt, um den Grad des Wandels zu untersuchen, den diese Koalitionsdynamiken hervorgerufen haben. Die Arbeit stützt sich maßgeblich auf EU-Verordnungen, Frontex-Berichte, Frontex-Risikoanalysen, und Pressemitteilungen, sowie auf einschlägige Studien von Moreno-Lax (2017), Perkowski (2018) und Franko Aas & Gundhus (2015). Zudem wurden Mitglieder des Frontex Forums für Grundrechte für Umfragen und Interviews angeschrieben. Es wurde ein Interview mit Aydan İyigüngör, derzeitige Vertreterin der FRA beim Consultative Forum durchgeführt.

Anhand der Theorie von Sabatier untersucht die Masterarbeit die Existenz zweier Rationalitäten, die die politische Debatte über Grenzkontrollen dominieren. Die Arbeit zeigt zuerst, dass in diesem Bereich zwei große Koalitionen entstanden sind - die Protection-First und die Enforcement-First Koalition. Durch weitere Recherchen konnte ein tieferer Einblick in Koalitionsdynamiken gewonnen werden. Es konnte festgestellt werden, dass im untersuchten Border Policy-Bereich zwei bis drei Koalitionen bestehen. Die Arbeit belegt zudem die erhöhte Anerkennung der Grundrechte von Migrant*innen in der Rhetorik der Organisation. Die Etablierung des Consultative Forums und des Amts für Grundrechte (FRO) in 2012, sowie ihre Beteiligung an Frontex-Einsätzen haben einen leichten Fortschritt bei der Umsetzung von neuen menschenrechtsfördernden Instrumenten ermöglicht. Die Einführung von neuen Instrumenten und Projekten wie z.B. Vega Children und einen Beschwerdemechanismus haben dennoch keinen maßgeblichen Wandel bzw. Paradigmenwechsel im untersuchten Politikfeld hervorgerufen.

CHAPTER ONE: INTRODUCTION

A fundamental element of European integration has been the development of agencies – decentralized entities that support the work of the major EU organs. Their establishment has been the result of the steady growth of competences of EU institutions such as the European Commission which has externalized a significant amount of its tasks to executive and regulating agencies, making them an inseparable component of the machinery of the Union. Some of these agencies have experienced a significant increase in their autonomy and range of activity throughout recent years. As a result, they have also drawn significant attention from academic researchers. In my thesis I would like to turn my attention towards operational agencies in one of the most dynamic and important fields of policy - the Area of Freedom, Security and Justice (AFSJ)¹.

The Area is a fundamental domain of policy-making that integrates the central responsibilities and competences of the state such as internal security, citizens' access to justice and control of national borders into a broader system.² The importance of the AFSJ agencies European Police Office (Europol), the European Union's Judicial Cooperation Unit (Eurojust), the European Asylum Support Office (EASO) and the European Border and Coast Guard Agency Frontex has been growing steadily. As a result, each of these agencies has attracted considerable scientific interest concerning their evolution, strategic development, accountability, inter-agency relationships etc. The aim of this paper is to attempt to complete some of the research gaps concerning Frontex' development from a perspective that has not been explored yet – through the analytical lens of policy change and coalition behaviour and coalition-building.

Some scholars have argued that Frontex' expanding role in managing the external borders of the Union in the past few years has paralleled the increase of fundamental rights challenges. Members of the academia, representatives of civil society and international organizations have raised concerns about human rights deficiencies in

¹ Santos Vara, Juan (2017), The EU's agencies: Ever more important for the governance of the Area of Freedom, in: Security and Justice, The Routledge Handbook of Justice and Home Affairs Research, New York, NY: Routledge, pp.445

² Trauner, Florian & Ripoll Servent, Ariadna (2015), EU institutions, policy change and the Area of Freedom, Security and Justice, in: Policy Change in the Area of Freedom, Security and Justice, New York, NY: Routledge, pp. 11

Frontex' land, sea and return operations, which have exposed asylum seekers and irregular migrants to exploitation and violence and have raised questions about upholding the principle of non-refoulement³. In an attempt to address this critique, the Frontex Management Board founded a Consultative Forum on Fundamental Rights in 2012. Its purpose is to guarantee the respect of human rights in all Frontex activities and to bring them into accordance with the European Border and Coast Guard Regulation through visiting hotspots, return operations, joint operations, as well as rapid border interventions.⁴ The creation of the Consultative Forum on Fundamental Rights, as well as the Fundamental Rights Office is a major landmark in the institutional development of the Agency which allowed new actors to engage with matters related to border management and potentially paved the way for a new human rights paradigm to influence this policy area.

Despite broad criticism that a security narrative persists in Frontex operations and border control in general, there is evidence showing that fundamental rights of migrants have gained importance in Frontex activities, especially since 2012. Some findings of this paper show that the agency incorporated a more rights-friendly narrative and scholars have found that the EU and its member states have increasingly attempted to specify legal norms and interpretations of relevant fundamental rights principles such as non-refoulement.⁵ However, the latest coverage on Frontex activities in the Mediterranean has once again highlighted the insecurities that migrants continue to experience at the European Union external border. In December 2020, Members of Parliament (particularly the Socialists and Democrats) even called for the resignation of the agency's director Fabrice Leggeri.⁶

This thesis is interested in exploring the continuity and degree of change associated with the increased reference to fundamental rights in Frontex activities. It will discuss major challenges facing Frontex, especially in context of latest events that

³ Carrera, Sergio & Allsopp, Jennifer (2017), "The Irregular Immigration Policy Conundrum: Problematizing 'Effectiveness' as a Frame for EU Criminalization and Expulsion Policies", London: Routledge, p.7

⁴ Frontex, Consultative Forum - General, available at <https://frontex.europa.eu/fundamental-rights/consultative-forum/general/>

⁵ Slominski, Peter (2013), The Power of Legal Norms in the EU's External Border Control, *International Migration*, 51:6, p.119

⁶ S&D Group (@TheProgressives), "We have already called for @Frontex Director to resign.", 12th January, 2:02 p.m. <https://twitter.com/TheProgressives/status/1348980966841344000>

involved the agency, including escalations at the Turkish-Greek and also Bulgarian-Turkish borders in 2020 (following Turkey's decision to open its western land and sea borders for refugees) that once again revived a lingering dilemma: should migrants rather be kept away or should they be allowed in (and receive protection within the EU)?

The paper will pay specific attention to the actors involved in the process and the contribution they made to these developments. Due to this specific interest in policy change and actors' behaviour, the Advocacy Coalition Framework (ACF) by Paul Sabatier and Peter Hall's framework on orders of change are regarded here as useful approaches to understanding the degree of change in the treatment of irregular migrants by Frontex. The Advocacy Coalition Framework investigates many aspects of the policy process, including coalition behaviour, political learning and policy reform.

Even though the scope of this paper does not allow an in-depth engagement with all aspects of the above-mentioned frameworks, the thesis will try to assess the positions of the actors participating in the coalitions that have subscribed to security driven or humanitarian narratives concerning border control/management. Interest group politics, coalition behaviour and dynamics of coalition-building in the policy area of border control have so far been rather neglected in this research area. This makes this investigation worthwhile and innovative and will hopefully contribute to the debate about the future of Frontex and its approach towards irregular migrants and asylum seekers.

CHAPTER TWO: METHODOLOGY

The research for this thesis is based on the analysis of primary and secondary sources. To answer the research question, the author uses primary sources such as first hand and official documents of the European Union including EU Treaties and Regulations. Other documents such as Frontex reports, risk analyses, press releases and Consultative Forum reports that contain statements from Frontex officials such as Executive Directors Ilkka Laitinen and Fabrice Leggeri and other EU office-holders involved in matters related to border control and management will also be referred to.

Additionally, relevant literature on policy change and advocacy coalitions such as the works of Paul Sabatier and Peter Hall will be used to understand and evaluate the nature of change in Frontex activities since its establishment. According to Sabatier's Advocacy Coalition Framework, different actors' belief systems are central to the development of policy. To understand the beliefs and positions of relevant stakeholders, the paper mainly relied on secondary interviews and qualitative content analysis (of mainly written texts such as books, articles, speeches, interviews, web content and social media posts).

Furthermore, an interview with Ms. Aydan Iyigüngör was conducted. Ms. Iyigüngör is representative of FRA to the Frontex Consultative Forum on Fundamental Rights and was also elected Chair in 2013. The questions were predetermined and sent to several members of the Consultative Forum. The conversation with Ms. Iyigüngör can be found in the appendix. Regretfully, due to the limited time available and the scope of this paper, it was not possible to conduct further comprehensive surveys and interviews with other Consultative Forum members, Frontex staff or other stakeholders involved in border policy.

Scientific, peer-reviewed articles make up a significant amount of the secondary sources. More particularly, these secondary sources critically examine the history of the Area of Freedom, Security and Justice (AFSJ), the development of the AFSJ agencies Frontex, Europol and the European Asylum Support Office. Certain insights from literature on securitization and criminalization of EU irregular migration policies, have allowed me to draw conclusions about the direction of Frontex policies in the last few years. These insights are supported by readily available analyses of interviews with Frontex officials and border guards, as well as of relevant official Frontex reports and documents. The discussion and argumentation relied significantly on peer-reviewed journal articles and studies by Moreno-Lax (2017), Leonard (2009), Slominski (2013), Perkowski (2019), Stachowitsch & Sachseder (2019), Franko Aas & Gundhus (2015) and Neal (2009).

CHAPTER THREE: THEORETICAL FRAMEWORKS

How do we track and analyze policy change in Frontex' activities? There are various theoretical approaches in political science that deal with the subject of policy and institutional change and policy implementation. Among the most prominent ones are the three orders of change approach, the path dependence approach, the advocacy coalition framework, the policy diffusion concept, political principal agent models, also venue-shopping (in the EU multilevel governance context). Of course, each of these approaches highlight different aspects of that process. This section will provide an outline of approaches most relevant to the topic and case study of my research and will explain the choice of frameworks in answering my research question.

There are a number of theoretical lenses that have contributed to the study of the policy process and policy change. Specializing in international security, Christian Kaunert has extensively researched agency governance in the European Union. One possible explanation for the development of AFSJ agencies, he argues, are interest shapers – factors that determine the preferences of actors responsible for the “future” of the AFSJ agencies. In this regard, the concept interest shaper shares analogous traits with Sabatier's “external perturbations” that lead decision-makers to change the course of policy. Kaunert and his colleagues Leonard and Occhipinti identify three sets of interest shapers:

1. spillover-enlargement effects (how cooperation in one area can contribute to more integration in another, i.e. free movement cooperation increased the perceived necessity to strengthen cooperation in border control and organised crime prevention),
2. crises and shocks (the role of such events is particularly highlighted in the development of the AFSJ – they trace their significance back to the end of the Cold War, the resulting migration flows, the creation of mafia groups in Central and Eastern Europe, the refugee crises in several members of the EC resulting from the collapse of Yugoslavia).
3. concerns for democracy (and fundamental rights), national sovereignty and pragmatism have elicited several important developments, and namely the strengthening of the European Parliament as opposed to the AFSJ agencies through the Lisbon Treaty,

conferring national parliaments authority over criminal matters, as well as strengthening the role of the European Court of Justice under the Treaty of Lisbon.⁷

However, interest shapers alone cannot explain or predict policy change. Kaunert et al. suggest additional frameworks that provide a more comprehensive explanation about how and why AFSJ agencies developed in the way they developed. One of them is The Multiple Streams Framework developed by John W. Kingdon which offered an explanation of the agenda setting process in the US political context, as well as the Supranational Policy Entrepreneurs (SPEs) approach, which expands on John Kingdon's Multiple-Streams Framework and Fäggersten's model of bureaucratic resistance which focuses on bureaucratic interests and their potential to prevent certain policy outcomes. He applies this approach to understand how Europol has not managed to promote intelligence cooperation in the Union and argued that specific bureaucratic cultures in national intelligence organisations have been a barrier to this political objective.

Another important concept which has been utilized in the EU context to explain the development of the EU migration and asylum policy is venue-shopping. Its basic idea is that decision-making actors, whenever encountering constraints that hinder the implementation of their desired policies tend to seek new, more favourable fora and venues to implement them. The concept referred to national officials turning to EU fora after experiencing obstacles at the domestic level such as the necessity for synchronization between ministries, judicial restraints and/or civil society discontent.⁸

"The Limits of Pragmatism" by Nils Karlson discussed the advantages and disadvantages of pragmatism and ideological politics in welfare-enhancing policy reform. Karlson defined ideological politics as political action guided by strong normative ideals, beliefs and values⁹. On the other hand, the author defined pragmatism as politics without ideology – political action that is not guided by (strong) abstract principles, normative ideals and "beliefs about how the world works".¹⁰ For pragmatists, beliefs about the

⁷ Kaunert, Christian, Léonard, Sarah & Occhipinti, John D. (2013), Introduction: Agency Governance in the European Union's Area of Freedom, Security and Justice, Perspectives on European Politics and Society, 14:3, p. 273-284

⁸ Kaunert, Christian & Léonard, Sarah (2012), The development of the EU asylum policy: venue-shopping in perspective, Journal of European Public Policy, 19:9, p. 1397

⁹ Karlson, Nils, (2012), "The Limits of Pragmatism in Institutional Change," Ratio Working Papers 194, The Ratio Institute, p.11-12

¹⁰ Ibid., p.4

importance of the working class, the market economy etc. for society are not firm and should be tested. Ideology and pragmatism here are ideal cases placed at the extremes of a matrix. Karlson argued that policy change should rather be the result of a combination of both pragmatic and ideological politics - “principled pragmatism”.¹¹ He refers to Peter Hall’s analysis of political change and notes that ideological change is basically equivalent to Peter Hall’s third order change which will be presented below.

Karlson’s observations about the limitations of pragmatism in policy-making are undoubtedly insightful and may be worth studying in an EU setting. Perhaps they may even offer a solution to the competition of beliefs in the EU border control system, but his article fails to explain how this combination of pragmatism and ideology should be implemented – how should the advantages of both approaches be combined? How should political discussion move to the centre of the matrix? In his article he concluded that cognitive frameworks should be reframed instead of trying to change values. However, Karlson does not explain this part further and hence it hasn’t become very clear what he means by “reframing outdated cognitive frameworks” and “framing new policies” in practice.¹²

Evaluating and comparing different theories and models of policy change has been a challenging process. The above-mentioned theoretical approaches show that each has something to offer to the policy change debate. This extensive search has helped to identify two approaches whose explanatory power stands out from the rest of the theoretical models. Therefore, in the following sub-sections I will explain the premises of Peter Hall’s Three Orders of (Policy) Change and Paul Sabatier’s Advocacy Coalition Framework (ACF), which I chose to work with in this paper and will emphasize on the advantages of combining them.

The Advocacy Coalition Framework for instance, is especially useful in understanding how change may occur through pressure and coordinated action by different state and non-state actors - which actors engaged in the process of policy making, to what extent did they engage in coordinated action to impact change in Frontex’ treatment of migrants? This level of coordination between actors directly impacts the level

¹¹ Ibid., p.14

¹² Ibid., p.14

or magnitude of change. Therefore, I have relied on the orders of change by Hall to show this possible magnitude of reform. As I will show next, Hall's concepts refer to policy change as having three different degrees that correspond to Sabatier's observation that political actors' beliefs can also be categorized into three analogical categories. Sabatier's contributions remain highly relevant for identifying the coalitions (and their belief systems) in the policy area of border management. The chapter on the Sabatier's Framework will explain further how important belief systems are for policy change.

3.1. Paradigm shifts, social learning and orders of public policy change – Peter Hall

Considered a classic in the study of policy processes, Peter Hall's 1993 work "Paradigms, social learning and the state" attempts to explain the factors that lead to a policy's stability and what it takes to generate dramatic outbreaks of change. Hall disaggregates the policymaking process into three variables: policy settings, policy instruments and policy paradigm. Building up on this observation, he identifies three different types, or stages of policy change.¹³ An alteration of policy settings, while the instruments and overarching goals and priorities remain constant represent a first order of policy change. The second order change, occurs when both settings and instruments become subject of reform simultaneously. Although the policy paradigm remains the same, second order change is more comprehensive and can point to a strategic type of policymaking. First and second order change can be referred to as "normal politics" and are associated with routine policy-making. A more robust change of policy occurs when all three of the variables are altered – resulting in a third order change of policy.

Hall developed this operationalization based on his analysis of British economic policy throughout the 1970s and the 1980s. In the British case, with Margaret Thatcher's rise to party leadership and consequently premiership, a third order change took place with the transition from a Keynesian mode of policymaking to a monetarist approach. Not

¹³ Hall, Peter (1993), "Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain", *Comparative Politics*, 25:3, p.278

only were the settings and instruments of policy changed, but also the entire framework of overarching ideas and precedence of priorities, as well as the nature of the problems that needed to be addressed through the new policies. Before Thatcher Keynesianism was the paradigm that determined what British economy world was and should have been like, which goals should a state pursue and which instruments should be used to attain these goals. Monetarism replaced Keynesianism, essentially becoming the new “prism through which policymakers saw the economy as well as their own role within it”, thus resulting in a shift of the settings and techniques. ¹⁴

The movement from one paradigm to another is likely to involve significant competition between competing paradigms, the accumulation of anomalies, policy experimentation and policy failures that cause a shift in the locus of power and authority. He acknowledged that the conflict initiated in that process may spill well beyond the political arena. Supporters of the victorious paradigm gain positions of authority, which has a few consequences. The British case demonstrates that the winning ‘monetarist coalition’ led by Thatcher institutionalized the new paradigm. When Margaret Thatcher took office, she was the main protagonist in the institutionalization process, appointing supporters of the monetarist paradigm in the cabinet and the important economic committees. ¹⁵

Peter Hall made a very important observation based on the British case – the involved actors in the process were not solely pursuing their interests but were in genuine pursuit of solutions to the economic problems that the country was facing. They participated in a sophisticated debate and “a play of ideas”.¹⁶ In that regard, he argued that social learning, the process in which actors revise and adapt their beliefs, goals and strategies because of newly acquired knowledge, past experience and the impacts of past policies, featured heavily in the quest for a better economic order in the UK. Even before Hall and Sabatier, state theorists like Heclo have argued that social learning is an important aspect of the political process – as political actors interact and collectively deliberate and reflect upon past and future policies. Back in 1993, Peter Hall stated that

¹⁴Ibid, p.279

¹⁵ Ibid, p.287

¹⁶ Ibid, p.289

the “notion of social learning is on the verge of becoming a key element in contemporary theories of the state and of policymaking more generally”.¹⁷

Therefore, learning is a factor significantly facilitating the process of policy change that can alter different aspects of the decision-makers’ belief systems. However, contrary to Heclo and other state-centric theorists, Peter Hall saw that learning does not take place entirely within the confines of the state, as he showed that process of change in Britain was a result of a growing societal debate that involved interest groups, political parties, experts and the media.¹⁸ This contradicts the view of state theorists who argue that policy-making is autonomous from societal pressure, interest groups, and other non-state actors. In the following table, I will show the differences between the two approaches to social learning and policy change.

State-centric approach	State-structuralist approach
Protagonists: Hugh Heclo, Paul Sacks and other state theorists	Protagonists: Peter Hall
Large capacity of states to act autonomously	Small capacity of states to act autonomously: states can influence policy, but less autonomously
Societal conditions and pressure less important for policy change	Societal pressure, interest groups, political parties, non-state actors etc. have an important role in the policy process
Previous policy is the foundation for future policy, decision-maker’s interests are influenced by policy legacies	Structure and past activities of the state influence the actions and interests of the above-mentions actors and serve as triggers for demands for change

Table I: State-centric and State-structuralist approaches to (political) learning (own representation)

In the context of European Integration, the traditional authority of states has been challenged by the increasing competence- and responsibility-sharing between different levels of government and non-state actors. This EU multi-level governance system falls within the state-structuralist understanding of policy change and proves the relevance of Hall’s observations in today’s structure of the EU. A closer look at the dynamics in the

¹⁷ Ibid, p.276

¹⁸ Ibid., p.288

Area of Freedom, Security and Justice and the role of Frontex in Chapter 4 will deliver a more complex picture of the dynamics in that policy area.

3.2. The Advocacy Coalition Framework – Paul Sabatier, Hank Jenkins-Smith

Sabatier and Jenkins-Smith developed an approach to evolution of public policies, which in their words should be applicable to a variety of policy issues “in most industrial societies”.¹⁹ The theoretical perspective outlined in this section can complement and build up on the theoretical approach developed by Peter Hall. First, this section will explain the premises of the Advocacy Coalition Framework. Secondly, it will show how it can be directly applied to the border control system and finally I will attempt to prove that ACF can be a useful addition to Hall’s framework.

Through the ACF, Sabatier intended to provide an alternative to previous attempts to deal with the essence of policy change – namely the institutionalist and “textbook” approaches. Sabatier and his colleagues recognize the value of the so-called “Textbook approach” (among its advocates were Easton, Lasswell and Anderson). For instance, its focus on policy impacts was one of its strongest advantages and its contribution to the analysis of phenomena exceeded institutions and institutional change. However, they point out several limitations of that approach, particularly the top-down, rather restricted legalistic view of policy, neglecting the multiple levels of governance and less dominant sources of policy. Sabatier further criticized the temporal view of policy evolution in the textbook approach.

Instead, Sabatier and Jenkins-Smith see policy evolution as consisting of a number of simultaneous cycles, interacting with one another and that involve several levels of government. They identified that policy change depends on three sets of factors and processes:

¹⁹ Sabatier, Paul & Jenkins-Smith, H. C. (1993), Policy change and learning: An advocacy coalition approach, Boulder, Colo: Westview Press, p.

1. Change is primarily a result of interactions of competing advocacy coalitions within a policy subsystem. An advocacy coalition consists of actors from multiple institutions, both public and private and at all levels of government.
2. External perturbations – changes in the socio-economic conditions (new social movements, population migrations), governing coalitions, output from other subsystems
3. Stable system characteristics such as constitutional rules and social structure.

A major assumption of the ACF is that policy change analysis is only useful and meaningful over a longer time interval that involves “learning and real-world impacts”, such as more than seven to ten years.²⁰ Additionally, the ACF sees government institutions are not seen as the single, most useful unit of analysis. Sabatier suggests that the notion of policy subsystems represents the complex nature of modern society much more adequately. Subsystems consist of actors from a variety of public and private organizations which are actively concerned with a policy problem or issue (such as air pollution control, mental health etc.) and may contain advocacy coalitions and policy brokers which mediate conflicting strategies stemming from various coalitions within the subsystem. They may also include, contrary to older and traditional conceptions, among others analysts, researchers and journalists.

Actors within a subsystem are assumed to share normative and causal beliefs and to act in accordance with each other. These actors are referred to as “advocacy coalitions” – “people from various organizations who share a set of normative and causal beliefs and who often act in concert.”²¹ Occasionally, there will be neutral experts who are part of the coalitions just to offer their expertise or other useful skills. Policy brokers might also participate in a coalition to mediate conflicting positions of different coalitions. Civil servants, elected officials, experts in fundamental rights can be both brokers and advocates.

The authors of “Policy Change and Learning” examine the policy process in several case studies. In the US air pollution subsystem in the 1970s and 1980s, one can

²⁰ Sabatier, Paul (1998), The advocacy coalition framework: revisions and relevance for Europe, *Journal of European Public Policy*, 5:1, p.111

²¹ Sabatier, Paul, A. & Jenkins-Smith Hank C. (1993), P.18

distinguish between two rival coalitions – the “Clean Air Coalition”, and the “Economic Feasibility Coalition”. The most immediate difference that set them apart were their belief systems. The former prioritized human health over economic development, favoured greater federal involvement to prevent local and state governments from industrial pressures. The “Clean Air Coalition” distrusted technological innovation, especially at the cost of human health and environmental degradation and was rather skeptical towards the ability of markets to prevent “side effects” of economic and industrial development like air pollution. The members of the “Economic Feasibility Coalition”, as the name suggests, stressed on economic efficiency. Its protagonists favoured the idea of establishing a balance between health and economic development and were generally skeptical towards the severity and the scale of the health problem. They supported economic incentives and were mostly against federal involvement.

This example demonstrates a major aspect of the ACF – the structure of belief systems of relevant actors. The authors distinguish between three components of belief systems: the deep normative core, the near policy core and secondary aspects of belief systems. The deep core comprises “fundamental normative axioms” defining “a person’s underlying personal philosophy” and are extremely hard to change. Beliefs in the near core are “fundamental policy positions” that are instrumental to achieving deep core beliefs. These are difficult to change, although not as difficult as those belonging to the deep core and can be modified as a result of experience. Secondary aspects are the various “instrumental decision and information searches necessary to implement the policy core”.²²

Thus, it becomes clear that ACF assumes that actors are not guided by self-interest, but rather by complex policy-oriented goals and objectives “comprising value priorities and conceptions of whose welfare should be of greatest concern” that need to be determined through empirical observations.²³ The ACF argues that these normative beliefs and goals (belonging to the policy core) are the most important for coalitions, since they are the type of beliefs that most often elicit coordinated behavior. These were more prominent than deep core beliefs and more behaviorally representative than secondary

²² Sabatier, Paul & Jenkins-Smith, H. C. (1993), p.31

²³ Sabatier, Paul (1998), p.109

preferences (“fairly general, yet very salient”) and have an adhesive function for most coalitions.²⁴ However, Sabatier acknowledges the findings of later papers which show that in a few cases, policy preferences that would be attributed to secondary aspects of beliefs can also provide the “glue” for coalitions. He finds that these constitute a distinct type of beliefs that share characteristics of policy core beliefs, which is why he calls them “policy core policy preferences.”²⁵

The underlying logic of the ACF is that these components can serve to predict changes in belief systems and consequently in policy. Following a similar logic, in the consequent sections of this thesis, I will attempt to distinguish between the advocacy coalitions within the subsystem, which Frontex is part of and will outline the main components that constitute their belief systems. A brief overview of the securitization debate with respect to border control and irregular migration can prove to be helpful in identifying distinct advocacy coalitions and their belief systems within that domain. Similar to the US air pollution system, the ACF can be applied to the EU border control system. The debate regarding securitization and respect for fundamental rights of asylum-seekers and irregular migrants in that policy system helps to distinguish between coalitions favouring security in border control operations and those advocating that fundamental rights should have prevalence in Frontex operations.

Advocacy coalitions within a subsystem can range between one and four. Sabatier accounts of studies applying his ACF framework that reveal the existence of one to three coalitions – however, the majority of the cases comprised of two coalitions. However, Sabatier argues that his own research on San Francisco Bay water policy led him to discover that there may be more coalitions in a subsystem than it appears on first glance. His initial findings showed two advocacy coalitions (Environmental/Fishery Coalition vs. Utilitarian View of Nature Coalition), but a renewed analysis of data indicated the existence of two additional coalitions emerging from the Utilitarian coalition.²⁶

An important point that Sabatier emphasized in his 1998 ACF revision concerned other crucial factors for coalition formation - actors need not only share policy core beliefs and goals, but also work together, interact repeatedly, “developing a co-ordinated lobbying

²⁴ Ibid., p.109

²⁵ Ibid, p.116

²⁶ Ibid, p. 108

strategy” and attempting to enforce that strategy.²⁷ In his revised work on the Framework Sabatier formulated a hypothesis regarding coordination between actors in a potential advocacy coalition. Actors are likely to coordinate if they:

1. Interact repeatedly; 2. “Experience low information costs”; 3. Believe that there are fair policies that would resolve internal conflicts among members of the coalition. ²⁸

At this point, one can notice several similarities in the arguments put forth by Sabatier (and Jenkins-Smith) and Peter Hall, including the importance that they attach to social conditions and the pressure exerted by different state and non-state actors in the direction of policy. Furthermore, the notion of competing advocacy coalitions is almost analogous to the competing paradigms and their supporters expressed in Peter Hall’s theory of policy change. When it comes to the variables of policy change in each of the frameworks, parallels are possible between the orders of change and the belief systems of advocacy coalitions.

Thus, the secondary aspects of belief systems that Sabatier identified can be viewed as analogous to the second order instruments and settings in Hall’s theory. They are both relatively easy to change and represent cases of normal policy-making. Policy paradigms combine features of the core of belief systems in Sabatier’s approach: the near policy core comprises of the fundamental policy positions and overarching goals (such as alleviating the financial problems of the elderly, or safeguarding and protecting children in Frontex operations). Change of overarching paradigms (and core beliefs) are quite difficult, but possible in the case of experience: learning from failures, experiments and anomalies.

The Advocacy Coalition framework has significant explanatory power and is especially relevant to the study of policy change in the EU border control system. The Framework shows that studying policy change requires a timeframe of about ten years or even more, because it is only then that real outcomes of policies become discernible. Only then can a process of learning from policy mistakes take place and become observable. For that matter, Frontex has existed for fifteen, which makes it a suitable case study.

²⁷ Ibid., p.130

²⁸ Ibid., p. 116

Additionally, it is very important to point out the framework's applicability to Europe. Sabatier and Jenkins recognized an important dynamic that is especially relevant for the European Union and the border control governance system – it is expected that actors from all levels of government, as well as international organizations and non-state actors will be involved in the policy making process in one domain. Sabatier argued that in contrast to traditional approaches, the ACF recognizes that journalists, researchers and agency officials are active members of advocacy coalitions, and are not just passive observers of the process. In the revised paper about ACF, Sabatier argues that several scholars have “had no difficulty discerning coalitions composed of administrative agency officials, interest group leaders, and researchers...forming environmental or industry-based coalitions in a variety of subsystems”²⁹. As mentioned in an earlier paragraph, these actors and coalitions may use tactics such as venue-shopping to increase their resources and influence.

The revision of the Framework by Paul Sabatier states that the ACF provides a “clear cut criterion for distinguishing major from minor change”.³⁰ Major policy change would be the change in aspects of the policy core, whereas minor change would be change in secondary aspects. This is also the case with Hall's framework – third order change is equivalent to major change, whereas minor change would be equivalent to first order change that includes a modification of settings. Distinguishing between major and minor change is an important step towards identifying substantial elements of change in Frontex policies and treatment of irregular migrants. This focus on scope and magnitude of change over a longer period of time establishes the major link between the research question and the approach itself.

The 1998 upgrade of the ACF responds to critiques regarding the framework's negligence of the conditions that lead to change:

1. External perturbations are necessary, but not sufficient for policy change: a minority coalition can take advantage of external perturbations (such as a migration crisis) in order to increase its importance. He even mentioned the strategy of manipulating the

²⁹ Ibid., p.121

³⁰ Ibid., p.118

magnitude and importance of their issue to gather support, joining coalitions of convenience, or venue-shopping.

2. Conditions for a successful consensus process – Paul Sabatier describes different scenarios that lead to a successful consensus process between dominant and minority coalitions that results in power sharing. He describes a scenario that to an extent resembles the dynamics in the EU system of governance, also in the border control domain. Sabatier argued that it is more possible that a less powerful coalition (instead of being solely replaced by a dominant coalition) resorts to different tactics to gain importance, bring attention to their issue and eventually achieve power sharing – such tactics include pork barrel politics, manipulating the dimensions of the problem, forming coalitions of convenience etc.

Another, often neglected outcome is when “all major coalitions view a continuation of the current situation as unacceptable”, so negotiations and a consensus process start to be viewed as the superior solution.³¹ It can be argued that the supposed favourable “evolution” of Frontex rhetoric about irregular migrants was indeed the result of similar consensus seeking processes. Furthermore, the successful attempts of non-state actors to engage EU governments, institutions into a legal discourse about the improvement of norms and interpretations of fundamental rights principles have been quite reminiscent of the consensus-seeking scenario depicted by Sabatier.³²

Finally, another advantage of the ACF is its applicability to a variety of policy areas: in the revised paper, Sabatier argues that in areas such as human rights, abortion, gun control, gay rights etc. where “subsystems seem to be characterized by well-defined coalitions driven by belief-driven conflict which resort to a wide variety of guidance instruments at multiple levels of government” the framework should be quite suitable.³³ It is evident that each of the two approaches offer aspects, which can be combined in order to better understand and explain a complex subject such as the change in Frontex compliance with fundamental rights.

Combining the ACF and Peter Hall’s Policy Change approach has several advantages for this paper. Firstly, I will attempt to answer the question what has driven

³¹ Ibid., p.119

³² Slominski, Peter (2013), p. 42

³³ Sabatier, Paul (1998), p.122

change (if any) through assessing the possibility of coalition building in the border control subsystem – which actors engaged in the process of policy making and to what extent they engaged in coordinated action. For the second part of the question – namely, “Did change happen?” I will rely primarily on the orders of change to show the magnitude and nature of reform. Despite the usefulness of Sabatier’s concepts (Near Policy core and Secondary aspects), I am inclined to argue that they refer more strongly to the different actor’s positions, rather than to actual change in policy, whereas Hall’s concepts refer precisely to change in aspects of policy and seem more suitable for the analysis that this paper attempts to conduct. However, Sabatier’s contributions remain highly relevant for identifying the coalitions active in the border control system and their belief systems. It is crucial to view the debate about border control and fundamental rights of migrants through the prism of belief systems in order to understand how actors engage and articulate their views and beliefs and how susceptible to change these views are.

So far, I have suggested the existence of two separate and competing coalitions in the border control system. Securitization theory and the existing discourse about a possible securitization of border control have facilitated my observation. In the following sub-section I will provide an overview of this influential theory and outline how it relates to the topic of the paper.

3.3. The Securitization discourse and its implications for Frontex

Securitization theory in international relations, developed by the Copenhagen school of security studies, explains how security is defined in politics, as well as the process of construction of security threats.³⁴ Ole Wæver and Barry Buzan are among the most prominent theorists of this school. They challenge the traditional view of security threats as referring to military threats to a national state’s survival and broadened this perspective and application to other policy fields such as political, economic and environmental fields to include various types of security (human, regional, cultural etc.).

³⁴ Balzacq, Thierry, et al (2016), ‘Securitization’ revisited: theory and cases, *International Relations*, December 2016, 30:4, p.494-495

According to Wæver and Buzan public issues can be placed on a spectrum from nonpoliticized through politicized to securitized, the first one meaning that an issue has not received significant attention by decision-makers or the public, i.e. no political action has been taken to deal with this issue. A politicized issue is one which has received significant attention from political decision-makers (and from the public) placing it high on the political agenda, whereas the latter term refers to a situation in which the issue has been declared to require urgent and extraordinary countermeasures.³⁵

The founders of the term argue that state actors use their power to present an issue as a security matter. As a stronger variation of politicization, securitization involves constructing threats and invoking the concept of security to mobilize public opinion and “legitimize certain political actions”, such as “contentious legislation, policies or practices that would otherwise not have been legitimate” and the use of force or repressive measures.³⁶ Therefore, these measures very often fall outside democratic control. An essential element and means of securitization is speech – a security invoking speech act emphasizes the importance of dealing with a threat immediately and by using special measures to counter it. However, securitization is only successful if “the relevant audience accepts this claim and thus grants the actor a right to violate rules that otherwise would bind.”³⁷ The Copenhagen scholars view securitization in rather negative terms and encourage the use of normal political measures to deal with such issues.

Securitization has increasingly been discussed in the context of the activities of the AFSJ such as asylum and border control. A possible securitizing dynamic in the migration policy of the European Union has been the subject of debate among political science scholarship. Jeff Huysmans, Sergio Carrera, Juan Santos Vara etc. have raised concerns about securitization and criminalization phenomena in migration, refugee and asylum matters in the EU system of governance. Carrera & Allsopp assessed the effects of EU policies, laws, agencies and technologies applied in migration management (migrant smuggling, visa policies, external border controls etc.) and argued that the increased focus on strengthening external borders, the efforts to deflect migration flows and the adoption

³⁵ Buzan, Barry et al. (1998), *Security: A New Framework for Analysis*. Boulder, CO: Lynne Rienner, p.23

³⁶ Wæver, Ole (1995) in Neal, Andrew W., p.334-335

³⁷ Wæver, Ole (2000) in Neal, Andrew W., p.337

of directives that apply traditional criminal law enforcement mechanisms have resulted in linking third country nationals (TCNs) with irregular status to insecurities and crime.³⁸

Additionally, they argue that the EU has increased its attention to anti-smuggling policies and has strengthened the involvement of Frontex, Europol and even the military. They further observe a militarization of border surveillance and criticize the failure of protecting irregular migrants' fundamental rights. The introduction of surveillance drones and the automation of border management/ governance has strengthened the military bias that has already been present in this policy area. It can be argued that this development has been the result of the EU's attempts to remedy the consequences of failed policies to manage irregular migration.³⁹ Annual Frontex Risk Analyses Reports (RAR) provide insights into how the agency interprets the threat and risk posed by migrants at the external border. Risk analyses have particular importance in security policy – through assessing and identifying threats, they inform the bases of every strategy and practice and therefore can be a powerful securitizing instrument.

Particularly until 2016, RAR often reflect the dehumanizing sentiments that were mentioned earlier, referring to the quantity of arriving migrants as “flows” which has been used a total 49 times in the 2016 Report. The report also deals with the potential trauma and injuries that rescuers may have suffered, but does not mention anything about the distress of the rescued.⁴⁰ The document emphasized on the instances of violence caused by the arriving migrants and their unwillingness to comply with the border authorities (“they do not obey orders...and are not afraid to engage in physical contact while crossing the border.”)⁴¹ It can be argued that these depictions strengthened the image of migrants as potential threats and aggressors.

However, Andrew W. Neal argues that the political processes and the context of the creation of Frontex do not follow the classical securitization logic. His work stresses

³⁸ Carrera, Sergio & Allsopp, Jennifer (2017), “The Irregular Immigration Policy Conundrum: Problematizing ‘Effectiveness’ as a Frame for EU Criminalization and Expulsion Policies”, in Ripoll Servent, A. and Trauner, F. Eds. (2017), *The Routledge Handbook of Justice and Home Affairs Research*. London: Routledge, p.71

³⁹ Csematoni, Raluca (2018), *Constructing the EU's high-tech borders: FRONTEX and dual-use drones for border management*, *European Security*, 27:2, p. 175-177

⁴⁰ Frontex (2016), *Risk Analysis for 2016*, Warsaw: Risk Analysis Unit, p.49, available from: https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf (Accessed 4th December 2020).

⁴¹ *Ibid.*, P.45

the importance of distinguishing between “securitizing moves” and “securitized outcomes” – even though in some cases “the statements and discourses of the EU institutions may be identifiable as securitizing moves, the relationship between that discourse and the reception, discussion, legitimation and actualization of policy proposals and changes is less clear.”⁴² The relationship between securitized outcomes and securitizing moves on the EU level is much harder to identify than in a national setting. He reveals that in the aftermath of the 9/11 terrorist attacks, there was a clear link between terrorism, migration and border control made by European institutions. Neal quoted an EU Commission communication which stated that “border controls must in particular respond to the challenges of an efficient fight against criminal networks, of trustworthy action against terrorist risks and of creating mutual confidence between those Member States which have abandoned border controls at their internal frontiers.”⁴³

Additionally, the European Council addressed the need for “better management of the Union’s external border controls” However, the urgency had evaporated – it did not translate to “extraordinary means”, violating rules and to what securitization theory might expect to be urgent policy responses. An Action Plan for the management of the external borders was the only outcome, whereas little operational progress followed in the next couple of years. In this context, there is common agreement that Frontex was not a result of the 9/11 attacks but rather a natural consequence of European integration that would have happened with or without the turmoil caused by the terrorist attacks.

Another reason why securitization dynamics do not directly apply to practices at the EU level is the institutional structure of the EU itself. Neal explains that the institutional structure poses a challenge to tracing the relationship between a securitizing move and the reception by the European public. He cites Carl Schmitt who argues that since the major function of the EU is to “bind its member states to a common set of rules...which are ultimately upheld by the EU courts” violating rules and extraordinary measures are not desirable, instrumental or feasible and are therefore unlikely for the EU institutions. ⁴⁴

⁴² Neal, Andrew W. (2009), *Securitization and Risk at the EU Border: The Origins of FRONTEX*, JCMS, 47:2, p. 336

⁴³ Ibid., p.339

⁴⁴ Ibid., p. 337

Slominski also argues that reputation, legitimacy and norms play an important role for the EU. More specifically, the European Union's self-conception as a "norm-based polity" prevents it from simply ignoring criticism about the treatment of irregular migrants and the legal interpretation of fundamental rights norms.⁴⁵ For that matter, The Charter of Fundamental Rights is still considered a fundamental element of the Union's identity. Also, various EU actors and Member States have recurrently attempted to specify and strengthen pertinent human rights law and improve fundamental rights standards.⁴⁶ This concern of the EU actors and institutions with legitimacy and reputation would significantly reduce the scope of securitization practices and securitized outcomes.

However, this still does not translate to a lack of a securitization logic in European border policies, nor does it mean that such a logic cannot coexist with a liberty or a "protection-first" logic. This leads to the question about the extent that the Area of Freedom, Security and Justice (AFSJ) and its subfields (asylum, borders, terrorism) are affected by a security or liberty logic and whether the two rationales have come to exist concurrently in the border policy area. How have preferences and beliefs of actors involved in border control and irregular migration affected the course of the policy process in this subfield? These are the main questions that the thesis will try to answer.

To round up this section, using the proposed belief structure by Sabatier I will show how the beliefs of the two border control coalitions have differed based on available sources such as official reports and other documents, statements, interviews etc. Drawing on Sabatier's and Jenkins-Smith's insights on belief systems of policy elites, I attempted to illustrate the structure of belief systems of each coalition – the policy core and their secondary aspects.

⁴⁵ Slominski, Peter (2013), The Power of Legal Norms in the EU's external Border Control, *International Migration*, 51:6, p.43

⁴⁶ *Ibid.*, p. 45

	Protection – First Coalition		Enforcement-First Coalition	
	Near Policy core	Secondary aspects	Near Policy Core	Secondary Aspects
<i>Defining characteristics</i>	(Fundamental policy positions, basic strategies)	(Instrumental decisions and information searches)	(Fundamental policy positions, basic strategies)	(Instrumental decisions and information searches)
<i>Susceptibility to change</i>	Difficult, but can occur as a result of experience and learning	Moderately easy	Difficult	Moderately easy
<i>Illustrative Components</i>	Humane migration laws, less restrictive border policy, addressing the causes of global migration, reduce migrant death toll resulting from EU policy of closure and exclusion	Ensuring high quality reception conditions, increasing the number and efficiency of Search and Rescue operations at sea (SAR) and NGO rescue boats, improve capacity of transit countries to host migrants, improving the human rights knowledge of Member States' border guards, cooperating with and consulting Member States border control authorities and Frontex	Securing EU borders, stricter border controls, deterrence measures, reduce migrant death toll resulting from illegal migration, strengthening border surveillance	Improving Frontex SAR operations, improve capacity of transit countries and other third countries to intercept and host migrants, improving the professional knowledge of Member States' border guards and establishing common training standards, consultation with international (human rights) organisations & discussions with NGOs

Table II.: Structure of belief systems of the Protection-First and Security-First coalitions (own representation)

The table displays the overall positions of the security enforcement coalition and the rights protection coalition based on reports and documents primarily from the timeframe between 2005 and 2011. The table reveals fundamental differences in the coalitions' policy cores and the secondary aspects of their belief systems. However, there are several minor points of agreement – both coalitions aim at reducing fatalities in the Mediterranean and improving the capacities of third countries to host migrants.

Furthermore, both coalitions see consultations and mutual exchange with various other experts and stakeholders (including universities, national organisations, NGOs, International Organisations (IOs) such as the UNHCR, the International Organisation for Migration (IOM) and the Committee for Prevention of Torture (CPT) as beneficial. It is obvious that the differences between the coalitions' primary and secondary beliefs lie in the relative emphasis on security or fundamental rights protection. Where the two coalitions show agreement in policy aspects, they are still guided by different motivations such as in the case of reducing fatalities in the Mediterranean and improving the capacities of third countries to host migrants. As pointed out, this distinction only serves as a general orientation to show how the belief structures can be applied to actors engaged in the border control system. There can also be significant discrepancies in the beliefs within one coalition, as will be shown in a following chapter.

The following section will be dealing with the history of the Area of Freedom, Security and Justice and Frontex.

CHAPTER FOUR: About the European Border and Coast Guard Agency

4.1. Development of the EU migration and asylum policy and the Area of Freedom, Security and Justice (AFSJ)

This chapter reflects on the history of the agency, helping to gain perspective on the institutional environment and the political climate in which the agency came into existence. Firstly, I would like to focus on the development of agencies and their place in the machinery of the EU. The institutional development of the European Union in the area of administration began shortly after the establishment of the European Economic Community in the beginning of the 1950s, particularly with the establishment of assisting and advisory committees, followed by the creation of organizationally and legally independent bodies in the 1970s.⁴⁷ Thus, the seventies gave birth to the first-quasi agencies of the EU, such as the European Centre for the Development of Vocational Training (Cedefop) established in 1975 with seat in Thessaloniki, as well as the The European Foundation for the Improvement of Living and Working Conditions (Eurofound) also established in 1975 in Dublin. A second generation of agencies were created in the 1990s, although these were mostly called foundations, departments or offices, whereas in official documents they were usually called “specialized” or “satellite bodies”.⁴⁸

As a result of a substantial increase in EU competences, as well as in technical and administrative activities, Frontex, among other agencies was created in the third wave of agency formations which took place in the beginning of the millennium. Political scholarship has discussed alternative options for tackling this competence growth “crisis”, including the possibility of transferring tasks from EU institutions to private legal entities, or to national and member state institutions. However, various risks and difficulties including the lack of controllability, efficiency and uniformity in the implementation of the tasks (by 28 national departments) have proved that externalization to independent agencies and internal departments is the optimal solution. Another argument explaining the proliferation of agencies in the EU is that of their supposed credibility – agencies are

⁴⁷ Seehase, Juliane (2013), Die Grenzschutzagentur FRONTEX: Chance oder Bedrohung für den Europäischen Flüchtlingsschutz. Nomos Universitätschriften Recht; 820. Baden-Baden: Nomos, p.131

⁴⁸ Ibid., p. 131

regarded as impartial, while the data and expertise that they generate is reliable and objective, for they are staffed by experts and professionals who are much less prone to be biased by public opinion or any other kind of pressures.⁴⁹

Additionally, some scholars widely recognize a distinction between regulatory and executive agencies in the EU. It is important to note here that the distinction is based on their origin and not on their competences - executive agencies have been established by the EU “Executive” (the Commission), whereas regulatory agencies by the legislative organs such as the Council of the EU and the Parliament. Regulatory agencies have the sovereign right to appoint personnel, they enjoy budget autonomy, do not need to follow any other institutions’ instructions and are also spatially distributed among all member states. According to this categorization, executive agencies are hierarchically subordinate and directly linked to the Commission by means of a reporting obligation and are located in the Commission’s office in Brussels und Luxemburg.⁵⁰

Currently there are 40 EU agencies working in various policy fields, while agency staff constitute 13 per cent of the entire EU staff.⁵¹ Additionally, some scholars emphasize on the distinction between internal departments and independent agencies. Internal departments support the EU organs organizationally and/or logistically and can be affiliated to one single EU organ (e.g. the European Anti-Fraud Office – OLAF for the Commission) or to several organs (such as the European Personnel Selection Office) and do not possess a separate legal personality, while agencies are distinct from the Community institutions (Council, Parliament, Commission, etc.) and have their own legal personality.

⁴⁹ Leonard, Sarah (2009). ‘The Creation of FRONTEX and the Politics of Institutionalisation in the EU External Borders Policy’, *Journal of Contemporary European Research*, 5:3, p. 371-374

⁵⁰ Seehase, Juliane (2013), p.136-137

⁵¹ European Union Agency for Fundamental Rights, (2015), *EU Agencies Working for You*, Luxembourg: The Publications Office of the European Union, p.5

Time span	1975-1992	1992/3-1999	1999-2009	2009- today
Development of migration related policies	TREVI (Terrorism, Radicalism, Extremism, Violence Internationally),	JHA (Justice and Home Affairs)	PJCC (Police & Judicial Cooperation in Criminal Matters)	AFSJ (Area of Freedom, Security and Justice)
	Schengen Rules adopted in 1985			
General institutional changes	Pillars: European Communities (EURATOM, ECSC, EEC) merged in 1965, TREVI (Terrorism, Radicalism, Extremism and Violence Internationally), in 1986 founded European Political Cooperation (EPC)	Maastricht Treaty: introduced CFSP and JHA pillars, amended: EURATOM, ECSC, and EEC to transform it into EC	Amsterdam Treaty 1999 and Nice Treaty 2003: CFSP, EC, JHA reformed and renamed into PJCC, institutional changes in EURATOM, ECSC, EC and TEU	Lisbon Treaty abolished the 3 pillars (founded EU as an overall legal unit with Charter of Fundamental Rights, and reformed governance structures & decision procedures

Table III.: Evolution of the Area of Freedom, Justice and Security (own representation)

As it is responsible for coordinating member states' actions in border control and surveillance of the EU's external borders, the development of Frontex should be understood and studied within the context of the development of the Area of Freedom, Security and Justice - a collection of policies to which the Lisbon Treaty attached great importance. The AFSJ policy area is fundamental to European and non-citizens alike, as it pertains to the delivery of justice, rights, security and freedom of movement within the Union.⁵² Therefore, this section will give an overview of the most decisive events in the development of that policy area, while highlighting the processes that gradually necessitated an externalization of competences to Frontex.

Major developments occurred in the 1980s with the 1985 Schengen Agreement – building on the concept of free movement, one of its main contributions was the elimination

⁵² Kaunert, Christian, Léonard Sarah & Occhipinti, John D. (2013), Agency Governance in the European Union's Area of Freedom, Security and Justice, Perspectives on European Politics and Society, 14:3, p. 273

of border controls within the member states, which allowed EU nationals and non-EU nationals to move freely within all signatory countries. This in turn led to a stronger focus of policy makers on controlling the external borders of the European Community and set a new impulse for cooperating and developing common rules and mechanisms for dealing with asylum seekers and refugees. From 1990 onwards asylum and illegal immigration, which were previously reserved for the national level, were increasingly dealt with at the European level – the foundations of the Dublin system were laid in 1990 with the signing of the “Convention determining the state responsible for examining the application for asylum”. The Schengen Implementing Convention of the year 1990 also included common mechanisms for screening third country nationals at the external borders of the EC.⁵³

EU asylum and immigration policy has been quite inconsistent throughout time. Some scholars identify three stages of migration policy development, mostly depending on the dominant mode of governance and on the type of legislation (primary or secondary) that governed the rules in that policy area. The signing of the Maastricht Treaty in 1992 (also known as Treaty on European Union (TEU)) – one of the most important agreements in the history of the EU has been regarded as the first stage of development.

The Treaty introduced the three pillars of governance and established the Justice and Home Affairs pillar which regulated police and justice cooperation, as well as migration matters and was based on an intergovernmental method ⁵⁴. Throughout that first phase, the control of illegal immigration, the exercise of controls on crossing the Community’s external borders, as well as the common asylum policy were part of the third (Justice and Home Affairs) pillar, which was based on an intergovernmental cooperation approach. None of the AFSJ agencies existed at the time, Europol only on paper and began its activities in 1999.

The year 1999 introduced major changes through the Amsterdam Treaty and the Tampere Programme. The Amsterdam Treaty introduced the transfer of migration issues from the third JHA pillar to the first (until then called European Community) pillar, while

⁵³ Trauner, Florian (2014): Migration policy: an ambiguous EU role in specifying and spreading international refugee protection norms. In: Falkner, Gerda, Patrick Müller (eds): EU Policies in a Global Perspective. Shaping or taking international regimes? London: Routledge, p. 149-166

⁵⁴ Caviedes, Alexander (2016), European Integration and the Governance of Migration, Journal of Contemporary European Research, 12:1, p. 552-565.

the latter was further renamed to “Police and Judicial Co-operation in Criminal Matters (PJCC)”. This resulted in the supranational institutions yielding authority over migration issues, particularly the European Commission which was granted the right of initiative and the competence to conclude agreements with non-EU countries. The European Council called for a common asylum and migration policy, particularly for developing measures aimed at establishing partnerships with countries of origin and ensuring fair treatment of third country nationals that reside legally in the EU.⁵⁵

The Programme developed at the Tampere Council in Finland the same year was focused specifically on asylum and migration policy and is until today regarded as a milestone in the efforts for harmonizing national immigration legislation. It has been considered the first major step towards the development of an Area of Freedom, Security and Justice due to introducing the idea of cooperation on all policy levels, as well as with third countries (transit and origin), using a what can be named a “human rights language” encouraging EU organs and member states to engage in strengthening protection and development in refugee-sending countries.⁵⁶

The Hague Council in 2004 was a continuation of the efforts to develop a common European immigration policy, placing stronger emphasis on forms of external migration management and on the development of an integrated (external) border management system. Compared to previous years (Tampere and Amsterdam years) this Programme featured significantly more paragraphs on managing the movement of people from neighboring regions through cooperation with third countries (origin and transit).⁵⁷ Thus, a framework of the EU external migration policy was announced in 2005. Prevention and reduction of irregular migration was one of the key priorities of the Global Approach to Migration. The framework defined the EU’s conduct in establishing relations with countries from the southern Mediterranean region and sub-Saharan Africa and later also with Balkan countries, countries from the Eastern Neighbourhood, as well as China, Hong

⁵⁵ Boswell, Christina (2003), The external dimension of EU immigration and asylum policy, *International Affairs*, 79:3, p. 619

⁵⁶ *Ibid.*, p. 624

⁵⁷ European Council: The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, (2004) OJ C 53/01, paras 1.3, 1.6.1-1.6.4.

Kong, Sri Lanka, Pakistan, etc.⁵⁸ The establishment of Frontex took place precisely during the Hague era of extensive “maturation” of the AFSJ.⁵⁹

The Stockholm Programme adopted in December 2009 is another important framework regulating action on the issues of citizenship, justice, security, asylum, immigration and visa policy for the period between the year 2010 and 2014. In 2012 the Global Approach was “relaunched” and renamed to the Global Approach to Migration and Mobility (GAMM) by the Council’s recommendation to the Commission. GAMM also introduced a new ‘pillar’ (priority theme) to its existing themes - international protection and strengthening external asylum policy. Maximizing the development impact of migration and mobility were given greater prominence and a ‘migrant-centered’ human rights approach was advocated.⁶⁰ Both the Programme and the Lisbon Treaty which entered into force in 2009, highlighted the concern for fundamental rights – especially personal privacy and data protection were given a lot of prominence and their protection was to be guaranteed by a widened authority of the European Court of Justice⁶¹.

Additionally, the Lisbon Treaty in particular strengthened the role of the Charter of Fundamental Rights. Since the entry into force of the Treaty, the Charter acquired even legal value as the EU treaties. It also laid down that agencies of the AFSJ should be subject to rulings of the European Court of Justice, at the national courts’ request. Along with the two (Hague and Stockholm) programmes, the *European Agenda on Migration* also defined the development of the AFSJ and Frontex in particular. This strategy, presented by the Commission in the spring of 2015, included four pillars, two of which were directly related to the work of the Border and Coast Guard Agency.

The “immediate action” pillar referred to the agency’s “immediate duty to protect those in need, such as lives at sea” – in other words preventing migrants from hazardous and life-threatening journeys. This led to increasing support to Frontex operations Triton (launched in 2014 and covering Italian territorial waters) and Poseidon (launched in 2011

⁵⁹ Kaunert Christian, Occhipinti John D, Léonard Sarah (2014), *Supranational Governance of Europe’s Area of Freedom, Security and Justice*, London: Routledge, p.91

⁶⁰ Hampshire, J. (2016), Speaking with one voice? The European Union’s global approach to migration and mobility and the limits of international cooperation, *Journal of Ethnic and Migration Studies*, 42:4, p. 571-586

⁶¹ Kaunert et al., (2013), *Agency Governance in the European Union’s Area of Freedom, Security and Justice*, *Perspectives on European Politics and Society*, 14:3, p. 277

and covering Greek islands in the Aegean Sea)^{62 63}. Another pillar (Reducing the incentives for irregular migration) envisaged strengthening the capacity of Frontex in return operations and assisting countries in North Africa “to tackle migration upstream”.⁶⁴

Policy change in the Area is a subject hardly explored by the academia. Trauner and Ripoll Servent are among the few scholars who have researched the topic of policy change in the AFSJ. The contributions of Peter Hall and Paul Sabatier are utilized by the two scholars in their research of policy change in the Area to develop a typology of change suited for the policy subareas in the AFSJ. They argue that change in the AFSJ sub policies can be analyzed based on two dimensions – a substantive and a functional dimension. The substantive dimension referred to the depth of policy change and the change in the rationale of the policy, whereas the functional dimension would refer to the form and type of European Integration in the given sub policy. The substantive dimension is based on the operationalization by Hall and Sabatier. The change in rationale is the change in the interpretation and definition of an issue which is often the subject of contestation between different policy actors. Thus, they find that according to EU rhetoric (formally), freedom, security and justice are of equal importance to this policy area, but in practice security has dominated the other two concepts.

Parkes argued that a security perspective which was favoured by interior ministers was dominating the policy field already between the end of the 1980s and the beginning of the millennium. This was associated with the bilateral 1984 Saarbrücken agreement between Germany and France, which was essentially exclusive in nature vis a vis other Western European countries. However, the Schengen Agreement laid the foundations of “today’s border regime”, announcing a shortage of security as a result of removing internal borders. Parkes identified three distinct periods of EU border policy:

1. Up until the Amsterdam Treaty of 1999
2. Between the Amsterdam and Lisbon Treaties (1999-2009)
3. Post-Lisbon period since the year 2009

⁶² Frontex, Joint operation Triton (news release, 10 October 2016) <https://frontex.europa.eu/media-centre/focus/joint-operation-triton-italy--ekKaes>

⁶³ Frontex, “Update to Joint Operation Poseidon 2011” (news release, 26.March 2011) available at: <https://frontex.europa.eu/media-centre/news-release/update-to-joint-operation-poseidon-2011-jzZfWV>

⁶⁴ European Commission, Commission Communication: A European Agenda on Migration (2015) COM (2015) 240 final, p.5

Building up on the operationalizations of Trauner and Ripoll Servent regarding change in the substantive and functional dimensions of border policies, he distinguished between dominant rationales during each of the three timeframes and the nature of change that occurred as a result.⁶⁵ Parkes found that prior to the Amsterdam treaty EU borders were seen as an amendment to national control and the policy core was beginning to be established with a security rationale dominating over liberal and technocratic concerns. The second phase was marked by a rising concern over the effectiveness and capacities of border control, policy change was expressed in the development and growth of cooperation with security and technocratic concerns dominating over liberal concerns. This was also the time in which Frontex came into being.

The period following the adoption of the Lisbon treaty was characterized the inability to align the three rationales – security, technocratic and liberty. With regard to depth of policy change new technologies, new spaces and new modes of governance were increasingly utilized in this policy area. These insights are particularly relevant for the field of border control and Frontex and will also be taken into consideration in the investigation of policy change in the border control subsystem.

4.2. Development, structure and activities of the European Border and Coast Guard Agency

Frontex, or the former European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union was created in October 2004 with Council Regulation (EC) 2007/2004 and began its activities in 2005. The role of Frontex is clearly propounded in Regulation (EU) 2016/1624 of 14 September 2016, which is:

“to establish a technical and operational strategy for implementation of integrated border management at Union level; to oversee the effective functioning of border control at the external borders; to provide increased technical and operational assistance

⁶⁵ Parkes, Roderick (2015), as cited in Trauner, Florian and Ripoll Servent, Ariadna (2016), “The Communitarization of the Area of Freedom, Security and Justice: Why Institutional Change does not Translate into Policy Change”, JCMS, 54: 6, p.1423-1426

*to Member States through joint operations and rapid border interventions; to ensure the practical execution of measures in a situation requiring urgent action at the external borders; to provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea; and to organise, coordinate and conduct return operations and return interventions.”*⁶⁶

Before Frontex there was limited intergovernmental cooperation between member states in the area of border management. The creation of Frontex was preceded by debates which either opposed (United Kingdom), or supported (France and Germany) a supranationalisation of border control and the creation and mandate of the agency. At the time, the debate was partly stirred by the creation of the Homeland Security Department in the United States. This new EU body represented a compromise between the two opposing sides – communitarization and intergovernmentalism in the area of border control.

The agency is managed by an Executive Director – as of 2016 the office has been held by Fabrice Leggeri, who is former Head of the Division for combatting illegal migration to the French Interior Ministry. Besides being the legal representative of the Agency, the Executive Director exercises a number of functions and powers, including among others to propose and implement “the strategic decisions and programmes and activities adopted by the management board..., to evaluate and coordinate proposals made by Member States for joint operations or rapid border interventions”, to prepare an annual report on the activities of the Agency and submit it to the Management Board and “to assess the request for assistance of a Member State for migration management support teams...” (as defined by Article 68 of Regulation (EU) No 2016/1624).⁶⁷

The Executive Director is assisted by a Deputy Executive Director and supported by “five Divisions, a Cabinet, Offices (Media and Public Relations; Inspection and Control;

⁶⁶ Regulation (EU) 2016/1624 of the European Parliament No. 2725/2000 of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council. L 251/2 (Online). Available from: <https://eur-lex.europa.eu/eli/reg/2016/1624/oj> (Accessed 4 June 2019).

⁶⁷ Ibid., L 251/53

Data Protection; Accounting) and Task Forces (ETIAS and Interoperability; Permanent premises for the Frontex headquarters)”⁶⁸. Currently, the five Frontex divisions are (the fifth one was introduced in 2018):

1. Operational Response: Field Deployments Unit; Coast Guard and Law Enforcement Unit; European Centre for Returns
2. Situational Awareness and Monitoring: Situation Centre, Risk Analysis, Vulnerability Assessment
3. Capacity building: Training Unit, Pooled Resources Unit, Research and Innovation
4. Corporate Governance Division: Human Resources and Security Unit; Legal Affairs and Procurement, Budget and Financial Services Unit, Information and Communication Technology Unit
5. International and European Cooperation Unit is still in development after having been introduced last year.

The diagram underneath shows how the organisational structure of the agency has changed between 2012 and 2019.

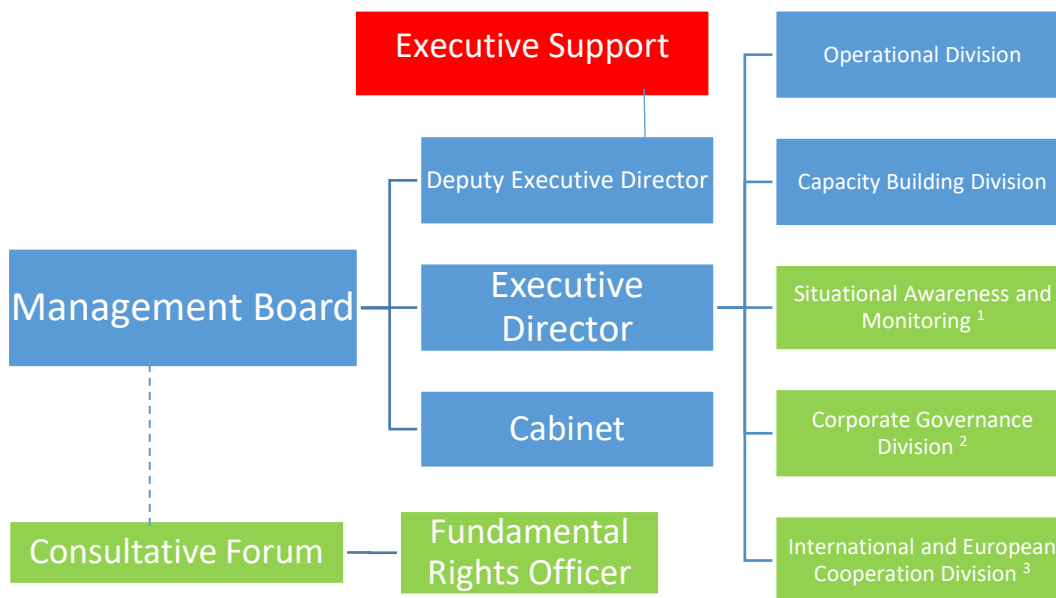


Diagram 1 (own representation).: Structure of Frontex (2012-2019)

⁶⁸ Frontex (2019), Organisation. Available from: <https://frontex.europa.eu/about-frontex/organisation/structure/> (Accessed on 4th June 2019).

¹² Previously three divisions existed, the third one called Administration Division combined features of the Situational Awareness, Corporate Governance and International and European Cooperation Divisions.

³ Division was created in 2018.

Frontex has seen a significant increase in its tasks and responsibilities, primarily in comparison with other EU agencies.⁶⁹ The diagram above shows how the internal structure of Frontex has changed between 2012 and 2019 in order to demonstrate the agency's expansion along with the functional differentiation that it experienced. The diagram shows the creation of the independent body of the Consultative Forum on Fundamental Rights, along with a Fundamental Rights Officer in 2012. The abolishment of the Executive Support Division was followed by the gradual establishment of three additional subdivisions, which replaced Administration Division. Of course, this is a relevant point, as the structural expansion of Frontex (along with the increase in staff and budget) which was mentioned in previous sections was the subject of criticism especially by the proponents of the Protection-First coalition. Their main argument being that the expansion and functional differentiation reflected the EU's deliberation to strengthen border control at the expense of fundamental rights of third-country nationals.

Additionally, Frontex has been characterized as an agency with a dual character in that it provides technical support to member states in border control management, as well as implementing joint operations between member states' border guards. The following regulations provided the main impulses for the agency's development and serve as the legal basis of the Agency:

a) Council Regulation 2007/2004

This Regulation established the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. The Regulation included important aspects of the new Agency's functions, responsibilities and structure. Among the top priorities were "assisting Member States with

⁶⁹ Santos Vara, Juan (2017), The EU's agencies: Ever more important for the governance of the Area of Freedom, in: Security and Justice, The Routledge Handbook of Justice and Home Affairs Research, New York, NY: Routledge, pp.447

implementing the operational aspects of external border management, including return of third-country nationals illegally present in the Member States...”⁷⁰. The Regulation stated the possibility of cooperation with Europol, the competent authorities of third countries and various international organisations.

The Agency should have legal, administrative and financial autonomy and should be a Community body having legal personality. It should have a Management Board consisting of “the operational heads of the national services responsible for border guard management or their representatives.”⁷¹ The Regulation includes various articles on rules governing the Agency’s role in return operations (e.g. “assistance for organising joint return operations of Member States and identify best practices on the acquisition of travel documents and the removal of third-country nationals illegally present in the territories of the Member States.”)⁷² Fundamental rights are only mentioned one article in very general terms.

b) Regulation (EC) No 863/2007

This regulation was an amendment of the founding Council Regulation (EC) 2007/2004 and authorized the deployment of RABITs (Rapid Border Intervention Teams) in urgent situations when one EU member state is facing a large number of third country nationals trying to enter its territory illegally. The Regulation stated that RABITs should deploy experts from other Member States, particularly trained to assist national border guards on a temporary basis.⁷³ Member states, their autonomy unaffected, are expected to provide such specially trained guards to a pool of experts that is called the Rapid pool. These guards are expected to fulfil tasks at the request of the Agency. The regulation further provides details about the operational plan, composition, training, deployment, coordination, tasks and powers etc. of the Rapid Border Intervention Teams. However,

⁷⁰ 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, (26 October 2004), L 349/1

⁷¹ Ibid., L 349/2

⁷² Council Regulation (EC) No 2007/2004, establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, L349/2

⁷³ Council Regulation (EC) No 863/2007 of the European Parliament and of the Council from 11th July 2007, establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004, L199/30

almost no references to fundamental rights obligations are made within the text of the document.

c) **Regulation (EU) No 1168/2011**

This regulation amended Council Regulation 2007/2004 and introduced new powers to Frontex, including in coordinating Joint Operations and in the deployments of European Border Guard Teams (EBGTs, formerly known as RABITs). More significant to the subject of investigation of this paper, the Regulation added multiple references to international law obligations for human rights and fundamental rights protection (Articles 16, 18, 20, 22, 29).

Article (29), for instance, declares the respect for fundamental rights and states that the Agency “observes the principles recognised in particular by the TFEU and the Charter of Fundamental Rights, notably the right to human dignity, the prohibition of torture and of inhuman or degrading treatment or punishment...”.⁷⁴ The right to liberty and security, the right to protection of personal data, the right to asylum, the principle of non-refoulement, the principle of non-discrimination, the rights of the child, and the right to an effective remedy were also quoted in Article 29.

Additionally, *Article (16)* explicitly emphasizes the importance of the incident reporting scheme which:

*“should be used by the Agency to transmit to the relevant national public authorities and to its Management Board any information concerning credible allegations of breaches of Regulation (EC) No 2007/2004 or the Schengen Borders Code, (...) including fundamental rights, during joint operations, pilot projects or rapid interventions.”*⁷⁵

Furthermore, *Article (18)* established that the Agency should provide fundamental rights trainings for Member States’ border guards, including raising national guards’ awareness and knowledge on important issues such as providing access to international

⁷⁴ Regulation (EU) No 1168/2011 of the European Parliament and of the Council, amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (25 October 2011), L 304/12

⁷⁵ Ibid., L 304/2

protection and to asylum procedures. *Article (20)* established that financial resources would not be provided for operations which do not fulfill the criteria of the Charter of Fundamental Rights of the European Union. Finally, the Regulation announces its intention to draft and implement a Fundamental Rights Strategy, establish a Consultative Forum on fundamental rights and set up a Fundamental Rights Officer.⁷⁶ Thus, this was the first Regulation that featured detailed rules and requirements for fundamental rights conformity.

d) Regulation (EU) 2016/1624

This regulation replaced the “European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union” through establishing the European Border and Coast Guard Agency. Using the same legal personality and name (Frontex), the Regulation authorized Frontex to carry out evaluations of member states’ capacity and vulnerabilities in controlling their sections of the border and make recommendations on how to correct the shortcomings that these assessments have revealed. Additionally, the regulation grants the agency permission to intervene whenever member states do not implement the measures suggested in the assessments and also in cases when member states face excessive pressures at the borders that can potentially imperil the Schengen Area.

The Regulation reiterates that the extension of tasks and competences should go parallelly to safeguarding and strengthening fundamental rights and accountability in the implementation of its activities. Last but not least, this regulation issued the Complaints Mechanism which was established to assist all those who were affected by Frontex operations to refer violations of their rights to the relevant authorities – the complaint is registered and assessed by the Fundamental Rights Officer.

e) Regulation (EU) 2019/1896 of 13 November 2019

The latest Frontex Regulation reiterated the demands of expanding the Border and Coast Guard’s mandate, resources and staff. It emphasized strengthening the cooperation of the agency with third countries and also called for reaching the “strategic

⁷⁶ Ibid., L 304/16

target of having a capacity of 10,000 operational staff".⁷⁷ The new Regulation called for the establishment of a European Border and Coast Guard that would be "composed of the Agency and the national authorities responsible for border management" and would "ensure the effective implementation of European integrated border management and increase the efficiency of Union return policy".⁷⁸

Additionally, a number of articles stressed the importance of The European Border Surveillance system (EUROSUR) and its main task to provide quality of information exchange between Member States and the Agency, as well as to improve the capability of member states to detect and prevent illegal migration and cross border crime. One article particularly referred to the safety of migrants crossing the sea: EUROSUR should considerably improve the operational and technical ability of the Agency and the Member States to detect small vessels and to improve SAR operations thus contributing to a lower migrant mortality rate at sea.⁷⁹

Regarding the detection and prevention of crimes linked to external border crossings such as migrant smuggling, trafficking in human beings and terrorism, the Agency should coordinate with Europol. The importance of Frontex cooperation with Europol was reiterated throughout the document (to be specific it was mentioned 14 times), whereas the FRA was mentioned only twice in the Regulation. Regarding returns, the document warned of the various cases of obstruction of return procedures by some undocumented migrants who refused to cooperate in providing personal data. It called for enabling the Agency to restrict certain rights of data subjects in order to prevent such issues. This Regulation also placed an emphasis on establishing a complaints mechanism for the Agency in cooperation with the fundamental rights officer, to safeguard the respect for fundamental rights in all the activities of the Agency.

⁷⁷ Regulation (EU) 2019/1896 of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, L 295/21 (13 November 2019)

⁷⁸ Ibid., L 295/3

⁷⁹ Ibid., L 295/5

CHAPTER FIVE: FRONTEX AND FUNDAMENTAL RIGHTS

According to the European Fundamental Rights Agency the rights of non-EU nationals in an irregular situation are often violated – such violations are expressed in exploitation at the workplace, blocking access to healthcare, education and/or justice, or also preventing access to asylum procedures of persons in need of international protection. Even though member states are not expected to provide the same benefits to migrants as to their own citizens, they must guarantee access to justice, essential healthcare especially for pregnant women, and education for children.⁸⁰ And even though Member States are responsible for processing asylum claims, Frontex officers are obliged to provide asylum applicants with information and refer them to the relevant authorities. As the thesis discusses the fundamental rights of irregular migrants, it is necessary to provide a definition for this particular category of migrants.

As specified by the Schengen Borders Code, an illegal migrant is a third country national who has entered, or is present in the territory of a Schengen state and does not, or no longer fulfills the conditions for entry, stay or residence as set out in Regulation 2016/399 of the Schengen Borders Code.⁸¹ The term “irregular” has become dominant in the official language of the Union, since the Parliamentary Assembly of the Council of Europe insisted on using this term, rather than “illegal migrant” or “migrant without papers”. This term is more neutral and does not carry, for example, the stigmatisation of the term “illegal”. It is also the term increasingly favoured by international organisations.⁸² Most irregular migrants have entered the EU legally acquiring short-term visas, but continue to reside in EU countries even past the expiration of their visas.

These overstayers are the biggest group of irregular migrants in the EU. Member States then confer a return decision to such non-EU nationals. Apart from over-staying

⁸⁰ FRA - European Union Agency for Fundamental Rights (2011), Fundamental rights of migrants in an irregular situation in the European Union (Fact Sheet), available at https://fra.europa.eu/sites/default/files/fra_uploads/1848-FRA-Factsheet-fundamental-rights-irregular-migrants_EN.pdf

⁸¹ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0399&from=EN> (Accessed on 4th June 2019)

⁸² Resolution 1509 (2003) Adopted by the Security Council at its 4830th meeting, from 19 September 2003 (Online). Available from: <http://unscr.com/en/resolutions/doc/1509> (Accessed on 20th May 2019)

individuals, rejected asylum applicants and criminal offenders also belong to this group of irregulars. In 2013 upheavals in the Middle East and Africa caused a sharp increase of irregular border crossings through the Mediterranean Sea. In 2015 the number of asylum applications and irregular migrants entering the EU rose drastically as a result of the Syrian civil war and other violent conflicts in Eritrea and Libya – from 562,7 thousand to 1 256,6 million for first-time applications and remained high in 2016. On 1st January 2018 there were 22.3 million non-EU nationals living in the EU. 76% of these were living in only five member states – Germany, United Kingdom, Italy, France and Spain.⁸³

The role of the European Border and Coast Guard Agency in returning individuals who have exhausted all possibilities of legalizing their stay in the EU is essential – coordinating and supporting the organisation and implementation of return operations, but also co-financing returns organised by Member States. In 2017 the Agency has assisted EU member states in conducting more than 13, 000 returns (rejected asylum applicants or individuals no longer eligible to remain). These returns accounted for 9 % of the 151 398 returns implemented by Member States.⁸⁴ According to data distributed on the website of the agency, in 2015, the agency has assisted the return of around 3,500 people. Frontex distinguishes between three main types of operations: forced return operations, voluntary departures and readmissions. The agency also emphasizes that “the decision about who should be returned is always taken by the judicial or administrative authorities of the Member States.”⁸⁵

Next to interceptions/rescues in the Mediterranean (before reaching Europe), return operations represent a major source of criticism and a subject of heated debate. Data collected by the Returns Network and visualized by Lighthouse Reports (a pro-migrant news agency) shows the increase in Frontex’ return flights in the last four years – the year 2016 marked a sharp rise in both budget and returns. Germany, Italy, Spain and France were the countries with the highest number of deported individuals.⁸⁶ Despite the

⁸³ Eurostat (2019), “Migration and migrant population statistics”, p.9 Available from: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/1275.pdf> (Accessed on 30th May 2019)

⁸⁴ Frontex, Risk analysis for 2018, p.7 https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis/Risk_Analysis_for_2018.pdf

⁸⁵ Frontex, Return: Types of operations, Frontex website, available at: <https://frontex.europa.eu/operations/return/> (last accessed on 10. November 2019)

⁸⁶ Frontex: EU’s Deportation Machine, Available at: <https://vimeo.com/351673775> (last accessed on 10. November 2019)

accuracy of the information provided in the visualization, there are a few issues with it, among which the suggestion that all returns are morally reprehensive and illegal. However, these issues will receive consideration in the last section, as they contain important cues for the belief system of the Protection-First coalition.

5.1. Legal obligations of FRONTEX to international law and human rights

- A) Commitment to the Geneva Convention on the Rights to Asylum/Refugee Convention, 1951
- B) Commitment to the European Convention on Human Rights, 1953
- C) Commitment to the UN Convention against Torture (CAT), 1987
- D) Commitment to the Charter of Fundamental Rights of the European Union (particularly relevant are art. 6, art. 18 and art. 19)
- E) Commitment to the law of the country in which the agency is operating

Until the 1992 Maastricht Treaty no treaty provision specifically dealt with the general matter of fundamental rights protection. Article F(2) provided that the EU must respect fundamental rights as general principles of law. One of the most crucial amendments was Article 6 of the revised Treaty on European Union which established that the Fundamental Rights Charter should acquire the same value as EU primary law (the TEU and TFEU), the accession to ECHR and that these rights, as guaranteed by the ECHR and member states would constitute the fundamentals of Union law.⁸⁷

According to the Treaty of the European Union (TEU), the Union recognizes the rights and freedoms listed in the Charter of Fundamental Rights of the European Union and accedes to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 5 of the Treaty states that the latter “constitute general principles of the Union’s law”. Toggenburg and Grimheden summarize thirteen values on which the Union is founded upon, as set out in Article 2 of the TEU: human dignity, freedom, democracy, equality, rule of law, respect for human rights, including those of

⁸⁷ Blanke, Hermann-Josef & Mangiameli, Stelio (eds) (2012), ‘The Protection of Fundamental Rights in Europe’ (eds), *The European Union after Lisbon: Constitutional Basis, Economic Order and External Action*, Springer-Verlag Berlin, pp.159-163.

minorities, pluralism, tolerance, justice, solidarity, non-discrimination and equality between men and women.⁸⁸ They parallel these values with their corresponding set of rights, as laid out in the Charter: right to life, prohibition of torture and inhuman or degrading treatment, right to asylum, protection in the event of removal, expulsion or extradition, etc.

This last point – protection in the event of removal, or in other words the principle of protection from refoulement is a fundamental element of human rights treaties and especially of international refugee law and is a key concern for asylum seekers and refugees. It is featured in important human rights instruments such as the European Convention on Human Rights, the UN Convention Against Torture and the 1951 Geneva Refugee Convention. Additionally, it is an integral component of customary international law and generally prohibits the return or deportation of an individual to a country where he or she would be exposed to cruel or degrading treatment. According to the Convention Relating to the Status of Refugees:

*“the principle of non-refoulement is so fundamental that no reservations or derogations may be made to it. It provides that no one shall expel or return (“refouler”) a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.”*⁸⁹

Different types of law (refugee law or international humanitarian law) and treaties protect certain categories of individuals from different types of dangers which means that there are absolute and narrow definitions of the principle. Tilman Rodenhäuser makes an important point regarding the application of the principle - non-refoulement applies not only when a person is directly targeted, facing certain ill-treatment or even death, for instance by execution. The principle should also apply when they are at risk of danger stemming from potential violence, even if they are not a direct target. He argues that this interpretation is also favoured by the European Court of Human Rights – an individual

⁸⁸ Toggenburg, Gabriel N., Grimheden, Jonas (2016), Upholding Shared Values in the EU: What Role for the EU Agency for Fundamental Rights?, Journal of Common Market Studies, 54:5, p.1099

⁸⁹ Convention and protocol relating to the status of refugees, Geneva, 28. July 1951, United Nations Treaty Series, vol. 889, No.2545, p.3. Available from:
<https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>

might be a direct target, but threats may also emerge from “cases of general violence, where there is a real risk of ill-treatment [or violations of the right to life] simply by virtue of an individual being exposed to such violence on return”.⁹⁰

In that regard, Rodenhäuser referred to the case of a Sri-Lankan national, who claimed asylum in Great Britain in 1999 due to his fears of detention and ill-treatment in his home country.⁹¹ The asylum applicant was issued return directions by the British authorities several times until 2007, due to the assessment that the applicant would not be personally targeted for any particular reason in his home country. However, after the applicant’s appeal to the European Court of Human Rights, the Court ruled against his expulsion from Great Britain. This was due to several risk factors, including the overall increase in general violence and decreasing levels of security in Sri Lanka, as well as the applicant’s Tamil ethnicity. This case was the first one, in which the Court prevented an applicants’ expulsion on grounds of general violence.

Many scholars have raised concerns regarding the application of that principle by the European Union in the context of migration flows to the EU and also with regard to Frontex return operations. They have expressed skepticism regarding the adequacy of the implementation of the non-refoulement principle by the EU and the Border and Coast Guard Agency in particular. The implications of indirect refoulement, or also called chain refoulement have been particularly underlined. For instance, Seehase argued that in the case of expulsion of irregular migrants, the EU is required to ensure the migrants’ safety not only in the destination country, but also in the case of further expulsion by that same country.⁹² The issue of non-compliance with the refoulement principle by Frontex has been subject of broad criticism by various actors at all levels of governance.

Immediate refoulement is a term for the occasion when migrants are rescued from a dangerous Mediterranean crossing and are removed immediately without being offered

⁹⁰ Rodenhäuser, Tilman (2018), The principle of non-refoulement in the migration context: 5 key points, International Committee of the Red Cross, Humanitarian Law & Policy, <https://blogs.icrc.org/law-and-policy/2018/03/30/principle-of-non-refoulement-migration-context-5-key-points/>

⁹¹ NA. v. The United Kingdom, Appl. No. 25904/07, Council of Europe: European Court of Human Rights, 17 July 2008, available at: <https://www.refworld.org/cases,ECHR,487f578b2.html> [accessed 25 November 2019]

⁹² Seehase, Juliane (2013), p. 130-137

the opportunity to apply for protection.⁹³ With regard to this point, Violeta Moreno-Lax stated that within maritime border interventions, the term rescue which is a fundamental element of Frontex operations is a narrowly defined category which only encompasses the physical aspect of rescue, but does not pertain to providing access to asylum or protection. She contrasted the narrow definition of “rescue” to the broadly defined “interdiction” term which referred to a broader scope of measures that started with control in the country of origin, transit and all the way to capturing at sea (possibly also the ensuing attempts of return).⁹⁴ Moreno-Lax’ intention here is to demonstrate that despite Frontex’ attempts to incorporate a humanitarian approach (and/or language) into its strategies, its actual objective remains the removal of migrants from EU territory. She calls this new approach new humanitarianism, which entails controlling but also seemingly caring for migrants.

Tamara Lewis et al. argue that it is necessary to differentiate between “internal fundamental rights and external human rights” norms. Lewis and her colleagues in the research project FRAME observe that human rights norms are external to the EU because they are a product of international law and are mainly promoted in the Union’s external relations. The EU Charter of Fundamental Rights (EUCFR) is the central source of fundamental rights to the EU, whereas The European Convention on Human Rights (ECHR) and the 1951 Refugee Convention are international human rights instruments.⁹⁵ Even though some instruments and bodies address both human rights and fundamental rights (such as the Stockholm Programme), the two are very often addressed by different bodies and instruments – the authors provide two examples of that. The Council for instance, has two bodies that deal with fundamental and human rights issues – the Working Group on Human Rights, and the Working Party on Fundamental Rights, Citizen’s Rights and Free Movement of Persons.

⁹³ Moreno-Lax, Violeta (2017), The EU Humanitarian Border and the Securitization of Human Rights: The ‘Rescue-Through-Interdiction/Rescue-Without-Protection’ Paradigm, *Journal of Common Market Studies*, 56:1, p. 120

⁹⁴ *Ibid.*, p.120

⁹⁵ Lewis, Tamara in Heikkilä, Mikkaela, et al. (2015), ‘Report critically assessing human rights integration in AFSJ policies’, (2015) FRAME Deliverable 11.2, p.9-10, available at <https://doi.org/20.500.11825/107>, 7 (last accessed 11th February 2020)

The European Commission has developed two separate strategies to cover the two types of rights separately – the Strategic Framework on Human Rights and Democracy deal with the implementation of external human rights, whereas the Strategy for the Effective Implementation of the Charter with fundamental rights. Thus, the FRAME scholars seem to imply a distinction between the two. General fundamental rights sources for EU law are the constitutions of member states, as well as their international human rights treaties and obligations. The above-mentioned ECHR is not formally binding, but is an important source of fundamental rights for the EU.

Particularly relevant for the EU Border and Coast Guard Agency is the Code of Conduct which is binding for all individuals participating in Frontex activities. The Code of Conduct was drafted following consultations with Member States and organisations such as the UNHCR and the EU Fundamental Rights Agency and is an important source of guidance for Frontex staff and actors involved in border management. As the importance of returns grew, an additional Code of Conduct was developed for Return Operations and Return Interventions coordinated or organised by Frontex. The Frontex Fundamental Rights Office and Consultative Forum contributed to drafting this set of rules and standards and emphasized the Agency's commitment to fundamental rights in its activities.

CHAPTER SIX: ADVOCACY COALITIONS IN EU BORDER MANAGEMENT – DRIVING FORCES OF CHANGE?

Now that the history of Frontex, the theoretical frameworks and the relevance of fundamental rights for Frontex have been discussed, it is time to move on to the subject of advocacy coalitions. So far it has been emphasized on the premise that the most useful unit of analysis in modern societies is the policy subsystem or domain (as opposed to an organization) which consists of a variety of organizations that are actively involved with a specific issue or problem, such as EU border control. Therefore, the unit of analysis here would be the EU border control domain, whereas I will assume that Frontex is the organization with the strongest influence in that policy area. Sabatier and Jenkins-Smith

identified three sets of factors leading to policy change (discussed in depth in Chapter Three):

- a) Interactions between competing advocacy coalitions
- b) Changes in socio-economic conditions, output from other subsystems and other external perturbations
- c) Constitutional rules and social structure

As mentioned in Chapter Three, it is important to identify the competing advocacy coalitions active within the EU border control subsystem. Previous chapters showed that subsystems must be comprised of actors from a variety of public and private organizations which are actively concerned with a problem or issue. The amending Regulation of 2011 which established that Frontex was to draft and implement a Fundamental Rights strategy also declared the establishment of a Forum on Fundamental Rights. Additionally, a Fundamental Rights Officer was assigned the task of coordinating and ensuring the implementation of the strategy and the recommendations of the Forum. Thus, these reforms enabled a number of new actors to become involved in border management.

However, Chapter Four, which dealt with the history and development of Frontex, revealed a gradual shift towards more respect for fundamental rights of irregular migrants in the agency's activities, starting slightly earlier than the adoption of the 2011 Regulation - approximately around the adoption of the Stockholm Programme in December 2009, which was about the same time that the Lisbon Treaty entered into force. So, this chapter will try to identify the actors involved in the process that caused fundamental rights of irregular migrants to become a concern for EU authorities.

This section argues that the involvement of a plethora of different actors enabled some extent of change to occur in the border policy system. As Sabatier found, one of the most useful ways of aggregating these actors is through advocacy coalitions that are composed of individuals from various institutions and that share a common belief system. These actors and individuals within each advocacy coalition will tend to share a consensus over the policy core, though not always with regard to secondary aspects. In this regard, it would be interesting to find out whether there have been any or substantial discrepancies within EU institutions, or within NGOs with regard to the prioritization of

fundamental rights issues in border control. Another aspect that will be assessed is journalist activism and journalist networks as coalition participants.

For the timeframe of the past fourteen years since the creation of the agency, I have attempted to identify the competing advocacy coalitions active within the EU border control subsystem and their members. Firstly, without classifying actors as part of any coalitions, I will outline the main groups of coalition participants that I have identified in the border control subsystem. Relying on similar findings by Sabatier and Jenkins, I have identified seven groups of actors based on my observations of the border control regime.

1. Frontex Management Board
2. Frontex border guards
3. EU authorities and officials: European Commission, European Council, MEPs and Political Groups within the European Parliament, other EU and AFSJ agencies
4. Intergovernmental organisations (UNHCR, IOM etc.)
5. Humanitarian and grass roots organisations
6. Academia: research institutes, think tanks etc. that focus on EU migration, asylum, border and security, such as Centre for European Policy Studies (CEPS), European University Institute, European Union Institute for Security Studies, Centre for European Integration Research, various university research institutes etc.
7. Prominent news agencies, journalists, journalist networks who frequently cover the subject of fundamental rights of migrants and Frontex operations (Daniel Howden, News/Refugees Deeply, Lighthouse Reports, EUObserver)

These actors' degree of involvement in the decision-making process has changed throughout time – the first three categories of actors have had the highest and most stable influence in the direction of policies, whereas the latter four have experienced stages of varied degrees of involvement and engagement in the policy process. This paper has attempted to encompass all actors from all seven groups, whereas particular attention has been paid to the different cultures of border guards, the preferences of the EU Parliament groups and the beliefs of the evolving network of non-profit organisations and journalist networks.

Two coalitions stand out in the border policy subsystem – the Protection-First Coalition and the Enforcement-First Coalition. Following Sabatier's studies, these

coalitions differ in their (near) core beliefs and respective policy positions, particularly in the priority that they accord to fundamental rights (right to life, non-refoulement, access to effective remedy in case of violation of rights and freedoms) in the implementation of Frontex activities. The aim of this chapter is to identify which coalitions the above mentioned actors belong to, which will then help to determine the magnitude of change that occurred as a result of these coalitions' interactions.

Steinhilper and Gruijters confirm my observation that two possible narratives exist in the policy area of migration and border control. They identify two opposing narratives in the context of the refugee border deaths debate – the deterrence narrative and the humanitarian narrative.⁹⁶ The differences between the two narratives will be illuminated in the next paragraphs.

6.1. The Protection-First Coalition: non-state actors and grass roots organisations

The network of humanitarian organisations and journalist networks mostly agree that the strategies of major EU institutions in the area of migration and border control all contribute to the agenda of reducing non-European migration into Europe. They have expressed fears that the EU and the governments of the Member States are complicit in producing narratives and practices that allow not-for-profit organizations to be slandered and humanitarian workers in the Mediterranean to be punished.⁹⁷ Therefore, journalist networks and humanitarian organisations listed above seem to fulfil one prerequisite for belonging to the same advocacy coalition – similar belief systems.

Steinhilper and Gruijters also argue that civil society, NGOs (Doctors Without Borders) and international organisations (UNHCR, IOM) associated the term “migrant crisis” with the human tragedy and the loss of life occurring due to EU deterrence measures and securing of the borders.⁹⁸ A statement by Medecins Sans Frontieres sums

⁹⁶ Gruijters, Rob J & Steinhilper, Elias (2018), A Contested Crisis: Policy Narratives and Empirical Evidence on Border Deaths in the Mediterranean, *Sociology*, 52:3, p. 516

⁹⁷ Howden, Daniel (2018). Interviewed by Claudia Torrisi at International Journalism Festival 2018, April 12. Available at: <https://www.youtube.com/watch?v=Q4hZcmV0ugk> (last accessed on 10.November 2019)

⁹⁸ Gruijters, Rob J & Steinhilper, Elias (2018), A Contested Crisis: Policy Narratives and Empirical Evidence on Border Deaths in the Mediterranean, *Sociology*, 52:3, p. 517

up the position of the (humanitarian) Protection-first coalition: “Europe cannot continue to count on the deadly sea crossing, fences and poor reception conditions to act as a filter of deterrence”.⁹⁹ Actors falling into the Protection-First narrative mostly agree that EU authorities have disproportionately emphasized actions in the Mediterranean border crossings and sea operations – particularly on the reduction of the numbers/interception of arrivals.¹⁰⁰ Therefore, a major difference is the way the two coalitions regard rescue missions in the Mediterranean – members of the Security-First Coalition see restrictions and security measures as the resolution to the high mortality of migrants at the borders, while Protection-First proponents argue that deterrence measures and unwillingness to provide adequate equipment for boat migrants are the cause of these fatalities.

Lighthouse reports and Returns Network – both critical towards the policies of the EU and Frontex and their “appetite for forced returns”, have created a visualization of Frontex deportations, which shows the number and geographical distribution of deportations, as well as a temporal chart of Frontex budget growth per year and flight deportations per year (for reference see Appendix).¹⁰¹ Their data points to a steady increase in return flights and Frontex budget and their estimations predicted a sharp increase in the budget of Frontex as of 2020, indicating a possible strengthening of a security narrative emphasizing stronger border control and an increased number of returns/deportations. This can be explained by the ongoing discussions at the time regarding the proposed Regulation (EU) 2019/1896, which envisioned an increase in Frontex staff and budget (see Chapter 4.2 for reference). The purpose of the visualization is to highlight the growth of Frontex and its instrumentalization by the EU, but it also presents Frontex as the driving force of returns which is factually inaccurate.

Chapter Five already distinguished between different types of deportations and the varying degree of Frontex involvement in them. The illustration does not seem to distinguish between return operations conducted by Member States and operations

⁹⁹ Medecins Sans Frontiers (2015), Obstacle Course to Europe. A Policy-Made Humanitarian Crisis at EU Borders, p.9, retrieved from https://www.msf.org/sites/msf.org/files/msf_obstacle_course_to_europe_0.pdf (last accessed on 5th July 2020)

¹⁰⁰ Moreno-Lax, Violeta (2017), The EU Humanitarian Border and the Securitization of Human Rights: The ‘Rescue-Through-Interdiction/Rescue-Without-Protection’ Paradigm, JCMS, 56:1, p. 122

¹⁰¹ Returns Network (2020), Frontex: EU’s Deportation Machine, Available at: <https://vimeo.com/351673775> (last accessed on 10. November 2019)

assisted or carried out by Frontex. It also does not mention another important aspect – the number of non-returns and number of return decisions relative to effective returns. The agency clearly stated that EU Member States decide who should be returned, while the role of Frontex is to coordinate and support the organisation and implementation of these operations. It could be argued that the visualization frames Frontex as the sole decision-maker (and perhaps the ultimate villain) and fails to concentrate on the objective role of Frontex within the deportation machine. Another inference made by the Lighthouse visualization is that all deportations are illegal and ethically unacceptable, which is another important aspect of the beliefs held by a large majority of the members of the Protection-First coalition.

Several non-state actors that obviously subscribed to the narratives and beliefs of the Protection-First coalition became prominent throughout the first few years of the agency's existence. Left wing pro-migrant groups such as the Noborder Network and PRO ASYL actively demonstrated against the creation of the Agency, demanding its closure and even petitioned the Parliament to shut the agency down.¹⁰² Before the establishment of Frontex, the Noborder Network and related NGOs and websites actively campaigned against the International Organisation for Migration (IOM).¹⁰³

Particularly, they criticized the organisation for attempting to conceal its efforts to expel and/or keep migrants away while presenting itself as a humane caregiver. The widely popular term Migration Management has also been continuously targeted, and an alternative agenda guided by the principle of freedom of movement has been strongly promoted by these actors. After the establishment of Frontex the agency fell under similar scrutiny. For years both the IOM and Frontex were criticized for perpetuating “the capitalist system and its massive and racist inequalities”.¹⁰⁴ Eventually, both organisations were referred to as “dirty players” of migrant deportation and expulsion and as instruments of the “brutal” European migration and border control regime.

¹⁰² Leonard, Sarah (2010), EU border security and migration into the European Union: Frontex and securitization through practices, *European Security*, 19:2, P.232

¹⁰³ Why the noborder network has started a campaign against the IOM, Retrieved from No Racism website, available at <http://no-racism.net/article/129/> (last accessed 30th October 2019)

¹⁰⁴ Actions against borders in Thessaloniki (2016), Retrieved from No Racism website, available at: <http://no-racism.net/article/5158/> (last accessed 30th October 2019)

The no border network was created in 1999 following the Tampere summit and unites various grass root organizations and groups that advocated freedom of movement and the universal right to settle where one wishes and opposed borders and deportations of migrants. The movement started with the self organisation of undocumented migrants in Europe and its main activities included occupations and demonstrations. The network has explicitly distanced itself from lobbying groups and NGOs due to its grass roots nature.

¹⁰⁵ Among the network's major initiatives are anti-deportation campaigns at European airports that aim at preventing deportations and forced returns of migrants. Many successful actions have taken place against Lufthansa, Air France, Swissair, British Airways, Iberia etc. In addition, the Noborder Network designed and published a comprehensive, interactive map of all participants active in the fight against European border policy up until 2012. The map includes transnational networks, local organizations, No border camps, campaign and research initiatives based in around fourteen countries.¹⁰⁶ Although the map does not claim to be entirely complete, it provides a good picture of the resistance against the EU border regime during the first years of Frontex existence.

However, it is hard to estimate the degree of networking and connectedness between these organisations and their activities based on this map, but it does provide an overview of the large number of simultaneous initiatives across Europe and beyond. It is also quite clear that all of them have shared very similar core beliefs, including the idea that the European migration regime is repressive, its continuous externalization to the east and south should be prevented, that refugees should be protected within and by Europe and that they should be provided significant support in the asylum application process. Along with that, many of these organisations advocated for the abolition of Frontex.

For instance, the manifesto of the Swedish "No one is illegal" Network openly renounces the necessity and legitimacy of national borders. The Swedish activists believe that borders should be abolished; they see them as political constructs without any moral

¹⁰⁵ No Border Campaign / Network (2010), Retrieved from Tactical Media Files Website, available at: <http://www.tacticalmediafiles.net/campaigns/6406/No-Border-Campaign-Network.jsessionid=A7914B73D512DEBE5288954997CE8079> (last accessed 30.March, 2020)

¹⁰⁶ Die Transborder Map, Retrieved from Plattform der antirassistischen Bewegung Website, available at: <http://kompass.antira.info/netzwerke/die-transborder-map/> (last accessed 20th May 2020)

justification and claim that upholding them is not in anyone's interest. They believe that "a person born in one place has no more claim on it than anyone else" and insist that these ideas should not remain simple visions and should instead be realized. Finally, they state that they "do not recognise any countries, organizations or individuals entitlement to in any way restrict free movement of people across borders" even less so to label them as illegal".¹⁰⁷ This manifesto clearly states the beliefs and goals not only of "No One is Illegal" but can also serve as a summary of the core positions of this coalition which I see as the predecessor of the Protection-First Coalition.

Currently some of the groups are inactive or have significantly reduced their activities. Even though many of the actors and initiatives illustrated in the map have ceased to exist, other actors have gained more importance in the promotion of the humanitarian narrative within the EU border and migration domain. For instance, the Frankfurt-based advocacy organization Pro Asyl has developed a close network with numerous partners at the international, European and federal levels. The organization promotes the work of refugee councils in the federal states and works closely with them. At the international level they cooperate with the UNHCR and at the European level, Pro Asyl cooperates with the European Refugee Council (ECRE).

Pro Asyl has remained one of the prominent NGO actors that actively participates in the human rights discourse promoting the argument that violence against refugees is planned systematically and has been instrumentalized by EU authorities as a deterrent for migration to Europe. Pro Asyl has reiterated its concerns regarding the agency's growing role as a "new deportation authority"¹⁰⁸. In March 2019, the organization openly and vigorously opposed the Commission's proposal of the new Frontex Regulation. Particularly the organisation criticized the envisioned extensions of the Frontex mandate, as the new Regulation emphasized the necessity of expanding and strengthening the mandate of the Agency in third countries, as well as increasing the sustainable return of irregular migrants from and to third countries, fighting cross border crime and control of external borders as the main tasks of Frontex.

¹⁰⁷ Manifesto, Retrieved from Ingen människa är illegal Website, available at: <https://www.ingenillegal.org/english/> (last accessed 20th May 2020)

¹⁰⁸ Pro Asyl (2019), Stellungnahme zum Kommissionsvorschlag einer neuen Frontex-Verordnung – COM (2018) 631 final, 15. March 2019

Furthermore, the official statement of Pro Asyl claims that even though the Commission proposal does not restrict human rights control, it does not extend it, given the current inadequate level of fundamental rights protection. Specifically, the NGO criticized the Regulation for not foreseeing a strengthening of the Frontex Fundamental Rights Officer, the Frontex Consultative Forum and the Complaints Mechanism. With the proposed increase in competence and the massive expansion of Frontex, this control would be all the more urgent. They conclude that an institutionally independent complaint mechanism is required that is easily accessible to victims and that can make legally binding decisions.

The views and positions expressed by the above-mentioned groups (particularly the Noborder Network and Pro Asyl) suggest the existence of a third coalition – one which is comprised of actors who hold beliefs which include putting a heavy emphasis on protecting migrants and ensuring fair reception and allowing them to exercise their right to apply for asylum. However, these organisations may differ from the Protection-First coalition in that they strongly favour universal freedom of movement, the abolition of national borders and call out all organisations that have presented themselves as humane caregivers but in their view do not actually support migrants and asylum seekers.

As the evidence shows, this coalition certainly existed before the establishment of Frontex and it can even be argued that it is the predecessor of the Protection First Coalition. The duration of this coalition's existence would be difficult to estimate, since some of the actors from this coalition have either ceased to exist or have become rather isolated, while others like Pro Asyl have developed connections with other like-minded organisations and eventually merged with the Protection First Coalition. The point here is that belief systems can be distinct, even if they appear similar at first glance. This is an observation made by Sabatier himself in several of his case studies - that some policy areas/subsystems can consist of up to four coalitions despite the initial impression that there may be less coalitions active within a subsystem. Underneath I have provided a comparison between the belief systems of the two coalitions.

	No Border Coalition		Protection-First Coalition	
<i>In existence</i>	(today)		(post-2012)	
	Near Policy core (Fundamental policy positions, basic strategies)	Secondary aspects (Instrumental decisions and information searches)	Near Policy Core	Secondary Aspects
<i>Illustrative Components</i>	Universal freedom of movement, European migration regime seen as repressive and (racially and socially) exclusive, national borders are not legitimate and unnecessary	Abolition of national borders, opposition to (abolition of) Frontex and other “managers” of migration, continuous externalization to the east and south should be prevented, cooperation with border authorities is mostly undesired/impossible	Do not (openly) question the legitimacy of borders, the causes of global migration should be addressed, death toll in the Mediterranean should be reduced, EU migration and border policy is often considered one of closure and exclusion	Ensuring high quality reception conditions, increasing the number and efficiency of Search and Rescue operations at sea (SAR) and NGO rescue boats, improve capacity of transit countries to host migrants, improving human rights knowledge of Member States' border guards, cooperating with and consulting Member States border control authorities and Frontex
<i>Representatives</i>	No Border Network (No Pasaran, The Vienna noborder-artivists, Autonoom Centrum Amsterdam, “No one is illegal” Network, Pro Asyl), search and rescue initiatives (Sea Watch, Sea-Eye, Seebrücke, Mission Lifeline)organisations with a grass roots nature that distance themselves from lobby groups and other organisations that partner with national and border authorities (e.g. IOM, and even UNHCR)		Newly emerged organisations such as FRA, other Consultative Forum members incl. EASO, ECRE, IOM, UNHCR, OSCE/ODIHR, Red Cross, Save the Children etc. and finally journalists, academia, possibly also leftovers, or individual representatives from No border Network	

Table IV.: Differences between No Border Coalition and Protection-First Coalition

At the beginning of this I section stated my interest in journalist networks, NGOs and other non-state actors that became prominent within the Protection-First coalition. There are prominent examples of journalist activism covering various topics of public relevance including migration and border management. Anthony Loewenstein - author, journalist and activist who is 2019 winner of the Jerusalem Peace Prize for his extensive coverage and engagement with the Israel-Palestine conflict, is a good example of a prominent activist and journalist that also covered (and criticized) Australian migration and border policies. He has campaigned against the Australian government's asylum policies

and deterrence approach and is also known for criticizing European countries for allegedly following Australia's lead for years.¹⁰⁹ Loewenstein even supported the proposed UN sanctions against Australia because of the country's mistreatment of refugees.

There are personalities in the EU arena whose expertise and involvement is comparable to that of Loewenstein. One such personality is Daniel Howden, who specializes in long-form and investigative journalism, contributed to the Guardian, The Economist and RefugeesDeeply and is currently director of Lighthouse Reports and Visiting Fellow in Refugee Studies at the University of Oxford. He regularly contributed to the Guardian, his articles mostly focusing on the situation of migrants and refugees on the European external borders. His latest contributions extensively covered the treatment of refugees and asylum seekers travelling on dinghies to reach the coast of the EU, claiming that "Europe's retreat from refugee rights did not begin last week".¹¹⁰

In an extensive recent article, he and two other prominent journalists (Apostolis Fotiadis and Anthony Loewenstein, who was mentioned previously), provided a thorough analysis of the unlawful actions of the EU (as well as Frontex, particularly Operation Sophia) in the Mediterranean. Among other proof, audio files from the flight crew during the operation, interviews with EU officials, as well as with German NGO Sea Watch founder Böhm and letters between Fabrice Leggeri and Paraskevi Michou have revealed how EU surveillance aircraft passed information about boats in distress to the Libyan coastguard. The letters between Leggeri and Michou also revealed that the Libyan coastguard received funding from the EU for keeping migrants from entering EU waters.

Additionally, Howden and his colleagues referred to the study of German professors Farahat and Markard who discovered that the main connection between European air surveillance and Libyan interceptions at sea was in fact the rescue coordination centre in Rome. Their findings point to Italy's particular role in the pushbacks and its failure to comply with its obligations under international law (particularly non-refoulement). This, however, would not be possible without the EU's and Frontex'

¹⁰⁹ Loewenstein, Anthony (2016), Dark past: so little has changed in Australia's posture towards asylum seekers, The Guardian, available at: <https://www.theguardian.com/commentisfree/2016/aug/12/dark-past-so-little-has-changed-in-australias-posture-towards-asylum-seekers> (last accessed on 10. November 2019)

¹¹⁰ Howden, Daniel, Fotiadis, Apostolis and Campbell, Zach (2020), Revealed : the great European refugee scandal, The Guardian, available at: <https://www.theguardian.com/world/2020/mar/12/revealed-the-great-european-refugee-scandal> (last accessed on 7th April 2020)

involvement and coordination. As Böhm from Sea Watch put it “European actors were...directly responsible for pushbacks to Libya”.¹¹¹ The founder of the German NGO also remarked that NGOs were rarely requested to join rescue operations.

Research into non-state actors that are dedicated to the improvement of the fundamental rights situation of migrants (regardless of their status) on the EU’s borders revealed a high number of search and rescue initiatives and organisations such as Sea Watch, Sea-Eye and Mission Lifeline that are closely involved with each other. Sea-eye is a non-profit association, which aims at saving the lives of vulnerable people at the EU’s borders through observing and documenting human rights abuses, evacuation and distribution of life vests, providing care for injured people at sea etc. With their German rescue ship Alan Kurdi, the organisation engages in search and rescue activity on the Mediterranean Sea and attempts to save people from drowning; “because European states have withdrawn from their responsibility, Sea-Eye pays attention and protects the right to life.”¹¹² The ship has rescued around 400 people from the Mediterranean in 2019 and was back in service in late March 2020 heading to the Libyan search and rescue zone.

Another prominent actor in the Protection-First coalition is Seebrücke which is an international movement that focuses on sea rescue of people who are forced to flee their homes. They have repeatedly demanded the establishment of safe routes for refugees, an end to the criminalisation of sea rescue and have advocated for humane reception conditions for migrants. They are supported by a number of civil society organisations, including Pro Asyl and Oxfam Germany. Along with countless other non-state actors, including Amnesty International, Caritas Europa, Caritas Hellas, Human Rights Watch, Solidarity Now, SOS Villages Greece, Doctors without Borders etc. SEEBRÜCKE Germany/ Switzerland/ Belgium/ Austria submitted an open letter calling upon the European Commission and the European Emergency Response Coordinator to evacuate Moria and the camps in Chios, Kos, Leros, and Samos.

On behalf of 3,373 of signatories from 53 countries, the petition demanded urgent action for the evacuation of refugees stranded in Greece in the midst of the Corona crisis.

¹¹¹ Ibid.

¹¹² Sea Eye (2020), “Alan Kurdi underway for its next mission”, Sea Eye, March 30th [Online], available at: (<https://sea-eye.org/en/alan-kurdi-underway-for-its-next-mission/> last accessed on 23rd May 2020)

The petition contained an action plan, that suggested to expand capacities on the Greek mainland, providing decent shelters or provisional housing so that self-isolation and social distancing measures are possible...Second, relocate camp residents to EU countries from the islands' respective airports, especially children, those with special needs, chronic morbidities, and the elderly.”¹¹³ The petition added that “since the beginning of the SARS-CoV-2 outbreak, the European Emergency Response Center has evacuated more than 1400 EU citizens from Wuhan, Japan, Oakland, Morocco, Tunisia and Georgia, showing that evacuation is technically feasible if there is political will.”¹¹⁴

So far it has been reported that after Luxembourg evacuated 12 children from Greek border camps, Germany has agreed to resettle 500 unaccompanied minors, starting with 50 in mid-April.¹¹⁵ Other countries have not yet responded to the demands of human rights activists and have not initiated resettlement activities. Overall, this section outlined the participants and belief systems within the Protection-First Coalition. Despite the overall cohesiveness, a closer investigation of the actors and their beliefs suggests a possible fragmentation. Table IV revealed a difference in fundamental beliefs – and the existence of a possible third coalition. This divide could have possibly impacted the level of coordination between them and thus also the overall impact on policy change and fundamental rights protection.

6.2. The Security-First Coalition

The previous subchapter showed that despite general coherence between members of the Rights Coalition, one can potentially distinguish between two groups within this coalition. European Union institutions, EU Parliament groups and individual EU officials also certainly hold different beliefs regarding border control and fundamental rights of migrants and asylum seekers. However, there is a widespread opinion within academia that EU institutions and officials predominantly favour security positions. This

¹¹³ Bozorgmehr, Kayvan et al. (2020), Evacuate Moria Now, Open letter to the European Commission and the European Emergency Response Coordinator, available at: <https://www.evacuate-moria.com/> (last accessed on 15th April 2020)

¹¹⁴ Ibid.

¹¹⁵ Deutsche Welle (2020), “Greece refugee crisis: First 12 children evacuated from camps”, Deutsche Welle, April 15th [Online], available at: <https://www.dw.com/en/greece-refugee-crisis-first-12-children-evacuated-from-camps/a-53129449> (last accessed on 15th April 2020)

section will particularly discuss the beliefs, positions and influence of this particular group. Some influential actors such as European Parliament groups and individual Members of Parliament strongly encourage the advancement of a humanitarian treatment of migrants on the part of EU border authorities and Frontex.

In 2005 Franco Frattini (Vice President of the European Commission responsible for Justice, Freedom and Security), and Luc Frieden (Justice Minister of Luxembourg) jointly addressed the Frontex Management Board in the Warsaw headquarters of the Agency. Discussing the benefits of the establishment of Frontex, Frattini and Frieden both praised the creation of “an efficient operational cooperation mechanism for the national border guards” at the European level. The two top EU officials highlighted that in the context of human trafficking, illegal immigration and international terrorism, Frontex had a vital role in strengthening the Union’s capability to establish and maintain an area of freedom, security and justice for those living in the EU.¹¹⁶ They also prompted that more actions needed to be taken “to combat the many and diverse threats” that faced the AFSJ.

The rhetoric of Frattini and Frieden in 2005 is not a definite indicator of the beliefs held by the entire Security-First coalition, but can be used to exemplify the policy direction that dominant EU officials wanted to pursue at the time – namely that deterrence and security driven positions have been dominant at the top levels of EU governance throughout the first few years after the birth of Frontex. Their statements suggest that protection of fundamental rights of migrants was not a priority for Frontex. As pointed out in previous sections, various research supports this statement. Another important paragraph in the previous sub-chapter discussed the unlawful actions of the EU and particularly Frontex Operation Sophia in the Mediterranean.

This section will not focus on proving that security and deterrence positions have dominated the policy area (or system), but will rather try to show the existing fragmentation of beliefs within the Security-first coalition and will attempt to assess the change (and continuity) that this coalition has experienced with regard to protecting fundamental rights of migrants. As this coalition has been dominant in directing EU policies since the creation

¹¹⁶ European Commission (2005), Franco Frattini and Luc Frieden visit the External Borders Agency (Frontex) in Warsaw (Press Release). Available from: http://europa.eu/rapid/press-release_IP-05-821_en.htm?locale=en (Accessed on 5. June 2019)

of Frontex, the change in the coalition's fundamental beliefs is essential for answering the research question.

The previous section showed that there has been a fragmentation within the coalition favouring protection (of migrants' rights over security). Ambivalent positions and fragmentation exist even within the dominant security-first coalition, as some actors have shown more dedication to fundamental rights than others. Unfortunately, it was not possible to collect information from Frontex staff – nevertheless, I will refer to interviews and statements of Frontex staff collected by academic researchers that reveal the diverse opinions of Frontex staff regarding the value of a human-rights oriented approach towards migrants. Chapter Four already outlined the complex structure of Frontex. Each of its divisions consists of smaller offices and units, which in total accommodate about 700 hundred employees (and their individual belief systems). In addition, there are about 1,300 officers that work under the command of EU Member States authorities, which makes the diversity of beliefs and values within the organisation inevitable.

Professors of Criminology at the Department of Criminology and Sociology of Law, University of Oslo, Katja Aas and Helene Gundhus conducted semi-structured interviews with Frontex border guards and officials analyzing the way that security and human rights narratives determined the informants' values and work methods. The authors reported differences in the priority that different Frontex employees give to humanitarianism despite the common rules that are laid out in different legal frameworks such as the Code of Conduct. The study shows a perceived difference between Nordic staff and staff from southern and (south-)eastern parts of Europe. For example, some of the interviewed Norwegian officers viewed human rights trainings as unnecessary for them, but emphasized that guards from "Eastern Europe" should rather be the targets of such trainings.¹¹⁷

The interviews with Norwegian officers and border guards revealed that these officers saw their engagement at the Greek border as an improvement for the standard of Frontex operations and for the conditions of the migrants. A few even recalled experiencing tension and disagreements between Greek guards and Norwegian guest

¹¹⁷ Aas, Katja Franko & Gundhus, Helene O.I. (2015), Policing humanitarian borderlands: Frontex, human rights and the precariousness of life, *British Journal of Criminology*, 55, p.4

officers regarding the treatment of migrant children. A Frontex team leader was certain that had Frontex not intervened through bringing guards from other countries and Mediciens sans Frontiers at the Greek border, the war-like conditions would have continued.¹¹⁸ This discrepancy between national police cultures and approaches towards migrants is in alignment with Sabatier's observations that simply aggregating actors according to organisations/institutions is not beneficial when analyzing policy change, even though they are in a position to influence the actions of their members.

However, the case analyzed by Franko Aas and Gundhus shows how in this case Frontex contributed to improving the standard of border control and detention conditions through bringing professionals from other European countries (equipped with the "values from the Norwegian side") that were concerned with the migrants' well-being in addition to policing – "Frontex functions as a patchwork of policing cultures".¹¹⁹ Another interviewee also invoked the cultural differences between north and south, as well as east and west:

*"Probably the Finns started training their border guards in the issue relating to...fundamental rights in border control...probably earlier than Bulgarians."*¹²⁰

There is additional evidence for the internal discrepancies between staff, management, officers etc. at all governance levels (Brussels, Frontex Headquarter and operations ground level). A relatively stable narrative (about the self-perception of Frontex, conceptions of migration and security etc.) exists among staff in Warsaw, whereas opinions and rhetoric among border guards and officers at the borders were quite diverse.¹²¹ Frontex staff in the headquarters expressed dissatisfaction with the decisions made at the highest level of governance – mainly by the three major EU institutions. Perkowski recorded disappointment with high level policy decisions and documents which were viewed as obscure and detached from reality on the ground. She quoted a staff member referring to the wording of the new Regulation as follows: "We just don't know

¹¹⁸ Ibid., p.6

¹¹⁹ Ibid., p.

¹²⁰ Perkowski, Nina (2018), Frontex and the convergence of humanitarianism, human rights and security, Security Dialogue 49:6, p.470

¹²¹ Perkowski, Nina (2019), "There are voices in every direction": Organizational Decoupling in Frontex, JCMS, 57:5, P.1188

what it means”¹²². Another interviewee was arguing for more clarity in the instructions and guidelines. They add that these hardly change anything and sarcastically expressed their “gratitude” to the EU organs for their guidance.¹²³

Additionally, some officers mentioned that they felt their contact with the agency was not strong during operations. Perkowski, similarly to Franko Aas and Gundhus also noted differences in the rationalities of border guards in different countries. On the other hand, it is worth mentioning that Warsaw staff also felt disconnected from the decision-making process in Brussels. Interestingly, Perkowski’s study also accounts of the perceptions of different units of Frontex towards cooperation with the Consultative Forum, as well as the fragmentation within the Management Board.¹²⁴ This raises the question whether Frontex is truly an Europeanising force, improving and harmonizing the overall standard of border management practices. The above-mentioned studies account for important narrative and belief discrepancies within Frontex itself and challenges accounts that view the organisation as a coherent unit guided by a single narrative.

However, the accounts still provide evidence that border governance is still dominated by rationales favouring security and restriction over protection. These dynamics have also divided the major EU institutions. The “liberal versus restrictive” cleavage was also displayed in competition dynamics among the European Parliament, the Council and the Commission. This makes the task of putting each organ into coalitions harder. According to Trauner and Servent, the three EU decision-making bodies have not managed to reconcile their different ideas of “what purpose borders are supposed to fulfil after communitarization”.¹²⁵ Here the two authors acknowledge the role of competition between different beliefs and rationales for policy change such as in the case of EU’s policy against human trafficking where the Parliament “referred back to certain rulings of the European Court of Human Rights (ECtHR), which exerted judicial and normative

¹²² Ibid., P.1190

¹²³ Ibid., p.1190

¹²⁴ Ibid., p.1194

¹²⁵ Trauner, Florian and Ripoll Servent, Ariadna (2016), “The Communitarization of the Area of Freedom, Security and Justice: Why Institutional Change does not Translate into Policy Change”, JCMS, 54: 6, p.1423

pressure on Member States by asking them to better protect women against trafficking and exploitation in the sex industry”.¹²⁶

Since the Lisbon Treaty came into force in 2009 the European Parliament has increased its involvement in the issue of Frontex accountability and migrant’s rights. The role of the Parliament has changed overtime, as have cleavages within the institution with regard to border control, migration and migrants’ rights. Slominski observed that the EU Parliament significantly contributed to the stronger inclusion of human rights in Frontex activities, whereas the Commission was the one holding back from dealing with the issue of raising legal clarity, deferring it as the Member States’ responsibility.¹²⁷ Additionally, the Parliament supported the application of the non-refoulement principle in Frontex operations beyond the EU borders, as well as the involvement of the UNHCR.

Back in 2010 MEP Cecilia Malmström from ALDE (Swedish Liberals), after becoming Commissioner for Home Affairs, expressed her commitment to “making training in fundamental rights compulsory..., creating a system for incident reporting, whereby Frontex is obliged to report to the competent authorities any alleged fundamental rights violations occurring during operations,” as well as “cooperation between Frontex and the European Asylum Support Office and the Fundamental Rights Agency”.¹²⁸ Despite internal disagreements, the European Parliament stipulated a more humane treatment of migrants and consulted with the Frontex Management Board to install a Fundamental Rights Officer within Frontex.

The contribution of the European Parliament to increasing the human rights sensitivity of Frontex seems palpable, but its composition (and inherent function to represent the diverse interests and opinions of European Union citizens) makes it impossible to place it into one particular coalition. This aligns with Sabatier’s position that members within one institution can also belong to competing coalitions. In May 2019 Human Rights Watch (HRW) conducted a questionnaire with all six EU Parliament Political Groups aiming to provide potential voters with a clear picture of the parties’

¹²⁶ Ibid., p. 1425

¹²⁷ Slominski, Peter (2013), The Power of Legal Norms in the EU’s external Border Control, *International Migration*, 51:6, p.45

¹²⁸ Cecilia Malmström, SPEECH/ 10/342 , Current Challenges and Opportunities in harmonising asylum and migration and the role of civil society (Brussels, 24 . June, 2010), European Commission, available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_10_342

stances on a variety of policies related to human rights. The questionnaire included questions on five themes:

- a) Defending the rule of law and fundamental rights
- b) Tackling discrimination and promoting equality
- c) Respecting migrants and refugee's rights
- d) Respecting rights while countering terrorism
- e) Ensuring respect for human rights in the EU's foreign policy

Hugh Williamson, director of HRW, stated that despite agreement on general principles, some major differences were identified in more detailed aspects of human rights policies such as agreements and support to third countries, and the weight of border security.¹²⁹ Besides ACRE (European Conservatives and Reformists Party) all other political groups (Alliance of Liberals and Democrats for Europe, European Green Party, European Left, European People's Party, Party of European Socialists) submitted their replies to HRW. HRW has provided links to the direct written responses of each of the parties, which allowed a more thorough analysis of the structure and emphasis of their answers and even the narratives dominant in each party.

Thus, to the question about each party's views on policies that target migrants and refugees, ALDE stated a clear vision that included a humane and effective Common European Asylum System (CEAS) with decent reception conditions and also expressed support for responsibility sharing between member states. The ALDE candidates also expressed support for migration agreements with safe third countries and financial support for those countries that host refugees, as well as safe, humane and legal resettlement schemes. Additionally, they highlighted paying special attention to refugee claims of LGBTI individuals and opposed reintroduction of permanent border control between Schengen states.

Another group with solid demands and views was the EGP. The Green Party highlighted the necessity to combat the drivers of migration, including violent conflicts. They stated their opposition to criminalizing humanitarian assistance to refugees and

¹²⁹ Human Rights Watch (2019), EU: Parliamentary Candidates' Views on Rights. Human Rights Watch. March 16th 2019. <https://www.hrw.org/news/2019/05/16/eu-parliamentary-candidates-views-rights> (last accessed 12th December 2019)

emphasized on the necessity of introducing guidelines that guarantee this. The group also supported addressing and resolving the shortage of actors that rescue migrants in the Mediterranean, as well as responsibility sharing among member states and demanded the introduction of humanitarian visas. Furthermore, they supported a “comprehensive and coherent immigration code” that would enable family reunions. The EGP also expressed their support for the UN Global Compacts. The Greens demanded that the EU cease making development cooperation conditional to migration cooperation, and cooperation with dictators in other countries.

Similarly, the Party of European Socialists also advocated in favour of humanitarian visas and the UN Global Compacts on refugees and migration. Additionally, they placed emphasis on involving civil society and human rights organisations in addressing human rights abuses and improving the quality of human rights standards. They see the role of the European Parliament as fundamental for ensuring the protection of human rights of asylum seekers and argued that the EP should financially support NGOs and UN agencies working in third countries. They expressed support for cooperation with third countries, but only if these are strictly monitored in terms of the countries’ observance of fundamental rights and the ratification of the Refugee Convention as a prerequisite. Overall, the respect for fundamental and human rights of migrants features heavily in the answers of this political group.

The European Left, like the Greens, highlighted identifying and combating the causes of forced migration and opposed cooperation with dictatorships such as Chad, Libya and Eritrea. Frontex was also mentioned for perpetuating the policy of expulsion of asylum seekers and shifting burdens to third countries. They also opposed the Fortress Europe direction that migration policies have followed. The European People’s Party also expressed support for the respect of the rights of asylum seekers and accentuated on improving border protection and member states’ collective responsibility over border security. Border protection is perceived as a way to prevent trafficking and ensure security. Additionally, the group supported effective returns of rejected asylum seekers, agreements with safe countries that can provide relief to refugees closer to their countries of origin, as well as the promotion of African economies for the sake of creating opportunities for migrants in their home countries, or neighbouring countries.

Overall, political groups in the European Parliament all declared their dedication to respecting human rights of refugees and asylum seekers. There are clear concurring views between most parties such as the PES, the EGP and the EL. Most differences occurred in the parties' opinions on external migration policy and agreements with third countries. Some parties such as the EGP and EL are critical of the EU's approach of cooperating with potentially criminal regimes and shifting the refugee responsibility to non-EU countries, others like ALDE and the EPP are in favour of providing support for African and Middle Eastern countries so asylum seekers can be sheltered in a region close to their home countries.

In addition to the original intention of the questionnaire to illustrate the importance and value of human rights to European Parliament groups, I have also attempted to explore the value of security (and its different dimensions) to the parties based on the dimensions frequency of usage and meaning: the number of times the word was mentioned in the questionnaire, the amount of time that the word was used in relation to migration, or other topics and whether it was meant as positive or negative security. The findings are illustrated in the Annex.

Perhaps it is not a surprise that the People's Party, which is comprised of national conservative parties mainly, places more value to the security of borders and physical security of EU citizens. The number of times the word has been mentioned in each of the parties' responses can also be an indication for the value placed on security. The EPP mentioned the word security four times in their answers, which is more than any other party. The EPP is also the only party that discussed security in a question related to migrants and migration. The PES and EL have discussed security in a different, social welfare context. The European Left, the European Greens and ALDE have mentioned security only once in their answers. Contrary to the EPP's rather positive interpretation of security, these parties discussed security (applied through police action and surveillance) rather negatively – as a potential threat to civil liberties and not as a desired outcome of policies.

This discussion is relevant to this chapter, as it shows the fragmentation of values and beliefs within EU institutions that are presumed to be security-oriented. Despite the fact that a large number of parties and delegates support and advocate for more rights

(including those of migrants), the largest political group in the EP is the conservative People's Party which strongly favours and promotes border control and security. With its strong legislative function and direct influence over the mandates of European agencies, the Parliament as a whole is an important factor for the development of Frontex. As mentioned in Chapter Four, Frontex is also directly accountable to the Parliament and the Council and is responsible for providing reports and general risk analyses to all three EU organs. In the case of an urgent situation, the agency is required to disclose information regarding decisions and measures directly to the Parliament.¹³⁰ The latest Frontex Regulation also granted the European Parliament larger involvement in appointing the Frontex Executive Director. Article 106 substantiates the obligations of the Executive Director to the Parliament that would include reporting on the implementation and monitoring of the fundamental rights strategy and other Frontex activities. Additionally, he or she "shall report regularly to the appropriate bodies and committees of the European Parliament."¹³¹

Despite the overall importance of the Parliament in Frontex affairs, the current number of seats for the European People's Party in the Parliament does not necessarily translate to largest influence on matters related to border policy. In fact, there are studies that have measured MEP and Party influence on European policies that show that MEPs from other groups have more influence on issues of Home affairs. For instance, the Democracy & Home Affairs Influence Index reveals that the Greens-European Free Alliance is the group with the biggest impact in shaping policies on Democracy and Home Affairs in the European Parliament. The Green/EFA MEPs have been "proportionally most influential, not only when impacting legislation and shaping the political agenda, but also when building a community of support for their ideas on social platforms."¹³² However, a separate in-depth study of positions of MEPs on border policy and their influence on Frontex is beyond the scope of this paper.

¹³⁰ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, L 295/87. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1896&from=EN> (Accessed on 6th November 2020)

¹³¹ Ibid., L 295/45

¹³² Influence Index (2020), Policy influence analysis, available at: <https://insight.bcw-global.com/influence-index/> (last accessed 6th November 2020)

CHAPTER SEVEN: THE SCOPE OF CHANGE IN FRONTEX POLICIES

This master thesis' main research goal is the investigation of continuity and change in Frontex' treatment of irregular migrants. The paper has a specific interest in coalition dynamics and behaviour, which were the subject of discussion in the previous chapter, as well as on orders (degrees) of change which will be discussed in the following paragraphs. Particular attention has been paid to the possibility of a paradigm shift (third order change) in border policy. The previous section already discussed the wide range of actors and coalitions that exist in the policy area of border control. This section will move on to discuss which aspects of policy have changed as a result of the activities of these coalitions.

The majority of political analysts that deal with stability and change in the border policy of the EU have observed that a security and technocratic perspective has dominated this policy field, particularly until the adoption of the Lisbon Treaty. I argue that in reality it has become increasingly evident that this coalition (of EU officials supporting rather restrictive measures) has also tried to incorporate rights and protectionist elements in border control. As mentioned in a previous section, this process has been triggered by a comprehensive debate, followed by legal amendments, norm adjustments and change in official language. With regard to depth of policy change after the adoption of the Lisbon Treaty new technologies, new spaces and new modes of governance were increasingly utilized in this policy area.

However, secondary aspects (practices on the ground) do not seem to have experienced a corresponding level of transformation since migrants continue facing what can be regarded as poor treatment at the EU external border. Particularly the period following the adoption of the Lisbon Treaty was characterized by an exacerbated inability to align security, technocratic and liberty rationales. A 2010 Frontex Report particularly emphasized on the agency's effort to address fundamental rights concerns through cooperation with organisations active in that field. ("Frontex has also established close ties with the United Nations High Commissioner for Refugees (UNHCR), the Inter-national

Organisation for Migration (IOM), the International Centre for Migration Policy Development (ICMPD) and a number of other relevant EU Council bodies. Moreover, this will be further extended with a working arrangement to be finalised in the near future with the Fundamental Rights Agency..."¹³³).

In relation to Frontex' cooperation with the IOM, Frontex External Relations Officer Richard Baumgartner has recalled that "IOM has shown a lot of understanding of our needs, making us better aware of the interaction between border management activities and migrants or travelers who need to cross the external borders." ¹³⁴ Michele Simone, UNHCR Senior Liaison Officer to Frontex at the time, praised the cooperativeness demonstrated by the Frontex external relations team and their support for UNHCR. ¹³⁵ His views on future collaboration between the agency and UNHCR and his hopes of developing their partnership towards increased mutual information-sharing was utmost positive.

The report clearly highlights the positive performance of Frontex throughout the first five years after its creation (e.g. first Frontex Executive Director Ilkka Laitinen praised the organisation's successful management and growth: "Hey, we're doing the right things. It works!")¹³⁶. This raises the question, if everything has gone so well back then, why have civil society organisations, journalist networks and academic researchers continuously criticized the shortage, or total lack of accountability of Frontex operations, its complicity in illegal returns and failures in reporting human rights violations (see Chapter Six, p. 56-59). A possible answer may be that Frontex was at an early development stage which still clearly favoured security considerations over fundamental rights ones.

The word choice and phrasing in that document reflect the agency's essential intentions to provide security through "fighting" irregular migration "and its more sinister manifestations such as trafficking in human beings." ¹³⁷ This provides an image of migrants as being both threats and victims. This way of framing migrants has not changed significantly since the document was published. In that regard Moreno-Lax suggests that

¹³³ Frontex (2010), "Wider Cooperation: A Helping Hand", Beyond the Frontiers, p.71

¹³⁴ Ibid., p. 26-27

¹³⁵ Ibid., p.71

¹³⁶ Ibid., p.17

¹³⁷ Ibid., p.70

this type of framing is part of a wider strategy based on a “rescue-through-interdiction” paradigm. She argues that despite significant efforts to include protectionist elements in border operations, a security logic still dominates this policy area. In this line of thought, I support the view of Moreno-Lax that a security and a humanitarian logic have intertwined to generate a new type of “ethical policing” that simultaneously cares and controls.¹³⁸

There is evidence that recent Frontex risk analysis reports have occasionally provided problematic interpretations of migrants and migration (see p.22). For instance, some scholars have captured the way that Frontex risk analysis applied racialized and gendered frames (e.g. language and narratives) to make sense of migration issues and legitimize certain strategies. These frames linked migrants with violence and chaos on one side and welfare exploitation on the other. An additional frame was related to humanitarianism, constructing some migrants as vulnerable and exploitable, presenting them as unaware of the dangers that a departure to Europe may pose.¹³⁹ A report from 2016 clearly relied on dichotomies such as West/rest, civilized/uncivilized, protector/protected, masculine/feminine to legitimize the border management practices applied by Frontex that potentially enable and increase ill-treatment of migrants at the border. Also in this case, there is a simultaneous representation of Frontex as a reliable security provider, but also as a caregiver to the vulnerable families, women and children etc.

However, this increased interlocking of security and humanitarian approaches may also foreshadow greater paradigm change. This approach may as well be an instance of policy experimentation that may bring about new and more comprehensive policy change. As Peter Hall argued, policy experimentation and policy failure are major factors in the transition from one paradigm to another (in our case between security and humanitarian paradigms) that is characterized as third order change. Such experimentation and failures would result in “a wider contest between competing paradigms” that “will end only when the supporters of a new paradigm secure positions of authority over policymaking and are

¹³⁸ Moreno-Lax, Violeta (2017), The EU Humanitarian Border and the Securitization of Human Rights: The ‘Rescue-Through-Interdiction/Rescue-Without-Protection’ Paradigm, *Journal of Common Market Studies*, 56:1, p. 121

¹³⁹ Saskia Stachowitsch & Julia Sachseder (2019) The gendered and racialized politics of risk analysis. The case of Frontex, *Critical Studies on Security*, 7:2, p. 107-115

able to rearrange the organization and standard operating procedures of the policy process so as to institutionalize the new paradigm.” just as in the British case that Hall dealt with.¹⁴⁰

Indications of such a shift of authority occurred once again in 2010 when Swedish Liberal MEP Cecilia Malmström was appointed Commissioner for Home Affairs – the portfolio dealing with migration, asylum and security matters. Her appointment was an indication for the desire to strengthen fundamental rights in external border management. Several months after she entered into office, she held a speech at the European Day of Border Guards in Warsaw. During her speech Malmström addressed the necessity for developing the right tools and laws in border management and for adaptation and improvement of the EU border system, as the EU was facing new challenges such as “travel flows”, “evolving security threats” and an “everchanging reality” in which “people fleeing war and persecution will continue to look to Europe for protection.”¹⁴¹ She also reiterated the importance of the expertise of civil society organisations, particularly addressing ECRE and the UNHCR for improving the work of the European Asylum Support Office which was founded a year later. Most importantly, the new Home Affairs Commissioner placed fundamental rights in the center of her speech - the compliance and “full respect for fundamental rights” in new policy initiatives such as data protection:

*“All persons must, when crossing or arriving at the external border, be treated with full respect for their human dignity and the principle of non-discrimination. This must be at the heart of all our actions and an absolute priority in the implementation of everything we do.”*¹⁴²

She also expressed support for “the adoption of the law of sea decision by the Council” which in her view affirmed the “legally binding nature of fundamental rights in international waters and provides further clarity on how to meet those obligations.” She also reiterated the importance of the adoption of this Council decision for the principle of non-refoulement

¹⁴⁰ Hall, Peter (1993), Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain, *Comparative Politics*, 25:3, p.281

¹⁴¹ Cecilia Malmström, SPEECH/10/264 (Warsaw, 25. May, 2010), European Commission, available at: https://europa.eu/rapid/press-release_SPEECH-10-264_en.htm

¹⁴² Ibid., p.2

and expressed support for the proposal for a new amendment of the Frontex Regulation, welcoming the “working arrangement with the EU fundamental rights agency.” Malmström made crucial remarks about the training of border control personnel in matters of fundamental rights and emphasized the importance of a functioning incident reporting mechanism. She added that “All Frontex activities must live up to the highest standards for how fundamental rights are fully respected in border management.”¹⁴³

The appointment of the liberal MEP Malmström was an indication of the EU’s efforts to include protectionist and humanitarian elements in border policy that had a favourable effect on the development of the new Frontex regulations that increased references to fundamental rights. However, especially since the refugee crisis in 2015 the EU has continued to be in a quandary – should migrants be kept away (and protected beyond the borders of the EU such as in Turkey) or should they be allowed in (and receive protection within the EU)? In 2020, the escalations at the Turkish-Greek and also Bulgarian-Turkish borders following Turkey’s decision to open its western land and sea borders for refugees, have revived this dilemma. The official EU stance this time seemed rather unambiguous – the current Commissioner for Home Affairs Ylva Johansson stated that “the European external borders are not open and should not be opened.”¹⁴⁴ Johansson has been entrusted by EC President Von der Leyen to execute the Commission’s current top priority: protection and care for unaccompanied migrant children.

The Commission planned voluntary relocations of children from Greece to other Member States, finding “sustainable solutions for those unaccompanied migrant children that will stay in Greece”, as well as providing increased financial and operational support for Greece and other Member States.¹⁴⁵ While European leaders have expressed support for the Greek government and the Commission President expressed gratitude towards Greece for taking on the role of the European ‘aspida’, (the Greek word for “shield”), journalist networks, humanitarian and pro-migrant groups have been highly critical of the

¹⁴³ Ibid., p.3

¹⁴⁴ European Commission (4th March 2020), Press remarks by Commissioner Johansson on immediate actions to support Greece, https://ec.europa.eu/commission/presscorner/detail/en/statement_20_396 (last accessed)

¹⁴⁵ Ibid.

encouraging attitudes demonstrated by EU and member state officials.¹⁴⁶ Online magazine “Foreign Policy” (FP) has reported on the violent clashes at the borders, as “Greek security forces in anti-riot gear” are beating refugees. The overall situation is described as the death of Europe’s morality.¹⁴⁷ The EU’s unpreparedness for a renewed migrant crisis is a recurring theme and a common concern raised by opponents of the EU’s measures.

Additionally, EUObserver, Pro Asyl and other media platforms have called out the Commission for its silence on Greece’s suspension of asylum claims.¹⁴⁸ EU director and director of Human Rights Watch, Lotte Leicht also condemned the EU’s highest officials for “praising Greek border guards using teargas and other violent means to prevent crossing at the land border...” and called the treatment of migrants arriving at sea irresponsible.¹⁴⁹ With regard to the EU’s condoning attitude, Pro Asyl argued that misanthropy is becoming a political reality across Europe. In light of the latest events around the spread of the Corona virus in Europe, Pro Asyl has called on Germany and other European countries to accept minors from Greek refugee camps despite the entry restrictions imposed by the coronavirus pandemic. The Managing Director of Pro Asyl, Günter Burkhardt told media outlets that the Corona crisis made the admission of these children and adolescents more urgent than ever.¹⁵⁰

7.1. The Frontex Fundamental Rights Office and Consultative Forum on Fundamental Rights – hope for a new policy paradigm in border policing?

The creation of a Consultative Forum on Fundamental Rights as an auxiliary, independent body marked a new “era” in Frontex approach towards migrants and border

¹⁴⁶ Jamieson, Alastair (2020), Greece is 'Europe's shield' in migrant crisis, says EU chief von der Leyen on visit to Turkey border <https://www.euronews.com/2020/03/03/greece-migrant-crisis-is-an-attack-by-turkey-on-the-eu-austria>

¹⁴⁷ Hockenos, Paul (2020), Europe's Morality Is Dying at the Greek Border, Foreign Policy, <https://foreignpolicy.com/2020/03/05/refugees-turkey-europes-morality-is-dying-at-the-greek-border/>

¹⁴⁸ Nielsen, Nikolaj (2020), “Commission silent on Greece suspending asylum claims”, *EUObserver*. 4th March 2020. Available at: <https://euobserver.com/migration/147621>

¹⁴⁹ “Greece/EU: Respect Rights, Ease Suffering at Borders”. *Human Rights Watch*. 4th March 2020 <https://www.hrw.org/news/2020/03/04/greece/eu-respect-rights-ease-suffering-borders>

¹⁵⁰ “Pro Asyl: Flüchtlingskinder Trotz Corona-Krise Aus Griechenland Aufnehmen.” *ARTE*, 18 Mar. 2020, www.arte.tv/de/afp/neuigkeiten/pro-asyl-fluechtlingskinder-trotz-corona-krise-aus-griechenland-aufnehmen.

security, or at least it set such expectations. The purpose of the Consultative Forum is to provide expertise and support to the Management Board and the Executive Director of Frontex in matters related to fundamental rights. This section will discuss how the Forum's mandate has changed since its creation, as well as the impact that this new body has had on Frontex. Since the Forum explicitly emphasized its auxiliary role and lack of capacity and mandate to systematically monitor and assess Frontex compliance with fundamental rights standards, it is unlikely that the Forum can elicit major, third order change in policy.¹⁵¹ However, it is worth assessing the Forum's success in shaping and modifying primary and secondary aspects of policy. Particular attention will be paid to the implementation of the Forum's recommendations by the Agency based on a comparison of Frontex Consultative Forum annual reports and a short interview with representative of FRA, Aydan Iyigüngör, who was also elected Chair in 2013.

Currently, the Forum is comprised of representatives of 15 bodies: the European Asylum Support Office (EASO), Fundamental Rights Agency (FRA) and the United Nations High Commissioner for Refugees (UNHCR) are permanent members of the Forum. The Council of Europe, the Office for Democratic Institutions and Human Rights – ODIHR of the OSCE) and the International Organisation for Migration (IOM) have so far also extended their memberships. The rest of the Forum's members are civil society organisations that are selected after an open call – according to the latest information on Frontex website, these organisations are Red Cross (EU Office), Amnesty International European Institutions Office, Save the Children, European Council on Refugees and Exiles, International Commission of Jurists, the AIRE Centre (Advice on Individual Rights in Europe), Churches' Commission for Migrants in Europe, Jesuit Refugee Service Europe and Platform for International Cooperation on Undocumented Migrants.¹⁵²

Each year the Forum publishes a report that includes recommendations made by its members to the FRONTEX Management Board. According to Article 70 of the European Border and Coast Guard Regulation (EBCG), the Consultative Forum must be consulted on the development and implementation of the Fundamental Rights Strategy,

¹⁵¹ Frontex Consultative Forum on Fundamental Rights (2019), Seventh Annual Report, p.17

¹⁵² Frontex Consultative Forum on Fundamental Rights (2018), Program Work for 2018, Retrieved from: https://frontex.europa.eu/assets/Partners/Consultative_Forum_files/Consultative_Forum_Program_of_Work_2018.pdf (last accessed 9. November 2019)

on the establishment of the complaints mechanism, on codes of conduct and on common core curricula. Currently the Consultative Forum has two chairs - Marta Ballesterro from the United Nations High Commissioner for Refugees (UNHCR) and Stefan Kessler from Jesuit Refugee Service. Forum members can occasionally delegate observers (not monitors) on visits to operations coordinated by the agency. The observers then develop recommendations based on their practical observations “and not only on the examination of rules, instructions and reports that are on paper”, which is exactly why their work is so valuable ¹⁵³. However, as the 2013 activity report mentioned, the Forum does not have “the resources to systematically screen all Frontex activities and documents for fundamental rights issues and, even less, compliance.” ¹⁵⁴

The Fundamental Rights Officer to Frontex - another crucial actor that complements the Forum steps in to resolve some of these shortcomings. She has the right to monitor all Frontex operations and very importantly - receives incident reports and processes individual complaints (a capacity that the Consultative Forum does not have) that she reports directly to the Forum, its Chair and Vice-Chair. Forum members can occasionally delegate observers (not monitors) on visits to operations coordinated by the agency. The observers then develop recommendations based “not only on the examination of rules, instructions and reports that are on paper”, but on their practical observations which is exactly why their work is so valuable ¹⁵⁵.

In order to be able to assess the impact of the Fundamental Rights Forum on Frontex activities, it is essential to compare the annual progress that Frontex has made since the creation of the Forum in 2012. The detailed annual reports, prepared by the Forum members and published on the Frontex website reveal detailed observations on the agency’s performance and include objective assessments of the agency’s shortcomings and improvements throughout each year. The first annual report included recommendations made to Frontex in 2013, as well as the outcomes of these recommendations (the degree of implementation of these recommendations by Frontex). These outcomes can be compared to the latest available report by the Forum to reveal how the performance of Frontex has changed since 2013.

¹⁵³ Frontex Consultative Forum (2013), First Annual Report 2013, p.13

¹⁵⁴ Ibid., p.14

¹⁵⁵ Ibid., p.13

Back in 2013 the Forum criticized that the Frontex Programme of Work did not sufficiently include protection of fundamental rights as a priority in all activities of the Agency. It also pointed out that Frontex should refrain from “implied value judgments such as by referring to ‘illegal’ migration.”¹⁵⁶ The report also put emphasis on the way migrants were framed as people who take advantage of the EU asylum system to enter EU territory. The most important findings and outcomes of the report from 2013 are summarized in a table underneath.

ISSUE	OUTCOMES IN 2013	OUTCOMES IN 2019
Main-streaming protection of fundamental rights in the entire range of Frontex activities.	☑ General higher sensibility of Frontex guards towards fundamental rights issues. Programme of Work 2014 envisioned integrating fundamental rights into the education/training curriculum of EBG through all phases of their careers. ☑ The Programme of Work does not include protection of fundamental rights a priority in all Frontex activities.	☑ The CF was not advised in the development of the Frontex European Integrated Border Management Strategy ☑ The CF was not consulted with on the development/implementation of Frontex training activities and courses during 2019.
Incorporating dialogue with the CF as an integral part in the annual planning cycle + allowing the Forum sufficient time for quality input.	☑ The Frontex Programme of Work for 2014 contains clear references to the cooperation with the Consultative Forum	☑ The CF followed the development of the new pre-authorisation system European Travel Information and Authorisation System (ETIAS) (for nationals of visa-free countries) ☑ The CF was not approached/ advised by Frontex in important activities ☑ More proactive approach and specific follow-up by Frontex needed
Capacity and role of the Fundamental Rights Officer (FRO)	☑ Unrestricted access to information, documentation and officials ☑ Monitoring capacity ☑ Receiving incident reports and individual complaints	☑ Regulation 2019/1896 enhanced the independence and mandate of the FRO and her team. ☑ Recruitment of at least 40 Fundamental Rights Monitors to oversee Frontex activities under lead of the FRO. ☑ Creation of the position of Deputy Fundamental Rights Officer ☑ Frontex did not follow the recommendation to increase the number of posts allocated to the Fundamental Rights Office. ☑ Absence of senior staff within the team of the Office.

¹⁵⁶ Ibid., p. 20

Development of effective protection measures for vulnerable persons (such as children and victims of trafficking) in consultation with NGOs.

☒ Frontex did not follow this recommendation, arguing that this issue was rather in the competence of the Member States.

☑ Development of VEGA Children: extension to land and sea borders in 2019 in addition to the JO VEGA Children that focused on identifying and protecting children at risk at airports.

Table V: Comparison of recommendations and outcomes in 2013 and in 2019.

Many recommendations by the Consultative Forum have been welcomed by Frontex and included in the Action Plan for 2014, or have been applied the following years. A closer look at reports from the following years can provide a better overview of the progress that Frontex has made in complying with the Forum's recommendations. The Seventh Annual Report that focused on the Forum's activities, observations and recommendations in 2019 stated that even after seven years since its establishment, inadequate staffing of the Fundamental Rights Office of Frontex remained a major concern. This is a serious issue, considering the mandate expansion that the Agency has experienced throughout the past several years (as mentioned in Chapter Four this expansion included among other the exercise of police and surveillance powers, increased involvement with and in third countries etc.).

The reports also provide extensive insight into the emergence of new policy instruments overtime, as the Consultative Forum increased its engagement and depth of its recommendations. Such important instruments are the Joint Operation VEGA Children, the Code of Conduct for Joint Return Operations (CoC JROs) enforced on 8th October 2013 that also envisioned a Complaint Mechanism for returnees. The Forum initially applauded the inclusive process of drafting and developing the CoC. Particularly, the 2013 report applauded the inclusion of provisions on identification of individual officers, as well as the provisions regarding application of coercive and restrictive measures.

The Complaint Mechanism is one of the most prominent examples of instruments developed as a result of the involvement of the Forum and the FRO into Frontex activities. In 2015 a European Parliament Resolution supported the establishment of an Individual Complaints Mechanism (ICM) after the Consultative Forum attended meetings with the

EP Committee on Civil Liberties (LiBE) and the Petitions Committee (PETI).¹⁵⁷ However, even in 2019 the ICM remains far from being effective – it has found limited application due to its limited accessibility, the time range for complaints remained undefined and the distribution of tasks among the actors involved in the process was also unclear. Additional small but important contributions have been the compilation of information booklets about the Complaints Mechanism (detailed guidelines about lodging a complaint) which were translated into 12 languages. The Fundamental Rights Office confirmed that the advice of the Consultative Forum was of great value to the production process.

Discussing policy instruments is central for understanding policy change, since they (along with settings and paradigms) are fundamental variables of policymaking (see Chapter Three). Although the main paradigm remained the same, Frontex still set additional goals that improve the agency's performance with regards to fundamental rights. Introducing the above-mentioned mechanisms was a small step towards achieving this goal, one step towards strategic action. In Peter Hall's terms, the introduction of the ICM, VEGA and CoC, even the establishment of positions and structures such as the Fundamental Rights Office(-r) and the Consultative Forum constitute second order change.

Another instrument aiming at managing human rights abuses during operations has been the Frontex Serious Incident Reporting Mechanism (SIR). This instrument has existed before the Consultative Forum and the FRO were created. Throughout the past couple of years the latter have repeatedly expressed concerns about the instrument's effectiveness, invoking the marginal numbers of reports and complaints that were submitted.¹⁵⁸ Frontex responded with the promise that the SIR Mechanism would be enhanced and modernised and reassured that it would seek the Forum's advice on the reform of the SIR mechanism in the course of 2020.

The CF and the Fundamental Rights Office deserve increased attention from the academia, as no research projects have been dedicated to the Forum's impact, development or challenges it faced since its eight-year existence. In a personal conversation with members of the Forum, I have found that an external evaluation of its

¹⁵⁷ Frontex Consultative Forum on Fundamental Rights (2019), Seventh Annual Report, p.6

¹⁵⁸ Frontex Consultative Forum on Fundamental Rights (2018), Sixth Annual Report, p.32

activities has been conducted and will be published shortly, but an independent research project might still provide additional value to that endeavor. Therefore, it is highly necessary for research institutes, think tanks, investigative journalists and members of the Forum to endeavor a common research project to evaluate the impact of the Forum. This could be a fundamental step for ensuring the Fundamental Rights Office future effectiveness and especially in asserting their position in relation to Frontex. This is especially important considering the current increased Frontex cooperation with third countries, aerial surveillance over the Mediterranean and the increased number of persons returned to Libya to face haphazard, even atrocious treatment and detention.

Additionally, the wider public and the media have to a large extent, if not completely, been unaware of the Forum's and the FRO's existence, let alone the impact of their activities. Perhaps journalists and journalist networks such as those mentioned in previous chapters should approach the two bodies for cooperation. This may alleviate this issue and will give the two human rights bodies a larger platform. In that regard, Aydan İyigüngör who is the representative of the European Fundamental Rights Agency to the Frontex Consultative Forum on Fundamental Rights has also argued that throughout the past two years the CF has encouraged Frontex to enhance cooperation with a wider network of civil society actors and seek stronger engagement where possible. Some examples of such cooperation are referred to in the Forum's annual reports. According to Ms. İyigüngör the Forum's greatest success was in the area of return operations and child protection. Another successful aspect were the trainings that targeted border guards.

So far, the last section discussed the level of change that the establishment of the Fundamental Rights Forum and Fundamental Rights Office brought (or helped to bring) about mainly in the form of introducing new instruments and practices that classify as second order change. The research so far does not point to a third order change in border policy (the most comprehensive type of change that entails a change in the paradigm). My communication with Ms. İyigüngör also provided important perspectives on how the Forum members feel about the distinction drawn between a "fundamental rights" versus a "security" paradigm in border policy. Regarding a possible movement to a new policy rationale favouring fundamental rights over security, she expressed a rather critical position regarding the formulation of the question arguing that it paints a black and white

picture of the issue. Thus, it can be argued that in her view it is rather impossible to distinguish clearly between these two paradigms.

Additionally, she stated that the Consultative Forum does not see its role as political. In this line of argument, it is not very likely that (most) Forum members perceive themselves as being part of a coalition (that needs to establish a fundamental rights paradigm). The perception is rather that of a “technical” advisory body to Frontex – in that sense, the Forum sees itself only as a supportive body. This contradicts the idea put forward by Sabatier that members should identify with a coalition. As Chapter Three mentioned, coordinated action and the sense of belonging to a coalition is a prerequisite for the very existence of a coalition. This is important, since it poses the question whether a distinction between these two coalitions is necessary at all. On the other hand, Ms. Iyigüngör stated that the Forum members appreciate that Frontex recognized the need for more systematic and permanent oversight of its own activities. She pointed out the novelty of this insight which in turn led to anchoring Fundamental Rights Monitors in the new Regulation, besides strengthening the existing mechanisms.¹⁵⁹

On 11th January 2021 Frontex proudly presented its first uniform on Twitter – the new navy-blue garment of the European Border and Coast Guard (EBCG) standing corps is also the first European Union service uniform.¹⁶⁰ The agency also revealed that it had signed an agreement with Europol which envisioned the mutual exchange of liaison officers in 2021.¹⁶¹ On the same day, media outlets released less gratifying information that the EU Anti-Fraud Office (OLAF) was opening an investigation against Frontex.¹⁶²

A month prior to these developments, MEPs scrutinized the Executive Director Leggeri and Frontex’ complicity in unlawful activities in the Mediterranean. The Alliance of Socialists and Democrats even demanded his resignation for the alleged complicity of Frontex staff in pushbacks.¹⁶³ These events once again placed Frontex in the spotlight

¹⁵⁹ Iyigüngör, Aydan (2020), August 11th, Personal communication [email]

¹⁶⁰ Frontex (@Frontex). " For the first time, the European Union has its own uniformed service – the European Border and Coast Guard standing corps. " 11th January 2021, 4.28 p.m., <https://twitter.com/Frontex/status/1348653085422460929>

¹⁶¹ Europol (@Europol), "The Frontex officer will join a network of 250+ liaison officers at Europol's headquarters". 11th January, 11:01 a.m., <https://twitter.com/Europol/status/1348570845283758081>

¹⁶² Nielsen, Nikolaj (2021), "EU anti-fraud office launches probe into Frontex", EUObserver. 12th January 2021. Available at: <https://euobserver.com/migration/150574>

¹⁶³ S&D Group (@The Progressives), "We have already called for @Frontex Director to resign.", 12th January, 2:02 p.m. <https://twitter.com/TheProgressives/status/1348980966841344000>

and raised important questions, among which issues of transparency, the agency's legitimacy, but also the capacities and impact of the Fundamental Rights Office and the Consultative Forum on Frontex. Another reoccurring issue is the extent to which Frontex should actually be held accountable for pushbacks of boats in the Mediterranean. For instance, Greek and Turkish captains decide if a boat is in distress and Frontex ships are always under the command of the country leading the operation. At the same time, the agency is already appointing its first human rights observers that are expected to be deployed in spring this year.¹⁶⁴

CHAPTER EIGHT: CONCLUSION

This final chapter will present the most essential findings, conclusions and limitations of this thesis. Considering the findings and limitations of the paper, the chapter will conclude with suggestions for future research.

The thesis investigated continuity and change in Frontex border policies and operations that target irregular migrants. There are plenty of theoretical approaches in the discipline of political science that have contributed to explaining and understanding aspects of the policy process. There are fewer approaches that deal with explaining policy change and reform. This paper combined two prominent approaches to research and show the extent of change in EU border policy - Paul Sabatier's Advocacy Coalition Framework and Peter Hall's Three orders of change. The former is applied in order to understand how change occurred through coordinated action and pressure by different state and non-state actors and how they affect Frontex policies towards migrants. Peter Hall's framework was then used to show the (level of) change that these coalition dynamics have generated.

The paper investigated the possible existence of two opposing rationales that dominate the political debate about border control and set out the existence of two coalitions in this policy system – the Protection-First Coalition and the Enforcement-First

¹⁶⁴ Der Standard (2020), „Frontex-Chef verteidigt sich: Behörde verdient Anerkennung“, *Der Standard*, 17th February, available at: <https://www.derstandard.at/story/2000124254569/frontex-chef-verteidigt-sich-behoerde-verdient-anerkennung> (last accessed on 18th February)

Coalition. These coalitions have different belief systems and as a result favour different policy positions and strategies. One particular difference is the priority that they accord to fundamental rights and freedoms of migrants (access to asylum, non-refoulement, access to effective remedy in case of violation of rights and freedoms) in the implementation of Frontex border operations and the strategies they choose for attaining these priorities.

Particularly, the paper argued that the Protection-First Coalition placed high value on the needs of migrants. Its goal is ensuring high quality reception conditions for everyone arriving at the borders of the EU and increasing the number and efficiency of Search and Rescue operations at sea (SAR) and views participation of NGO rescue boats as highly necessary. The protection-first narrative blames the security logic (that currently dominates the border policy subsystem) and practices for the high mortality of migrants at EU external borders, particularly in the Mediterranean. Another point that has been highlighted consistently over the years was ensuring systematic and permanent oversight of Frontex activities (e.g. through increasing the monitoring capabilities of the Fundamental Rights Office of Frontex). Other positions included improving the human rights knowledge of Member States' border guards, particularly of those at the external borders.

The Enforcement-First coalition's main priority is securing EU borders. This coalition views illegal migration as a major reason for the high number of deaths in the Mediterranean. Like the other coalition, it also supports improving SAR operations, yet the involvement of NGOs has been viewed rather critically. Important priorities have been strengthening border surveillance and improving capacity of transit countries and other third countries to intercept and host migrants. Another strategy they shared with the Protection-First coalition was improving the professional knowledge and establishing common training standards of Member States' border guards. They also view consultation with international (human rights) organisations & discussions with NGOs positively. This coalition currently has a more dominant position in the border policy subsystem.

This thesis discerned a few important developments regarding the advocacy coalitions in the border policy subsystem. One development concerns the positions of the Enforcement-First Coalition which have experienced a change from a ("pure") security logic (of portrayal of irregular migration as mainly a security problem) to incorporating

humanitarian elements into border policy. This was the result of significant pressure overtime exerted by advocates of the protectionist narrative. Another important finding was that both coalitions are very fragmented. Chapter Six even discussed the existence of an additional third coalition with beliefs and positions similar to the Protection-First coalition. Exploring the possibility, the chapter suggested that this No-Border Coalition explicitly condemned the EU's repressive and exclusive migration regime. A fundamental difference between the two coalitions would be the No-Border Coalition's belief that national borders are illegitimate and that they should be abolished. Some proponents of this coalition also oppose the existence of Frontex and are sceptical of the work of other (mostly international) organisations active in the field of asylum, migration and border control. This coalition firmly condemns cooperation with oppressive dictatorships.

Another aspect that the paper discussed about coalitions concerned coalition members' own identification with advocacy coalitions. Particularly, certain members of the Protection Coalition do not apprehend the distinction drawn between a "fundamental rights" versus a "security" paradigm or coalition in border policy. This leads to the insight that some actors may not actually identify with coalitions at all. This could be interpreted as a limitation of the Advocacy Coalitions Framework (and placing EU actors in advocacy coalitions) in studying policy change in EU border governance, but it could also be an indication of the existence of several coalitions (due to the belief disparity evident here) which also severely impacts the degree and direction of policy change.

The findings related to advocacy coalitions carry the discussion to continuity and change in Frontex policies. A few developments portend Frontex' (and the EU's) will to place more emphasis on the wellbeing of migrants. The investigation found a gradual shift towards more official recognition of the importance of fundamental rights in Frontex activities and operations. Nevertheless, throughout the first two to three years following the creation of the border agency there was very limited to no reference to the rights and safety of those arriving at the EU borders and the focus lay on the security of European citizens. Chapters Four and Six revealed a gradual shift towards more acknowledgement of human rights starting approximately around the adoption of the Stockholm Programme, as well as around the time that the Lisbon Treaty entered into force. This was primarily the result of the enhanced (and favourable) position of the European Parliament and

possibly also the pressure from various non-state actors throughout the years. Organisations such as the IOM and the UNHCR were approached with regard to trainings of border guards but there was no mention of improving reception conditions for people in need of protection or with regard to refoulement.

However, the security narrative remained strong and dominant with former Frontex Executive Director stating that the main challenges were about “catching” people at the border, preventing migrants from overstaying in the EU illegally but also reducing migrant deaths at sea.¹⁶⁵ The Council demanded from Frontex and the Commission to increase the balance between law enforcement and fundamental rights in Frontex activities, particularly in joint border operations. More substantial reforms were initiated through the amending Regulation of 2011 which established that Frontex was to draft and implement a Fundamental Rights strategy. As mentioned in Chapters Four and Six, the same Regulation declared the establishment of a Forum on Fundamental Rights in 2012 that allowed external civil society and international organisations to consult Frontex in matters of fundamental rights. Previous chapters established that this development was also due to the involvement of the European Parliament.

The Consultative Forum and the Fundamental Rights Office introduced important reforms in the policy subsystem. The investigation found that the two bodies managed to introduce new instruments and practices in Frontex policies which classifies as second order change. It can also be argued that the creation of the two bodies was itself an example of second order change. Chapter Seven attempted to compare the progress Frontex made between 2013 and 2019 based on recommendations and assessments made by the Consultative Forum on Fundamental Rights. Among the most prominent examples of instruments developed as a result of the involvement of the Forum and the FRO into Frontex activities are Joint Operation VEGA Children and the Code of Conduct for Joint Return Operations (CoC JROs).

The latter also envisioned a Complaint Mechanism for returnees foreseeing important provisions on identifying individual officers, as well as regulations on the application of coercive and restrictive measures. However, the Individual Complaint Mechanism still has very limited accessibility and remained underdeveloped as a tool. The

¹⁶⁵ Frontex (2010), “Wider Cooperation: A Helping Hand”, *Beyond the Frontiers*, p.13

Forum and the FRO continued to raise concerns about the effectiveness of another important tool, the Frontex Serious Incident Reporting Mechanism (SIR), which similarly to the Complaints Mechanism continues to have limited application. Overall, despite the introduction of new instruments for strengthening the agency's fundamental rights compliance overtime, they are still rather underdeveloped.

The investigation also showed that the increased acknowledgement of fundamental rights in the rhetoric and the introduction of new but underdeveloped instruments did not lead to third order change in border policy. In other words, no substantial paradigm change has taken place in this policy area. To a significant extent, this may be the result of a fragmentation of beliefs and loose networks within both (or all) advocacy coalitions in this policy system. It was demonstrated that Frontex itself cannot be regarded as a coherent structure with a "uniform organizational narrative".¹⁶⁶ Differences in opinions on migration and depth of humanitarian responsibilities were visible across several axes such as the duty held (e.g. staff or management), nationality etc. Similar tendencies exist in the alleged Protection-First Coalition, where discrepancies in beliefs and attitudes towards the role of Frontex, conceptions of security etc. exist among different actors and individuals. This could be the result of a fragmentation of beliefs and values, as well as loose networks within each of the advocacy coalitions, particularly within the Protection-First Coalition which is also the less dominant coalition in this field.

Overall, the investigations show that different narratives and beliefs continue to coexist in this policy area. The investigation of deep and near core beliefs of actors show that the policy area studied in this paper is still mainly dominated by security concerns. The paper showed that the coalition(s) favouring protection of migrant's rights are still a minority coalition but have managed to increase their importance. Nevertheless, Frontex which is at the core of EU border policy has made progress in inserting humanitarian narratives and practices in its operations and internal structures. It positively recognized the need for more systematic and permanent oversight of its own activities and supported the anchoring of Fundamental Rights Monitors, besides strengthening the existing and other safeguarding mechanisms.

¹⁶⁶ Perkowski, Nina (2019), "There are voices in every direction": Organizational Decoupling in Frontex, *JCMS*, 57:5, p. 1187

8.1. Limitations and outlook

As has already been stated above, in the border control system change occurred mainly in the secondary aspects, which confirms Sabatier's and Hall's observations that large-scale paradigm change is a rare event. Advocacy Coalition analysis permitted more nuanced explanations of change in the EU border policy system through providing insights into different actor's beliefs, values and normative ideals. The investigation raises questions about the impact of beliefs and ideology on political action. The beginning of the thesis mentioned other possible approaches for studying policy change. Karlson's theoretical reflections about the advantages and limitations of ideological politics and pragmatic politics (politics without ideology, normative ideals and beliefs) may also provide a useful starting point for research. He introduced the concept "principled pragmatism" which entails a combination of pragmatic and ideological politics.¹⁶⁷ Alternatively, Karlson's reflections could also provide insights into the motivations, beliefs and other crucial factors that impact policy change.

Due to the time constraints for research for this thesis, as well as the unavailability of several potential respondents, it was not possible to conduct additional interviews and inquire into internal dynamics and discrepancies of advocacy coalitions in the border policy subsystem. This limited access to appropriate respondents presented a major challenge and may have restricted the findings and results. Additional interviews with members of the Frontex Consultative Forum and Frontex staff could have improved and increased the credibility of the findings. Other possible methods for collecting information on beliefs and attitudes of individual members of the advocacy coalitions that can complement the methods used in this paper include ethnographic field work through informal conversations and observations.

Several suggestions for future research emerged throughout the research and the writing process.

1. Assessing the impact of the Consultative Forum and/or the Fundamental Rights Office.

In 2022 there is highly necessary for research institutes, think tanks, investigative journalists, Forum members and Frontex staff to endeavor a common research project

¹⁶⁷ Karlson, Nils (2012), "The Limits of Pragmatism in Institutional Change," Ratio Working Papers 194, The Ratio Institute, p.4-14

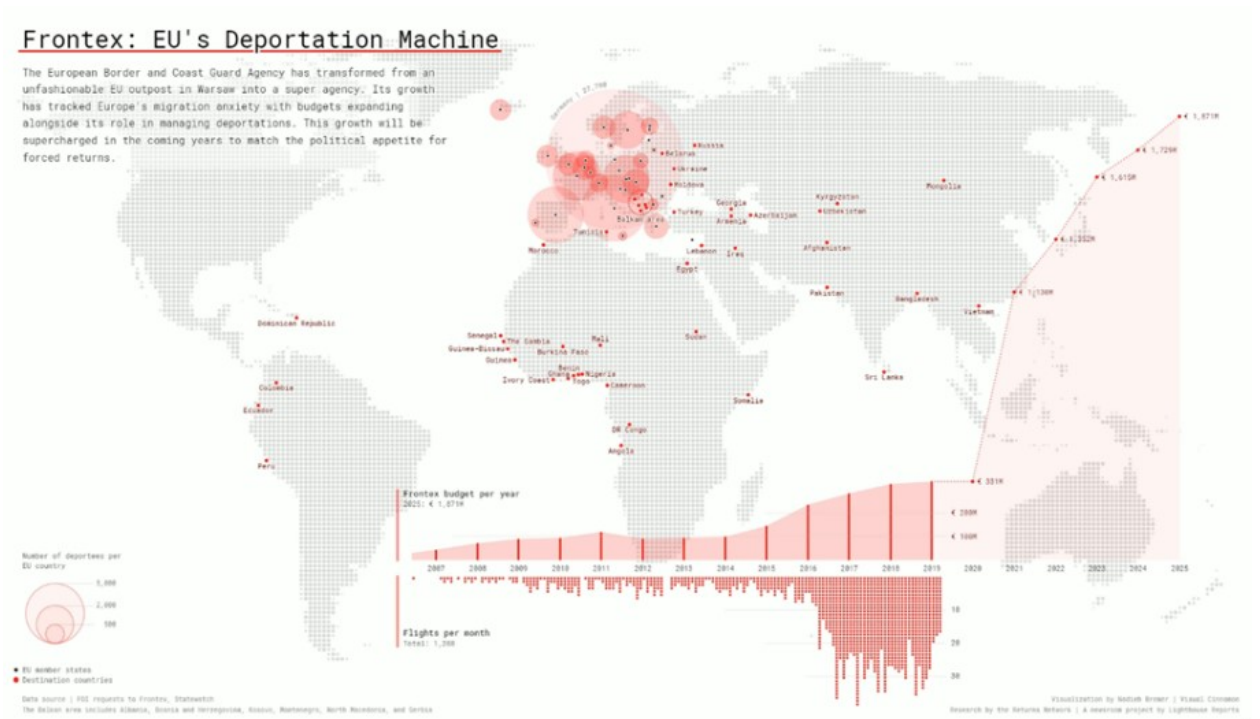
to evaluate the impact of the Forum. This could be a fundamental step for ensuring the future effectiveness of the two bodies and could perhaps help assert their position within Frontex.

2. The European Parliament featured prominently in the discussion about Advocacy Coalitions. A previous section also approached the influence of MEPs and EP parties on Home Affair issues. For example, the Influence Index revealed that the Greens-European Free Alliance is the group with the biggest impact in shaping policies on Democracy and Home Affairs in the European Parliament, while centrist/centre-right parties have greater political influence in the EU's foreign affairs.¹⁶⁸ This index could serve as basis for potential research projects in the area of border control and Frontex operations to inquire about the influence of various political groups on border policy and the accountability of Frontex towards the Parliament.

¹⁶⁸ Influence Index (2020), Policy influence analysis, Influence Index Website, available at: <https://insight.bcw-global.com/influence-index/> (last accessed 6th November 2020)

APPENDIX

Appendix 1. Animated Data Visualization “Frontex: EU’s Deportation Machine” (Returns Network)



¹⁶⁹ Returns Network (2020), Frontex: EU’s Deportation Machine, Available at: <https://vimeo.com/351673775> (last accessed on 10. November 2019)

Appendix 2. Importance of security for European Parliament political groups

POLITICAL GROUP	FREQUENCY (ENTIRE QUESTIONNAIRE)	FREQUENCY (MIGRANTS AND REFUGEE'S RIGHTS)	THEME OF QUESTION	TYPE OF SECURITY (METAPHORICAL CONTENT & ASSOCIATION)
	1	0	Respecting Rights While Countering Terrorism	Security as mostly physical viewed rather negatively – privacy more important than surveillance
	1	0	Respecting Rights While Countering Terrorism	Security as physical – current EU strategy of combating terrorism (police action and mass surveillance) are viewed negatively
	1	0	Defending The Rule Of Law And Fundamental Rights	Social security (access to public services)
	3	0	1. Respecting Rights While Countering Terrorism (x2) 2. Tackling Discrimination And Promoting Equality	1. Security as rather physical -cannot be achieved at the expense of civil liberties 2. Social security of persons with disabilities (inclusion in education and employment)
	4	2	1. Respecting Migrants and Refugee's Rights (x2) 2. Respecting Rights While Countering Terrorism (x2)	1. Security as physical – border security, better protection of EU borders 2. Security as physical - right balance between security and privacy

Appendix 3. Interview with Aydan Iyigüngör, Project Manager at the Technical Assistance and Capacity Building Unit, Department for Asylum and Migration, European Union Agency for Fundamental Rights

1. What impact has the Consultative Forum on fundamental rights had on FRONTEX (particularly the treatment of vulnerable migrants such as unaccompanied minors, children and women?)

An external evaluation on the effectiveness and impact of the Consultative Forum's work was launched in 2019. The evaluation assessed the relevance, impact, effectiveness, efficiency and internal coherence of the Consultative Forum, to obtain an understanding of the obstacles and challenges and to identify possibilities for improvement. Findings of the evaluation include:

· Overall, the Forum has been able to support Frontex to address key challenges and needs in the field of fundamental rights, which arise mainly in the area of operations. The Forum's activities appear to be relevant in the current context and in relation to Frontex mandate. However, several challenges exist in relation to both the Forum and the Agency when exercising their mandates, which in turn might have hampered the full achievement of this objective.

2. What is the Forum's greatest success in this endeavour (impacting the work of Frontex)?

· Some of the fundamental rights challenges that the Forum helped to address were those which arise in Frontex JOs, including return operations and in relation to child protection. Furthermore, the Forum contributed to meeting the needs in this field by including fundamental rights components in training courses, and more specifically by contributing to the design and development of several training courses for border guards and other staff.

· As the Forum has solely an advisory role, it has only been able to address to some extent other more overarching challenges.

· The lack of follow-up from Frontex' side on some of the recommendations meant that these outputs could not always translate into better protection of fundamental rights, as although recommendations are operational and targeted, they were not always implemented. The new Frontex Regulation that was proposed in September 2018, is set to remedy this issue to some extent, as Frontex will be obliged to inform the Forum on the follow-up on its recommendations. In addition to the mandate of the Forum having been slightly amended, this new provision will create more transparency about Frontex' follow-up to the Forum's recommendations.

· The Forum has played a key role in promoting fundamental rights and disseminating knowledge about fundamental rights both within Frontex and among key stakeholders. The full Evaluation Report will be published shortly as an annex to the CF Annual Report 2019.

3. For quite some time, political science scholars have argued that a logic of securitization has been dominating the field of migration, asylum and border policy in the EU (Huysmans 2000, Moreno-Lax 2018, Gundhus 2015). Considering the influx of migrants arriving in the EU starting in 2015 and the November 2015 terrorist attacks in Paris, have you observed a similar securitization trend of EU border practices following these external events?

This one falls outside what the Frontex Consultative Forum is or does – I think this question is quite 'big' and rather on the political side of the story. Concerning your first question I would just like to propose to you to refrain from wording such as 'influx' etc – we pay a lot of attention to this at FRA and try to avoid repetition and perpetuation. But this is just a very personal suggestion which you can take or leave.

3. In the domain of EU border policy, has the creation of the Consultative Forum prompted a movement towards a new policy rationale that prioritizes fundamental rights (over security)? Do you believe that both rationales can exist in harmony?

The question itself might be a bit too black and white – there is a lot of literature why security needs to be based on human rights...again the CF is not to be seen in any policy context it is rather a ‘technical’ advisory body to Frontex. But what can surely be pointed out positively is that the need for more systematic and permanent oversight of Frontex activities was obviously seen and therefore the Fundamental Rights Monitors’ were anchored in the new Regulation, besides strengthening the existing and other safeguarding mechanisms. I think it is worthwhile highlighting the novelty of this, since also at national level there is no such example.

4. How are contentious issues, problems, disagreements between the Forum and Frontex resolved, what courses of action do you take in a case of disagreement?

The Consultative Forum holds three meetings a year and maintains regular contact and an open dialogue with the Agency and its Management Board, which are key to addressing any potential disagreement in relation to its work. The Forum issues a public report on its activities where it outlines the main recommendations as well as remaining concerns.

5. How important is cooperation within member organisations of the Forum and are there currently internal disagreements over contentious issues?

Cooperation is essential and undertaken as per the CF working methods. CF recommendations and opinions are mostly issued by consensus.

6. Do you consider cooperation with organisations that are currently NOT members of the Forum necessary (e.g. grass roots, sea rescue organisations)

Many of the current CF members are umbrella organisations whereas others bring in the experience of partners with which cooperation is pursued at field level. The CF has encouraged Frontex to enhance cooperation with a wider network of civil society actors and seeks that engagement in its work when possible. Some examples of such cooperation are referred to in the Forum’s annual reports. Please also see recent research which you might consider useful: