

Controlling human trafficking-an analysis of the European legal order in the field of human trafficking

A case study on the EU governance system against THB

Bachelor thesis by

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Summary

This study will assess the phenomenon of trafficking in human beings, the influence by the European institution FRONTEX which aims to discuss the impact on the policy framework to combat THB. Accordingly the main research question is: *To what extent has the implementation of FRONTEX influenced the EU governance system against the trafficking in human beings in the European Union?* The research planned will contribute to the explanation and knowledge of the phenomenon of THB in the European Union. The analysis is assisted by three sub questions that will explain the European institution FRONTEX, the phenomenon of THB and the connection between them. The EU governance system against THB will be analyzed by the different actor's involved, related theories and measures to control illegal immigration and cross-border crimes. The strengths and weaknesses in the EU governance system and legislation in connection to the implementation of FRONTEX will be discussed. It analyses the differences between the different EU actors and policy frameworks in order to frame a discussion about the actual effectiveness of these measures. Generally the study observes that FRONTEX, introduced in 2004, supplemented and enforced instruments and measures included in the system to combat THB. FRONTEX has especially affected the further coordination and cooperation in operational activities against THB between the national LEAs.

List of abbreviations

AFSJ	Area of Freedom, Security and Justice
EBGT	European Border Guard Teams
EU	European Union
EUROSUR	European Border Surveillance System
IBM	Integrated Border Management
JHA	Justice and Home Affairs
JIT	Joint Investigative Teams
LEA	Law Enforcement Agencies
OC	Organized Crime
OCG	Organized Crime Groups
RABIT	Rapid Border Intervention Team
SBC	Schengen Borders Code
SIS	Schengen Information System
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
THB	Trafficking in Human Beings

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1. Introduction

The phenomenon of trafficking in human beings in Europe, by organized crime groups will reach the level of other illicit activities such as drug and weapon trafficking, in the next ten years. THB has constantly been referred to be modern slavery or the 'slavery of our times'. *"Victims are often recruited, transported or harbored by force, coercion or fraud in exploitative conditions, including sexual exploitation, forced labor or services, begging, criminal activities, or the removal of organs"* (Eurostat, 2011, p.10).

Due to the removal of the internal frontiers within the Schengen area, the European Union implemented different measures to combat the cross-border crime of THB. Trafficking in human beings has frequently been defined to be one of the main threats to the internal security of the European Union. This mostly involves organized crime groups, and usually takes place in a transnational setting, as this facilitates a great range of cross-border crimes and decentralized networks. THB falls under the rubric of serious cross-border offenses, which entails different EU supranational and intergovernmental institutions such as Europol, Eurojust and of course FRONTEX. Accordingly, these different Justice and Home Affairs agencies provide the framework to the EU governance system to address THB in a coordinated, coherent and problem-oriented manner. The new forms of threats will not 'respect geopolitical borders of the nation states and the EU', but 'more importantly still, they traverse and resist the institutional 'borders' and arrangements traditionally designed to manage them' (Burgess, 2009). The requirement to construct networks, to provide solutions to the changing problems for the national institutions implied a response by the European Union. The resulting 'global insecurity supposes more coordination, more integration and more unification between police and intelligence services of the different MS' (Bigo, 2008). Due to the rise of 'internal security challenges' the importance of border integrity implies the prerequisite of a coordination of cross-border policing. With the introduction of FRONTEX in 2004, the Union implemented a European border agency to secure and guard the complex EU governance system of the external European borders, which aimed at the assurance of the Schengen area. THB implies present 'socio-economic inequalities between the developed and developing world' that will constantly influence the decision of people to move to Europe (Europol, 2013). Thus, the existence of many low-paid employment opportunities in Europe and the high degree of unemployment among young people in Africa, Middle East and East Asian countries, will more likely increase the number of migrants to Europe in the next years (Europol, 2013, p.24). Europol also observes escalating numbers of intra-EU trafficking (Europol, 2013), whereas 'the number of cross-border investigations against OCGs involved in THB in the EU remains low' (Europol, 2013, p.24). Hence, the MS institutions mainly aim at the national dimension of the different investigations in THB cases. The detection of THB

experiences a problem with the lack of networking within inter-institutional cooperation, especially between national- and supranational levels. 'The value-laden nature of security and insecurity has contributed to a fragmented evolution in European approaches' (Burgess, 2009), that virtually shows the discrepancy in the Justice and Home Affairs pillar, in which many different perceptions lead to different strategies and problems of competences. The study defines the combat of THB into a framework of different European institutions and various theories, the EU governance system against THB.

The research conducted will emphasize the impact by FRONTEX on to the EU governance system against THB within Europe, in particular during the period of 2005 to 2013. The study will focus on the political, legal and operational dimensions by FRONTEX, on the European measures to combat THB. The connection of this European agency towards the eradication of THB has not yet been examined in scientific literature. The thesis will develop a better understanding of the different institutions and its implications to the legislation in the fight against THB in Europe. In order to evaluate different solutions, the various actors and influences of these into the European governance system against THB have to be put under examination.

The outline of the paper is as follows, it will first of all introduce the research-and sub questions followed by the methodology paragraph in the second chapter. The third chapter defines the different aspects and factors influential to the theoretical framework of THB, including the definition of THB, the distinction between smuggling and trafficking in human beings, the process of THB-how does trafficking work and connection between THB and organized crime. The first analysis chapter (Chapter 4) defines the EU governance system. This chapter includes prevention strategies by the European Union to combat THB, consisting of the securitisation of migration, the framework to prevent THB in Europe, the current legislation on THB in the EU and the various involved law enforcement agencies, such as Europol and FRONTEX. Taking all these factors into consideration, the next chapter (Chapter 5) the final discussion analyses the connection between the THB framework and FRONTEX, including the SBC Regulation, EUROSUR and FRONTEX amendments. Thus, these factors will be further outlined reflecting strengths and weaknesses in the current legislation, in connection to the implementation of FRONTEX; it expresses an analysis of the effectiveness of the current measures, but does not provide solutions to the phenomenon itself. The final chapter (Chapter 6) outlines the concluding remarks in order to answer the stated research question (Chapter 2.1.).

The following section will outline the defined research question, sub questions and methodology.

2. Research question and Methodology

2.1. Research question and sub questions

To what extent has the implementation of FRONTEX influenced the EU governance system against the trafficking in human beings (THB) in the European Union?

The main research question, based on a descriptive approach to the problem, will provide knowledge on the phenomenon of THB, to understand the influence of FRONTEX, as part of the EU governance system against THB.

In order to be able to develop a coherent answer to the research question, the author will split up the overall research question into three sub questions:

What is trafficking in human beings and which strategies have been used by the European Union to combat THB?

What is FRONTEX and what are the assigned tasks and responsibilities?

What are the strategies used by FRONTEX to combat THB?

2.2. Methodology

In order to answer the explanatory research question and the different sub-questions effectively, the analysis will mainly focus on secondary sources, such as various public official documents, different Council Directives and Regulations in connection to THB and FRONTEX. The data collection contains qualitative data from various articles of scientific journals, such as the literature widely interprets the treaties, the Treaty on the European Union, Treaty of the Functioning of the European Union and common EU law. The qualitative literature bases on secondary sources, mainly scholarly articles, grey literature and Council legislation. The particular emphasis is based on the literature that involved and proposed substantial differences to the mentioned concepts and theories.

To examine the different factors influential to the EU governance system against THB, a critical literature analysis of grey literature will be carried out; with the core examination of Council Framework Decision 2002/629/JHA, Council Directive 2011/36/EU, Council Regulation (EC) 2007/2004 (FRONTEX), Regulation (EU) No 1052/2013 (European Border Surveillance System) Council Regulation (EC) No 562/2006 (Schengen Borders Code), Council Regulation (EC) No 863/2007 (Rapid Border Intervention Teams), Regulation (EU) No 1168/2011 (Amendments FRONTEX) by the European-Commission and Council. Furthermore, an extensive review of the different aspects in the jurisdiction, in the fields of the JHA and Area of Freedom Security and Justice

-particularly THB, will be administered, especially in connection to the theory of intergovernmentalism, supranationalism, and the securitization of irregular immigration.

Limitations to the research will only evolve in connection to the qualitative approach taken, since the general subjectivity by the research reviewer might lead to vague or false conclusions in the observation of different legal features. Another relevant threat for this thesis is the misinterpretation of articles and paragraphs. The author tried to prevent these threats by thoroughly analyzing relevant scientific literature.

3. Theoretical construction of trafficking in human beings

This chapter will introduce the theoretical construction of the phenomenon of 'trafficking in human beings' within the European Union. It provides both the general description of THB, and the distinction between smuggling and trafficking in human beings. In this respect, the differentiating forms of THB have to be re-called, as 'THB for the purpose of sexual exploitation', 'THB for the purpose of labour exploitation' and 'THB for other purposes'.

3.1. What is trafficking in human beings?

In order to 'assess' effective measures to combat trafficking, the author will distinguish between the different factors involved in THB and the crimes that arise from these. In the research of the phenomenon of THB, a well-prepared definition plays a vital role. This is required in order to construct useful measures to be implemented in the counter-trafficking legislation.

Until the start of the 21st century, there has been no definition of trafficking in human beings on the international scale. THB is commonly 'committed in more than one state and their preparation and planning involve more than one state' (McCreight, 2006, p.112). The crime of THB has also been identified as 'new form of slavery', and involves different stages such as the recruitment of the victims in the country of origin, the transport towards the country of destination and the exploitation at the final destination (the so-called chain of trafficking) (Caneppele& Mancuso, 2013, p.260). By the introduction of the '*Palermo Protocols Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*', the distinction between smuggling and trafficking in human beings has been internationally adopted. The 2000 '*UN Convention against Transnational Organized Crime*' adapted a commonly used definition of human trafficking and recognised trafficking as a violation of human rights. The Palermo Protocols entered European legislation in the European Council Framework Decision (2002/629/JHA) on Combating Trafficking in Human Beings, but the replacing Directive 2011/36/EU provides the European wide definition of THB:

*"The recruitment, transportation, transfer, harbouring or receipt of persons, including exchange or transfer of control over that person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."*¹

In the time period shortly after the Palermo convention, critiques were recognized as the measures included no gender-specific details, as mostly women appeared to be trafficked and required special attention (McCreight, 2006). The requirement of support measures to be gender-specific, in order to be effective in the combat against THB, found implementation in the new Directive 2011/36/EU².

Furthermore, neither the Palermo convention, nor the Council Framework Decision contained a definition of 'exploitation', with the differentiating forms of exploitation within the phenomenon of THB. This includes 'THB for the purpose of sexual exploitation', 'THB for the purpose of labour exploitation' and 'THB for other purposes'. The replacing Directive on preventing and combating trafficking in human beings and protecting victims, determines a new differentiation of the definition of 'exploitation':

*"Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities or the removal of organs."*³

Although 'vulnerability' will be dedicated as a feature of human smuggling next to THB, it involves a far more important aspect in the common definition of THB. Vulnerability mostly regulates the entrance to the circle of trafficking, by the victims. Therefore it is stated:

*"A position of vulnerability occurs when the person has no real or acceptable alternative but to submit to the abuse involved."*⁴

In the definition of THB, the forms of exploitation, the violation of human rights and dignity, and the position of vulnerability play a vital role in consideration of effective measures. THB connects with serious forms of crime, and has been identified as violation of personal freedom and not as threat to

1 Council Directive on preventing and combating trafficking in human beings and protecting victims 2011/36/EU, and replacing Council Framework Decision 2002/629/JHA, (2011) OJ L 101/1.

2 *cf op cit n 1 supra*, para 3.

3 *cf op cit n 1 supra*, Art. 2(3).

4 *cf op cit n 1 supra*, Art. 2(2).

the sovereignty of its state. Furthermore THB is considered to be a transnational crime because of the cross-border characteristic.

3.2. Distinction between smuggling and trafficking in human beings

In order to distinguish between the different concepts of human smuggling and trafficking, there are four main differences among the phenomena. These are the agreement to enter a country legally or illegally, exploitation, trans-nationality and source of profits.

The agreement to enter a country legally or illegally-an agreement to be smuggled into the country of destination will be mostly introduced between the two involved parties. Human smuggling identifies consent between the customer and the smuggler, this contract mostly expires with the arrival at the country of destination. The smuggling in human beings always involves the irregular or illegally access to the country of destination. Thus the trafficked persons will agree on the terms to be smuggled into a country illegally or legally. Thus trafficked people mostly not have any intention to participate in the process to enter a territory illegally against their will. The other option, in the process of THB is the legal entrance to a country, mostly by a student or tourist visa, and the person of interest will stay beyond the expiration date of the visa.

Exploitation-In the agreement between the smuggler and the immigrant, the contract ends with the arrival of the migrant at the destination. Thus in the case of trafficking, the person of interest will be further exploited with inhuman conditions to work off their debt towards the trafficker, after the arrival in the country of destination.

Trans-nationality- human trafficking contains two different settings, as it takes place on the crossing of international borders (international trafficking) and within the border of the own national state (internal trafficking).

Source of profits-in the case of THB, profits derive from the different forms of exploitation by the trafficker, whereas the case of smuggling in migrants profits originate from the transportation or the entanglement of the stay or illegal entry to another country. Furthermore according to Aronowitz (2001), 'smuggling usually involves short-term monetary profit whereas trafficking usually involves long-term exploitation for economic gain'.

The Smuggling of Migrants has been further defined in the UN Convention against Transnational Organized Crime, in the annexed Smuggling of Migrants Protocol, as:

"Procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a

permanent resident."⁵

Included in the Palermo Convention, states are required to implement a criminalization approach towards smuggling of migrants and the facilitation of illegally overstaying in a country. Due to additional circumstances that will compromise the degrading treatment of migrants that accordingly will be subject to danger to lives or safety.⁶ A clear line towards the different forms of victimization indicates the most important feature during the comparison, which entails smuggled persons and trafficked victims.

Outlined by the definition in the UN Palermo Convention, smuggling is considered to be a crime against the state not a person, because of the mostly present agreement between the two parties, to cross the borders illegally. On the contrary trafficking in human beings is defined as crime against humanity (Marques, 2012), and violation of human right, therefore contains a personal level. Due to the fact that THB at most involves the facilitation of transportation of individuals to other places, in the opposite to the place of origin, this happens against the will of the people or in connection with false promises. The smuggling of migrants is mostly associated with male gender. On the contrary trafficking more often contains women and children, who are identified as victims rather than criminals, in the following principle (Nieuwenhuys & Pecoud, 2006).

In the theoretical framework of THB, the difference between smuggling and trafficking in human beings within or into the European Union, receives great attention. The Palermo convention defines a dichotomous approach to the legal background of the difficulty. It is stated on the difference between coercion and consent, people trafficked will be considered as 'victims'. On the other hand migrants entered other territory with the help of smugglers and without valid documents, will be engaged as illegal immigrants and criminals, on the basis of an agreement to deliver the service of smuggling between the two parties. Due to the victimization of the people trafficked, requirement for protection, a broad range of protective measures have been implemented accordingly⁷. On the contrary the Smuggling protocol entails minimum provisions for a protective environment for smuggled peoples.

THB significantly discriminates the facilitation of migration, as it involves different forms of exploitation and the use of force to be efficient. Furthermore it requires no cross-border element or the

5 Article 3, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational, Organized Crime United Nations Convention against Transnational Organized Crime, adopted by the UN GA Resolution 55/25 of 15 Nov 2000 (UN DOC A/Res/55/25 (2000)).

6 *cf op cit* n 5 *supra*, Art. 6.

7 Council Directive on the Residence Permit Issued to Third-Country Nationals Who Are Victims of Trafficking in Human Beings or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate with the Competent Authorities 2004/81/EC, [2004] OJ L 261/19 and Council Directive on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework decision 2001/220/JHA 2012/29/EU, [2012] OJ L 315/57.

factor of transportation⁸. Thus smuggling implies the illegal entry of migrants that entails a cross-border element. Differentiations in the further process identify the requirement of exploitation of trafficked people and displacement, as they arrived in the country of destination (Nieuwenhuys& Pecoud, 2006).

3.3. The process of THB-How does trafficking work?

This paragraph will outline the different factors that comprise the 'chain of trafficking', it starts off with the general process of THB, involving the recruitment, transportation and coercion by the traffickers. The descriptive analysis will include the various causes of trafficking in human beings; furthermore a legal analysis of the problem will be carried out in a following chapter.

The phenomenon contains different 'pull' and 'push' factors, for the recruitment and migration of foreigners to another country. Mostly this is connected to the high demand for cheap labour, in order to carry out the three D-jobs (dirty, demanding and dangerous) in the Western world, where the local people are not willing to conduct these jobs (Van Impe, 2000). Besides the trafficking networks aim towards the most vulnerable groups in society, this identifies the people to be most easily trafficked. Organized crime groups usually utilize women and children to be inserted to work within the 'chain of trafficking' (Europol, 2011).

According to the organizational model by Salt and Stein (1997), the process of THB divides into three different parts. The first is 'the process of mobilization by which migrants are recruited in origin countries'. The second defines 'the requirements en route as migrants are transported from origin to destination countries'. All followed by the last and the third stage 'the processes by which migrants are inserted and integrated into destination countries' (Salt, 2000; Salt& Stein, 1997). The organizational structure of THB has widely identified the high degree of specialization among the extreme violent and increasingly decentralized sub-units. The flexibility is increased through the incorporation of small sub units of criminal specialists, with certain services and expertise, and 'inter-dependency of criminal activities' (Van Impe, 2000; Aronowitz, 2001, Vayrynen 2003, Surtees, 2008). The large scale inter-connectivity across different countries and the hierarchical structure among the organization opens the possibility to allow quick adjustments to re-organize activity in the illicit markets, which pulls the trigger towards effective penetration by the law enforcement agencies (Salt, 2000; Aronowitz, 2001). This furthermore leads to the characteristic that the distribution or separation of tasks is vital to the efficiency of the structure and trafficking task.

⁸The European Commission (COM) 286; EU Strategy towards Trafficking in Human Beings 2012- 2016, [2012].

3.3.1. Part 1: the mobilization

The mobilization process starts with the recruitment of the victims to be trafficked. There are various ways of promoting the better, improved, more beneficial life in the Western world among the vulnerable groups of people in the commonly known destination countries. Most victims are recruited by acquaintances, advertising in local newspapers, most likely with the promise for a better future as outlined before. Deception is a key factor in the mobilization of victims, in which false information concerning the promised possible employment and additionally the fake promises of marriage, might be involved (Van Impe, 2000). These service providers charge a tremendous amount of money for the provision of delivering employment in the Western world, which cannot be afforded to pay by the migrants, therefore the 'debt bondage' becomes present (Van Impe, 2000). Therefore a close connection between trafficking in human beings and illegal employment becomes obvious. THB gains from the vulnerability to poverty, conflict and post-conflict situations, the general lack of employment and opportunities, and the lack of access to educations, which serve as reasons for immigration to the Western world (Europol, 2011).

3.3.2. Part 2: en route

The transportation of the victims involves a well-orchestrated management of the organization to transfer migrants from the country of origin to the country of destination. The methods used by the organizations differ among them, because of various situations they fear and have to adjust to. There are various ways or gateways, such as by air, sea and land, served and used by the international networks to be able to reach the country of destination; this involves a great variety of special knowledge among the different sub units in the organizational structures in order to decide on the different routes used (Salt & Stein, 1997). The 'segmented business involving an interaction between a criminal network and a legitimate transportation company' describes a highly organized and complex operation, involved in the process of THB. This will be affected by numerous players, in the operation accordingly (Aronowitz, 2001). Through the steady exchange or rotation of women between different countries of destination, and the lack of official documentation, it becomes difficult to identify the country of origin, whereas the decision for the country of destination depends on the use of local knowledge and the weaknesses in the border control there after (Aronowitz, 2001). Another important element at this stage, will be the access to corrupt border guards and police by the trafficking network, to be able to smoothly cross the borders and pass through various countries.

3.3.3. Stage 3: insertion and integration

On arrival in the country of destination, the networks have to provide accommodation and employment, to be able to involve the trafficking victims into the local labour markets (Salt & Stein, 1997). Most frequently used markets for employment by victims will be the service sector, with restaurants, factories, farms and hotel, the 'legitimate domestic service economy' and the 'criminal economies of the sex industry'-most likely prostitution (Aronowitz, 2001; Europol, 2011). At this stage, the networks use local knowledge and experts to build up a system for the location or re-location of the victims, and use oppression to be able to ensure that migrants will do as they have to. In this line, the traffickers will carry out manipulation and coercion, in order to control victims with the use of deception and violence as 'traffickers and enforcers have characteristically been known to use excessive violence against their victims to maintain control. Less sinister practices include seizing of documents, confinement of victims to the workplace or threatening them with deportation' (Aronowitz, 2001). The factor of coercion will mostly be present in the country of destination, because of the difficulty of becoming detected with people under the abuse of power. Another element is isolation of the victims among other migrants, as this is a key condition to improve the exploitation conditions in the country of destination (Van Lient, 2004).

The exact description of the process that facilitates the phenomenon of THB becomes important, as it introduces the first approach to the influence by FRONTEX in the legal framework against THB. The analysis carried out will examine the various obstacles in the current legislation, with connection to FRONTEX, to understand the complex framework of the European security governance system to combat THB.

The previous section outlined the definition of the phenomenon of THB, including the 'chain of trafficking' followed by the process of THB. The definition of THB will be of high importance, to understand the facilitation of a network of coordination for the law enforcement agencies to fight the cross-border crime of THB. THB has been constantly defined as crime against humanity and violation of human rights. In this connection, the explanation of THB is a key component in the analysis on the influence of FRONTEX onto the EU governance system against THB. The chapter encountered the differences between the various forms of exploitation, and the distinction between smuggling and trafficking in human beings. That leads to the four key differences between these two concepts, which include *the agreement to enter a country illegally*, *exploitation*, *trans-nationality* and *source of profits*. Furthermore the process of THB, according to Salt and Stein (1997), contains three different stages, such as the *mobilization*, *en route* and the *insertion and integration*. These features and key characteristics of THB build the basis to the analysis of the influence by FRONTEX on the European legislation against trafficking in human beings, in the final discussion (Chapter 5).

4. Analysis-The EU governance system against THB: The counter- action strategies by the European Union to prevent, fight and combat THB

This chapter defines the previous mentioned EU governance system, which includes all the elements entailed in the counter-action strategies to prevent, fight and combat THB. The EU governance system against THB contains five approaches, the legal measures, prosecution, protection, prevention in countries of origin, and prevention in countries of destination (Friesendorf, 2007, p.380). This study will only focus on three of the five approaches, because of the particular interest in the involvement of FRONTEX on to the EU governance system against THB, such as legal measures, protection and prevention in countries of destination. The study outlines legislation implemented by the EU to counter THB, and in particular the approach following the securitisation of illegal immigration. Furthermore the actors involved, such as Europol, FRONTEX, Eurojust and the different national LEAs will be presented, additionally to the various instruments in order to prevent, fight and combat THB. Due to the different causes and consequences of THB, followed by its transnational characteristic and institutional dynamics, a complex EU governance system against THB has evolved (Friesendorf, 2007, p.384). The EU governance system developed a broad cooperation between the different national and European institutions, as networks are core elements of security governance (Friesendorf, 2007; Krahmann, 2005). Furthermore the networking process developed with the requirement to combat the transnational and cross-border characteristic by the crime of THB. The EU governance system against THB defines a multifaceted approach to address the various causes and consequences of THB. This is emphasised by the transnational governance culture included in the EU governance system, as flexible forms of governance will be required to be effective, such as different EU institutions and instruments (SIS, Eurosur) (Friesendorf, 2007, p. 384).

4.1. The securitisation of illegal immigration

The phenomenon of the securitisation of illegal immigration becomes highly important in the connection to the development of European legislation on THB. It frames the dominant approach to migration by the EU in the last decade. The author will outline the theory behind the phenomenon, in order to understand the obstacles that arise from the approach to legislate the counter-actions against THB by the EU. The introduction of the securitisation of illegal immigration will enhance the understanding of the following paragraphs of this chapter, on the 'the framework to prevent THB in Europe', followed by the institutional development of the European law enforcement agencies. In the following section, the author will show the different levels of influence of the phenomenon on the legislative approach by the EU. It will be further outlined the various stages of development of the

phenomenon in order to understand the process of development in the European legislation to combat THB and to enhance the basis for the institution of FRONTEX. The main obstacle that remained until the introduction of Directive 2011/36/EU is the generalisation of the phenomena of irregular migration and human trafficking by the EU and the common approach to combat it. The securitisation of migration displays the inefficient approach by the EU to tackle THB in a coherent and coordinated manner. The phenomenon of THB has long been linked to the threat of irregular immigration, therefore various measures developed over time to combat the phenomenon of irregular immigration.

In the European policy-making process, the phenomenon of securitisation of illegal immigration evolved to a great extent, in the 1990s. The EU defined a new chapter in the debate about securitisation of irregular immigration at the European external borders (Neal, 2009). During this time, the 'migration-crime-security' nexus developed, as the process-of migration, asylum-seeking and illegal immigration within the EU, has constantly been criminalized and defined within a security framework (Black, 2003; Goodey, 2008). Due to 9/11, the European Union put strong emphasis on the linkage of terrorism, security, migration and borders, in order to obtain a high level of internal security. Through the securitisation phenomenon, the following law enforcement approach by the EU, and the construction mentioned before of the 'migration-crime-security' nexus, played an important part in the EU policy framework to combat THB (Goodey, 2008). The 'migration-crime-security' nexus describes a long evolving debate after the Cold War, according to which security threats develop from non-state actors. This increasingly involves crimes such as undocumented migration, drug-, weapon-, and human trafficking. In the nexus, the irregular immigration phenomenon is followed by an enhancement of the border controls and stricter internal surveillance of immigrants. The security nexus shows particular attention to the national and regional security issues and threats.

The law enforcement method is based on the crime against a state rather than on individual trafficking victims. Thus the transformation of sovereignty and the realm of it have been combined to a specific territory and population. The approach connects the various European coordinating institutions to collect and share information to prevent cross-border crime, with FRONTEX in the middle. The European institutions were heavily involved in the process to define the question of state sovereignty in differentiating between the inside and outside of the geographical and institutional functional borders (Bigo, 2008). However as Bigo (2002) defines 'Immigration is often perceived as a danger for the integrity of the state and the nation, thus a challenge to the principle of their sovereignty'. This emphasises the importance of the borders of the EU, and European agency FRONTEX to secure them. Due to the removal of the internal borders and the free flow of people inside the territory of the Schengen area, the protection and integrity of the external borders became more important. The sovereignty in the territory of a state displays the importance of a border authority. Important is the

support by the agency FRONTEX to obtain the high level of internal security. In fact, the violation of the integrity of state sovereignty remained to be the main obstacle to the effective combating of THB.

To effectively combat illegal immigration, and the networks that facilitate the service of trafficking, a victim-centred approach received attention from the EU at a later stage. The EU moved from a law enforcement approach to a state-centred policy to combat THB effectively. Such an approach requires different testimonies by trafficking victims which, furthermore provides a softer approach to reach the victims, as protection is included in the victim-centred legislation (Goodey, 2008). Thus, Bermejo (2009) defines the new approach as moving 'restrictive migration policy and the social construction of migration into a security question'. Accordingly, immigration policy will be a form of control policies to hinder a threat to society, such as THB. The crime of trafficking as a problem of organized crime, but not defined within the framework of a human rights abuse, was obviously assumed to be a factor of immigration (Goodey, 2008; Krieg, 2009). On a European institutional level, the law enforcement approach as the instrument to counter trafficking in THB neglects human rights and opposes to the victim-centred approach (Krieg, 2009). The victim-centred approach is based on the protection and testimonies of the victims in order to use the provided information to effectively combat THB. The circle of exploitation will be disconnected to move the victims of trafficking in-to a safe location and to use the information for the prosecution of the traffickers. The human rights sphere in the approach outlines the rights of the innocent victim of trafficking and the different needs of the victim in the criminal proceedings. The main emphasis is based on the debate on the violation of fundamental rights and if the measures to counter these will be identified among human rights law or criminal law (Krieg, 2009). The author emphasises the various characteristics of the approaches followed by the EU in the current legislation in the next two paragraphs. This implies a crucial step in the analysis, in order to understand the influence of FRONTEX, included in the European approach, to combat THB.

Due to the Framework decision 2002⁹, the human rights approach will be implemented. In this framework victims of trafficking shall not be considered as criminals. This is the case, if they entered the country of destination illegally, in which the victims of THB are considered illegal migrants to the country (Caneppele& Mancuso, 2012). Thus, according to Krieg (2009), 'humanitarian intentions of victim protection are overshadowed by general anti-immigration conveniences' and the phenomenon of securitisation of illegal immigration appears to be present again. In this context, the 'victimisation of criminal law' emphasizes the focus on the situation, especially the rights and position, of the victim. That leads to the detection of the crime, by the approach of 'identifying the victim' and not through the trafficker or perpetrator (Krieg, 2009). This concept is important to note in connection to FRONTEX,

9 Council Framework Decision on Combating Trafficking in Human Beings 2002/629/JHA, [2002] OJ L 203/1.

because of the distinction between the threat for a state's internal and external security or and the problem for the affected person (Krieg, 2009).

However, the securitisation of migration, 'the defence of national and regional border regimes and immigration control' have been connected with the EU policy-making concerning internal and external security. Regarding the European Commission defined immigrants as most influential source of insecurity (Neal, 2009). The EU response facilitates a strict limitation of irregular immigration, whereas this identifies a predominant thinking about security in connection to the involvement of illegal immigration (Krieg, 2009). Such as that migration of people will cause a threat to the society and public order of the country of destination. Due to the violation of migration law, the immigration by false or undocumented entry will be responsible for the mechanisms involved in the securitisation of migration (Krieg, 2009). This breach of border integrity therefore constitutes a violation of state sovereignty. According to Monar (2006), two categories of internal security risks are present. The two categories include illegal immigration and serious forms of cross-border crime. Illegal immigration has various implications for the internal security of the European Union, because of the connection of organized crime and the involvement of illegal immigration in THB. One of the responses by the EU, after 9/11, linked the right of asylum and migration to security. Hereby 'constructing a tension between the demands of security and the rule of compliance' (Neal, 2009). During the securitization of migration, immigration control and 'the defences of national and regional border regimes' connected to the 'question of internal and external security' (Krieg, 2009).

Due to the involvement of the European coordinating institutions, containing FRONTEX, in the executive order of the European Union, Europe developed a close regime of closed external borders and implemented external frontier controls. The implementation of the closed border regime facilitated the broad exclusion of migrants, which furthermore identifies asylum seekers and illegal migrants as a threat to European internal security (Bermejo, 2009). The focus of the analysis on FRONTEX will examine the European border regime within the scope of the internal security in the EU. The increase of external border threats, as immigration is defined to be a security problem to the management of the European external borders; accordingly a clear linkage 'of immigration to issues of domestic and internal security' found implementation in the EU response (Bermejo, 2009).

According to Schain (2009), the securitisation of immigration reflects the 'preference of the ministries that control the process and their ability to dominate institutional space', that connects national and European policy agendas. Thus, securitisation serves to combat immigration on a European level, to be able to gain more autonomous action in each national ministry of internal affairs (Schain, 2009). That connects to the theory of venue shopping by Guiraudon (2000), which applies to the specific securitisation of immigration, as domestic ministries have been constrained by local support to

strengthen immigration policies to restrict further migration (Schain, 2009). In accordance with the outlying theory, 'where there are co-operative frameworks, they tend to support control and exclusion, rather than harmonization and expansion of immigration policy' (Schain, 2009). The analysis will examine the various developments in the recent legislation towards the European approach to combat THB, including control and exclusion. Furthermore, the Guiraudon (2000) framework defined the efforts to extend the level of immigration policies at the EU level, to point towards greater intergovernmental cooperation for immigration control. Hereby more restrictive immigration policies favoured by the MS, and implemented by European institutions, have played an effective role in the intergovernmental approach, to effectively use European institutions for increased immigration controls (Schain, 2009). The final analysis chapter (Chapter 5) will take this into consideration, for the closer examination of the institutional basis of FRONTEX. In order to be able to determine the influence of FRONTEX and its abilities towards the immigration control sphere in the EU governance system, the phenomenon of securitization of migration has to be taken into account during the analysis. In conclusion, the process of the securitization of migration has shown that the EU developed one approach to combat irregular migration including THB, and has not distinguished between the different forms of irregular migration. THB has been widely defined as 'deprivation of their freedom of movement, forced labor, sexual exploitation, sexual, physical and mental abuse' and articulates a 'serious violations of fundamental human rights and human dignity' (Piotrowicz, 2009, p.176, 182). Therefore THB is a crime against humanity and people. Due to the violation of the territorial integrity of the nation state, as it undermines the 'rule of law and political foundation of states', THB furthermore identifies a major threat to the integrity of the nation state (Obokota, 2005, p.445).. In fact, the violation of the integrity of state sovereignty or territorial integrity remained to be the main obstacle to the effective combating of THB. The implementation of the closed border regime facilitated a broad exclusion of migrants, which furthermore identifies asylum seekers and illegal migrants as threat to European internal security (Bermejo, 2009). During the securitization of migration, immigration control and 'the defences of national and regional border regimes' connected to the 'question of internal and external security' (Krieg, 2009). The concept of the securitization of illegal immigration provides crucial information to the analysis of the EU governance system against THB, involving the European institutions FRONTEX, Europol and Eurojust followed by the various national LEAs. It connects the various developments and amendments in this legal sphere. Furthermore the securitization of illegal immigration describes the different changes in the institutional basis and architecture, followed by the increased political willingness for adjustments, in the Justice and Home Affairs pillar and the EU governance system against THB. The previously introduced concept follows the line of arguments induced by the threat of organized crime groups and

the importance to tackle the cross-border crimes by an enhancement in the cooperation between the different law enforcement agencies.

4.2. The framework to prevent THB in Europe

In this part of the chapter, the study focuses on the Area of Freedom, Security and Justice, and the different instruments, characteristics and institutions, and their impact on the EU governance system against THB in Europe. The development towards a common policy on external border control will be described and further analysed during this chapter. Furthermore this section will explain the policy part of the European approach to facilitate internal security and combat THB, due to a strengthening of mechanisms at the external borders. It will closely analyse these instruments as part of the European framework to prevent THB. Particular attention will be paid to the intergovernmentalism approach to the Justice and Home Affairs sphere. Furthermore the question of blurry borders and the shift of sovereignty are other closely connected topics that will be focused on in detail. This section shall serve the purpose of understanding the association between the different strategies and their development in the area of internal security and border control to the phenomenon of THB, framed by the securitisation of migration.

4.2.1. The Area of Freedom, Security and Justice

The Area of Freedom, Security and Justice introduced by the Treaty of Amsterdam in 1999, as new policy field replaced the previously implemented Justice and Home Affairs domain. The AFSJ contains, among the existing *acquis*, different other EU policy fields such as immigration, judicial cooperation in civil and criminal matters, approximation of criminal law, police cooperation and fundamental rights protection (Wessel, Marin & Matera, 2010). The creation of the AFSJ developed due to the increased threat of global insecurity and the resulting demand for cooperation and collaboration within the EU (Bigo, 2008; Mounier, 2009). Thus, the AFSJ is defined as a cross-pillar project, as it implements a common policy on border checks, asylum and immigration (Article 77(1) TFEU), a common integration policy Article 79(1) TFEU, following the Schengen Convention. The Schengen Convention implies provisions for the abolition of frontier border checks, a common external frontier and judicial cooperation in civil and criminal matters followed by police cooperation (Chalmers, Davies & Monti, 2011 p.115). The Schengen *acquis* protocol included in the Treaty of Amsterdam inserted the provision to the European legal framework of the TEU, which made it binding EU law (Chalmers et al, 2011, p.30). The Schengen Agreement introduced the policy development of a common policy on external border controls. Besides the framework of police and judicial cooperation increased systematically by the Schengen Convention. Furthermore all measures concerning the institutional provision implemented by the convention are regulated in Article 77

TFEU, including FRONTEX (Chalmer et al, 2011). The legal basis of the FRONTEX Regulation¹⁰ is defined in Article 77 TFEU¹¹, and generally included in Title V Chapter 2 of the Treaty of the Functioning of the European Union, which governs the AFSJ and especially the policies on border checks, asylum and immigration.

With the introduction of the Lisbon treaty the AFSJ provision has been recognized as second treaty objective in Article 3 TEU (Wessel et al, 2010). The Lisbon Treaty connected the former Title IV on ‘visas, asylum, immigration, and other policies related to free movement of persons’ with the former Title VI TEU on ‘police and judicial cooperation in criminal matters’, in the new Title V TFEU (Wessel et al, 2010). Hereby the AFSJ reallocated decision-making between the first and third pillars. This implied that immigration and asylum moved in to European Commission legislative competence. Thus policing and judicial cooperation on criminal matters continued to stay in the intergovernmental sphere of decision-making and procedure in the third pillar (Chalmers et al, 2011, p.30). According to the AFSJ implementation it ‘*shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration, and the prevention and combating of crime*’¹².

The policy areas of the AFSJ define different sections of state sovereignty, as they are highly involved in the internal security of the MS, such as policing, criminal justice, and free movement of people. According to Bigo (2008) however, security is more important than sovereignty. Though the AFSJ with the different policy areas remains highly controversial, the EU implements more operational cooperation and establishes European agencies under the scope of the AFSJ. Due to the securitization of illegal immigration, immigration control as instrument of border security becomes dominated by the theory of intergovernmentalism (Lavenex, 2006). Immigration policy as cornerstone of national sovereignty has shifted out to the trans-governmental cooperation to use the framework of Europeanization (Lavenex, 2006). The European approach, defined in the AFSJ, implies a further increase in power for the various European law enforcement agencies (Chalmers et al, 2011). Hence the construct of the AFSJ does not provide an intergovernmental idea of cooperation, because the security of public order and internal peace is shared between the MS and the European Union (Wessel et al, 2010). Hereby the sphere of the AFSJ is a *shared competence* between the MS and EU, ruled by Article 4(2). According to Article 33 TEU that specifies the provision to achieve these objectives of Title VI, EU action ‘*shall not affect the exercise of the responsibilities incumbent upon MS with regard to the maintenance of law and order and the safeguarding of internal security*’ (Fletcher et al, 2010,

¹⁰ Ibid.

¹¹ Cf. Article 77 TFEU (ex. Art. 62 TEC).

¹² OJ EU C115, 9/05/2008, 17.

p.32). Furthermore Article 4(2) TEU implies a double dimension on the provision, as national security remains the sole responsibility of the MS, due to the introduction of injunctions on the different EU institutions (Chalmers et al, 2011). Who have to respect the laws of the MS, to allow them to maintain sovereignty on their territory. This introduces a monopoly role for the MS in the sphere of the protection of national security according to Article 72 TFEU (Chalmers et al, 2011). Thus this indicates the absence of an independent role by the EU in the sphere of internal security. The competence is limited to the ‘emphasis on the facilitation of cross-border cooperation between national law authorities’ (Fletcher, Lööf & Gilmore, 2010, p.46). This underlying assumption shall be followed by the MS to enhance their system for internal security with the assistance and use of the EU and its capabilities. As stated in Article 2 TEU, the AFSJ shall achieve ‘*closer cooperation between the various operational law enforcement organizations and judicial authorities of the MS*’ (Fletcher et al, 2010, p.32). Through the strong connection of justice with security, Article 67 TFEU emphasizes the judicial cooperation in association with the provision to provide security to European citizens (Monar, 2006). That results in Article 87 TFEU, which regulates the Europe wide cooperation in matters such as ‘the prevention, detection and investigation of criminal offences’ (Fletcher et al, 2010, p.32). Furthermore, Article 87 TFEU defines the enhancement of national powers and functionalities in the operational law enforcement agencies, by providing the supervision of coordination of EU cooperation to agencies such as FRONTEX and Europol (Fletcher et al, 2010, p.32). The AFSJ, in the sphere of internal security, contains an increased responsibility to effectively combat cross-border crime (THB¹³), illegal immigration and to maintain public order due to border controls (Monar, 2006; Puntsher Riekmann, 2008). The AFSJ linked itself to the provision of ‘*appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime*’ according to Article 3(2) TEU (Wessel et al, 2010). The AFSJ has been the European instrument to provide reasonable measures to protect the European and Schengen area. It developed from the ‘coordination of control’ to the ‘deeper harmonisation of domestic policies’ and has been marked by the ‘supranational communitarisation’ of domestic policies (Lavenex, 2006). The AFSJ appeared to become a strong supranational dominated policy area, as this includes the European LEAs and the counter-policies against THB. THB implies a transnational characteristic and requires a European coordinated approach in counter-actions to prevent and combat it. But the main responsibility for prevention lies with the MS, enhanced by the European institutions to supplement counter-action strategies by coordinating the different national LEAs. The efficient management of the external borders, to minimize the threats to the European internal security, requires coordinated measures fostered by the AFSJ, including border checks and surveillance towards the combat of THB. Hence, the AFSJ displays a mainly nationally focused approach that re-defines into a system of operational

¹³ Article 67 TFEU.

cooperation via the European institutions, implied by the EU governance system.

4.2.2. The European control mechanisms

The European Union developed different prevention mechanisms to control the unregulated flow of migrants and the cross-border crime of THB, at the external borders. In the following paragraph the author will outline the Schengen Information System, the approach to integrated border management (IBM) and EUROSUR. These instruments of the European Union, to stabilize the internal security of the Schengen area, have been framed by the discussion of securitization of illegal immigration and the external dimension of the AFSJ. Thus these mechanisms and instruments assist the framework by the European Union to combat THB. The European Union facilitates a fast and efficient exchange of information, in order to serve the cooperation between the different national law enforcement agencies, in the combat of cross-border crime. The European wide cooperation is a key instrument in order to provide a high level of internal security, and enables the MS to strengthen the internal and external borders against threats such as THB.

4.2.2.1 The Schengen Information System

The SIS has been developed in order to collect and store valuable information, to facilitate an improved exchange of data, 'to ensure effective entry controls at Schengen External Borders' (Monar, 2006). However the instrument of data collection has formed a new law enforcement mechanism and tool to effectively combat cross-border crimes, i.e. THB. It contains information on persons to be refused to enter the Schengen area, stolen items, and wanted persons. Thus the SIS is a network system that connects all national crime databases (Monar, 2006). The abolition of the internal borders implied different measures such as the closer cooperation between the various national law enforcement agencies. These are including the police, customs and judicial cooperation across MS, via the SIS (Vaughan-Williams, 2008). The first version of the SIS was followed by SIS II in 2013; SIS II will facilitate more instruments to investigate cross-border crime. The European institutions FRONTEX and Europol have been enabled by SIS and SIS II to extended operational activity, such as providing more information for joint operations, European Border Guard Teams, investigations and JIT. This bases on the assumption that the two versions of the SIS provide operational instruments, such as the European wide exchange and collection of data, followed by improved channels of communication. The SIS provides valuable information for the area of free movement of persons, and the instruments to facilitate prevention measures for the limited access to the Schengen area. It furthermore contains data that is not person or object linked, which increases the level of information on organized crime, terrorists and their networks. Particularly the first version of the SIS has been dominated by the concept of securitization of illegal immigration. The SIS collects vital information

and data on refugees, immigrants, as well as criminals that facilitate criminal networks to provide THB. The European Commission adapted the SIS II as an investigation system and tool, different to the previous SIS I as only reporting system. It is a European instrument to facilitate an exchange of information, in order to provide the different national law enforcement agencies with the information for efficient investigations of THB, coordinated by FRONTEX. The mechanism to exchange information on these networks (OCG) supports the operational activities by the various agencies. The study concludes that the SIS provides vital information to the European framework to combat THB. The cross-border characteristic of THB implies the requirement to provide European wide information to the different LEAs in order to establish coordinated counter-measures against THB. Thus FRONTEX position implies an increase in efficiency and operational activities for the European institutions. The SIS, as European instrument of data collection, supports the operational activities of FRONTEX, due to the strengthening of the external borders and the required use of cross-border information. The increased competences gained by FRONTEX, based on the integrated border management of the external borders, will mean improved competences for other EU institutions, such as Europol. FRONTEX facilitates an active system of border controls, surveillance and data collection, which enables other European institutions to create more efficient operational activities.

4.2.2.2 The Integrated Border Management

The JHA Council has agreed on the integrated border management, defined by the Finnish presidency in the 'EU border management Strategy', in 2006¹⁴. IBM is the 'border management of the common Schengen regime, external borders must be 'integrated' and must cover all border-related threats' (Carrera, 2007). It focuses on the detection and investigation of cross-border crime and the border control, such as THB. Based on the cooperation between the different national law enforcement agencies, FRONTEX defines to be the major instrument in this relation. That results in 'FRONTEX as a common institutional mechanism for the operational coordination at EU level' (Carrera, 2007). The IBM constituted the first approach to secure the Schengen territory without borders against the increasing challenges of cross-border crime, i.e. THB. Thus the instrument of border surveillance defines to be a vital part in the EU strategy, included in the IBM (Marin, 2014). The task of border surveillance in particular gains a vital role in the counter-actions against THB. The position of FRONTEX in the field of combating THB has been enhanced by the introduction of the IBM. The dimensions of the IBM include the fields of: 'criminal law, policing, expulsion, customs cooperation and internal security' that resulted in difficulties as the 'Treaties provided for different legal bases

¹⁴ Council of the European Union, Justice and Home Affairs, 2768th Council Meeting, Brussels, 4-5 December 2006, Press Release, 15801/06.

subject to different rules'. Furthermore the IBM has not been defined by the Treaties (Mungianu, 2013, p. 366).

4.2.2.3 EUROSUR

The last mechanism to mention in the framework to prevent THB is the Regulation¹⁵ establishing the European Border Surveillance System. EUROSUR has been established among the Schengen Member States to facilitate the infrastructure to detect, prevent and combat illegal immigration and cross-border crime. Furthermore it provides an enhanced information exchange and interagency cooperation to improve border surveillance for FRONTEX (European Commission, 2013). FRONTEX, as European coordination institution gained more power in the operational coordination of border surveillance, due to the newly implemented national coordination centres. The National coordination centres are the new instrument to coordinate all national law enforcement authorities linked to tasks of border surveillance, with the European institution of FRONTEX and other MS. EUROSUR implies an intelligence-driven approach by the European Union to effectively combat cross-border crime and transnational criminal networks, forcing a threat to the external borders of the EU (European Commission, 2013). Thus the intelligence-driven approach to combat illegal immigration shows the influence by the discussion of securitization of illegal immigration on the policy-making process. EUROSUR effectively improves the basis to combat THB within the European Union, as it enhances the functionality of FRONTEX by providing more mechanisms and instruments. The different mechanisms SIS, EUROSUR and IBM, frame the approach used by the EU to facilitate the high level of internal security. As previously outlined, THB contains the important cross-border characteristic, which requires cross-border instruments to prevent it. Thus, SIS, EUROSUR and IBM entail measures and instruments to facilitate fast and efficient cross-border cooperation, investigations and exchange of information. However the AFSJ does not contain law enforcement tasks and objectives, which furthermore leads to the monopoly of law enforcement by the MS (Wessel et al, 2010). Nonetheless the main objective of the AFSJ is the coordination of cooperation between the different national systems, enhancing the cooperation within the Schengen area without internal borders (Wessel et al, 2010). The maintenance of the European internal security, implied by the provisions of the AFSJ, furthermore contains the surveillance and control of internal and external borders.

4.2.3. The framework of a common policy on external border controls

The external borders of the EU have been influenced by an increase in operational cooperation, as a result of the supranationalisation in the development of a common policy on external border controls

¹⁵ Council Regulation (EU) No 1052/2013 of the European Parliament and of the Council establishing the European Border Surveillance System, OJ L 295/11.

(Mungianu, 2013). The AFSJ as the framework of the Schengen *acquis*, building on a Schengen area without internal border control, aims for the strengthening of European external border controls. The Lisbon Treaty conferred further EU competences to the area of external border controls, which implied an enhancement of powers for the EU institutions, such as FRONTEX (Mungianu, 2013, p.360). The harmonization of national rules under the EU framework of external border management will prevent an increase in threats to the European internal security. FRONTEX developed more operational cooperation between the MS, under the sphere of management of European external borders. According to Mungianu (2013, p.361) 'operational cooperation has become part of a process of supranationalisation' and beforehand 'an expression of intergovernmental governance'. The concept of a common policy for external border control contained the 'integrated management system' for external borders that followed on the IBM. FRONTEX contributes to the integrated management of the external borders by the facilitation of operational cooperation. However Mungianu (2013, p. 363) concludes that 'external border control by EU institutions cannot take place without taking into consideration the fact that MS retain primary responsibility for the surveillance and control of their own external borders'. The institutionalisation of the management of the borders, a previously intergovernmental dominated idea, started with the implementation of FRONTEX. Therefore the provision of border surveillance and control moves from the borders between the MS, to the inside of the national territory (Burgess, 2009). According to the Schengen Borders Code¹⁶ Member States preserve the supervision of border controls, at their own national borders. Whereas according to Burgess (2009), 'threats no longer respect the geopolitical borders of the nation state', they oppose the institutional frameworks of the borders that are constructed to manage them. Furthermore the shift between the internal and external borders, defines changes in the concept of national sovereignty (Burgess, 2009). Thus the borders constitute the sovereignty of the nation state, and border controls remain in control of these and will not be affected by EU policy action, according to Article 77(4) TFEU (Chalmers et al, 2011). As Burgess (2009) points out, in 'concepts and arrangements traditionally aimed at the internal security challenges (police) become increasingly challenged to address matters traditionally reserved for the external security professionals (military and international police forces)'. During the process of securitization of the AFSJ, a differentiation between internal and external borders developed. Internal borders moved into the responsibility of a policing function. This emphasizes the new form, tasks and area of policing. The internal frontier points within the Schengen Zone are defined to be vital points of policing, but are not allowed to be called border controls (Chalmers et al, 2011). Due to the de-localized policing function and the 'debriefing of internal security abroad', surveillance and control instruments of public order will take place from a distance,

¹⁶ Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), (2006) OJ L 105/1

outside the national borders (Bigo, 2008). Whereas the new collaboration between the agencies on a European level allows the police to use their instruments beyond borders (Bigo, 2008), the facilitation of border controls is a nationally associated instrument, which shifts due to the AFSJ into a network of operational cooperation between MS. However this outlines the intergovernmental idea in immigration control, and the cooperation framework influenced by FRONTEX to combat THB. Furthermore FRONTEX is recognized as 'logical continuation of the integration process' and the institutionalisation of the integrated border management (Pollack& Slominski, 2009). The common policy on external borders implies an enhancement of the level of internal security within the Schengen area. Thus, the controls at the external borders constitute a vital instrument to effectively combat THB.

The previous sections defined the abilities of the AFSJ, facilitating the instruments of the EU to coordinate the cooperation in criminal and policing matters, and border surveillance among the MS to combat THB. The emphasis on the protection of external borders is strongly linked to the abolition of the internal borders in Europe by the Schengen *acquis* (Pollack& Slominski, 2009). Therefore, the competences of the EU are restricted to the coordination of operational activities of the EU institutions with the support from national law enforcement agencies (Monar, 2006; Krieg, 2009; Neal, 2009). In conclusion, the analysis implied a change in the notion of sovereignty and interpretation of borders. The differentiation between internal and external borders within the Schengen area, defined different approaches to secure and surveillance them. The European approach for a common policy for external border controls has been a main development of the AFSJ. It aimed for more operational cooperation between the MS and was shaped by FRONTEX. More operational cooperation has been a key instrument in the European framework to effectively combat cross-border crime, i.e. THB. Due to the introduction of the Lisbon Treaty, the operational activities of EU institutions have been enhanced. The de-localized policing function, as core policy area in the AFSJ, remained highly controversial as it touches the sovereignty of the MS. The AFSJ suffered furthermore from lack of power for the European institutions, in order to facilitate effective coordination among the MS, as sovereignty remained in MS hands. The study outlined that the policies towards THB have been heavily influenced by the discussion of securitization of illegal immigration. Thus particularly the implementations of the main three instruments included in Chapter 2 of the TFEU on border checks, asylum and immigration (SIS, EUROSUR and IBM) were influenced by the securitization process. The supportive framework of FRONTEX and the other EU law enforcement agencies gained more operational power, to facilitate more efficient cross- border investigations.

4.3. The current legislation on THB in the European Union

The following paragraph on the current legislation concerning THB, in the European Union, will describe the development and key characteristics of the various approaches on the phenomenon. Due to the previously outlined policy objectives and strategies to prevent and tackle THB, the following paragraph will connect the previous part, with the current legislation on THB and the beforehand introduced concept of the securitization of immigration. This paragraph aims to serve with a comprehensive level of information to further analyse the influence of FRONTEX on the current legislation on THB.

The European approach to legislate counter-actions against THB developed into different directions over the past decade. The measures concerning this crime are implemented multi-layered in the EU legislative framework. As outlined in the previous chapter, the EU definition of THB solved the problem of an uncoordinated approach to combat THB.

Since the start of the 1990s, the EU initiated various measures, programs, Directives and Regulations on the political side of legislation to address the prevention and combat on THB. The first European legislation on the phenomenon of THB started off by the implementation of the Framework Decision 2002/629/JHA¹⁷, which followed the Palermo Protocol¹⁸ by the UN. The following paragraph will outline the European approach to combat THB, and its evolutions towards the latest form. The part establishes the legal and institutional basis of the approach taken by the EU. More recently, the FD¹⁹ has been replaced by the Directive 2011/36/EU. The newest form of the approach by the EU is based on the Directive *on preventing and combating trafficking in human beings and protecting its victim*²⁰. The other main instrument included in the EU approach is the Council Directive *on Short-Term Residence Permits*²¹. Thus the FD in 2002 contained the central European definition of trafficking in human beings, as to be referred to in various other measures in the EU legislation (Krieg, 2009). The measures to address THB are multi-layered, as EU legislation defines different frameworks including the right of victims of THB to reside in the EU, sexual exploitation of children and the sanctions

¹⁷ *cf op cit n 1 supra*, 1.

¹⁸ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational, Organized Crime United Nations Convention against Transnational Organized Crime, adopted by the UN GA Resolution 55/25 of 15 Nov 2000 (UN DOC A/Res/55/25 (2000)).

¹⁹ *cf op cit n 1 supra*, 1.

²⁰ Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ 15.04.2011, L 101.

²¹ Council Directive on the Residence Permit Issued to Third- Country Nationals Who Are Victims of Trafficking in Human Beings or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate with the Component Authorities 2004/81/EC, [2004] OJ L 261/19.

against employers that employ illegal workers from third countries²². This indicates the victim-centred approach in the European legislation. The Directive 2011/36/EU was adopted under Title V TFEU (provision on Judicial Cooperation in Criminal Matters), in particular under Article 82(2) and 83(1) TFEU. Especially the Charter of Fundamental Rights of the European Union prohibits THB, in Article 5.

The Stockholm Programme,²³ provides an overview to an open and secure Europe serving and protecting citizens, and defines priorities in fight against THB within the European Union. The programme displays the amended approach by the EU in order to combat THB, due to the introduction of the amendments to the Directive 2011/36/EU that includes the European Border Guard Teams, which followed the Schengen Borders Code in 2006, the RABIT Regulations in 2007 and the EUROSUR Regulation in 2013.

The policies by the European Union address THB in a comprehensive manner, focusing on prevention, protection of victims and prosecution of criminals²⁴. The approach by the Directive 2011/36/EU defines to be human-rights based, victims-centred and gender-specific, to ensure the facilitation of help to victims. These features developed over time following the introduction of the FD in 2002. The first legislation on THB, following the Palermo Protocol, showed a predominant law enforcement approach (Krieg, 2009).

The new Directive²⁵ aims at a comprehensive provision for the protection of victims, and articulates support for the principle of non-punishment. It further implies the enhancement of cross-border cooperation among different national law enforcement agencies in order to strengthen the fight against THB²⁶. According to this Directive the basis for cooperation with Europol and Eurojust shall be increased and improved²⁷. Directive 2011/36/EU adopts measures to prevent further secondary victimization accordingly²⁸. Another aspect to adjust the legal framework and to develop into a community matter is paragraph 32 of the Directive 2011/36/EU. It functions to resemble power in to European Commission hands, with the requirement of the principle of subsidiarity and proportionality, to foster further cooperation among the MS²⁹. This displays the judicial cooperation in criminal matters, and further alignment of law in the different MS (Krieg, 2009). The Directive of 2011 forces

²² *cf op cit* n 4 *supra*, para 3.

²³ Stockholm Programme- an open and secure Europe serving and protecting citizens OJ C 115 [2010].

²⁴ Commission Communication: The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM (2012) 286 Final, Brussels, 19.6.2012.

²⁵ *cf op cit* n 1 *supra*.

²⁶ *cf op cit* n 1 *supra*, Article 5.

²⁷ *Ibid*, Article 5.

²⁸ *cf op cit* n 1 *supra*, Article 20.

²⁹ *Ibid*, Article 20.

the implementation of a minimum rule concerning the sanctions of criminal acts, to be met by the MS in the area of THB³⁰. This section on the current legislation on THB in the European Union will be important, in order to connect the immigration control strategies with the law enforcement agency system to the phenomenon of securitisation of migration. It provides the frame to analyse the anti-trafficking approach by the European Union, including different approaches, strategies and measures. This paragraph has shown the enhancement of cross-border cooperation among different national law enforcement agencies, to furthermore strengthen the combat of THB. The legislation to tackle THB has been widely shaped by the theory of securitisation of migration. This study will use the previous paragraph to analyse the position and influence by FRONTEX on the current legislation on THB, in the last chapter.

4.4. The European law enforcement agencies

This paragraph aims to introduce two of the most influential and important European agencies, in the combat against THB, in connection to the stated research question. The paragraph illustrates Europol and FRONTEX, due to their involvement in the EU governance system against THB established by the AFSJ. The AFSJ developed its external action dimension, due to the increased number of external challenges as asylum, migration and serious crime (Monar, 2014, p.147). The connection to the European institutions appears as Monar (2014, p.149) defines ‘the establishment and strengthening of the (...) agencies Europol, Eurojust and FRONTEX have all contributed to a parallel growth of the rationale, possibilities and needs for EU external action’. In the following, the author will emphasize the different legal bases, tasks and institutional settings of these institutions. The closer examination of the institutions involved in the EU governance system against THB will be of high importance, in order to evaluate the influence by FRONTEX on the prevention and combat of THB, at a later stage. The present study decided not to involve Eurojust into the description of the prevention measures against THB, as it only provides judicial cooperation but will not take part in the operational framework at the external borders of the European Union.

The institutions created by the European Union, implemented a response to the requirement of increased information exchange and coordination at EU level, concerning the improved competitiveness to tackle transnational crimes and external capacity-building. Furthermore they established a new form of governance structure, with the task of strengthening the coordination and cooperation between the various national law enforcement agencies, followed by the provision³¹ to supplement technical knowledge to the MS.

³⁰ *cf op cit* n 1 *supra*, Article 1.

³¹ Article 1(3), Regulation (EU) No 1168/2011 of the European Parliament and of the Council amending Council

4.4.1. Europol

Europol, the European Police Office, as the first European agency in the JHA sphere, was established with an agreement in the Maastricht Treaty³². Europol is the EU law enforcement agency that deals with criminal intelligence, and broadly to assist the law enforcement authorities of the MS, in order to effectively fight serious and organized crime (Fletcher et al, 2010). Europol's responsibility is defined in the point to which an 'organised criminal structure is involved and active in two or more countries' (Mounier, 2009, p.584). The power of Europol is limited to foster further cooperation among national authorities, with '*preventing and combating terrorism, unlawful drug trafficking and other serious forms of international organized crime*'³³. It is authorized to facilitate the exchange of information between MS, and analyse the data in order to assist solely national- and joint investigations (Fletcher et al, 2010). The agency's main task is defined 'to improve the effectiveness of cooperation of law enforcement authorities in the MS' (Puntscher Riekman, 2008). Europol, with its headquarters situated in The Hague, came into operation in 1999. Europol as an intergovernmental innovation, gained the power 'to coordinate operational cooperation between national police or judicial authorities', as transferred from MS to the tandem of Eurojust and Europol (Fletcher et al, 2010). Both agencies are provided with a legal basis included in the TFEU, explicit to the tasks, establishment and executive powers³⁴. Europol, an old third pillar institution, in the police and judicial cooperation sector involved the principle of supranational intergovernmentalism in the institutional framework (Puntscher Riekman, 2008). Europol is among Eurojust one of the most institutionalized EU institutions in the AFSJ, provided by "light" institutional structures to avoid triggering sovereignty concerns' (Busuioac & Groenleer, 2013, p.286). The ability to act in an operational activity by Europol, as stated in Art. 88 TFEU, is limited by the MS, as operational activity requires to be within an agreement between the participating MS and Europol. Therefore Europol does not facilitate autonomous law enforcement powers. It does not have 'coercive powers, and cannot arrest individuals or search premises' (Mounier, 2009, p. 584). Europol enhances the general operational cooperation due to the participation in the various joint operations by FRONTEX (European Council, 2011, p. 7). The Lisbon Treaty will 'improve Europol's operational capacities' and framed Europol as 'external dimension of their internal security instruments' (Mounier, 2009, p. 582, 583). The external security threats required institutions for cooperation between the different LEAs and third countries outside the EU to tackle OCG, such as THB. Furthermore Europol is assigned to fully use the advantages of the interagency cooperation to effectively provide the tasks by the IBM (European Council, 2011, p.7). Thus both agencies are

Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, (2011) OJ L 304/5

³² Convention on the establishment of a European Police Office (Europol Convention), OJ 1995, C316/2.

³³ Ibid, Article 2.1.

³⁴ Articles 85 and 88 TFEU.

required to improve the exchange of information at the operational level, such as ‘*strategic analysis and situation monitoring*’, especially the risk assessment on THB (European Council, 2011, p.8). FRONTEX provides information to the ‘*Europol Illegal Immigration Bulletin and OCTA*’, on the opposite Europol will contribute to FRONTEX Risk Analysis Network (FRAN) (European Council, 2011). Europol is defined to be the main investigator of THB and OCG within the European Union, in order to provide FRONTEX with valuable information to prevent the threat of THB at the European external borders. Europol facilitates the collection of data on the phenomenon of THB and estimates the presence of THB within the Union. Furthermore Europol has developed to become the central criminal information centre of the EU, by providing an information platform to perform more effective operational responses to transnational crime. Europol evolves to be the main actor in the investigation of THB, due to its investigating mandate within the framework of EU law enforcement operations. Therefore Europol heavily engages in the JITs to combat THB, by supporting investigations, provision of operational analysis, technical expertise and mobile offices (Mounier, 2009, p.585).

In final words, ‘Europol does not just promote an increase of police powers’ but aims to strengthen the exchange and flow of information as well as further cooperation between the different national LEAs, in ‘reorganizing police administrative structures’ (Mounier, 2009, p.591). Europol facilitates projects to promote, improve and strengthen the combat against OC but also the analytical and strategic capabilities by the local LEAs (Mounier, 2009, p.592).

4.4.2. FRONTEX

FRONTEX³⁵ has been implemented to develop integration among the different MS border-security systems, to imply a coordinated defence to threats to the external borders of the European Union. The agency, situated in Warsaw, is the coordinator of intelligence-driven operational cooperation between the Member States at the external borders. FRONTEX claims independent legal personality³⁶, operational and budgetary autonomy (Pastavridis, 2010). The legal basis of the FRONTEX Regulation³⁷ is defined in Article 77 TFEU³⁸, and generally included in Title V Chapter 2 of the Treaty of the Functioning of the European Union, which governs the AFSJ and especially the policies on border checks, asylum and immigration. Due to the Schengen Border Code, which will be described in detail in the final discussion, FRONTEX’s assigned central task is the border control and the therefore mentioned checks and surveillance. Furthermore it provides risks analysis and crime intelligence to the

³⁵ Council Regulation (EC) No. 2007/2004 of 26 of October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349/1.

³⁶ Ibid, Article 15.

³⁷ Ibid.

³⁸ Cf. Article 77 TFEU (ex. Art. 62 TEC).

MS, in addition to the provision of detection and investigation of cross-border crime in coordination with the different national law enforcement agencies. The responsibility to control and monitor the external borders resides within the MS. Thus FRONTEX assists the application of the various Community measures, implemented towards the management of the European external borders. This applies to the crucial role of providing information and technical knowledge, among the implementation of these measures.

The management of the external borders, with the introduction of the Amsterdam treaty and integration of the Schengen *acquis*, shifted towards a community competence. Due to the change in the institutional basis, it is not further governed by the theory of intergovernmentalism, besides to the composition of the management board with two Commission officials and the different heads of national border guards services (Marin, 2011). According to Mungianu (2013, p.359) ‘the establishment of FRONTEX marks the shift of sovereignty from Member States to EU institutions in EU external border controls’. Through the enhancement of competences by FRONTEX, with the task of operational coordination, the MS decreased the influence and the Community institutions gained supranational characteristics. As FRONTEX bases its founding legal framework in the first pillar, the MS remain to be the head of direction, nevertheless of their supranational influence (Puntscher Riekmann, 2008). The EU MS ‘sovereignty clauses’ that regulates the responsibility for the external border tasks of surveillance and control will prevent the EU to fully exercise the given power (Mungianu, 2013, p.359).

FRONTEX coordinates the operational activities between the host MS and the participating MS. Thus FRONTEX holds the responsibility for the management of the external borders of the EU, though ‘*the responsibility for the control and surveillance of external borders lies with the Member States*’³⁹. The European institution may enforce joint operations in cooperation or agreement with the Member States⁴⁰. Furthermore the capacity for operational activity by FRONTEX heavily depends on the MS solidarity and rules on the principle of dependence (Carrera, 2007). Hence this describes the supportive framework by the agency⁴¹. The amendments by the FRONTEX Regulation in 2011 contributed to the improvement in the role of FRONTEX ‘*in line with the objective of the EU to develop policy with the view to the gradual introduction of the concept of Integrated Border Management*’⁴² which builds the basis for a common policy on border control (Mungianu, 2013, p.372). The main task by the agency is ‘*to coordinate operational cooperation between MS in the field*

³⁹ *cf op cit* n 17 *supra*, Article 1.

⁴⁰ *Ibid*, Article 3.

⁴¹ *Ibid*, Article 2.

⁴² *cf op cit* n 30 *supra*, recital (7).

of management of external borders⁴³, gained an increase in competences by the introduction of the Regulation on Rapid Border Intervention Teams⁴⁴ (RABIT). FRONTEX defined a new chapter in the approach of ‘increased coordination of the operational cooperation between the Member States’⁴⁵ (Mungianu, 2013). The activities by the agency, in the operational coordination, RABIT, were are ‘emergency-driven’, and show the high degree of political pressure by different MS (Carrera, 2007). Due to the introduction of RABIT, as a crisis response tool, which is another instrument for FRONTEX, in the case that it fails to predict a crisis or risk and the MS in question wants to react. According to Mungianu (2013, p.384) FRONTEX obtained a leading role in the border control management, and is not limited ‘to providing technical and operational assistance’. The EU instrument of RABIT has been followed by the ‘European Border Guard Teams’ implied by the FRONTEX Regulation 2011/36/EU⁴⁶. The EGBTs have been connected to the operational activity in the amended FRONTEX Regulation, in order to resemble the composition and deployment of the Rapid Border Intervention Teams. Hence, the EGBTs extended their sphere of activity to more operational involvement in counter actions against THB, as they are not only deployed during RABITS, joint operations and pilot projects. EGBTs imply a more independent role apart from the MS than, the previously used RABITs. The EGBTs enable FRONTEX to further operational activities between the national LEAs at the European external borders.

The implementation of the Regulation, concerning EUROSUR⁴⁷ changed the scope of FRONTEX’s activities (Jeandesboz, 2008). Due to the new provided infrastructure and technical tools, it improves the capabilities of FRONTEX to react at the European external borders, with the purpose of detecting, preventing and combating cross-border crime⁴⁸. FRONTEX affected the EU governance system against THB on the basis of available instruments and measures. Furthermore, it framed a European wide coordination and cooperation in operational assistance to combat THB among the national LEAs. This resulted in a system of border controls to combat THB that previously has been strongly nationally focused, into a system of operational cooperation between the national border agencies.

⁴³ *cf op cit* n 21 *supra*, Article 2(1)a.

⁴⁴ Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers; OJ L199/30.

⁴⁵ *cf op cit* n 28 *supra*, recital (3).

⁴⁶ *cf op cit* n 30 *supra*.

⁴⁷ *cf op cit* n 16 *supra*.

⁴⁸ *Ibid*, Article 10.

4.4.3. The cooperation between the agencies

The notion of further horizontal cooperation between the JHA agencies has been first implemented in the Hague Programme⁴⁹ (European Council, 2010). The introduction of the Stockholm Programme enforces a ‘*genuine European judicial and law enforcement culture*’⁵⁰, followed by the enhancement of cooperation between the Agencies and the exchange of information (European Council, 2010). FRONTEX and Europol associate different formal cooperation agreements between each other. The first approach to cooperation for FRONTEX with Europol has been implied by the FRONTEX Council Regulation 2007/2004⁵¹. Both agencies participate in the agreement to cooperate the exchange of all forms of information⁵². This is defined in the operational cooperation between the agencies, as they ‘*exchange strategic information related to illegal immigration and cross-border crimes*’ (European Council, 2010). ‘Strategic information’ according to Article 2 shall include ‘*enforcement actions that might be useful to suppress offences and improve the integrated border management*’⁵³ the ‘*routes and changes in routes used (...) in illicit trafficking*’⁵⁴. The framework of cooperation integrated in the agreement between the agencies, focuses particularly on the criminal offence of THB⁵⁵. The assistance of Europol to FRONTEX shall particularly take ‘*full advantage of the interagency cooperation for enhancing the IBM concept*’ (European Council, 2011). Thus they share information in order to produce joint threat and risks assessments of common interest, such as the combat of THB. FRONTEX and Europol extensively improve their operational abilities by the exchange of information, followed by the coordinated cooperation to counter cross-border crimes. In particular, FRONTEX gains valuable information on the criminal networks that facilitate THB, with the help of using information provided by Europol. The agreement concludes to hold a high level meeting between the agencies, in question of cooperation and related issues⁵⁶. Furthermore FRONTEX will regularly invite Europol in order to participate in the regional networks meetings, with the focus on the maintenance of the close cooperation between the agencies (European Council, 2011).

In the previous section, the study examined the two most important law enforcement agencies, Europol and FRONTEX, according to their institutional bases, operational activities and

⁴⁹ The Hague Programme: strengthening freedom, security and justice in the European Union, Council document 16054/04, JAI 559, Brussels, 5 November 2004, p. 25.

⁵⁰ *cf op cit* n 11 *supra*, p. 8.

⁵¹ Working Arrangement according to Article 13 of Frontex Council Regulation (EC) 2007/2004 of 26 October 2004.

⁵² Operational Cooperation agreements allow for the exchange of all kinds of information, including personal data. The Agreement of 1 October 2009 repealed the Agreement of 4 June 2004 with effect from 1 January 2010.

⁵³ *cf op cit* n 31 *supra*, Article 2(1)a.

⁵⁴ *Ibid*, Article 2(1)e.

⁵⁵ *Ibid*, Article 3(1).

⁵⁶ *Ibid*, Article 4.

responsibilities in the European framework, to maintain internal security. Therefore the AFSJ developed and introduced different European law enforcement agencies. However these have not gained the institutional acknowledgement to be a solely institutional actor, in the EU governance system. Furthermore none of the European institutions received autonomous law enforcement powers, and remained as institutional coordinators of operational activities between the national law enforcement agencies. The study conducted an increase in cooperation, in the field of information exchange particularly in the combat against THB, within Europe. The previous section provided crucial information in order to understand the institutional framework by the EU, and the EU governance system against THB to obtain a high level of internal security. The different institutional bases, task and responsibilities of the agencies, form a coherent argument to tackle the phenomenon of THB effectively.

5. Final discussion

In the final chapter of this thesis, the main findings analysed in the previous sections will be discussed. The main emphasis is placed on the discussion of the FRONTEX legal basis and the European approach to prevent and combat THB. The study will finally examine to what extent FRONTEX influenced the EU governance system against THB. In this part, the SBC Regulation, EUROSUR, FRONTEX amendments Regulation 1168/2011 and Directive 2011/36/EU will be closely analysed and connected according to the previously outlined issue.

Directive 2011/36/EU, the last amendment to the European framework to combat THB particularly highlights the fact that the cross-border cooperation shall be further enforced and continued. Thus the cross-border cooperation between the different MS law enforcement agencies shall facilitate enhanced cooperation with Europol, Eurojust and FRONTEX⁵⁷. This is implied by the network effect contained in the EU governance system. The replacing Directive calls for the relinquishment of power into the hands of the European Union, in order to achieve the objectives of the Directive, because the outlined goals can be better achieved at the Union level⁵⁸. Therefore, the first European wide legislation, the Council FD (2002/629/JHA) demands ‘*an efficient judicial and law enforcement cooperation against THB*’⁵⁹. The FD in 2002 lacked a particular European institution in order to enforce the required and implied enhanced operational cooperation among the national LEAs. In the Council of Europe Convention on Action against Trafficking in Human Beings in 2005, Article 7(1) defines ‘*Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings*’. This requires the newly introduced institution of FRONTEX, in

⁵⁷ *cf op cit* n 1 *supra*, preamble 5.

⁵⁸ *cf op cit* n 1 *supra*, preamble 32.

⁵⁹ *cf op cit* n 1 *supra*, preamble 2.

order to coordinate the extension of border controls by the MS. The present study concludes that the introduction of FRONTEX opened up new instruments to combat THB, such as the European wide coordinated counter-actions at the external borders. Council Directive 2011/36/EU furthermore defined that ‘*Parties shall strengthen co-operation among border control agencies by, inter alia, establishing and maintaining direct channels of communication*’⁶⁰. Thus this implies another step in the coordination of counter-actions to combat THB by FRONTEX. In this case FRONTEX maintains the task of information exchange, supply of knowledge and operational assistance. The cooperation and coordination of intelligence-driven policing displays FRONTEX’s responsibility in the construct of the EU governance system against THB. FRONTEX’s role in the construct only provides the task to supplement activities on national level. The impact by FRONTEX can be better grasped by Article 29(2), which requires MS to adopt measures to ensure coordination and coordinating bodies to effectively combat THB. The creation of FRONTEX has been demanded, as the different national agencies and parties are requested to cooperate, in order to prevent and combat THB⁶¹. This shall emphasize the cross-border cooperation as well as the strengthening of this cooperation between the different LEAs⁶². Within the EU governance system the cooperation characteristic is outlined by the European institutions of Europol and Eurojust. Europol provides the information for the operational activity by FRONTEX, in order to prepare effective counter-actions. Hence, FRONTEX is difficult to entail to the sphere of combating THB, due to the responsibility residing by the MS. Therefore, the study encounters a significant transfer of powers of national law enforcement to the European level, defined by the introduction of EUROSUR and EBGTs, into the hands of FRONTEX.

Due to the Schengen process and the strengthening of the external borders, FRONTEX’s task is the common response to migration, security and borders (Neal, 2009). FRONTEX has been implemented in order to strengthen European external borders, evolving the ‘*integrated border management ensuring a uniform and high level of control and surveillance*’⁶³. The amendments to the SBC, i.e. the enhancement of border surveillance, shall prevent unauthorised border crossing to enforce measures to counter cross-border criminality⁶⁴, are a vital instrument of FRONTEX. As a result the SBC provides more tasks for FRONTEX in the sphere of border surveillance through an increase in border controls at the European external borders within the integrated border management (Mungianu, 2013, p.361).

⁶⁰ Article 7(6). Council of Europe Convention on Action against Trafficking in Human Beings. Council of Europe Treaty Series – No. 197 [2005].

⁶¹ *cf op cit* n 58 *supra*, Article 32.

⁶² *cf op cit* n 1 *supra*, preamble 5.

⁶³ *cf op cit* n 43 *supra*, preamble 2.

⁶⁴ Article 12. Council Decision 2010/252/EU of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 111 Article 12. SBC 2010

Furthermore, the increased control and surveillance of the external borders will require an enhancement of increased coordination of the operational cooperation between MS⁶⁵. FRONTEX, as institution for effective protection and *‘efficient management of the external borders through checks and surveillance contributes to combat (...) THB’*⁶⁶, shall facilitate a high degree of internal security. According to Article 2(2) FRONTEX Regulation, FRONTEX is the exercising body of the EU to coordinate instruments and measures to detect internal security issues such as THB. The Stockholm Programme significantly increased the role of FRONTEX in the task of managing the European external borders against cross-border threats. Thus, Wessel et al (2010, p.295) outline that the European institutions will not be able to go beyond the scope of the work programmes and follow the priorities outlined by the Stockholm Programme.

FRONTEX has been amended by Regulation (EC) No 863/2007 creating the Rapid Border Intervention Teams. The increase of responsibilities by FRONTEX and its role in the securitisation of the external borders identifies the European goal to introduce the IBM and EUROSUR⁶⁷. That contains the Joint Operations, Joint Investigative Teams and RABITs. The Regulation No 1168/2011⁶⁸ introduced the instrument of ‘European Border Guard Teams’. The EBGTs have been connected to the operational activity in the amended FRONTEX Regulation, in order to resemble the composition and deployment of the Rapid Border Intervention Teams. Hence, the EBGTs extended their sphere of activity to more operational involvement in counter actions against THB, as they are not only deployed during RABITs, joint operations and pilot projects. EBGTs imply a more independent role apart from the MS than, the previously used RABITs. In the composition the EBGTs will not contain FRONTEX personnel, only national border guards will participate (Mungianu, 2013). The EBGTs changed the scope of operational activities by FRONTEX, but remain focused on the outlined priorities by the Stockholm Programme. The institution stays behind with more operational capabilities and institutional independence in the management of the European external borders.

The amendments imply that *‘considering that the responsibility for the control and surveillance of external borders lies with the MS, the Agency (...) shall facilitate and render more effective the application of existing and future Union measures relating to the management of external borders’*⁶⁹. It connects to the SBC and contributes to a high level of surveillance of the external borders. FRONTEX’s main task is to *‘carry out risk analyses, (...) assessment of the capacity of MS to face*

⁶⁵ Ibid, preamble 3.

⁶⁶ Ibid, preamble 4 and Preamble 3. Regulation (EC) No 863/2007 of the European Parliament and of 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 guards officers; OJ L199/30. Regulation No 863/2007 Preamble 3

⁶⁷ Ibid, preamble 7.

⁶⁸ *cf op cit n 30 supra*.

⁶⁹ *cf op cit n 30 supra*, Article 1(2).

*threats and pressures at the external borders*⁷⁰. According to Article 4⁷¹, ‘*the Agency shall develop and apply a common integrated risk analysis model*’. The risk analysis is a key instrument in the management of the external borders and important in the chain to conduct operations in these areas. Hence, the risk analysis is a vital instrument to efficiently prevent and combat THB, and for the use of counter-actions against other transnational threats at the European external borders⁷², implied by the EU and its institutions, inserted in the EU governance system. According to Mungianu (2013, p.369), Article 74 and 71 TFEU identify the supranationalisation of border controls by the European Council. The European Council defines the Europeanisation of border controls and surveillance towards FRONTEX as a main instrument to combat THB. The FRONTEX Regulation determines FRONTEX as instrument to further supranationalisation in the sphere of external border controls (Mungianu, 2013, p.373). The supranationalisation process has developed instruments for FRONTEX, as the EBGT that followed the RABITs. Due to the amendments to Directive 2011/36/EU, FRONTEX gained increased coordination of the operational cooperation between the different MS. Thus, the EBGTs as instrument will enhance FRONTEX’s ability to control borders in response to a threat (such as THB), and supports the stability of European countries security. The study concludes that the EBGTs provide more operational instruments, in connection with the different European institutions (in particular Europol and Eurojust) and national LEAs.

The introduction of the JIT emphasised the need to enforce more operational cooperation among the different European law enforcement agencies, in order to strengthen the counter-actions to tackle THB more effectively. This has gained importance as Europol observes escalating numbers of intra-EU trafficking in human beings (Europol, 2013). FRONTEX used the common framework of the JIT to enable the facilitation of an increased number of measures to combat THB (Mungianu, 2013). In the following the power of FRONTEX has been extended by the introduction of RABITs. Furthermore, due to the development of EUROSUR, FRONTEX facilitates more reaction capabilities, infrastructure and instruments to control THB. The counter actions against THB as cross- border crime require a fast and high level of information exchange between the different LEAs to be effective, as European wide cooperation displays a vital instrument in the EU governance system. In order to facilitate this highly important instrument, EUROSUR has been implemented. The ‘further enhancement of the role of the Agency is in line with the objective of the Union’ to install the integrated border management⁷³. However, the impact of FRONTEX on the EU governance system against THB facilitates only the task of initiating, coordinating and evaluating operations in cooperation with MS (Monar, 2006).

⁷⁰ *cf op cit n 30 supra*, Article 1(3).

⁷¹ *cf op cit n 30 supra*, Article 4.

⁷² *cf op cit n 30 supra*, Article 1(c).

⁷³ *cf op cit n 30 supra*, preamble 7.

THB implies a transnational characteristic and requires a European coordinated approach in counter-actions to prevent and combat it. But the main responsibility for prevention lies with the MS, therefore FRONTEX enhances the MS counter-action strategies by coordinating the different national LEAs. On the priority list of the ‘Strategy towards the Eradication of THB’, Priority D identifies the focus on ‘*enhanced coordination and cooperation among key actors and policy coherence*’⁷⁴. Furthermore, the European Union will focus on increasing cross-border police and judicial cooperation and ‘*the extent to which the MS shall make full use of EU agencies*’⁷⁵. Therefore the participation of FRONTEX is required for the increased cooperation beyond borders by the different national LEAs against THB. That leads to the assumption that FRONTEX counter measures against ‘*THB will also contribute to coherence between the internal and external aspects of EU security policies*’ and will ‘*enhance national and transnational law enforcement cooperation*’⁷⁶. These targets will be mostly engaged via the FRONTEX instrument of joint investigations and operations. The study observes a shift in the counter measures against THB with the introduction of FRONTEX. Hence, the strengthening and increase in cooperation and coordination of operational activities supplements a new approach in the combat against THB.

The Schengen *acquis* implies the importance of external borders to the general level of internal security. Thus, the Internal Security Strategy⁷⁷ defined an enhancement of actions at the European level in order to frame a high level of protection against transnational threats, i.e. THB⁷⁸. The Stockholm Programme defines the prime objective of law enforcement cooperation in order to combat crimes that contain a cross-border dimension. The MS will be encouraged to frequently ‘*use the investigative tool of Joint Investigative Teams*’⁷⁹, implied by FRONTEX in order to prevent crimes such as THB. Thus the involved operational assistance, in the management of the external borders by providing information and technical advice, reflects the main responsibility by FRONTEX⁸⁰. The EU Council calls for ‘*coordinated and coherent policy response which goes beyond the AFSJ*’ in the combat against THB, which is enhanced by ‘*improving coordination and cooperation within the Union and with the mechanisms of the Union external dimension as an integral part*’⁸¹. That improves the situation of counter-measures against THB by the mechanisms and instruments evolved by FRONTEX and supported by Europol. The efficient management of the external borders, to minimize the threats to the European internal security, requires border checks and surveillance that will

⁷⁴ *cf op cit* n 24 *supra*.

⁷⁵ *cf op cit* n 24 *supra*, Action 3 Priority C.

⁷⁶ *cf op cit* n 30 *supra*, Action 4 Priority C.

⁷⁷ See *cf op cit* n 23 *supra*, 4.1. Internal Security Strategy.

⁷⁸ See *Ibid*.

⁷⁹ *cf op cit* n 23 *supra*, Article 4.4.3.1.

⁸⁰ *cf op cit* n 30 *supra*, Article 2(1)e.

⁸¹ *cf op cit* n 23 *supra*, Article 4.4.4.2.

contribute to the combat of THB⁸². Hence, the system of border control displays a mainly nationally focused approach that re-defines into a system of operational cooperation via FRONTEX, implied by the EU governance system. The Stockholm Programme proposes ‘*measures to make border checks more efficient in order to prevent THB*’⁸³. The SBC Regulation lines out that the improvement in border controls will support the counter and prevention actions against THB⁸⁴, coordinated by FRONTEX and assisted with information by Europol (Carrera, 2007). Thus FRONTEX’s ‘*role is not limited to providing technical and operational assistance*’, it contains a more comprehensive and leading role within the operational coordination of MS activities at the EU external borders (Mungianu, 2013, p.384). The significance of FRONTEX becomes noticeable, as cross-border crime will not be manageable at the national level. Furthermore the ‘externalization of internal security’ leads to a ‘de-localized policing function’, which enhances the situation of FRONTEX, in the prevention of THB (Bigo, 2008). The process to further supranationalisation of the policing function entails the scope of the EU governance system, assisted by FRONTEX, Europol and Eurojust. The introduction of EUROSUR, as previously outlined (see section 6.2.2.3.), provided the required instruments for FRONTEX for the effective combat of THB and other cross-border crime⁸⁵. It provides the EU governance system against THB including the institution FRONTEX, with the required infrastructure and tools to improve the reaction capability and situational awareness at the external borders, in order to detect, prevent, and combat cross-border crime⁸⁶. EUROSUR is accompanied by the SIS, which builds the basis to the information exchange on cross-border crimes, such as THB. The SIS collects vital information and data on refugees, immigrants, as well as criminals, which facilitates criminal networks that provide THB. It is a European instrument to assist the exchange of information, in order to provide the different national law enforcement agencies with the information for efficient investigations of THB, coordinated by FRONTEX. Due to the cross-border characteristic of THB, the mechanism to exchange information on these networks supports the operational activities by the various agencies involved in the EU governance system. Following the new mechanisms in the framework of immigration controls at the external borders, the EU engages actively in cooperation with third countries for the prevention of THB, thus this task is carried out by FRONTEX. This determines the further development in the European framework to combat THB, by the introduction of FRONTEX.

⁸² *cf op cit* n 23 *supra*, Preamble 4.

⁸³ *cf op cit* n 23 *supra*, Article 4.4.4.2.

⁸⁴ *cf op cit* n 62 *supra*, Preamble 6.

⁸⁵ *cf op cit* n 15 *supra*, Preamble 1.

⁸⁶ *Ibid.*

6. Concluding remarks

In this final section of the thesis, a few concluding remarks will be made in order to answer the initial research question. This thesis has analysed the EU governance system against THB, and the influence of FRONTEX on this framework. Generally it is observable that FRONTEX, introduced in 2004, supplemented and enforced instruments and measures included in the system to combat THB. FRONTEX has especially affected the further coordination and cooperation in operational activities against THB between the national LEAs and European institutions, as implied by the EU governance system. FRONTEX has been actively involved in the development from a law enforcement approach to a state centred oriented policy to combat THB by the EU.

Referring back to the previous stated research question, namely to what extent has the implementation of FRONTEX influenced the EU governance system against THB, the study would like to point out the following aspects.

Here the European Union, in the legislation of THB, has constantly referred back to the enhancement and strengthening of the information exchange, supportive measures and operational assistance, in the provision for the national LEAs in order to improve the counter actions against THB. Thus, it becomes difficult to estimate the influence by FRONTEX on to the European framework to prevent THB, because of the fact that the responsibility for detection and prevention resides with the MS. The AFSJ has shifted sovereignty, in domestic policies, such as FRONTEX, Europol and Eurojust from the MS to the supranational institutions. FRONTEX has played an important role as instrument for further cooperation and coordination of LEAs, as Article 87 TFEU defines the enhancement of national powers and functionalities in the LEAs. THB has become an internal European problem, as intra-EU trade of THB has increased (Europol, 2013). Therefore the national LEAs move into focus, but it becomes difficult to entail FRONTEX in the sphere internal border controls. However the Council Directive 2011/36/EU relinquishments power into EU hands, in the combat of THB, which leads to an enhancement of the position by FRONTEX.

On the other side, due to the securitisation of illegal immigration, and the Schengen *acquis*, the border controls at the European external borders gained significance. FRONTEX appeared to be the European institution to secure the European internal security via the strengthening of external border controls and surveillance. According to Monar (2014, p.148), the EU external border will not solely be able to stop crime threatening the EU externally. Therefore primarily national focused or EU measures to combat cross-border crime will not be sufficient. The crime of THB requires well connected networks to be facilitated and operable, only OCG will have the capabilities to organize and maintain a system, which enables this form of cross-border crime. Due to the global 'chain of trafficking', the prevention

and combat of OCG involved in THB, gains great emphasis. It requires a network of coordinating bodies in order to facilitate effective law enforcement measures, as implied by EU governance system. Furthermore trafficking persists globally, with the requirement for governments to implement 'stricter extraterritorial border and immigration controls' (FitzGerald, 2012). FRONTEX implies measures to increase the management of the external borders, in order to combat the cross-border element of the crime. The study concludes that FRONTEX with the development of instruments, such as EUROSUR, SIS II and EBGTs produced additional measures to secure the external borders against cross-border crime, i.e. THB. This is assisted by FRONTEX which lead to 'intelligence-driven operations based on risk analysis and threat assessments' (Carrera, 2007, p.2).

These final reflections in mind, FRONTEX affected the EU governance system on the basis of available instruments and measures. Furthermore, it framed a European wide coordination and cooperation in operational assistance to combat THB among the national LEAs. This resulted in a system of border controls to combat THB that previously has been strongly nationally focused, into a system of operational cooperation. Therefore it would be an interesting research question to observe the further developments in the EU external and internal border management to combat THB, reflecting the sovereign national borders and monopoly of power.

7. Bibliography

- Andreas, P. (2003). Redrawing the line: Borders and security in the twenty-first century. *International security*, 28(2), 78-111.
- Aronowitz, A. A. (2001). Smuggling and trafficking in human beings: the phenomenon, the markets that drive it and the organisations that promote it. *European Journal on Criminal Policy and Research*, 9(2), 163-195.
- Askola, H. (2007). Violence against women, trafficking, and migration in the European Union. *European Law Journal*, 13(2), 204-217.
- Bermejo, R. (2009). Migration and Security in the EU: Back to Fortress Europe?. *Journal of Contemporary European Research*, 5(2), 207- 224.
- Bigo, D. (2008). EU Police Cooperation: National Sovereignty Framed by European Security? Security versus Justice? In E. Guild and F. Geyer (eds.), *Police and Judicial Cooperation in the European Union* (pp. 91-108). Aldershot, Ashgate.
- Black, R. (2003). Breaking the convention: Researching the “illegal” migration of refugees to Europe. *Antipode*, 35(1), 34-54.
- Boswell, C. (2003). The ‘external dimension’ of EU immigration and asylum policy. *International Affairs*, 79(3), 619-638.
- Breuil, B. C. O., Siegel, D., Van Reenen, P., Beijer, A., & Roos, L. (2011). Human trafficking revisited: legal, enforcement and ethnographic narratives on sex trafficking to Western Europe. *Trends in organized crime*, 14(1), 30-46.
- Bruch, E. M. (2004). Models wanted: The search for an effective response to human trafficking. *Stan. J. Int'l L.*, 40, 1.
- Burgess, J. P. (2009). There is no European security, only European securities. *Cooperation and conflict*, 44(3), 309-328.
- Busuioc, M., Groenleer, M. (2013). *Beyond Design: The Evolution of Europol and Eurojust, Perspectives on European Politics and Society*, 14(3), 285-304.
- Caneppele, S., & Mancuso, M. (2013). Are protection policies for human trafficking victims effective? An analysis of the Italian case. *European journal on criminal policy and research*, 19(3), 259-273.
- Carrera, S. (2007). *The EU border management strategy*. Centre for European Policy Studies.
- Chalmers, D., Davies, G., & Monti, G. (2010). *European Union law: cases and materials*: Cambridge University Press.
- Coluccello, S., & Massey, S. (2007). Out of Africa: The human trade between Libya and Lampedusa. *Trends in Organized Crime*, 10(4), 77-90.
- Council of the European Union (2010). Interim report on cooperation between JHA Agencies. Council document 5816/10, JAI 87, Brussels, 29 January 2010.
- Council of the European Union (2011). Draft Scorecard- Implementation of the JHA Agencies report. Council document 5676/11, JAI 45, Brussels, 25 January 2011.
- Curtin, D., & Egeberg, M. (2008). Tradition and innovation: Europe's accumulated executive order. *West European Politics*, 31(4), 639-661.
- Danailova-Trainor, G., & Laczko, F. (2010). Trafficking in persons and development: towards greater policy coherence. *International Migration*, 48(4), 38-83.
- European Commission (2013). Memo/13/1070- EUROSUR: Protecting the Schengen external borders- protecting migrants' lives.
- Europol (2011). Trafficking in Human Beings in the European Union. The Hague, 1. September 2011.
- FitzGerald, S. A. (2012). Vulnerable bodies, vulnerable borders: Extraterritoriality and human trafficking. *Feminist Legal Studies*, 20(3), 227-244.
- Fletcher, M., Lööf, R., & Gilmore, B. (2008). *EU Criminal Law and Justice*: Elgar European Law.
- Friesendorf, C. (2007). Pathologies of security governance: Efforts against human trafficking in Europe. *Security Dialogue*, 38(3), 379-402.

- Goodey, J. (2008). Human trafficking Sketchy data and policy responses. *Criminology and Criminal Justice*, 8(4), 421-442.
- Guiraudon, V. (2000). European integration and migration policy: Vertical policy-making as venue shopping. *JCMS: Journal of Common Market Studies*, 38(2), 251-271.
- Guiraudon, V. (2003). The constitution of a European immigration policy domain: a political sociology approach. *Journal of European Public Policy*, 10(2), 263-282.
- Jandl, M. (2007). Irregular migration, human smuggling, and the eastern enlargement of the European Union. *International migration review*, 41(2), 291-315.
- Jeandesboz, J. (2008). Reinforcing the Surveillance of EU Borders: The Future Development of FRONTEX and EUROSUR. *CEPS Challenge Paper No. 11*, 19 August 2008.
- Jordan, A. D. (2002). Human rights or wrongs? The struggle for a rights-based response to trafficking in human beings. *Gender & Development*, 10(1), 28-37.
- Kelly, L. (2005). "You can find anything you want": A critical reflection on research on trafficking in persons within and into Europe. *International Migration*, 43(1-2), 235-265.
- Krahmann, Elke, 2003. 'Conceptualizing Security Governance', *Cooperation and Conflict* 38(1): 5-26.
- Krieg, S. H. (2009). Trafficking in human beings: The EU approach between border control, law enforcement and human rights. *European Law Journal*, 15(6), 775-790.
- Laitinen, I. (2007). Frontex and the Border security of the European Union. *European View*, 5, 57- 62.
- Lavenex, S. (2006). Shifting up and out: The foreign policy of European immigration control. *West European Politics*, 29(2), 329-350.
- Lavenex, S., & Uçarer, E. M. (2004). The External Dimension of Europeanization The Case of Immigration Policies. *Cooperation and Conflict*, 39(4), 417- 443.
- Mameli, P. A. (2002). Stopping the illegal trafficking of human beings. *Crime, law and social change*, 38(1), 67-80.
- Marin, L. (2014). Protecting the EU's Borders from... Fundamental Rights? Squaring the Circle Between Frontex's Border Surveillance and Human Rights. In *Freedom, Security and Justice in the European Union*. Springer New York. 75- 99.
- Marin, L. (2011). Policing the EU's External Borders: A Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Border. *Journal of Contemporary European Research*, 7(4), 468-487.
- Márquez Sánchez, E. (2012). Fighting human trafficking in countries of origin and destination. Improving multidisciplinary cooperation between Nigeria and European countries. *SIAC-Journal- Zeitschrift für Polizeiwissenschaft und polizeiliche Praxis*, (1), 55-61.
- McCreight, M. V. (2006). Smuggling of migrants, trafficking in human beings and irregular migration on a comparative perspective. *European Law Journal*, 12(1), 106-129.
- Monar, J. (2006). Cooperation in the justice and home affairs domain: characteristics, constraints and progress. *European Integration*, 28(5), 495-509.
- Monar, J. (2014). The EU's growing external role in the AFSJ domain: factors, framework and forms of action. *Cambridge Review of International Affairs*, 27(1), 147-166.
- Morehouse, C. (2009). *Combating human trafficking*. Springer Fachmedien.
- Mounier, G. (2009). Europol: A New Player in the EU External Policy Field?. *Perspectives on European Politics and Society*, 10(4), 582-602.
- Mungianu, R. (2013). Frontex: Towards a Common Policy on External Border Control. *European Journal of Migration and Law*, 15, 359- 385.
- Neal, A. W. (2009). Securitization and risk at the EU border: the origins of FRONTEX*. *JCMS: Journal of Common Market Studies*, 47(2), 333-356.
- Nieuwenhuys, C., & Pécoud, A. (2007). Human trafficking, information campaigns, and strategies of migration control. *American Behavioral Scientist*, 50(12), 1674-1695.
- Obokata, T. (2005). SHORTER ARTICLES, COMMENTS, AND NOTES: TRAFFICKING OF HUMAN BEINGS AS A CRIME AGAINST HUMANITY: SOME IMPLICATIONS FOR

- THE INTERNATIONAL LEGAL SYSTEM. *International and comparative law quarterly*, 54(02), 445-458.
- Papastavridis, E. (2010). Fortress Europe and FRONTEX: Within or without International Law. *Nordic Journal of International Law*, 79, 75-111.
- Picarelli, J. (2009). Human trafficking and organized crime in the US & Western Europe. *Strategies against human trafficking: The role of the security sector*, in C. Friesendorf (ed.), published by National Defence Academy and Austrian Ministry of Defence and Sports, Vienna, 115-136.
- Piotrowicz, R. (2008). The UNHCR's guidelines on human trafficking. *International Journal of Refugee Law*, 20(2), 242-252.
- Piotrowicz, R. (2009). Legal Nature of Trafficking in Human Beings, *The Intercultural Hum. Rts. L. Rev.*, 4, 175-203.
- Pollak, J., & Slominski, P. (2009). Experimentalist but not accountable governance? The role of Frontex in managing the EU's external borders. *West European Politics*, 32(5), 904-924.
- Puntscher Riekmann, S. (2008). Security, freedom and accountability: Europol and Frontex. *Security versus Justice*, 19-34.
- Rijken, C. (2005). Challenges to criminal justice co-operation in combating trafficking in human beings in the European Union. *ERA-Forum*, 6(2), 267-281.
- Salt, J. (2000). Trafficking and human smuggling: A European perspective. *International Migration*, 38(3), 31-56.
- Salt, J., & Stein, J. (1997). Migration as a business: the case of trafficking. *International migration*, 35(4), 467-494.
- Savona, E. U., & Stefanizzi, S. (2007). *Measuring human trafficking*. Springer.
- Schain, M. A. (2009). The state strikes back: immigration policy in the European Union. *European Journal of International Law*, 20(1), 93-109.
- Smarrt, U. (2003). Human trafficking: simply a European problem?. *European Journal of Crime Criminal Law and Criminal Justice*, 11(2), 164-177.
- Surtees, R. (2008). Traffickers and Trafficking in Southern and Eastern Europe Considering the Other Side of Human Trafficking. *European Journal of Criminology*, 5(1), 39-68.
- Tyldum, G., & Brunovskis, A. (2005). Describing the unobserved: Methodological challenges in empirical studies on human trafficking. *International Migration*, 43(1-2), 17-34.
- Van Impe, K. (2000). People for sale: The need for a multidisciplinary approach towards human trafficking. *International Migration*, 38(3), 113-191.
- Van Liemt, G. (2004). Human trafficking in Europe: an economic perspective. Working Paper 31. *Forced Labor*.
- Vaughan-Williams, N. (2008). Borderwork beyond inside/outside? Frontex, the citizen-detective and the war on terror. *Space and Polity*, 12(1), 63-79.
- Väyrynen, R. (2003). Illegal immigration, human trafficking, and organized crime. *World Institute for Development Economics*, No. 2003/72.
- Wessel, R. A., Marin, L., & Matera, C. (2011). The external dimension of the EU's area of freedom, security and justice. *Crime within the area of freedom security and justice—a European public order*, Cambridge University Press, Cambridge, 272-300.