

THE IMPLEMENTATION OF THE
COOPERATION ARRANGEMENTS OF
FRONTEX WITH FRA AND EASO

Bachelor Thesis



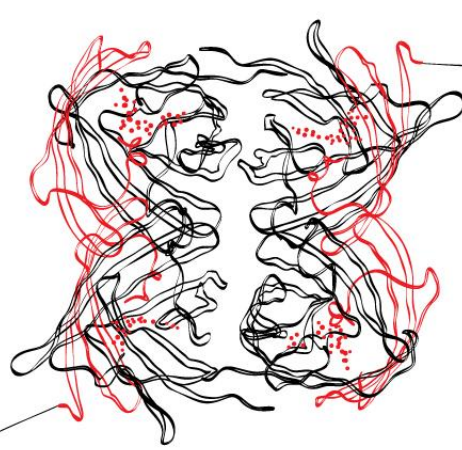
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Summary

This research aims to answer the question to what extent the work of Frontex is influenced by the cooperation agreement concluded with FRA in 2010 and the working arrangement concluded with EASO in 2012. Due to Frontex' 'well-known' Human Rights (HR) infringements, those new agreements were employed to improve Frontex' compliance. This research wants to find out what change in the work of Frontex became visible after these agreements were made. The outcome shows that the agreements are partially influential especially concerning the training. Hence this cannot be noticed concerning the operational aspects of Frontex' work at the moment. It is also to stress that FRA and EASO are cooperating with a different focus and the agencies differ as well. Moreover, Frontex is the pivotal player in both relationships as it decides in almost all issues to what extent it lets the two agencies influence its work. The design of this approach will be explorative as this topic has not been analysed yet. The data collection is done via structured interviews. Furthermore, a content analysis of various laws, scientific articles, public statements and other primary and secondary data will be done.

List of Abbreviations

BG	Border Guards
CCC	Common Core Curriculum for Border Guards
CEAS	Common European Asylum System
CF	Consultative Forum on Fundamental Rights
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EP	European Parliament
EU	European Union
FR	Fundamental Rights
FRA	EU Agency for Fundamental Rights
Frontex	European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union
FRS	Fundamental Rights Strategy
HR	Human Rights
HRW	Human Rights Watch
JO	Joint Operations
JRO	Joint Return Operations
MEP	Member of the European Parliament
MS	Member State
NGO	Non-governmental organisation ⁷
TEU	Treaty on European Union
TFEU	Treaty of the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

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1.0 Introduction and Outline

The European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union, commonly known as Frontex, is widely discussed in the literature and media because of its struggle to comply with Fundamental Rights (FR).¹ Therefore, and due to other reasons, which will be elaborated in the following chapters, various agreements like the cooperation arrangement with the European Union Agency for Fundamental Rights (FRA) in 2010² and the working arrangement with the European Asylum Support Office (EASO) in 2012³ were concluded. The overall thesis aims at finding out whether those agreements have a practical influence on the work of Frontex. Therefore the focus of this thesis is on the following two research questions:

1. *How is the work of Frontex influenced by the implementation of the cooperation agreement with FRA in 2010 and by the implementation of the working agreement with EASO in 2012?*
2. *Can an influence in the work of Frontex be perceived by Frontex, FRA and EASO?*

So, the aim is not only to discover if this influence is observable by scholars but also to find out whether the signing agencies of the arrangements can perceive an influence on the work of Frontex as well. This approach is chosen as it differs from what can be found in academic literature written by outsiders of the agreements.

In order to answer those research questions, various sources will be analysed. Of course a look will be taken at the arrangements to find out what framework is actually provided for those cooperations. Moreover, to generate a picture of the agencies own perception on those cooperations, their own articles and statements of their websites is assessed. Additionally, interviews with the signing agencies about their perceptions were conducted. Finally, scientific literature of scholars outside of the agreements is examined to find out how those cooperations are assessed by them.

The main finding of this thesis is that the agreements are influential especially in the field of training. Concerning other aspects like the operational cooperation the implementation has not fully taken place yet which makes it difficult to evaluate its potential influence on the work. According to EASO and Frontex, EASO will become influential in this field as soon as the implementation of for example mixed border teams will take place⁴. Other fields of work (e.g. risk analysis and research) are not very much influenced by the cooperation agreements even though partial collaboration takes place because

¹ Pro Asyl. (2010). Zu den Folgen des Frontex Einsatzes an der türkisch griechischen Landgrenze mit deutscher Beteiligung. from http://www.proasyl.de/fileadmin/fm-dam/a_Startseite_und_Aktionsseiten/Startseite/2010_ab_April_/Evros_Reisebericht_2010.pdf

Human Rights Watch. (2011). The EU's Dirty Hands – Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece. Retrieved from http://www.hrw.org/sites/default/files/reports/greece0911webwcover_0.pdf

² Frontex & FRA. (2010). *Cooperation Arrangement between The European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union And The European Union Agency For Fundamental Rights*. Retrieved from http://fra.europa.eu/sites/default/files/fra_uploads/891-Cooperation-Agreement-FRA-Frontex_en.pdf

³ EASO & Frontex. (2012). *Working Arrangement between European Asylum Support Office and The European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*. Retrieved from <http://easo.europa.eu/wp-content/uploads/20120926-FRONTEx-EASO-working-arrangement-FINAL.pdf>

⁴ Interview with Frontex representative Vera Martins Peres de Almeida on 26, June 2013.

Frontex as pivotal player in this issue decides what and how to process the gained information of FRA and EASO.⁵

This research is relevant because Frontex and its work are a controversial discussed issue concerning border controls and security in the European Union (EU) and it has a great impact on many migrants entering the EU. As European Union agency it is importantly to stress that Frontex is required to comply with the Charter of Fundamental Rights.⁶ As Frontex concluded new agreements with FRA and EASO in order to amongst others strengthen their compliance with FR, I regard it as crucial and very interesting to assess if those agreements actually have an impact on the practical work of Frontex in order to find out if those agreements and their extent is truly enough. I am aware of the fact that this research is only limited in its reach and resources. However, it is from great interest for the agencies themselves, for the migrants, for the Human Rights NGOs and also even for the EU citizens not only for financial reasons but also for humanitarian ones. This research can only be regarded as starting point for further investigation on this topic.

This thesis is structured in the following way. In the following section an overview on the background of this topic will be provided in order to place this research in the wider discussion. The second chapter deals with the methodology of this research. So, the research sub-questions are introduced as well as the research design and case selection. The third chapter focuses on the scientific background. A legal background on the three agencies will be provided in order to better understand the following analysis of scientific literature. The next chapter then deals with the analysis of the cooperation and working arrangements which provide the legal framework of the work relationship between the agencies. The fifth chapter addresses the perceptions of the agencies. Ultimately, an overall conclusion which incorporates the various sections is provided which tries to answer the two research questions. Moreover, a recommendation for future research concerning this topic is presented.

1.1 Background of the current discussion

The Schengen Conventions of 1985 and 1990, which became incorporated in European Union (EU) law as the Schengen *aquis* in the Amsterdam Treaty of 1999, led to the abolition of internal border controls⁷ and one common external border⁸ of most countries participating in the European Union and some non-EU countries. Moreover, the Treaty of Amsterdam established an ‘area of freedom, security and justice’ as well strengthened the EU competence concerning external border controls, immigration and asylum matters.⁹ This development of one external border pushed Member States (MS) to pursue a joint cooperation in the management of the external borders, especially as the

⁵ Id.

⁶ Brooks, T. J. (2012). Can Frontex Be Held Liable for Human Rights Violations? Potential Application of Recent European Case Law to the Activities of an Inter-Governmental Agency. *Potential Application of Recent European Case Law to the Activities of an Inter-Governmental Agency (June 20, 2012)*. Available at SSRN: <http://dx.doi.org/10.2139/ssrn.2088249>

⁷ See Convention implementing the Schengen Agreement, Article 2, at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922%2802%29:en:HTML>.

⁸ Id. Articles 3-8

⁹ See Article 3.2 TEU

mobility of people had increased during the past decades due to ‘developments in infrastructure and transports’, ‘demographic changes at the global level’ and recently as the peak due to the ‘instabilities of the North African countries’¹⁰ which meant in increased influx of migrants in the EU. Therefore, Frontex was established in 2004 in Council Regulation (EC) 2007/2004¹¹ and became operational in 2005.¹² The main purpose of this agency is to manage the operational cooperation among the MS at the EU external borders including their surveillance.¹³

However, during the past years a struggle of Frontex between the issues of border security and the compliance with the Fundamental Rights became more prominent.¹⁴ According to Statewatch the EU Commissioner for Home Affairs Cecilia Malström stated in reference to the Arab Spring that “Europe failed to stand up for democracy, freedom and human rights” because it prioritised securing the border over supporting those who had fought for liberty and democracy’.¹⁵ This illustrates how the EU and also Frontex as EU agency are very much concerned about the protection and surveillance of the external borders instead of respecting the FR in their implementation as priority. Also the Special Rapporteur on the human rights of migrants of the UNHCR Crépau stresses that in the EU irregular migrants are perceived as security problem which Frontex is supposed to prevent.¹⁶ The securitisation of irregular migrants of course affects the way Frontex and border guards work. Hence, in the past this securitisation led to push-backs of migrants who did not get the chance to claim asylum and had to return to their country where they departed from. This practice occurred as well during Frontex lead Joint Operations in the Mediterranean Sea.¹⁷ Also Melanie Fink stresses that the common practice of avoiding boats with possible migrants from landing at the EU coast or even reaching it ‘clashes with the European cornerstone of refugee protection’.¹⁸ This practice is a violation of the principle of non-refoulement which is incorporated in the Charter of Fundamental Rights of the EU in articles 18 and 19¹⁹ implying that people claiming to be a refugee (which does not need to be

¹⁰ Marin, L. (2011). Policing the EU's External Borders: A Challenge for the Rule of Law and Fundamental Rights in three Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Borders. *Journal of Contemporary European Research*, 7(4), 468-487.

¹¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union. Brussels: European Union. OJ (L 349/1), 26.10.2004; hereafter: Frontex Regulation.

¹² Guild, E. (2011). Implementation of the EU Charter of Fundamental Rights and its Impact on EU Home Affairs Agencies. 17. Retrieved from http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/02_study_fundamental_rights_/02_study_fundamental_rights_en.pdf

¹³ See Chapter 2.1 and 3.1 of this thesis

¹⁴ Human Rights Council. (2013). Report of the Special Rapporteur on the human rights of migrants, Francois Crépau. from http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.46_en.pdf

¹⁵ Statewatch. (2012). Analysis Criticism of Frontex’s operations at sea mounts. from <http://www.statewatch.org/analyses/200-frontex-search-rescue.pdf>

¹⁶ Human Rights Council, 2013 p.5, 9

¹⁷ Guild, 2011, p.58; FRA. (2013). Fundamental rights at Europe's southern sea borders. Retrieved from <http://fra.europa.eu/en/publication/2013/fundamental-rights-europes-southern-sea-borders>. p.46

¹⁸ Fink, M. (2012). Frontex Working Arrangements: Legitimacy and Human Rights Concerns Regarding 'Technical Relationships'. *Merkourios*, 28(75), 20-35. p.2.

¹⁹ Charter of Fundamental Rights of the European Union (2010/C 83/02). Brussels: European Union. OJ (C 83/389), 30.03.2010. Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>

done officially) are not allowed to be returned or exposed to another country where they might become subject to inhumane treatment, torture or where their lives are at risk.²⁰

Migrants which are detected while irregularly entering the EU become registered and are usually brought to detention camps. This registration functions as screening. However, according to McDonough and Tsoudri FRA has noticed during a Frontex operation in Greece that this registration process is lacking human resources and interpreters.²¹ According to Human Rights Watch this is usually the most substantive interview those migrants are attending before being departed.²² Therefore, it is crucial to identify those who are in need of international protection, even if this is not the purpose of the screening, because refugees usually do not get any other chance to claim asylum especially because suitable interpreters and legal advice are missing.²³ As the screening of age, origin and identity usually takes only a few minutes, mistakes can be made which have already led to inaccurate identification of nationality and age of some migrants. This can have tremendous consequences for the migrants as they might be deported even though they are too young or from a different country.²⁴ Of course all of this does not go along with the provisions of the Charter of Fundamental Rights of the EU.

After the registration, irregular migrants are most commonly put into detention camps which often but not only in Greece are in devastating conditions. As most of the irregular border crossings take place between Greece and Turkey and many Frontex operations take and already have taken place there, a focus is often put on Greek detention camps. Also in Frontex operations irregular migrants were consciously brought to detention camps which were overcrowded, unhygienic, inhumane and without any legal guarantees, briefings on their situation or interpreters and therefore do not fulfil the human right standard in any way.²⁵ Moreover, it is important to stress the overcrowding also happens because irregular migrants are systematically detained.²⁶

Another aspect raising FR concerns are Joint Return Operations (JRO) of Frontex. According to a report written by four Members of the European Parliament (MEPs) of the Greens expelled persons ‘regularly report violence in form of humiliation, insult, aggression, blows and even beatings during attempts to remove them’.²⁷ As well as some people claimed that they did not even know they were

²⁰ FRA, 2013, p. 39

²¹ McDonough, P.; Tsoudri, E. L. (2012). Putting solidarity to the test: assessing Europe’s response to the asylum crisis in Greece. p.15. Retrieved from <http://www.unhcr.org/4f269d5f9.html>

²² Human Rights Watch, 2011, p.42

²³ Pro Asyl, 2010

²⁴ Id.

²⁵ Brooks, 2012; Hamood, S. (2008). EU–Libya Cooperation on Migration: A Raw Deal for Refugees and Migrants? *Journal of Refugee Studies*, 21(1), 19-42; Human Rights Watch, 2011; Jelpke et al. (2011). *Für ein offenes, rechtsstaatliches und gerechtes europäisches Asylsystem*. Retrieved from <http://dip21.bundestag.de/dip21/btd/17/046/1704679.pdf>; Pro Asyl, 2011

²⁶ Human Rights Council, 2013

²⁷ Keller, S., Lunacek, U., Lochbihler, B., & Flautre, H. (2011). Frontex Agency: Which Guarantees for Human Rights. *Brussels, Greens/EFA in European Parliament*. p. 15. Retrieved from http://barbara-lochbihler.de/cms/upload/PDF_2011/GL_Frontex_E_1.pdf

supposed to be expelled until they arrived at the airport.²⁸This of course conflicts with Fundamental Rights.²⁹

Besides that, Frontex often is criticised for the lack of transparency and democratic accountability concerning its operations and the reporting on it.³⁰

Generally speaking, many sources support the view that Frontex and its operations did not always comply with law and therefore needs to adjust its current practice.³¹ Frequently, discussions arise if and to what extent Frontex can be held liable for those infringements as, with regard to its operations, the MS where the operation takes place are responsible.³² However, according to article 3.1 of the Regulation (EU) No 1168/2011³³ Frontex can initiate and carry out operations. Therefore its liability for its own operations increased.³⁴

Even though over the past years amendments on the Frontex Regulation were made, unfortunately there is still a huge gap between policy and practice.³⁵ In order to improve some of the above mentioned aspects, the cooperations with FRA and EASO were concluded. This provided background stresses the importance to find out if the measures taken by Frontex during the past few years actually did improve their compliance with FR. Therefore, this thesis takes a closer look at the working arrangements of Frontex and their actual impacts on its work.

²⁸ Id., p.17

²⁹ See articles 4, 18, 19 of Charter of Fundamental Rights of the EU

³⁰ Amnesty International & ECRE. (2010). Briefing on the commission proposal for the regulation amending council regulation (EC) 2007/2004 establishing Frontex., p.4. Retrieved from <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCoQFjAA&url=http%3A%2F%2Fwww.ecre.org%2Fcomponent%2Fdownloads%2Fdownloads%2F58.html&ei=1AHMUZvGEIKd0AWXoYGoCQ&usg=AFQjCN G542Lj7-Z9aIqiEHIPHgkFbVxg&bvm=bv.48340889.d.d2k>; Council of Europe. (2013). *Frontex: human rights responsibilities*. Retrieved from <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19547&Language=EN>; Perkowski, N. (2012). A Normative Assessment of the Aims and Practices of the European Border Management Agency Frontex. *Refugee Studies Centre Paper Series*, 81, p.4.

³¹ Brooks, 2012, p.9; Council of Europe, 2013, p.1; FRA, 2013; Perkowski, 2012, p.3

³² See article 1.2 of the Frontex Regulation

³³ *Regulation (EU) No 1168/2011 of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*. Brussels: European Union. OJ (L 304/1), 25.10.2011

³⁴ Amnesty International & ECRE, 2010, p.5; Statewatch, 2012

³⁵ Human Rights Council, 2013, p.10

2.0 Methodology

The following chapter will illustrate the intended research including its conceptualization, sub-questions, design, the sample, the case selection and the data collection.

2.1 Mission and Tasks of Frontex

This chapter will start with conceptualization of what is meant by the ‘work of Frontex’. This is crucial because before one can assess whether the work is changed. One needs to know what the work of Frontex actually is and on which aspects of the concept this research will put its emphasis. Therefore it is essential to know how the work of Frontex actually is defined in the founding and amended regulation of Frontex. In order to do so, a look will be taken at the EP (European Parliament) and the Regulation (EU) No 1168/2011³⁶ which is an amendment of the original and founding regulation of Frontex. This new regulation provides an overview of the tasks of Frontex which serves as definition of what is actually meant by using the term ‘work of Frontex’. Concerning some aspects this new regulation makes reference to the Frontex regulation³⁷ because those aspects are not changed or just expanded in the new regulation. According to Article 2 of the two above mentioned regulations the task of Frontex is:

- *‘a) coordinate operational cooperation between Member States in the fields of management of external borders;*
- *b) assist Member States on training of the national border guards, including the establishment of common training standards;*
- *c) carry out risk analysis, including the assessment of the capacity of Member States to face threats and pressures at the external borders;*
- *d) participate in the research relevant for the control and surveillance of external borders;*
- *da) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea;*
- *e) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, especially those Member States facing specific disproportionate pressures;*
- *ea) set up European Border Guard Teams that are to be deployed during joint operations, pilot projects and rapid interventions;*
- *f) provide Member States with the necessary support, including, upon request, coordination or organization of joint return operations;*

³⁶ Regulation (EU) No 1168/2011 of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union. Brussels: European Union. OJ (L 304/1), 25.10.2011

³⁷ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union. Brussels: European Union. OJ (L 349/1), 26.10.2004

- *g) deploy border guards from the European Border Guard Teams to Member States in joint operations, pilot projects or in rapid interventions in accordance with Regulation (EC) No 853/2007;*
- *h) develop and operate, [...], information systems that enable swift and reliable exchanges of information regarding emerging risks at the external borders,[...];*
- *i) provide necessary assistance to the development and operation of a European border surveillance system and, as appropriate, to the development of a common information sharing environment, including interoperability of systems.’³⁸*

As it would exceed the limits of this research, it is decided to focus only on the red marked tasks of Frontex to observe a change its implementation. While it is chosen to leave out four aspects, seven will be included in the analysis. Because the red marked aspects are more relevant concerning the cooperation with FRA and EASO, it is decided to concentrate on those. In the following thesis, sometimes reference will be made to the different work concepts. This overview here will help to understand what is explicitly meant by the concept. So, this can be regarded as the conceptualization in this research of the expression ‘work of Frontex’. The next section will deal with the sub-questions of this thesis.

2.2 Sub-Questions

The following table will provide an overview of the sub-questions which help to answer the overall research questions. Not only the research sub-questions are mentioned but also the corresponding research methods which will be employed to answer the question as well as the sources where one can find the necessary information is provided.

Table 1: Research sub-questions

Research sub-question	Research methods	Sources
How is the work of Frontex supposed to be influenced by the two specific agencies according to the agreements?	Primary source analysis Secondary source analysis	Official cooperation agreement between Frontex and FRA. Official working agreements between Frontex and EASO. Scientific literature dealing with agreements concluded by Frontex

³⁸ Id.

How do Frontex representatives regard the practical implementation of the two (FRA & EASO) agreements? According to their (Frontex) perception how did the implementation of the two agreements influence their work?	Structured interviews Secondary source analysis	Frontex representatives Frontex website & documents
How do FRA/EASO representatives regard the practical implementation of their agreements with Frontex? According to their (FRA/EASO) perception how did the implementation of the two agreements influence Frontex work?	Structured interviews (via e-mail) Secondary source analysis	FRA representatives EASO representatives FRA/EASO websites & documents

These sub-questions are more precise than the overall research questions. Hence, in combination they assist to answer the general questions. Besides that it helps to get an overview of the overall research strategy. The next section will present the research design.

2.3 Research Design

According to Babbie an explorative research is ‘to start to familiarize a researcher with a topic. This approach occurs when a researcher examines a new interest or when the subject of study itself is relatively new’.³⁹ The research topic of this thesis is not really explored yet as the agreements are both fairly new. Moreover, it is noticeable that most scientific literature does not extensively deal with it while it only touches this topic briefly. That is why this research is considered as an explorative research design. Furthermore it is important to indicate that this research makes use of qualitative data, meaning that the data consist of words or data which is usually not measureable.⁴⁰ This is done as there are much more information of qualitative nature instead of quantitative nature concerning this topic. Besides that, the research design is a case study as two specific cases (1. FRA influences the work of Frontex, 2. EASO influences the work of Frontex) are observed in depth. Therefore, the units of analysis are FRA, EASO and Frontex.

2.4 Case selection and sampling

The two cases focusing on⁴¹ have been chosen by purposive sampling, meaning that those two cases were selected intentionally. Due to the small size of the overall sample (N=12), as Frontex is having

³⁹ Babbie, E. (2007). *The Practice of Social Research* (12 ed.): Wadsworth, Cengage Learning., p.92

⁴⁰ Punch, K. F. (2012). *Developing Effective Research Proposal* (Vol. 2): SAGE Publications., p.46

⁴¹ see Section 2.3

partnerships with only 12 EU agencies, random sampling is not recommendable.⁴² Moreover, as it is focused on agencies whose mandate is related to the protection of Fundamental Rights, only certain agencies come into considerations.

2.5 Data Collection

The data collection will be done by interviews and by collecting primary and secondary data. Table 1 already provides an overview how the sub-questions or data-collection questions will be answered by providing the suitable data collection method. The data which will be extracted from the interviews and primary and secondary sources have a qualitative nature. Moreover, most of the data is already existing data except for the interviews which will of course be newly created data. Concerning the interviews, it is crucial to mention that those interview questions are sent by e-mail previously.

This approach is chosen because it involves important stakeholders and their views (except refugees) and it finds out on what the agreements are based. Moreover, this seems the most feasible approach.

A general threat of this research approach is that the proposed interviews do not work out properly. That is the reason why this approach does not only rely on the interviews but also on the content analysis of primary and secondary data.

The following chapter will provide a theoretical background including the analysis of the scientific literature concerning this topic.

⁴² Seawright, J., & Gerring, J. (2008). Case Selection Techniques in Case study research. *Political Research Quarterly*, 61(2), p.295

3.0 Theoretical Background

This chapter starts with a general overview concerning the three EU agencies in order to acquire some background information and to better understand the subsequent analysis of the scientific literature on the implications of the cooperation and working arrangements on the work of Frontex. Therefore this chapter starts with providing a legal background about the field discussed. The following section of this chapter is about Frontex. Sections three and four will provide an overview about the FRA and the EASO. The last section deals with the effects of the agreements on Frontex work.

3.1 Legal Background

The main EU instrument to ensure FR is the Charter of Fundamental Rights of the European Union of the year 2000.⁴³ Through the ratification of the Lisbon Treaty in 2009, the Charter became legally binding for all EU MS and EU agencies including Frontex⁴⁴. Crucial articles concerning the work of Frontex are Articles 2, 4, 18 and 19.⁴⁵ Article 2 of this Charter guarantees the right to life. So, talking about this article in a broader sense, ‘a state may have a duty to act when loss of life is foreseen and the state can prevent this loss.’⁴⁶ This especially applies to Frontex operations at sea. Article 4 of the Charter prohibits subjecting anyone to torture and inhumane or degrading treatment.⁴⁷ Concerning Frontex’ work, this article is applicable for push-backs of migrants at sea which are in need of international protection but also when transferring migrants to detention camps that are of inhumane conditions.⁴⁸ Article 18 provides the right to asylum⁴⁹ to everyone in coherence with the ‘Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees’. This is particularly important as asylum seekers entering the EU have to be protected despite the importance of border protection. Finally, Article 19 prohibits collective expulsions and underlines the principle of non-refoulement.⁵⁰ This applies as well to the operations of Frontex when they deal with refugees entering the EU irregularly or when they return migrants to their place of departure.

Within Europe in general, the European Convention on Human Rights (ECHR) is a major legal instrument as well. Even though it is not incorporated in EU law and there is no specific article concerning asylum as such⁵¹, the interpretations and applications of the responsible European Court of Human Rights (ECtHR) are extremely relevant and binding for the MS of the EU as well. Its

⁴³ *Charter of Fundamental Rights of the European Union (2000/C 364/01)*. Brussels: European Union. OJ (364/1), 18.12.2000. Retrieved from http://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁴⁴ Human Rights Watch. (2011). *The EU’s Dirty Hands – Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece.*, p.46. Retrieved from http://www.hrw.org/sites/default/files/reports/greece0911webcover_0.pdf

⁴⁵ *Charter of Fundamental Rights of the European Union (2010/C 83/02)*.

⁴⁶ FRA, 2013, p.29

⁴⁷ *Charter of Fundamental Rights of the European Union (2010/C 83/02)*.

⁴⁸ See Section 1.1

⁴⁹ *Charter of Fundamental Rights of the European Union (2010/C 83/02)*.

⁵⁰ Id.

⁵¹ FRA & Council of Europe. (2013). *Handbook on European Law relating to asylum, borders and immigration*. Available from http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders_en.pdf

judgements in cases like *Belgium and Greece vs. M.S.S.*⁵² concerning the principle of the EU Dublin Regulation and *Hirsi vs. Italy*⁵³ concerning the principle of non-refoulement have a major impact on how it is dealt with asylum seekers in the EU and therefore are crucial for the work of Frontex as well.

The Treaty of the Functioning of the European Union (TFEU) deals in Title V (The Area of Freedom Security and Justice), Chapter 2 with ‘Policies on Border Checks, Asylum and Immigration’ in the articles 77-79.⁵⁴ Article 77 states that ‘The Union shall develop a policy with a view to: [...]; (b) carrying out checks on persons and efficient monitoring of the crossing of external borders; (c) the gradual introduction of an integrated management system for external borders.’⁵⁵ This is a crucial legal cornerstone for the development of Frontex as it describes its major purpose. Also Article 78 is very important in this context. It obliges the EU to create a Common European Asylum System (CEAS) also in coherence with Geneva Convention of 1951 and the Protocol of 1967 relating to the status of refugees.⁵⁶ Moreover, it stresses the compliance of those policies with the principle of non-refoulement.⁵⁷

The CEAS is planned to be implemented in three five-year programmes of the European Council.⁵⁸ The first ‘Tampere Programme’ lasted from 1999-2004 and was crucial in the development of the initial immigration and asylum policies⁵⁹ as first phase of the CEAS. In the second phase from 2005 till 2009 called ‘The Hague Programme’, Frontex started its work among the development of other policies concerning migration.⁶⁰ The last phase started in 2010 and is ongoing right now until 2014 (‘The Stockholm Programme’). It is responsible for the establishment of EASO⁶¹ and recent major accomplishments concerning a common asylum system of the EU.⁶²

Also the ‘Schengen Borders Code’ established in 2006⁶³ is a crucial legal foundation concerning Frontex operations as it sets out common rules for border checks and surveillance and facilitates movement across borders. Article 3⁶⁴ again stresses to respect the principle of non-refoulement in the application of the Code as well as the rights of refugees and persons requesting international

⁵² Brooks, 2012, p.4

⁵³ Id., p.6

⁵⁴ *Consolidated Version of the Treaty on the Functioning of the European Union*. Brussels: European Union. OJ (C115/47), 09.05.2008; hereafter TFEU

⁵⁵ Id. Art. 77

⁵⁶ Id. Art. 78

⁵⁷ Id.

⁵⁸ Human Rights Council, 2013, p.23

⁵⁹ Id., p.24

⁶⁰ Id.

⁶¹ Id.

⁶² European Commission. (2013). A Common European Asylum System Reference: MEMO/13/532. 2013, from http://europa.eu/rapid/press-release_MEMO-13-532_en.htm

⁶³ *Regulation (EC) No 562/2006 of the European Parliament and the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)*. Brussels: European Union. OJ (L 105/2), 13.04.2006

⁶⁴ Id. Art. 3

protection. Moreover, it covers conditions of entry⁶⁵ and various other rules concerning the protection of the EU external borders in respect of the human dignity.⁶⁶

This section was intended to provide a legal background with respect to Frontex and its operations and corresponding FR. The following section deals with Frontex and its institutional development.

3.2 Frontex

Frontex was founded in 2004 and is officially operational in Warsaw, Poland since May, 2005.⁶⁷ According to the Frontex Regulation, the aim of this agency is ‘an integrated border management ensuring a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a fundamental component of an area of freedom, security and justice.’⁶⁸ So, Frontex basically aims at facilitating operational cooperation especially in fields of surveillance and control of EU external borders among Member States. Frontex coordinates those actions and assists MS.⁶⁹ Its main tasks are to coordinate joint operations and joint returns, to produce risk analyses, and to take care of the training of border guards (BG).⁷⁰ A more precise overview on the tasks of Frontex can be found in chapter 2.1. Frontex is organized by its Management Board which consists of one representative of each Member State owing one voting voice and the Commission which has two voices as well. The Management Board is also responsible for electing the Executive Director (currently Ilkka Laitinen). With regard to its amount of staff and budget it is importantly to stress that despite the financial crisis the number of staff as well as the budget increased annually since its foundation.⁷¹ While the budget was 6 million euro in 2005, the budget increased to 85 million euro in 2012.⁷² This development underlines how the importance of Frontex and its mission increased during the past years.

While Regulation (EC) 2007/2004⁷³ is the founding regulation of Frontex, it was amended twice already. The first amendment took place in 2007⁷⁴ and the last amendment came in force in 2011⁷⁵ which changed some crucial aspects of Frontex. One of the major changes is the requirement to

⁶⁵ Id. Art. 5

⁶⁶ Id. Art. 6

⁶⁷ Guild, 2011, p. 17; Regulation (EU) No 1168/2011

⁶⁸ Council Regulation (EC) 2007/2004

⁶⁹ Perkowski, 2012, p.3

⁷⁰ Regulation (EU) No 1168/2011

⁷¹ Guild, 2011, p.18; Council of Europe. (2013). *Frontex: human rights responsibilities.*, p.3. Retrieved from <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19547&Language=EN>

⁷² Id.

⁷³ *Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union.* Brussels: European Union. OJ (L 349/1), 26.10.2004

⁷⁴ *Regulation (EC) No 863/2007 of the European Parliament and the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers.* Brussels: European Union. OJ (L 199/30), 31.07.2007

⁷⁵ Regulation (EU) No 1168/2011

establish a Fundamental Rights Officer.⁷⁶ She took up her work in December, 2012 and is responsible for the independent monitoring of FR in the agency and shall report back about her assessment on a regular basis to the Management Board.⁷⁷ Another major addition is the development of a Consultative Forum⁷⁸ which is supposed to consist of fundamental rights organizations like UNHCR and European agencies like FRA and EASO. Its purpose is to advise the Management Board on policy matters concerning FR.⁷⁹ In comparison to the founding regulation, this amended regulation refers to the FR more frequently which can be noticed not only by the establishment of the just mentioned provisions, but also by having regard to the other parts of article 26a which is called ‘Fundamental Rights Strategy’ and generally by reading through the preamble or other articles.⁸⁰ Besides this, the operational competence of Frontex is strengthened by the new amendment as it is allowed to buy or lease its own equipment and a ‘co-leading role for the agency regarding joint operations and pilot projects’.⁸¹ So, this amendment was a crucial development for this agency.

3.3 FRA

According to Council Regulation (EC) 168/2007⁸² the purpose of the European Union Agency for Fundamental Rights is ‘to provide the relevant institutions and authorities of the Community and its Member States when implementing Community law with information, assistance and expertise on fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights’.⁸³ So, especially compared to EASO FRA is basically an information agency⁸⁴ specialized on fundamental rights. Its main tasks are ‘collecting and analysing information and data; providing assistance and experience; communicating and raising rights awareness’.⁸⁵ As noted above, the FRA concluded a cooperation agreement with Frontex on the 26th of May, 2010 in order to strengthen ‘the respect of fundamental rights in the field of border management and in particular in Frontex activities’.⁸⁶ More aspects of this cooperation will be discussed in section 4.1.

3.4 EASO

⁷⁶ See Art. 3.3 of Regulation (EU) No 1168/2011

⁷⁷ See Art. 26a.3 of Regulation (EU) No 1168/2011; Human Rights Council, 2013, p. 9

⁷⁸ See Art. 26a of Regulation (EU) No 1168/2011

⁷⁹ Human Rights Council, 2013, p. 9

⁸⁰ See for example Art. 1, 2, 3 of Regulation (EU) No 1168/2011

⁸¹ Council of the European Union. (2011). *Strengthening the European external borders agency Frontex - Political agreement between Council and Parliament.*

⁸² Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights. Brussels: European Union. OJ (L 53/1), 22.2.2007

⁸³ See Preamble of Council Regulation (EC) No 168/2007

⁸⁴ Comte, F. (2010). A New Agency Is Born in the European Union: The European Asylum Support Office. *European Journal of Migration and Law*, 12(4), 373-405., p.392

⁸⁵ FRA. (2013b). What we do. from <http://fra.europa.eu/en/about-fra/what-we-do>

⁸⁶ Frontex & FRA, 2010

The European Asylum Support Office was established in 2010 by the Regulation (EU) No 439/2010 by the Council and the European Parliament.⁸⁷ Its three main tasks are the support for practical cooperation among Member States on the matter of asylum and its procedures, assistance for Member States which are under pressure of migrant flows and the implementation of the CEAS (Common European Asylum System).⁸⁸ In contrast to FRA, EASO is an operational agency which also practically assists member states, including the deployment of Asylum Support Teams which provide technical or operational assistance to a MS ('particular in relation to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases within the framework of the actions to support' MS).⁸⁹ However, it is also obliged to produce reports regularly. Therefore it is important to avoid duplications in reports of other agencies like FRA.⁹⁰ Since 26th of September, 2012 EASO and Frontex signed the working arrangement which emphasises the sharing and exchange of information on mixed migration flows and to create methods to identify those in need of international protection.⁹¹

3.5 The collaboration of Frontex with FRA and EASO

This section deals with the discussion of Frontex cooperations with FRA and EASO and to what extent, according to the literature, Frontex work is influenced by those collaborations.

Since May, 2010 FRA and Frontex are cooperating with each other. This makes an assessment of what kind of collaboration have taken place so far possible. According to Human Rights Watch FRA has an advisory role concerning the training of BG and operations.⁹² However, FRA's opinion is to no extent binding for Frontex. Moreover, while FRA reported on the inhumane conditions in Greek detentions camps, FRA lacked to address Frontex role in, consciously of those conditions, transferring and exposing the migrants to those detention camps.⁹³ So, this portrays the working relationship as if FRA lacks not only the legal competence but also a voice in order to influence the work of Frontex. As this topic corresponds with the work concept e (assistance of MS facing specific disproportionate pressures), one can conclude according to this source, FRA does not affect Frontex work.

Similar to this Keller et al. note that it is difficult to assess to what extent the improved training for border guards by FRA and UNHCR has an actual influence on the way operations are carried out because it is still too early to see results of the training in the actual practice of border guards.⁹⁴ Furthermore, it is argued that FRA can only act on request of Frontex which underlines that FRA has

⁸⁷Regulation (EU) No 439/2010 of 19 May 2010 establishing a European Asylum Support Office. Brussels: European Union. OJ (L 132/11), 29.5.2010

⁸⁸ Id.

⁸⁹ Id. Art. 14

⁹⁰ Comte, 2010, p.392

⁹¹ EASO & Frontex, 2012

⁹² Human Rights Watch, 2011, p.26

⁹³ Id.

⁹⁴ Keller et al, 2011, p.30

some influence on the border guard training, but it is extremely limited to influence how the operations are carried out. This weak role of FRA in the collaboration with Frontex is also often claimed by other authors.⁹⁵ Brooks underlines that according to the working agreement, FRA can only provide its expertise, for example on JOs, only on request of Frontex. This underlines that FRA 'is not empowered to be an effective watch-dog against human rights violations perpetrated by Frontex'.⁹⁶ Therefore, its practical impact is just limited to the development of the training of border guards and Frontex staff, as also mentioned by Keller et al.⁹⁷ Perkowski argues that besides the increased use of human rights terminology in the recently amended Frontex Regulation, scholars are still sceptical about its implementation in Frontex practice as, due to the lack of transparency and external evaluation, it is not clearly visible.⁹⁸ The Council of Europe recently stressed that Frontex shall strengthen its cooperation with human rights agencies like FRA because there is still much potential to improve the incorporation of human rights in the practice of Frontex work.⁹⁹ Moreover, it criticizes that many aspects as the training on fundamental rights for the complete staff of Frontex¹⁰⁰ has not been started yet to be implemented, despite the fact that the training concepts and materials are already prepared by FRA and UNHCR.¹⁰¹

So, basically FRA has an impact on the training standards of border guards and Frontex staff (work concept (b) training) as they were very much involved in the development of it, however, the implementation of all trainings has not taken place yet. Even if some training sessions have taken place already, the effects of it in their practical work cannot be seen yet. Concerning the operational aspects of Frontex mission (work concept (a) operational cooperation), it is important to underline that Frontex can request the opinion of FRA, but it is completely up to Frontex if and to what extent this is actually put into practice. So, especially with regard to the operational work, FRA influence is extremely limited.

Focusing now on the working arrangement between EASO and Frontex, it is crucial to stress that since its signature less than one year has passed. Therefore, the expectations concerning its implementation might be less high. However, one has to realize that EASO has cooperated with Frontex since its foundation, hence in a smaller scale. EASO is active at the borders of Greece since 2011. However, according to the Special Rapporteur on human rights of migrants Crépeau, the cooperation between EASO and Frontex at the Greek border is still not present.¹⁰² He states that according to the Stockholm Programme 'the activities of Frontex and of the Asylum Support Office (EASO) should be coordinated when it comes to the reception of migrants at the Union's external

⁹⁵Brooks, 2012, p.10

⁹⁶ Id.

⁹⁷Keller et al, 2011

⁹⁸Perkowski, 2012, p.27

⁹⁹Council of Europe, 2013

¹⁰⁰Frontex & FRA, 2010; Art. 8.2

¹⁰¹Council of Europe, 2013, p.15

¹⁰² Human Rights Council, 2013, p.12

borders'.¹⁰³ However, this coordination at the Greek border does not take place, as Frontex screens and interviews the migrants by itself without any supervision of EASO which would be a suitable way to 'mainstream effective and timely identification of persons with international protection needs'.¹⁰⁴ Despite the possibility to establish mixed or common border guard teams, according to their cooperation agreement¹⁰⁵, it is not made use of it. Of course, this could help to improve the reception procedure and providence of information on asylum for instance, which was criticised above. This is the main argument of other scholars as well that this cooperation would have much potential to improve the overall situation at the borders concerning fundamental rights, however, its implementation is currently lacking.¹⁰⁶ So, one can conclude that currently EASO cannot change the work of Frontex. However, if the planned cooperation and the implementation of mixed teams take place, EASO might have quite some influence on the operational work of Frontex (work concept (e) assistance of MS facing specific disproportionate pressures).

As this cooperation came into force only few months ago, this relationship is not explored by many scholars yet. Therefore, the following analysis of the agreement and an interview provides more information on this.

Conclusion

Having taken a closer look at the current discussion of scholars concerning the two working agreements, it is already visible that Frontex has the role of a pivotal player or a consumer¹⁰⁷ who can decide what to 'buy' and what not to include in its work while FRA and EASO provide Frontex with their offers and possible input. It is indicated that FRA actually has some influence in the development of the training standards; however, the implementation of Frontex is just starting. Besides this field of work, according to the above mentioned scholars, FRA's influence on the work of Frontex is not visible. EASO, on the other hand, might have more influence concerning the operational practice of Frontex, however, again a practical implementation of cooperation in this field has not taken place yet. Therefore, one has to underline, that after the discussion above, neither FRA nor EASO have a crucial impact on the work of Frontex. For that reason, the following chapter will analyse the two working arrangements in order to find out more about the actual framework of those cooperations.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ EASO & Frontex, 2012; See Art. 3

¹⁰⁶ ECRE. (2013). ECRE Interview with Adriano Silvestri, Head of Asylum, Migration and Borders Sector at the EU Fundamental Rights Agency. from <http://oppenheimer.mcgill.ca/ECRE-Interview-with-Adriano?lang=en>

¹⁰⁷ Idea developed in a discussion with Dr. Luisa Marin

4.0 Analysis of the Cooperation Arrangement and the Working Arrangement

In the following chapter the focus will be put on the actual arrangements between Frontex, EASO and FRA. This is a necessary step in order to find out what framework is actually provided for the agreement partners to cooperate. Furthermore, it will be assessed which fields of cooperation leave much space for FRA or EASO to influence the work of Frontex and which fields of work leave only a minimal room for an impact. The analysis will start with FRA. Afterwards a look will be taken at the Working Arrangement of EASO and Frontex. During this analysis the several articles of the arrangements will be linked to the concepts of the work of Frontex. At the end a conclusion of the assessment will be provided.

4.1 Cooperation Arrangement between Frontex and FRA

The Cooperation Arrangement between Frontex and FRA was signed on the 26th of May, 2010 by both parties and entered into force the day after.¹⁰⁸ As the agreement itself consists only of eight pages, which is quite short, it is already visible that this arrangement has to be rather broad in its content and only functions as framework for enhanced discussions about the various aspects of cooperation.

The purpose of the agreement is stated as the following in the first article: ‘The purpose of this Cooperation Arrangement is to establish a cooperation framework [...] with the overall objective of strengthening the respect of fundamental rights in the field of border management and in particular in Frontex activities...’¹⁰⁹ This first statement underlines already how the cooperation relationship is to look like, as FRA is the provider to improve the work of Frontex. So, the cooperation focuses on how both agencies can improve the compliance of FR in Frontex practice, while Frontex is not providing to the work of FRA. This cooperation already appears to be a one-sided relationship. Interestingly, this article mentions cooperation in the context of ‘border management’ and ‘Frontex activities’ which indicates that FRA is likely to have an influence on the work concept (a) operational practice. However, the formulation of this article is quite broad concerning its practical implementation. Hence, this is elaborated more precisely in the following articles.

The second article is about the ‘Common approach to fundamental rights’.¹¹⁰ As well as the first one, it is rather broad in its formulation. Even though it is declared that ‘the parties will cooperate to foster a common understanding of fundamental rights in the context of border management across the EU and coordinate their actions...’¹¹¹ which sounds as the FRA has a vital role concerning FR in the

¹⁰⁸ Frontex & FRA. (2010). *Cooperation Arrangement between The European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union And The European Union Agency For Fundamental Rights*. Retrieved from http://fra.europa.eu/sites/default/files/fra_uploads/891-Cooperation-Agreement-FRA-Frontex_en.pdf

¹⁰⁹ Id. Art. 1

¹¹⁰ Id. Art. 2

¹¹¹ Id. Art 2.1

context of border management (work concept (a) operational operation), the last part unveils the weakness of the FRA in this field as it is stated ‘were appropriate’.¹¹² The second paragraph of this article also underlines FRA’s limited influence as it continues that ‘the parties *will consider* the development of appropriate tools to identify existing differences as regards fundamental rights issues at an operational or practical level, affecting Frontex activities’.¹¹³ This statement would be stronger with regard to FRA potential influence on Frontex’ work, if the verb would not be ‘consider’ which is quite loose in its meaning. The article continues by using terms like ‘where feasible’, ‘where appropriate’ or ‘will consider the possibility and appropriateness...’¹¹⁴ This underlines that the agreement is insubstantial concerning FRA’s influence in Frontex operations as this agreement leaves the more concrete aspects open for bilateral discussions.

The third article deals with ‘Joint Operations’.¹¹⁵ This article again underlines FRA’s weak position to influence the work of Frontex concerning JOs (concept (g) deployment of border guards in amongst others joint operations) since it is written that ‘the FRA *may offer on request* its expertise to Frontex in the different phases of a joint operation. This *may include advice* on how to mainstream fundamental rights considerations in the design...’¹¹⁶ When it comes to the practical and crucial part where HR violations happen more frequently, the FRA has no influence at all. Even if the FRA is requested to provide their opinion on something, Frontex can ignore it completely. So, this article is as well completely Frontex driven, meaning that they can choose what to include in their work and which recommendations to leave out.

The fourth article is called ‘Risk Analysis’.¹¹⁷ Concerning this topic, which belongs to the work concept c (risk analysis), the two ‘Parties *will hold consultation* with a view to strengthening the capacity to collect data and information on the situation at the border ...’¹¹⁸ The second paragraph then states ‘[f]or this purpose, the FRA *will offer, on request*, methodological guidance to Frontex for relevant data collection and the development of related risk indicators.’¹¹⁹ Finally, the possibility has to be *considered* to collaborate in drafting analytical reports which are of interest for both parties.¹²⁰ So, this means that the FRA can change the work of Frontex with regard to this topic to a very limited amount during their consultations. However, Frontex is not obliged to include their opinion. Moreover, the second and the third paragraph are very reluctant in its formulation with respect to FRA’s possibility to influence, as Frontex needs to request the advice of FRA, meaning that Frontex is the party which decides if methodological guidance is needed. By saying that the possibility has to be considered to collaborate in a draft report, it is very unsure to what extent this will become

¹¹² Id. Art. 2.2

¹¹³ Id. Art. 2.2; Emphasis added

¹¹⁴ Id. Art.2.2

¹¹⁵ Id. Art. 3

¹¹⁶ Id. Art. 3; Emphasis added

¹¹⁷ Id. Art. 4

¹¹⁸ Id.; Emphasis added

¹¹⁹ Id.; Emphasis added

¹²⁰ Id.; Emphasis added

practice. In order to picture it one can say that, FRA supplies Frontex with its expertise, while Frontex as consumer can choose which aspects it wants to include and which not.¹²¹

The fifth article of the Cooperation Arrangement treats of the topic ‘Training on Fundamental Rights for border guards’¹²², so it deals with concept (b) training of border guards. This article is starting strong concerning the potential influence of FRA as it is written that ‘[t]he Parties *shall cooperate* in mainstreaming fundamental rights in the design, implementation and evaluation of training activities for national border guards when dealing with fundamental rights’.¹²³ This means that both parties have to cooperate on this topic, so FRA actually has the possibility to influence the training activities. In addition, the third paragraph clarifies that FRA has to provide its knowledge in the ‘development and upgrading of Common Curricula’.¹²⁴ Moreover, it will be tried to ‘evaluate the impact on fundamental rights of such curricula’, when feasible.¹²⁵ Similar to the above mentioned paragraphs, the FRA and Frontex have to work together on ‘development of learning activities, tools and methodologies relating fundamental rights for national border guards’ as described in the fourth paragraph. Ergo, the FRA has quite some impact concerning the Common Curricula as well as learning and training activities of border guards.

Article 6 deals with ‘Research’.¹²⁶ This belongs to the work concept (d) research. It basically describes that both parties will exchange information on upcoming research activities as well as on current migration issues and related policy developments.¹²⁷ Likewise, it explains that the Parties have to invite each other for research meetings and cooperate in research activities when it is appropriate.¹²⁸ This means that both parties have an equated standing concerning the topic research where both parties cooperate with each other when it is suitable with regard to the topic. However, the influence of FRA on Frontex research is therefore again very small, as Frontex again is in the position to evaluate what FRA ‘product’ to buy.

The seventh article is called ‘Return’ which is work concept (f) return operations. The first paragraph states that ‘[t]he Parties will collaborate with a view to ensuring that forced removals are carried out in full respect of fundamental rights, as well as in a humane and dignified manner’.¹²⁹ As the Parties *have to collaborate*, FRA is in a good position to ensure the FR and by doing so to influence the work of Frontex. The second paragraph explains again that FRA ‘shall offer its expertise in the development and upgrading of good practices, codes of conduct and other guidance tools on the different operational aspects of removal operations that have a bearing on fundamental rights...’¹³⁰ Here the position of FRA can be quite influential because it has to provide its expertise to Frontex and

¹²¹ Idea developed in a discussion with Dr. Luisa Marin

¹²² Id. Art. 5

¹²³ Id. Art. 5; Emphasis added

¹²⁴ Id. Art. 5.3

¹²⁵ Id.

¹²⁶ Id. Art. 6

¹²⁷ Id.

¹²⁸ Id.

¹²⁹ Id. Art. 7

¹³⁰ Id.

if it is introduced smartly, it can change the work of Frontex on this matter. As the Parties have to ‘collaborate in the creation and reinforcement of independent return monitoring mechanisms’¹³¹ to ensure fundamental rights, FRA has a good position to influence the work of Frontex if it is properly executed in practice.

The eighth article of this agreement is about the ‘Training on fundamental rights for Frontex staff’.¹³² Even though it is formulated as the following ‘FRA *shall assist* in the assessment of training needs of Frontex staff in the area of fundamental rights and cooperate in the development of a specific fundamental rights training for Frontex staff’, the verb assist is used which implies a secondary role in the assessment and only limited power of FRA.¹³³ However, the second paragraph strengthens the competence of FRA again as it is written that ‘the Parties *will collaborate in the implementation* of fundamental rights training for the Frontex staff as well as its evaluation’.¹³⁴ So, the FRA has an impact in the implementation of the FR training of the Frontex staff and its assessment.

The following paragraphs of this agreement will not be discussed here as those are about the organizational aspects of this relationship and less about its practical ones. To sum it up, the relationship between FRA and Frontex is mainly focusing on Frontex and its work. The agreement regulates to what extent and how cooperation is possible but only with regard to Frontex and its practices. So, the whole arrangement is only focused on how to improve the work of Frontex but nothing is said about what Frontex can provide. Therefore, the analogy of Frontex being the consumer that is purchasing FRA expertise to that extent as Frontex wishes is very suitable. Even though, FRA is provided influence concerning the training on fundamental rights for border guards and Frontex staff, in most important issues relating to the practice of Frontex, FRA’s influence on the work of Frontex is extremely limited and relies on the approval and willingness of Frontex to cooperate. This applies in crucial working fields as the common approach to FR, Joint Operations and Risk analysis. Concerning most aspects of the arrangement FRA only has an advisory role and acts ‘on request’ or ‘when it is feasible’ or ‘appropriate’. Those vague phrasings of course leaves many aspects to further discussions between the two Parties, however, FRA cannot force Frontex in any way to improve the compliance with regards to FR. This relationship is very one-sided as Frontex is the pivotal player concerning most issues. Talking about the different fields of work, FRA has some influence concerning the training of BG and Frontex’ staff as well as in return operations, however, in the fields of practical management at the borders, risk analysis and JOs, FRA can only advice Frontex, while it is up to Frontex what to put into practice.

4.2 Working Arrangement between EASO and Frontex

¹³¹ Id.

¹³² Id. Art. 8

¹³³ Id.

¹³⁴ Id. 8.2; Emphasis added

The Working Arrangement between EASO and Frontex was signed on the 26th of September, 2012 and also entered into force the day after.¹³⁵ This agreement is subdivided not only into articles but also into chapters which differs to the above discussed arrangement. Moreover, it consists of ten pages which are a few more than the above discussed agreement¹³⁶, but still rather short, also just outlining the general framework of the agreement.

The first chapter as well as the first article are called ‘Purpose’ which ‘is to establish a cooperation framework covering the relevant areas of common work and interest, setting the objectives and principles of such cooperation.’¹³⁷

The second chapter has the title ‘Operational Cooperation’ and the second article is called ‘Operations’¹³⁸. It states that both parties ‘will *endeavour* to cooperate and coordinate their assessments and operational responses when assisting [MS]... in particular in the view of deployment of European Border Guard teams and /or Asylum Support Teams’.¹³⁹ Therefore it belongs to the work concept (e) assistance of MS facing specific disproportionate pressures and (g) deployment of border guards. Even though the verb ‘endeavour’ is used which implies a non-binding intent, the next part is more concrete by saying that both sides have to inform each other about their upcoming operations in a timely manner in order to be able to cooperate those with each other.¹⁴⁰ Moreover, it is written that ‘the Parties may request each other’s expertise and support in every phase of the operations in accordance with their respective mandate’.¹⁴¹ Again, in this agreement many terms which are unbinding and lose are used. However, concerning the practical implementation, one can notice that both parties will aid and advise each other which puts them both equally in their relationship.

The next article deals with the topic ‘Expert Pools’¹⁴² which are teams that consists of experts in a certain filed relevant to the work of Frontex and that priory applied to Frontex/EASO to participate in it.¹⁴³ It explains that both agencies will inform each other about the composition and the functioning of their respective expert pool. Moreover, they ‘*will explore possibilities* for establishing common or mixed teams from the pools with border management and asylum experts...’¹⁴⁴ One can conclude that again in the crucial part (mixed teams of experts) non-binding formulations are used. So, EASO’s influence here is limited if those teams will not be formed. If they will be formed, their possibilities to influence the work of Frontex are increased as they can inform and discuss with the experts of Frontex.

¹³⁵ EASO & Frontex. (2012). *Working Arrangement between European Asylum Support Office and The European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union*. Retrieved from <http://easo.europa.eu/wp-content/uploads/20120926-FRONTEx-EASO-working-arrangement-FINAL.pdf>

¹³⁶ See Section 4.1

¹³⁷ EASO & Frontex, 2012; Art. 1

¹³⁸ Id. Art. 2

¹³⁹ Id.; Emphasis added

¹⁴⁰ Id.

¹⁴¹ Id.

¹⁴² Id. Art. 3

¹⁴³ Frontex. (2013b). Call for Expressions of Interest: Pool of Experts on Automated Border Control. from <http://www.frontex.europa.eu/news/call-for-expressions-of-interest-pool-of-experts-on-automated-border-control-fyKXmZ>

¹⁴⁴ Id.; Emphasis added

In the following Chapter III the issue ‘Information and Analysis’ will be discussed.¹⁴⁵ The fourth article is called ‘Information exchange and risk analysis’¹⁴⁶ and therefore relates to the work concept (c) risk analysis and (d) research. This article is similar to Article 4 of the arrangement between Frontex and FRA¹⁴⁷ as it is also stated that both agencies ‘will hold consultations on and exchange their analytical reports, where relevant to the other’s mandate. The Parties will explore possibilities of cooperating in collecting and producing joint statistics as well as in drafting analytical reports...’¹⁴⁸ In those consultations EASO is not likely to influence the work of Frontex to a great amount. However, they can give their opinion on the analytical reports and provide suggestions. Of course, it is still up to Frontex what they take into account. By using the formulation ‘will explore possibilities’ it seems unlikely that EASO and Frontex will produce those kinds of statistics and reports together. But if they do so, EASO can influence this with their findings and methodologies.

‘Country of Origin Information’ is the title of the fifth article of the Working Arrangement.¹⁴⁹ This article requires both agencies to share ‘Country of Origin’ and ‘Third Country Monitoring’ information and products with each other. Therefore this is a work concept (d) research. Moreover, it is clarified that after consultation and if the situation is suitable ‘the Parties will engage in establishing and implementing specific mechanisms for joint Third Country Monitoring’.¹⁵⁰ Indirectly, EASO can influence Frontex work by pointing at specific findings but again it is up to Frontex how it will process the information. If, however, those mechanisms for joint Third Country Monitoring will be established and implemented, EASO has equal power in the creation process. Nevertheless, it is unsure if this will be happen since the formulation of ‘Whenever the situation requires and following prior consultations...’ is quite vague.¹⁵¹

The following article is about ‘Early Warning’¹⁵² which is work concept (c) risk analysis. It illustrates the obligation to ‘hold consultations to align the development of their respective activities in the field of Early Warning’.¹⁵³ The two agencies are obliged ‘to exchange information and analysis with the view to strengthen preparedness and to substantiate coordinated operations’.¹⁵⁴ As this is based on consultation, it is up to Frontex to what extent it will include the information from EASO in its analyses. However, since those information belong to such a crucial field of work, it is very likely that those information will have an influence on Frontex’ risk analysis. Still, Frontex is the consumer of EASO’s expertise that is in the position to pick as it prefers.

¹⁴⁵ Id. Art. 4

¹⁴⁶ Id.

¹⁴⁷ Frontex & FRA, 2010; Art. 4

¹⁴⁸ EASO & Frontex, 2012; Art. 4

¹⁴⁹ Id. Art. 5

¹⁵⁰ Id.

¹⁵¹ Id.

¹⁵² Id. Art.6

¹⁵³ Id.

¹⁵⁴ Id.

Chapter IV is called ‘Capacity Building’ dealing in article 7 with the topic ‘Training’¹⁵⁵ and therefore concept (b) training. This article is formulated rather broadly as it generally says that all issues concerning training will be exchanged.¹⁵⁶ Furthermore, consultations will be held ‘on the development of training materials and the implementation [...] and will explore the possibilities of mutual participation in training programmes and activities’.¹⁵⁷ So, here it is difficult to evaluate the impact of EASO as it is again up to Frontex to what extent it includes the information of EASO into its practices. Of course EASO can advise Frontex and provide them their opinion and expertise, especially if they participate in each other’s training, but the range of influence is limited.

Article 8 of the agreement is about the ‘Technical cooperation’.¹⁵⁸ It clarifies that technical support might be requested and provided of the other party. However, this will be exactly discussed in a separate arrangement focusing on the single case.¹⁵⁹ As this topic is mentioned vaguely by stating that it will be dealt with on a case-by-case basis and leaving out any precise aspects, it is impossible to evaluate its potential impact on the work of Frontex.

The last article being discussed is Article 9 dealing with the topic ‘Research’.¹⁶⁰ Of course, this is work concept (d) research. This article basically creates a platform of possible cooperation in research to better understand themes like ‘migration, borders, asylum and international protection and its management’.¹⁶¹ However, this is to be explored in a prior consultation. Again, this formulation is rather vague and not very binding for both parties, even though this topic is crucial for future actions and operations. With regard to EASO’s position to influence the research of Frontex, its possibilities are limited as Frontex ‘the consumer’ is in the pivotal role.

The following chapters deal with the ‘Horizontal Cooperation’ and ‘Final Provisions’.¹⁶² They are not discussed because the organizational structure of the arrangement is not relevant in this approach. To sum it up, EASO has potential to affect the work of Frontex with regards to operational responses, deployment of BG and Early Warning. However, most aspects of this agreement are still left open for discussion as the specific implementation is not regulated in this arrangement. This means that in most working fields of Frontex it is rather difficult to evaluate if EASO can influence their work because the parties need to ‘consult on it’ first. Examples for those topics are ‘Expert Pools’, some parts of the ‘Risk analysis’, ‘mechanisms for joint Third Country Monitoring’, ‘Technical Cooperation’ and ‘Research’.

Conclusion

¹⁵⁵ Id. Art. 7

¹⁵⁶ Id.

¹⁵⁷ Id.

¹⁵⁸ Id. Art. 8

¹⁵⁹ Id.

¹⁶⁰ Id. Art. 9

¹⁶¹ Id.

¹⁶² Id. Chapter V and Chapter VI

Comparing the arrangement of FRA and Frontex and the agreement of EASO and Frontex, it becomes visible that EASO has more power concerning the topic operations while FRA has more a stake in the training of border guards and Frontex staff. Moreover, the relationship between EASO and Frontex seems to be more equated because Frontex can impact the work of EASO to some extent as well as the other way around concerning some topics. Examples for this are the topics 'Technical cooperation' or 'Operations'. Generally, the language of the EASO arrangement is different compared to the FRA agreement because terms as 'request each other's expertise' are more often used. In contrast, in the FRA agreement one can more often read 'Frontex may request' or FRA 'may advise'. This is interesting since it underlines the different relationships of FRA and EASO to Frontex. Another general remark which goes along with the conclusion of the previous chapter is that concerning many topics FRA and EASO provide their expertise, while Frontex is in the position to behave like a consumer that may 'purchase' or ignore it. Finally, it is important to stress that those agreements only provide a framework for the cooperation and a great amount of aspects are still open for discussion between the partners. Therefore it is not always visible from those arrangements to what extent FRA and EASO can influence the work of Frontex. Of course one could already find fields in which their leverage concerning Frontex work is greater than in others, but in some fields the influence can be minimal or rather large depending on how the parties decide on the issues.

5.0 The perception of the three agencies

This chapter will focus on the perception of the three agencies on the two working arrangements. Therefore, various sources like interviews and agency reports were used. The first section deals with perception of FRA on the agreement with Frontex. Then a closer look will be taken at EASO's perception and its cooperation with Frontex. Finally, Frontex' point of view will be analysed.

5.1 The perception of FRA

As an interview with FRA did not work out, due to timely reasons, the main source of this section is an open letter from the FRA Director Kjaerum to the European Ombudsman Diamandouros on the Ombudsman own initiative inquiry OI/5/2012/BEH-MHZ on the 26th, September 2012.¹⁶³ Moreover, a recently published report by FRA will also be employed.¹⁶⁴

According to the Director, FRA and Frontex are cooperating on a regular basis and FRA is also providing assistance concerning human right matters to Frontex covering most fields of their work (research, training and capacity building, risk analysis and operations).¹⁶⁵ Concerning the institutional cooperation it can be stressed that FRA assisted on to Frontex' draft Annual Work Programmes, Frontex Multi Annual Plan 2013-2016, draft of the Frontex Fundamental Rights Strategy and in the drafting committee of the Consultative Forum of which FRA is currently also a member.¹⁶⁶ This implies that FRA has possibilities to influence the framework of the work of Frontex. However, it is always important to stress that especially concerning the Annual Work Programme and the Frontex Multi Annual Plan, Frontex may not take FRA's comments into considerations as this all happens on a voluntary basis for Frontex.

Having regard to training and capacity building, in 2011 FRA developed in cooperation with UNHCR a fundamental rights training for the Frontex' staff. However, this has not been implemented yet.¹⁶⁷ Similarly, FRA and other experts worked together on the fundamental rights training manual for national border guards which is currently also not implemented.¹⁶⁸ Another aspect of cooperation is the framework on sectoral qualifications and border guard competences but which is in an early stage of development.¹⁶⁹ This already stresses, that even though many projects are in process right now, not much appears to be actually implemented. A crucial aspect of the cooperation is the FRA

¹⁶³ Kjaerum, M. (2012). FRA Director Kjaerum to the European Ombudsman Diamandouros on the Ombudsman own initiative inquiry OI/5/2012/BEH-MHZ on the 26th, September 2012. 2013, from http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCoQFjAA&url=http%3A%2F%2Fwww.ombudsman.europa.eu%2FshowResource%3FresourceId%3D1349790547910_OI-5-2012-BEH-MHZ-E2012-162527.pdf%26type%3Dpdf%26download%3Dtrue%26lang%3Den&ei=s2TdUYLLCsXesgaB8YCgCg&usq=AFQjCNFAh1k8vOcwHDTtQfrZdAS9xolBpw&bvm=bv.48705608,d.Yms

¹⁶⁴ FRA. (2013). Fundamental rights at Europe's southern sea borders. Retrieved from

<http://fra.europa.eu/en/publication/2013/fundamental-rights-europes-southern-sea-borders>. doi:10.2811/26971

¹⁶⁵ Kjaerum, 2012

¹⁶⁶ Id.

¹⁶⁷ Id.

¹⁶⁸ Id.

¹⁶⁹ Id.

participation in a working group established by Frontex in order to revise the common core curriculum (CCC) for border guards which ‘sets out the basic knowledge and skills that each border guards in Europe should have’.¹⁷⁰ According to Kjaerum, FRA was requested to draft certain parts on specific topics and it proposed amendments to operational parts of the CCC and he asserts that almost all suggestions of FRA were incorporated to the CCC.¹⁷¹ Moreover, FRA participated in the development of a trainer’s manual for the training of border guards on anti-trafficking.¹⁷² FRA also advised Frontex on topics for instance concerning the use of dogs at borders and forced removals as Frontex can request its expertise concerning fundamental rights.¹⁷³ So, basically one can conclude that, concerning work concept (b) training of border guards, FRA had some influence to adjust the CCC and therefore in future the practice of BG. In other fields of training and capacity building the cooperation is taking place as well, however, the implementation of the developed material is still lacking which means that it has no effect on the work of Frontex yet.

Talking about the operational cooperation, FRA contributed to the briefings of officers which were to be deployed in different operations concerning various topics relating to fundamental rights.¹⁷⁴ Moreover, it was also invited to provide comments on the operational plan for the Hammer and Minerva operations. Importantly to notice here is that ‘the integration of a fundamental rights perspective was covered in the general parts but was not translated into the operational details’.¹⁷⁵ Besides this, Frontex allowed FRA to visit Frontex operations at the southern borders in order to collect information for their own research which was recently published.¹⁷⁶ To sum it up, FRA’s possibilities to influence the work of Frontex concerning operations (work concept (a) coordinate operations among MS) is quite limited as it is an informational agencies and less an operational. Even though it can take some influence on operational plans and trainings, it is left to Frontex how to use that information.

Concerning the topic research, it is basically explained that FRA shares its knowledge and information with Frontex, if it is of interest for them or relates to their activities.¹⁷⁷ So concerning the work concept (d) research, cooperation takes. Nevertheless, as discussed already in other sections of this thesis, Frontex is again the pivotal player by choosing how it will process the information. So, the influence of FRA very limited.

While having regard to the report of FRA which was recently published, it is easily noticeable that it also criticises Frontex concerning some aspects as the allocation of funds which are supposedly security focused or the language of the instrument on borders and visas.¹⁷⁸ It is stressed that even

¹⁷⁰ Id.

¹⁷¹ Id.

¹⁷² Id.

¹⁷³ Id.

¹⁷⁴ Id.

¹⁷⁵ Id.

¹⁷⁶ Id.; FRA, 2013

¹⁷⁷ Kjaerum, 2012

¹⁷⁸ FRA, 2013, p.116, 123

though Frontex made some progress over the past years concerning their compliance with FR, ‘there are still aspects that remain to be addressed’.¹⁷⁹

5.2 Perception of EASO

In order to get a picture of how EASO perceives the relationship to Frontex and how this is influencing Frontex’ work, a closer look will be taken at an interview which was conducted for this research by sending the questions and answers via e-mail.

EASO stresses that the cooperation with Frontex is implemented to its full satisfaction as the cooperation has started in all fields ranging from operational cooperation, exchange of information and trend analysis, consultation of each other’s work programmes to exchange of best practices in consultative activities and training to cooperation in research.¹⁸⁰ Both agencies cooperate closely on bilateral and multilateral level as EASO is also member of the Consultative Forum on Fundamental Rights (CF). The cooperation between the EASO and Frontex developed since EASO is operational while the working arrangement formalised this cooperation by providing a legal framework.¹⁸¹

Talking about the operational cooperation between the two agencies, EASO plans to work closely in emergency support programmes in order to provide joint assistance in Greece.¹⁸² However, as this is only planned at the moment, right now EASO cannot influence this. Moreover, EASO and Frontex coordinate their assessment when assisting MS which are under particular pressure in their asylum system, facing a high influx of migration such as Greece.¹⁸³ They inform each other on their planned operations as well as they request each other’s expertise and support in operations. Besides this, profiles, composition and shared practices of expert pools are shared.¹⁸⁴ Concerning the working concepts, this belongs to concept (e) assistance of MS and concept (a) coordinate operational cooperation. So, provided this information which is again quite vague, EASO is not in the position to influence Frontex’ work directly because they again only ‘inform each other’ and ‘request each other’s expertise’ while it is up to each agency how to deal with the information. However, this might change if, as confirmed by EASO, mixed teams are employed by both agencies.¹⁸⁵

Having regard to the topic information and analysis, EASO underlines the exchange of information and data on asylum and migration as well as analytical reports.¹⁸⁶ Also concerning this field of work best practices and methodologies on data collection and information gathering analysis are shared regularly.¹⁸⁷ Additionally, EASO stresses the exchange of information relevant to EASO ‘Early warning and Preparedness System’ as well as the ‘Country of Origin’ information including its

¹⁷⁹ Id.

¹⁸⁰ Interview with EASO via E-Mail, 16th of June, 2013; hereafter: Interview EASO, 2013

¹⁸¹ Id.

¹⁸² Id.

¹⁸³ Id.

¹⁸⁴ Id.

¹⁸⁵ Id.

¹⁸⁶ Id.

¹⁸⁷ Id.

methodologies.¹⁸⁸ This relates to the work concepts (c) risk analysis and (d) research. In those fields of Frontex' work EASO has a limited position to influence Frontex by providing crucial information, however as stated above it is up to Frontex which data it will make use of and which it ignores.

The last field of cooperation is capacity building and training. Both agencies 'have exchanged their training strategies and plans, their methodologies, including e-learning tools, training management and didactics'.¹⁸⁹ Moreover, EASO provided its expertise and training on international protection aspects of their training materials such as the Common Core Curricula, European Border Guard Teams' training, the training on Trafficking in Human Beings and training on Fundamental Rights and vulnerable groups.¹⁹⁰ This field of work clearly belongs to the work concept (b) training. EASO proved to be able to influence this field of work with its input to the extent as Frontex approves it.

5.3 Perception of Frontex the working arrangement with FRA

Fortunately, Frontex perception is based on a live interview with a Frontex representative just conducted for this research.¹⁹¹

The cooperation was initiated by FRA which invited Frontex to the annual Border Guard Day in 2010 to start conversations on possible fields of shared interest.¹⁹² Today, the fields in which FRA has the most visible impacts are the training, the drafting and the chairing of the Consultative Forum (CF) and the development of the Fundamental Rights Strategy of Frontex.¹⁹³ As Frontex contributed significantly on the Strategy and on the drafting of the CF, which was essential to mainstream FR in all areas of Frontex, it did indirectly have an impact on Frontex work concerning fundamental rights.¹⁹⁴ Frontex regards FRA as sister agency to which it has very close cooperation on a daily basis. FRA even participated in the selection process of the Fundamental Rights officer of Frontex. Since the development of the CF the relationship changed however, as the bilateral relationship became in more and more fields multilateral.¹⁹⁵ This is because the CF consists of four working groups covering the main aspects of cooperation (training, return, operation, risk analysis) and Frontex participates in all of them actively.¹⁹⁶

Concerning operational cooperation, FRA's only way to really influence the work of Frontex is through the CF as this has the possibility to check operational plans. Besides that, it is planned that CF representatives are sent to the operational area in order to observe and report on it.¹⁹⁷ So, at the

¹⁸⁸ Id.

¹⁸⁹ Id.

¹⁹⁰ Id.

¹⁹¹ Interview with Frontex representative Vera Martins Almeida (External Relations International Organisations & EU Bodies), 26th of June, 2013; hereafter: Interview Frontex, 2013

¹⁹² Id.

¹⁹³ Id.

¹⁹⁴ Id.

¹⁹⁵ Id.

¹⁹⁶ Id.

¹⁹⁷ Id.

moment FRA does not have a possibility to really influence the work concerning the operational practice (a) of Frontex bilaterally, except through the CF multilaterally.

Talking about training, FRA had a strong influence in the development of the manual for training of BG and the CCC.¹⁹⁸ Right now the impact of the training is unforeseen yet. Hence, the training pilot took place in April and it appears to be much more promising than the former CCC.¹⁹⁹ Moreover, FRA developed a training manual for the general Frontex staff which will start with the first groups in autumn 2013.²⁰⁰ Conclusively, FRA has changed the training of BG and the CCC as well as the training for the staff (work concept (b) training).

FRA is also a member of the CF group on risk analysis. So, indirectly they provide Frontex with information. Besides that, Frontex provided FRA the opportunity to visit the operational fields of Frontex in order to conduct a research.²⁰¹ All those information and data concerning both agencies are shared. However, it is stressed that the Frontex unit on risk analysis works independently.²⁰² Concerning work concept (c) risk analysis, FRA has few possibilities to influence the work of Frontex because FRA can do so only indirectly via the CF. Moreover, Frontex uses the information selectively.

The last topic is return operation which is concept (f). According to Frontex, FRA participated actively in the development of a Code of Conduct which is right now under revision of the MS and which will most likely be implemented in September, 2013.²⁰³ This Code of Conduct sets out the framework concerning FR for return operations. So, FRA can indirectly influence return operation of Frontex via its input to the Code of Conduct.

Generally, FRA has a major possibility to influence the topic training of Frontex. Concerning the other aspects of work, its possibility to change is quite limited as it is mostly indirectly.

5.4 Perception of Frontex the working arrangement with EASO

This cooperation was also initiated by EASO already in its developing process as Frontex provided it with practical information on how to set up an agency.²⁰⁴ Therefore, cooperation was taken place in all fields already. So, the working agreement just formalised the existing cooperation.²⁰⁵ The relationship is described as friendly and close while both agencies respect each other's fields of expertise. Currently a cooperation plan is produced in order to specify the exact cooperation and which enables even enhanced and closer cooperation.²⁰⁶ Moreover, EASO is also a member of the CF and will chair it in 2014. According to Frontex, concerning all fields of cooperation, discussions and

¹⁹⁸ Id.

¹⁹⁹ Id.

²⁰⁰ Id.

²⁰¹ Id.; FRA, 2013

²⁰² Interview Frontex, 2013

²⁰³ Id.

²⁰⁴ Id.

²⁰⁵ Id.

²⁰⁶ Id.

conversations are taking place already, however, the practical implementation is often not possible yet due to the early stage of the cooperation.²⁰⁷

Even though, this cooperation is in such an early stage, EASO contributed to the development of the FR manual and also participated in training sessions.²⁰⁸ So concerning this field, it could influence the work of Frontex to a minor amount.

As EASO is an operational agency, close cooperation is planned for this field. Currently, the cooperation takes only place by sharing information and best practices concerning their operations but practical cooperation is not possible yet because the EASO and Frontex operations take place in different locations in Greece.²⁰⁹ It is, however, planned for the future and therefore as well discussed in the cooperation plan. Frontex explained that joint teams, joint interpreters and joint monitors are very likely to be implemented in the future.²¹⁰ So, concerning work concept (e) assistance of MS and concept (a) coordinate operational cooperation, EASO is not yet influential at all. However, this is very likely to be changed when the cooperation plan is implemented.

Frontex stresses that this cooperation still leaves much potential for closer cooperation which will be made use of. It is aware that not many effects of the collaboration can be seen yet but this will be change soon.²¹¹

Conclusion

This chapter shows that FRA is definitely influential concerning institutional matters as in the development and chairing of the CF, in the development of the very influential FRS and in the selection of the Fundamental Rights officer. Moreover, it stresses the importance of FRA in the development of training material. Even though it cannot be determined yet to what extent this will impact the work of Frontex practically at this early point of time. It is certain that FRA influenced the training concerning various themes and groups in Frontex. It became also noticeable that FRA cannot truly influence the operational aspect of Frontex work directly. Concerning research and risk analysis FRA position is similar to the one of EASO, as both agencies share and exchange information and data of interest with Frontex, however nothing was produced together yet and it is up to Frontex of what information they make use of.

Talking about EASO, even though it is stressed that cooperation is taking place in all fields of work, the most visible one is EASO's impact on the training materials and in the training sessions. However, this does not represent the actual focus of this cooperation. Since this cooperation is so new, the practical implementation concerning operational cooperation is still in development. But if implemented during the next years the potential to influence the operational work increases.

²⁰⁷ Id.

²⁰⁸ Id.

²⁰⁹ Id.

²¹⁰ Id.

²¹¹ Id.

Finally, one can clearly see the different focus of FRA and EASO to change Frontex' work in the long run. While FRA is the informational agency influencing mainly the institutional setting and changing several trainings of Frontex, EASO is an operational agency which will increasingly cooperate with Frontex in an operational context. However, it is not possible yet, to see what effect this will have on the work of Frontex. Even though it is likely that EASO will become quite influential concerning this topic.

6.0 Conclusion

The idea of this research started with the wide discussion of the weak implementation of FR in the work of Frontex. In Chapter 1, an overview of the main arguments and point of critiques are provided. As one way to respond to this, Frontex concluded working agreements with FRA and EASO which were in detail discussed in Chapter 4. In order to find out how the work of Frontex is influenced by those agreements a closer look was taken at the discussion of scholars (Chapter 3) and additionally the perception of the three agencies was assessed (Chapter 5).

With regard to the first research question ‘How is the work of Frontex influenced by the implementation of the cooperation agreement with FRA in 2010 and by the implementation of the working agreement with EASO in 2012’ one can now provide an overall answer. Concerning the institutional setting FRA was influential in changing it while it actively participated in the development of FRS which is according to Frontex a crucial change concerning the mind-set of Frontex.²¹² Moreover, FRA was a crucial partner in the development of the CF and in the selection process of the Fundamental Rights Officer. Concerning work concept b ‘training’ FRA was very much in the position to influence the training not only of BG but also of the Frontex staff in order to mainstream FR consciousness in their daily work. Even though the change in Frontex practical work cannot be seen yet, as the practical training only starts during this year, the training itself was very much influenced by the inputs of FRA. But also EASO was recently influential to change the training of the BG manual.

Both agencies are not influential concerning the practical operations of Frontex. While this is also not really foreseen concerning the cooperation with FRA, EASO did not have the opportunity yet to practically change Frontex’ work. As underlined by EASO and Frontex, discussions are already taking place. However it is still too early for the practical implementation of this cooperation in the fields.²¹³ When the cooperation will take place, as recently discussed including mixed teams of experts, this will change this field of work to a great extent. But as this is not the case yet, right now both agencies are not influencing the operational work of Frontex directly.

Similar to this, even though cooperation takes place concerning risk analysis and research, besides an exchange on data and information, FRA and EASO do not influence Frontex’ work, as Frontex works independently in those units and decides how and what information are used.

Concerning the topic return operations, not many information were provided except that FRA participated in the creation of a Code of Conduct for those kinds of operations. So, when it will be implemented in September, 2013, FRA indirectly influences the working behaviour in this.

Finally, it is interestingly to stress that the cooperation between those agencies is perceived weaker by scholars than by the agencies themselves. A reason for this might be because the agencies know the

²¹² Interview Frontex, 2013

²¹³ Id., Interview EASO, 2013

cooperation on the daily basis and on what the agencies currently work in order to implement the agreements increasingly. But this is open for discussion. Additionally, it is to underline that the perceptions of EASO and FRA are covered by a similar perception of Frontex.

However, it is important to underline that in many fields of cooperation FRA and EASO are the supplier of expertise and knowledge, while Frontex ‘the consumer’ chooses what it and how it includes those aspects in their work. So, during all times, Frontex lets only influence the other two agencies as much as it allows. This might be due to the reason that Frontex is the giant concerning its budget and resources while FRA and especially EASO are the dwarfs. However, this needs to be analysed in more detail.

As some aspects of the agreements are not really implemented yet, it would be interesting to create a research about those cooperations in a few years again. Then they will be implemented and one can assess to what extent they changed the work of Frontex when fully implemented.

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