European Public Administration

Bachelor Thesis

L.F. Sluis

S1234080

1-1-2017

Output legitimacy of the European External Borders Agency

'To what extent can the mandate of the new EBCG improve the output legitimacy of the EU's external borders agency?'

First supervisor:
Dr. L. Marin

Second supervisor:
Dr. M.R.R. Ossewaarde

UNIVERSITY OF TWENTE.

Abstract

This bachelor thesis focuses on investigating the working practices of the European Union's external borders agencies, FRONTEX and its successor, the European Border and Coast Guard Agency (EBCGA). The external borders agency has been criticised for not upholding fundamental rights, not providing transparency and not effectively operating in their areas of work. The new mandate significantly reinforces the Agency's operational powers and provides the Agency with a new, supervisory role. This research aims at revealing the extent to which the new mandate can improve the currently lack of output legitimacy, defined as effectiveness of the working practices of the external borders agency. By analysing the effectiveness of FRONTEX, comparing the outcomes with the innovations that the EBCGA has to offer, it is concluded that under the new mandate, the external borders agency of the European Union (EU) is able to improve the currently lacking output legitimacy.

Table of Contents

List of abbreviations

ARA	Annual Risk Analysis
Art.	Article
CCC	Common Core Curriculum
CEAS	Common European Asylum System
CEC	Communication from European Communities
CF	Consultative Forum
CoC	Code of Conduct
CFREU	Charter for Fundamental Rights of the European Union
EaP-RAN	Eastern Partnership – Risk Analysis Network
EASO	European Asylum Support Office
EBCG	European Border and Coast Guard
EBCGA	European Border and Coast Guard Agency
EBCGT	European Border and Coast Guard Team
EC	European Commission
EES	Entry Exit System
EP	European Parliament
ETIAS	European Travel Information Authorisation System
EU	European Union
Europol	European Police Office
FPO	Field Press Officer
FPRI	Framework Programme for Research and Innovation
FRA	Fundamental Rights Agency
FRAN	Frontex Risk Analysis Network
FRO	Fundamental Rights Officer
FRR	Fundamental Rights Report
FRS	Fundamental Rights Strategy
FTU	Frontex Training Unit
HoL	House of Lords
IBM	Integrated Border Management

IO	International Organisation
JO	Joint Operation
JRO	Joint Return Operation
MAP	Multi Annual Programme
NGO	Non-Governmental Organisation
OCTA	Organised Crime Threat Assessment
OPERA	Operational Resource Application
PCU	Practitioners Common Unit
PoW	Programme of Work
PRU	Pooled Resource Unit
R&D	Research & Development
RDU	Research and Development Unit
RABIT	Rapid Border Intervention Team
RAU	Risk Analysis Unit
SBC	Schengen Borders Code
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees
WA	Working Arrangement
WB	Western Balkans

1. Introduction

With the recent developments and activities concerning irregular[1] migration and growing numbers of asylum seekers, there is said to be a certain 'Disgrace at the European Union's external borders' (Bozorgmehr & Razum, 2015). In order to keep effective control and surveillance of the external borders of the European Union (EU), the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) was founded by a Council Regulation in 2004[2]. The Schengen area without internal borders can only be sustainable when its external borders are effectively secured and protected. Alarming problems arise: over 3000 migrants became missing or found death in their attempt to cross the Mediterranean from January 2015 until the end of September 2016, shortcomings in the working practices of the EU's external border agency and Common European Asylum System (CEAS). Besides this, growing discrepancies between Member States (hereinafter referred to as "MS") and the Union arise about who should care for who and which competences fall under whose responsibility (Carrera & den Hertog, 2016; UNHCR, 2016). These developments, on both social European and national levels are leading to 'insufficient (human and equipment) capacities and a lack of cooperation by some member states'. Besides the abovementioned problems, the expenses of re-establishing external border controls in Europe, as a result of the threat to public policy or internal security, and with that the ending of the Schengen Agreement, would increase and could cost Member States over three billion Euros per year, on top of the twenty billion Euros fixed costs (European Added Value Unit, 2016).

According to Article 77 of the Treaty on the Function of the European Union (TFEU)[3], the EU shall develop policies on border checks, asylum and immigration. Responsibilities here are to carrying out checks on persons and the monitoring of the crossing of external borders and the introduction of an integrated management system for the external borders. Due to these policies, the EU ensures the absence of any controls on persons when crossing the internal borders, which is in line with the Schengen Borders Code (SBC). Besides these policies, the article also states that the European Parliament (EP) and the Council are allowed to adopt measures in the case this is necessary for the establishment of the before mentioned integrated management system for external borders. These measures are forming the concept of Integrated Border Management (IBM). Part of this migration policy by the EU is to manage the security of the external borders to guard and protect against irregular migration as well as security, health and different threats that occur as a result of the movement of people into the EU (Katsiaficas, 2014). Next to managing the external borders from the inside and protecting its citizens, IBM also covers aspects beyond the borders. This includes the responsibility for the return of citizens who are irregularly staying in the EU but also the cooperation with third-countries, other institutions and organisations. The wider view of the concept IBM relates to the fact that what is happening at the external borders of the EU is only a small part of any journey. To be really effective in managing the borders, the management must cover the aspects of the whole journey. This journey starts long

---

[1] Irregular migration is preferred in European policy over illegal immigration which is used in United States context. See Morehouse & Blomfield (2011). Illegal is assumed to be inaccurate (legally incorrect, misleading, ignoring international legal obligations, violates principle of due process and is inaccurate in describing people arriving at the borders), harmful (dehumanising, criminalising, prevents fair debate, threatens solidarity and undermines social cohesion) and is against European values (discriminatory, oppressive and outdated) (PICUM, 2009)

[2] See the Council Regulation (EC) No 2007/2004

[3] See Article 77 of the Treaty on the Functioning of the European Union.

before the traveller reaches the borders and ends way beyond it. Knowledge of the whereabouts, destination and control of these journeys is very important. In order to control all the aspects of this journey, effective cooperation between the large numbers of people and institutions involved is necessary. This full and effective cooperation is called IBM (Frontex, 2015a)

When European integration extended and became more deepened within European policy and culture, the attention for external border control increased. In recent European history, the strategic committee on immigration, frontiers and asylum (SCIFA) and the Practitioners Common Unit (PCU) lacked effectiveness in their working practices. The both predecessors of FRONTEX suffered from several lacks of hierarchical control, administrative legitimacy, legal control and output legitimacy (Wolff & Schout, 2012). On the latter concept the focus is laid in this thesis. Output legitimacy is here defined as the effectiveness, flexibility and subsidiarity of the working practices of European agencies. European agencies are often criticized by MS and academics for having problems with this form of legitimacy (Horeth, 1999; Føllesdal, 2006; Schmidt, 2015). They are said to have poor planning capacities, lack of long-term projects, or lack of coordination due to the intergovernmental working methods. As a result of these structural problems of the border agency, consensus on a European agency for the management of the external borders was reached on by the European Commission (EC). Following outcomes of analyses of this agency it shows that FRONTEX does fairly improve the shortcomings of its predecessors (Pollak & Slominksi, 2009; Wolff & Schout, 2012) .

As can be concluded from the short introduction of the working practices of the external border agencies, there is a difference between the practical contributions of the agencies, which are discussed in the literature as positive and promising, and the real instruments used with the corresponding added value of the agency. This discrepancy between how European agencies are assessed leads to the current academic discussion of the shortcomings in the agencies and the added value of their work throughout the years (Leonard, 2009; Wolff & Schout, 2012; Vara, 2015). Some argue that the EU's regulatory system lacks democracy and they hope that there could be a sense of depoliticisation of the system through the introduction of European agencies (Majone, 1996: Dehousse 1997: Groenleer, 2009). As Schout (2011) states, in order to define the true contribution of agencies to the EU's regulatory system, the debate needs to be shifted from politics and the pressures regarding agencification to the more important aspect; the added value of an agency (Schout, 2011).

In this bachelor thesis, the possible effect that the new regulation for the European Border and Coast Guard (EBCG) agency has on output legitimacy will be analysed and compared to the output legitimacy of FRONTEX, the former European agency on external border control. It measures the effectiveness, subsidiarity, flexibility. In other words, how the government acts on this subject *for* the people (Schmidt, 2011). The EBCG is a result of a proposal that states that FRONTEX, in their current form, was hindered in its ability to effectively address and remedy the situation created by the refugee crisis. It should be stated however, that it is actually not a refugee crisis but more a crisis of refugee policy. According to den Heijer et al. (2015), it is not the numbers of refugees that are the problem, but the way Europe is acting upon it and not properly dealing with them. The EU's external borders agency (hereinafter referred to as: "the Agency") was not able to purchase its own resources, relied on Member States' contributions and did not had its own operational staff. With the new EBCG Agency (EBCGA), "the role became to coordinate a range of information exchange and operational activities under a 'functional

approach' to coast guards" (Carrera & den Hertog, 2016). In this thesis, the under-researched role of the EBCG is analysed and there is tried to tackle the shortcomings and other challenges that its predecessors encountered during the management of European external borders. In taking steps to challenge and eventually solve the 'crisis of refugee policy', this research contributes to the EU's goal of decreasing the number of refugees at the external borders and improve effectiveness of European policies in this area. With help of competences introduced by the new EBCG, for example the vulnerability assessment, the 'right to intervene', and the introduction of migration management support teams[4], the European authorities could intervene without consent of the member state concerned, which are mostly Hungary, Italy and Greece. The reinforced mandate of FRONTEX would enhance the activities of the agency with regard to the monitoring and crisis prevention.

1.1. Research Question

The goal of this thesis is to analyse and compare the output legitimacy of the European External Borders Agency. The academic discussion (Majone, 2000; Busuioc, 2009; Grabbe & Lehne, 2016) indicates that European agencies suffer from a lack of effectiveness, subsidiarity, and flexibility regarding the outcome of their working practices. This thesis addresses these deficits by showing how the new mandate could be able to improve its output legitimacy with relation to its shortcoming predecessors. This research objective is embodied in an explanatory research question that searches for a relationship between the lack of output legitimacy that the agency suffers from (Wolff & Schout, 2012) and the possible improvement of output legitimacy through the new mandate of the EBCGA. The research question that will be addressed is:

"To what extent can the new mandate of the European Border and Coast Guard Agency improve the output legitimacy of the European Union's external borders agency?"

Due to time issues and the scope limitation of the thesis, it should be stressed that the extent of output legitimacy only refers to the effectiveness aspect of output legitimacy.

1.2. Sub-questions

The research question is at such too complex to answer in a sufficient way and therefore it is being sub-divided into smaller, more specific sub-questions. Each of these questions addresses a different aspect of the research question and by answering them, analysing them together, an answer to the general research question is expected. The sub-questions for this bachelor research thesis are:

1. *What is output legitimacy for European agencies?*
2. *How is the output legitimacy of the previous European Union's external borders agency assessed?*
3. *What does the new mandate for the EBCG contain with regard to output legitimacy?*

The first sub-question provides a general assessment of the academic literature, legal aspects, and an extensive description on what output legitimacy entails for European agencies and how they are criticized for it. Secondly, the focus is laid on the previous agency for the management of EU's external borders, FRONTEX. The agency has been critically assessed for different shortcomings and the lack of output legitimacy. In answering the third sub-question, insights on the new mandate for the European external

---

[4] See Article 13 and 18 of Regulation (EU) 2016/1624

border agency are provided. The new framework, the legal aspects of it and an assessment of its output legitimacy are given. As a fourth and final sub-question, the issue of improvement in output legitimacy is analysed. To be able to answer this question, the first three questions must be answered to see what aspects of output legitimacy are there to be improved.

> 4. *How can output legitimacy of the European Union's external border agency be improved?*

When having answered the fourth question, the conclusion on how the new mandate of the EBCG can improve the output legitimacy of the EU's external borders agency will follow. The new legal framework will be applied to the shortcomings on output legitimacy of the agency's previous one. After this analysis, in which the different aspects of the output legitimacy are analysed, a suitable answer to the research question can be given.

1.3. Thesis structure

The thesis is organised as follows. In the subsequent section an insight into the theoretical implications of this research will be provided. Emphasis will be laid on the concept of output legitimacy, on the current academic discussion around the output legitimacy of the external borders agency, and on the history of the agency. After the theorisation, in the methodology section it is elaborated how the research will be performed, which data are collected and how the analysis provides guarantees for answering the (sub-) research question(s). After that, it is time for performing the analysis. Both European external border agencies will be assessed through indicators in order to measure the effectiveness of their working practices. When having assessed this, it is possible to draw conclusions from the results of this analysis. The last chapter will discuss the implications for future research but also the shortcomings and strengths of this one.

2. Theory

Within the academic literature regarding European agencies and their added value, many emphasis is laid on the fact that the difference between the practical contributions of an agency and its instruments and outcome should be highlighted. The discussion on EU agencies started with the fact that according to some, the EC had too much influence on new rules and kept coordination over government on national levels. This led to heavy political lobbying and the production of poor policy measures. As a result of this, the EU started focusing on agencies (Groenleer, 2009). Majone (1996) hoped that through the realisation and shift from focus towards these agencies, the level of politicisation within EU regulatory levels would decrease.

Before moving on to the other different criticisms addressed at the working practices of the EU agencies, let me first highlight the different types of EU agencies. The importance of EU agencies calls for a common understanding of the differences between EU institutions of purpose and the role of the agencies (CEC, 2008). The first distinction that can be made between agencies is those between Community agencies and 'second' and 'third' pillar agencies. The latter falls under the authority of the Council and operates thereafter. According to the EU, a Community agency is "a body governed by European public law, has its own legal personality and is distinct from the Community institutions (like the European Council, European Parliament and the European Commission) (European Union, n.d.). Within the Community agencies one can make a distinction between regulatory agencies and executive agencies, where the former has a variety of

roles and the latter a more specific executive role (Leonard, 2009). The two types of agencies are very different, in terms of their independence, the tasks they are given, and their governance. Executive agencies are only based in the areas of Luxembourg and Brussels, whereas the regulatory agencies are spread around the whole EU (CEC, 2008).

Executive agencies are set up under a Council regulation adopted in 2002 and have the task of helping manage the Community programmes. Under this single legal basis[5] they are governed and by this, their tasks are strictly defined in the Union's institutional framework.

Regulatory agencies, sometimes referred to as 'traditional agencies' (CEC, 2008), due to their longstanding working practices, or to as 'decentralised agencies' because their spread around the EU, are operating a different way. As stated before, regulatory agencies have their own legal personality and are independent bodies. These agencies are particularly of importance in the area in which the EU shares its competences with the MSs. This can be the case when new policies should be implemented at the Community level, but narrow cooperation with MS is necessary in order for this policy to be effective (CEC, 2008). Taken this typology into account, and where the Agency plays a role in ensuring the application of a common approach between guarantees for people refused at the border, it can be concluded that this agency is a regulatory one. The practices aim at reducing "decisionism, arbitrariness and disparity" of MS border practices (Neal, 2009; Léonard, 2009).

One of the shortcomings of the regulatory EU agencies, as discussed in the research by Dehousse (1997) and Majone (2002), is that they are not independent of the European executive authorities and they lack technical expertise, flexibility, transparency and proper functioning management (Dehousse, 1997; Majone, 2002). FRONTEX is also criticised for the same reasons. As Carrera (2007) states: "FRONTEX is supposed to be a depoliticised Community body however some factors are preventing its immunity" (Carrera, 2007). There are several factors provided for this prevention; the operational capacity of the agency is dependent on the willingness of involvement of the MSs, FRONTEX' activities are emergency-driven and the EC is exercising a large influence over its activities. Later academic debates focuses on the origins of agencies, some state here that the agencies were found as reaction to political events, where others aimed at analysing the agencies as a result of functional needs (Schout, 2011). According to Majone (2002), European independent agencies are a response to the credibility problems of EU democratic politicians. The agency can engage more in the continuity of policies and be consistent to a greater extent than political bodies due to the fact that they are independent of the electoral outcomes (Majone, 1998; ibid., 2002). The debate however, shifts from analysing the political aspects of the agency towards a more functional assessment of whether European agencies can contribute to a certain 'added value' of the outcomes of its working practices.

Important critical point is the distinction in the dynamic nature of EU agencies in their *de jure* competences and their *de facto* activities. When it comes to their competences obtained by EU law (de jure), the terms of 'operational' and 'coordination' are not defined by EU law (Carrera et al., 2013). However, in their founding regulations, the agencies' activities are based on the coordination of operational cooperation. When taking a closer look at the actions of the agencies (de facto), it can been seen that they do not only act

---

[5] See Council Regulation (EC) No 48/2003.

as coordinators, but also as initiators and planners for the actions on operational level. It is said that while dynamism and flexibility are import aspects for the European agencies in order to respond to new conditions and evolving political realities, these developing contradictions between the *de jure* competences and *de facto* activities are standing in tension with the rule of law principles of legality, transparency and accountability (Carrera et al., 2013).

When assessing an agency on its added value, 'legitimacy' is a relevant starting point, where agencies use the European response to the so-called 'legitimacy crisis', and to use the words of Majone; "agencies are an instrument to strengthen the legitimacy of EU policy" (Majone, 1996). However, legitimacy is a concept that is used in very different and broad ways and has been used by many different authors[6]. Looking back a long time ago, Max Weber's legitimacy relates on the general accepted arguments of religion, tradition, formal-legal, ideology and charisma. In modern conditions, the word relies more to the "trust in institutional arrangements". By ensuring this trust the government's processes are responsive to both the preferences of the governed and to the effective solutions of the common problems of the governed (Scharpf, 2003). The former relates to input legitimacy, and the latter relates to output legitimacy. These types constitute the core notions of democratic legitimacy (Scharpf, 2003). Input legitimacy is defined as democratic control or governing processes by the people, where output legitimacy can be defined as government for the people, the effectiveness of policy or the substantial legitimacy (Scharpf, 1999).

2.1. Output Legitimacy

Output legitimacy is concerned with the substance of the regulations and to what extent "which competence and knowledge of the person in charge of its elaboration affect the quality of the final regulatory outcome and its acceptance" (Iglesias-Rodríguez, 2012). Output legitimacy depends thus on the effectiveness of the government processes in practice, however, this evaluation criterion in performance assessment is difficult in view of some, the EC had endorsed great difficulties in agreeing on an evaluation framework with only effectiveness as a criterion (Schout & Wolff, 2012). In the 'output-oriented' tradition, as Scharpf (2003) refers to output legitimacy, the legitimacy depends on the governing institutions and their extent to which they protect public policy against the dangers of the 'tyranny of the majority' and the danger of being corrupted by self-interested governors. This protection goes by four aspects, which are the (1) assignment of governmental powers to multiple actors in the government that are independently part of the electoral accountability. Through the (2) establishment of independent judiciaries and other regulatory agencies who are protected against political interference. By establishing (3) veto positions and interdependencies between the political actors these dangers are restricted as well. The last aspect of protection is the (4) Bill of Rights between government and individuals and/or groups, which inhibits governmental interference with certain basic interests (Scharpf, 2003).

According to Schout (2011), the Agency should contain different underlying accountability mechanisms. These mechanisms steer the way in which policy instruments are used. Accountability is here defined as: "a relationship between an actor and a forum, in which the actor has the obligation to explain and justify his or her conduct, the forum can pose questions and pass judgment, and the actor might face consequences"

---

[6] Dowling & Pfeffer (1975), Nagel (1987), Majone (1996 & 1999), Cohen (1997), Dehousse (1997), Borràs, Koutalakis & Wendler (2007), Buess (2013) and Beetham & Lord (2014)

(Busuioc, 2012). The three important aspects as described by Busuioc (2012) are informing, debating, and the matter of consequences when there is dissatisfactory behaviour of the actor involved (Busuioc, 2012).

Output legitimacy refers to effectiveness. Schout (2011) states that when evaluating performance of a European agency, more criteria should be taken into account. First of all, effectiveness as an extent to which experts agree on the value of the delivery, in this case the working practices of the agency. Secondly, there is focus on the flexibility of the agency. The responsiveness to new conditions is meant by this mechanism and is added to the framework as a result of complaints on inflexible EU standards. The third mechanism for output legitimacy is subsidiarity, the principle where the EU aspires responsibilities to remain as much as possible at national levels. The three accountability mechanisms that define output legitimacy will further be elaborated on in the next sub-sessions. The legitimacy-based framework in Table 1 makes it possible to define and assess the contributions of an agency and compare it to alternative policy instruments.

Legitimacy	Accountability mechanisms
Input	- Hierarchical controls - Administrative mechanisms - Legal control - Functional cooperation
Output	- Effectiveness - Flexibility - Subsidiarity

Table 1 - Framework to assess the legitimacy of EU agencies.
(Source: Schout & Wolff, 2012)

2.1.1. Effectiveness

As stated before, effectiveness refers to the extent to which experts agree on the delivery of the working practices of an agency or institution. Carrera (2010) adds to this by stating that effectiveness of the working practices of a European Agency like FRONTEX also depends on the regime at the point of the extent to ensuring the protection of human rights and the guarantees that are enshrined in the Charter of Fundamental Rights of the European Union (CFREU)[7] and the Schengen Borders Code (SBC)[8] (Carrera, 2010). In a recent article, the emphasis on human rights is even more highlighted as it is stated that the European border agency is still unaccountable with regard to the rights of refugees. The agency is, according to Fotiadis (2016), evading responsibility and throwing it off to the MS, who on their turn have the habit to blame the EC. By this means, no one wants the responsibility for safeguarding refugees' rights. In this thesis, effectiveness will be assessed on the relation between the objectives and goals that are listed in the Agency's Programmes of Work (PoW) and the results that are reported its General Reports, Annual Risk Analyses (ARA) and external evaluations by Non-Governmental Organisations (NGO). FRONTEX has been criticized for being involved in acts of human rights violations and not carrying out sea surveillance in compliance with their human rights obligations (Fink, 2012; Spengeman, 2013; Vara, 2015; Vara & Sánchez-Tabernero, 2016). Some examples of these violations, as stated in a report of the European Free Alliance (2012) are violations to the right of asylum, obstacles to the right to leave any country, inhuman and degrading treatment of people and violation of the right of protection of personal data. It is thus necessary that the future missions of

---

[7] See the Charter of Fundamental Rights of the European Union (2000/C 364/01)
[8] See Regulation (EC) No 562/2006

the Agency, which include the operations by the EBCG, guarantee, protect and promote fundamental rights (Keller et al., 2012). The difficulty here is however, who is to be held responsible for the decisions that are taken in the area of fundamental rights. According to Ilkka Laitinen, former Executive Director of FRONTEX, "as regards fundamental rights, FRONTEX is not responsible for decisions in that area. They are the responsibility of the Member States". Contesting, Keller et al. (2012) are stating that in a FRONTEX' note to the EP "the respect of Fundamental rights (..) is unconditional for FRONTEX and is fully integrated in its activities. In fact, FRONTEX considers the respect and promotion of fundamental rights as integral part of effective border management and both concepts go, therefore, hand in hand" (Keller et al., 2012). It can thus be stated that the responsibility for the guarantee of fundamental rights is quite a dilemma.

2.1.2. Flexibility

The accountability mechanism on flexibility is mainly about the ability of the EU to actively and swiftly respond to new conditions in different working areas of the Union. To assess flexibility of the Agency, there must be looked at to what extent it is able to come up with challenges to tackle problems like thousands of irregular migrants that are arriving at the external borders of the EU. A radical upgrade on the EU's ability here is needed for facing this problem. In order to this the Agency must provide "targeted and protection sensitive joint operation responses at EU's borders", especially in exceptional situations to assist the MSs in providing their border security. By this means, the Agency should enhance multipurpose, protection-sensitive, and flexible responses to significant uncertainties at the external borders. These significant uncertainties follow from the risk analyses of the Agency (CEC, 2016). Another important aspect in order to respond flexible to new conditions is the provision of trained human resources and technical solutions that should be made available in Joint Operations (JO). When these resources are provided for in a timely manner and in a cost effective way, the working practices of an agency are more flexible.

2.1.3. Subsidiarity

Subsidiarity of agencies is a largely contested accountability mechanism of agencies, where it is said that due to the fact that border management is a shared competence, but still the MSs are responsible for controlling their part of the external border of the Schengen Area, the principle is hard keep up with. The principle is defining the circumstances in which it is preferable for action to be taken by the EU instead of by the MS involved (Raffaelli, 2016). The legal basis of this principle is found in the Treaty on the European Union (TEU)[10]. In different areas where the EU does not have exclusive competence, the principle of subsidiarity is trying to safeguard the ability of MS to take decisions and authorisation of action and intervention by the Union, only when the objectives of such an action cannot be sufficiently performed by the MS, and thus can better be exercised at Union level. The general aim for this principle is to ensure a certain degree of independence for lower authorities in relation to their higher bodies. The problem for FRONTEX is that it cannot impose any activity without the consent of the involved MS. Border Guard management and the corresponding operations are subject to instructions by the authorities of the MS. In the mandate set up to renew FRONTEX, these competences are more freely.

---

[10] See Article 5(3) of the Treaty on the European Union (TEU)

In the Regulation on the EBCG[11], it is stated that the Agency is carrying out vulnerability assessments to take into account the MS' capacity to carry out all border management tasks. This is a typical example of where the subsidiarity principle comes in; as a result of this vulnerability assessment the MS involved could receive a number of measures that are ought to be taken in order to sufficiently carry out their border management. This number of measures are provided for by the Agency and thus by the Union, a higher authority. When an MS is not taking the necessary measures that are referred to in the Regulation[12], the Council could propose a decision by means of an implementing act in order to intervene in the MS. This should be done with consultation of the Agency, but it can be stated that the subsidiarity principle is active here, where the authority of the Commission is deciding on possible intervention. This legal act is situated in the Regulation[13], on 'situation on the external borders requiring urgent action'. Due to shortfalls in the provision of national expertise, it cannot be guaranteed that the teams on the ground have access to the necessary information. The agency should focus more on the provision of education in order to make sure that MSs are able to gain the expertise needed for challenging the migrant issue (CEC, 2016).

2.2. European Union's External Borders Agency

As a result of a deepening and more widening process of European integration, the attention for the protection and management of the EU external border control grew. Due to the removal of the internal borders following the creation of the Schengen agreement in 1985[14], the EU needed common solutions in order to control unwanted immigration and to fight against cross-border crime, like human trafficking. In addition, the terrorist attacks on 11 September 2011 led to the identification of measures that were aimed at reinforcing the "homeland" security, including the securing of the external borders (Léonard, 2009).

2.2.1. Pre-history of FRONTEX

Due to the increased attention to the management of the EU's external borders the intergovernmental group SCIFA was founded by the Treaty of Amsterdam in 1997. This strategic committee on immigration, frontiers and asylum is working group that issued strategic guidelines on immigration, frontiers, and asylum for the Committee for Permanent Representatives (Schout & Wolff, 2012). Swiftly after their application, SCIFA was sub-divided into SCIFA +, whose task was to coordinate the ad-hoc centres of border control, so managing the operational aspect of border control. Soon after the establishment the effectiveness of their operations and their arrangements was challenged by both EC and the representatives of some MSs. The Commission showed structural shortcomings in their institutional arrangements (Léonard, 2009). In a report on the implementation of programmes, ad hoc centres, pilot projects and joint operations the Council of the European Union stated that the work of SCIFA + faced some serious problems concerning of:

a. The lack of suitable planning and preparation

b. The lack of central operational coordination

---

[11] See Article 13 of the Regulation (EU) 2016/1624
[12] See Article 13(8) of the Regulation (EU) 2016/1624
[13] See Article 19 of the Regulation (EU) 2016/1624
[14] See Title 2, Chapter 1, Article 2 of the Schengen Agreement (1985)

c. The lack of adequate in depth treatment of difficulties which arose during the implementation period

d. The lack of legal basis carrying out common operation

e. The fact that participating countries did not fully meet their obligations under the programmes

As a result of these shortcomings, the Common Unit was created in 2002 under SCIFA + to give it a more operational colour. With the acknowledgement of the deficiencies mentioned above in the attempt to control the external borders by the EU (Council of the European Union, 2003), there originated a need for professionalization and de-politicization at the level of EU border management (Schout & Wolff, 2012). The Commission suggested as a result of this, to introduce the establishment of an External Borders Practitioners Common Unit (PCU). The PCU should play a full multidisciplinary and horizontal role to gather managers and practitioners carrying out the full range of tasks concerning external border security.

The PCU however, as well as SCIFA+, showed shortcomings with regard to accountability mechanisms. In their analysis on the added value of agencies, Schout & Wolff (2012) conclude among other things that "output legitimacy was clearly problematic" and relates this to the intergovernmental working methods, the varying commitment that the member States showed and the problems that the PCU faced when starting up. The working practices of the PCU suffered from continuing national practices, lacked coordination and the agency as such was still highly politicized, which was not wished for (Neal, 2009).

2.2.2. FRONTEX

In the Thessaloniki European Council in June 2003[15], the Commission asked for an examination of the necessity of creating a new mechanism for the operational cooperation in the management of the external borders of the EU. Following from this examination, FRONTEX was established in October 2004. The Agency's main objective was to better coordinate operational cooperation amongst MSs in order to increase the effectiveness of the implementation of Community policy on the management of the external borders (Léonard, 2009), and by this means ensuring the coordination of MS' actions in the implementation of the measures that are applied by the Community in the area of the management of the EU's external borders (Léonard, 2010). According to the founding regulation of the Agency, FRONTEX has six main tasks[16]:

1. The coordination of operational cooperation between Member States regarding the management of external borders
2. Assistance to the training of national border guards
3. Conduct of risk analyses
4. Follow up on developments in research relevant for external border controls and surveillance
5. Assistance to MS in cases where increased technical and operational assistance at external border is required
6. Assistance to MS for the organisation of joint return operations

---

[15] See Presidency Conclusions on the 2003 Thessaloniki European Council 11638/03
[16] See Article 2(1) of the Council Regulation (EC) No 2007/2004

The establishment of FRONTEX was not based on securitization, exceptional politics and urgency, but in response to the dangers to European integration and contribute to migration, security and external border issues (Neal, 2009). The coordination of operational cooperation between MS has lot to do with FRONTEX' JOs. These operations are planned and developed on the basis of the ARAs of the Agency which analyses and highlights future risk of irregular migration and cross-border crime. During the yearly conferences with MS, FRONTEX prioritises the proposed JOs on basis of these risk analyses (Frontex, n.d.). To provide this theory part with all the JOs it has executed would be too extensive, therefore I focus on two main successful operations at the Southern external border. In JO HERA (originally existing of HERA I and HERA II) 2006, the MS cooperated with Spain in order to return illegal migrant to their countries of origin. The migrants arrived at the Canary Islands where their country of origin was established by the Agency (this establishment has an accuracy score of 100%), and by this they could be returned to their country of origin. For HERA I, this led to a total of 6076 returned migrants under the authority of Spain (Frontex, 2007). The main aim of HERA II, which consisted of cooperation between FRONTEX, Italy, Portugal and Finland, was to detect vessels with migrants setting of towards the Canary Islands from the coastal areas of Senegal, Mauritania, Cape Verde and the Canary Islands. In the case these vessels were detected, they could be diverted back to the point of their departure and by this means the number of persons that die at sea could be reduced. During this operation more than 3 500 migrants were stopped. In 2011, FRONTEX coordinated operation HERMES (JO Hermes Extension 2011), which aim was coordinating sea border activities to control irregular migrations flows from Tunisia towards the southern coastlines of Italy, mainly the islands of Lampedusa and Sardinia. HERMES was hosted by Italy and the MSs participating in the operation were Poland, the Netherlands, Germany, France, Austria, Portugal, Belgium, Romania, Hungary and Spain. A country that is linked to the EU by an Association Agreement[17]and also participated in this JO is Switzerland. FRONTEX' operational plan for the JO states that the JOs at sea focus on the 'common effort to carry out border surveillance to ensure that persons attempting to cross the external borders undergo the border control' as this is required by the SBC[18]. Among the objectives of HERMES is the facilitation of effective cooperation with relevant third countries in activities that are coordinated by FRONTEX at the external borders of the EU (Mungianu, 2016, p.207).

The problem with FRONTEX lies, according to Carrera (2007) with the fact that it is a "depoliticised body in a very highly political spectacle", the main reason for this is a significant influence of the Commission on the Agency's activities (Carrera, 2007). The Board of FRONTEX has two important EC representatives in it. Where the Commission only should guide the agency on the state of affairs in different relations with member states, it is clear that the influence on the actual key activities of FRONTEX is highly present. Furthermore, the Agency's capacity is mainly depending on the level of cooperation from the MS. What also is of importance to the level of politicisation of the agency is the fact that it is "emergency-driven" and a by-product of the political pressures and strategies that are exercised by particular involved member states. Laitinen adds to this by stating in 2006 that 'his' agency is "namely a coordinating body with no executive powers, no operational assets of its own" and that the operations executed by the agency are dependent on the contributions of resources by the involved

---

[17] See Association Agreement OJ L 300 of the EEC and Swiss Confederation
[18] See Regulation (EC) No 562/2006

MSs (Laitinen, 2006). Wolff (2010) emphasises this a little more when she states that the impact assessment, that was carried out in order to amend the initial FRONTEX regulation, concluded that the main goal of FRONTEX, operational cooperation in the field of external border management, was still insufficient and inefficient. This same impact assessment also underlines the problems FRONTEX encounters: voluntary contributions for equipment, lack of human resources, insufficient coordination of joint operations and their exact role in return operations (Wolff, 2010). This leads to a paradoxical situation for the agency, where on the one hand the agency has sufficient resources at hand and possesses the necessary flexibility to operate when needed. But on the other hand, depends only on the goodwill of member states to fit the agency with the operational tools for contributing to the operations (Pollak & Slominski, 2009).

As Rijpma (2010) states; "the EU's external border agency is a very easy target for criticism", he highlights the way in which the agency is controlling the Southern external borders is highly criticised. The powers of the agency are limited and the responsibility for operational activity at sea remains with the MSs. In this way, according to him, the agency cannot be held fully responsible for failing practices at the external borders. The efforts in solving these problems should be based on political decisions, regarding full respect of international law and by this, it is the Member States and the Community institutions, not Frontex that should be blamed for the failure. The EU should reconsider the securing of fundamental human rights, the rule of law in the external dimension of EU border management and the insurance of the safeguards that are enshrined in the SBC (Rijpma, 2010).

With regard to the human rights aspect, to many people it would be paradoxical or ironic to link FRONTEX to the humanitarian ideals that are written down in their PoWs. The agency is criticised a lot for its JOs and is the "most visible representative of the militarization of European borders and the so-called outsourcing of European asylum rights to third countries" (Aas & Gundhus, 2015). The critique, from different actors including NGOs, EU agencies and IOs (IOM, 2010; Amnesty International, 2012; Human Rights Watch, 2012; FRA, 2013a, 2013b) is based on how and whether the core fundamental rights are safeguarded by FRONTEX at the external borders of the EU.

Due to the mentioned shortcomings, the EC insisted on providing FRONTEX with a stronger mandate in organising joint return flights, to develop an Erasmus-style programme for border authorities and by these means to create a European culture of border guards of the MS. This mandate is provided by the EP and the Council of the European Union[19]. However, besides the new competences given through the mandate, the agency should integrate more on a horizontal way within border management and asylum policies, and the cooperation between experts in the field and the authorities should be promoted (Wolff, 2010). The latter would also lead to a higher extent of output legitimacy as the effectiveness of the Agency would be more positively evaluated by experts.

2.2.3. European Border and Coast Guard
As one of the key responses to the 'refugee crisis' that hit the external borders of the European Union in 2015, the EC proposed a regulation for a mandate of the former FRONTEX regulation in December 2015 (Carrera & den Hertog, 2016). Regulation (EU) 2016/1624 of the EP and the Council was enforced in October 2016. The regulation

---

[19] See Regulation (EU) No 1168/2011

establishes "a European Border and Coast Guard to ensure European integrated border management at the external borders with a view of managing the crossing of the external borders effectively"[20]. IBM includes here the current irregular migratory challenges and potential threats to the external borders. The EU contributes to the addressing of serious crime with a cross-border dimension, to ensure high levels of internal security. On the same time, it keeps full respect for the fundamental rights and safeguards the free movement of persons within the Union.

The activities of the Agency shall be based on the new regulation. To ensure a coherent European IBM, the Agency shall facilitate and render more effective the application of existing and future Union measures relating to the management of the external borders[21]. The main new competences with the mandate for the regulation of the EBCG consist of the installing of liaison officers, right to intervene and the assessing of vulnerability of MS. Art. 12 of the Regulation states that the liaison officers will act on behalf of the agency and their role is to foster cooperation and dialogue between the agency and national authorities[22]. The 'right to intervene' regards to a situation at the external border that requires urgent action[23], here the Agency can implement measures adopted by the Commission to mitigate the risk of putting in jeopardy in the Schengen area.[24] Or it can be done with regard to a request by an MS that it is in need of a rapid border intervention[25], for example when challenging illegal immigration or cross-border crime. The Agency will further more be empowered to require that Member States take correct action on a timely manner. When the functioning of the Schengen area is at risk and when national deficiencies are not remedied, the EBCGA is able to intervene and make sure that the correct action is taken on the ground. This action can be performed without the request for assistance of the MS or even when the MS considers assistance not necessary.

Vulnerability assessments[26] are used for assessing the capacity and readiness of MSs to face the challenges at their external borders. When this assessment leads to deficiencies in properly facing those challenges, the Agency should identify measures needed for MSs to implement. The Regulation provides the EBCG with an additional role, namely that of supervisor, where the EBCGA is in charge of the execution of these assessments (Rijpma, 2016). According the Regulation, the Agency shall be a body of the Union, it shall have legal personality[27].

In the light of the shortcomings to its predecessors, the EBCG should focus on challenges in three particular areas; 1) autonomy and the constant state of emergency 2) structural capacity and institutional standards and 3) asylum processing and human rights. According to Carrera & den Hertog (2016), "the poor state of transposition and practical implementation of EU asylum standards by MS is just the tip of the iceberg of a more systemic deficit" (Carrera & den Hertog, 2016). Hereby referring to the lack of certain ground conditions as not facilitated by the member states and a lack of output legitimacy as the future working practices will not be evaluated as effective and flexible. In the eyes

---

[20] See Regulation (EU) 2016/1624
[21] See Article 6(2) of the Regulation (EU) 2016/1624
[22] See Article 12 of the Regulation (EU) 2016/1624
[23] See Article 19 of the Regulation (EU) 2016/1624
[24] See Article 19(3) of the Regulation (EU) 2016/1624
[25] See Article 15 of the Regulation (EU) 2016/1624
[26] See Article 13 of the Regulation (EU) 2016/1624
[27] See Article 56 of the Regulation (EU) 2016/1624

of some, the EBCG is just a small step towards improvement of the external border management systems. The name of FRONTEX could be changed, but that is not leading to the solution to the accountability issue for operational activities and besides that, the unclear division of responsibilities is increased (Rijpma, 2016).

However, when facing the challenges in the areas mentioned and improving them in their new operations and with their increased competences, the EBCGA could improve the output legitimacy issue.

2.3 Conclusion

After having described the theoretical implications, how the European agency for external border controls has originated and how the new EBCG provides border management with new aspects, it is time for focusing on the first sub-question of this thesis. This question relates to what output legitimacy actually is. Output legitimacy for European agencies refers to three main concepts, knowing effectiveness, subsidiarity and flexibility of their working practices. To measure the output legitimacy of a European agency, there must be looked at to what extent their working practices are perceived as effective, uphold the subsidiarity principle and whether they act flexible upon changing conditions.

3. Methodology

In order to investigate to what extent the mandate of the EBCG is able to improve the output legitimacy of the EU external border agency, a suitable methodological approach is necessary. In this section, an insight will be provided to which method is chosen for this analysis, how the data is collected, which data are included, and elaboration on the choice of data. After that, the operationalization of the concept needed for analysis is given. When the chosen concept is appropriately operationalized it is possible to continue on the analysis part, which is leading to the answers of the second and the third sub-question of this thesis, namely how the output legitimacy of the EU's external borders agencies is assessed.

3.1. Choice of Method

For this thesis a qualitative type of research method is chosen. To perform a proper analysis on output legitimacy and therefore find a suitable answer to the research question, the comparative content analysis will be used. The content analysis is a research technique where ideas, meaning and expression in a text or document are studied through analysing patterns, or concepts, in elements of the text (Yang, 2008). This method was originally used in the 19th century as a method for analysing hymns, newspaper and magazine articles, advertisements and political speeches (Harwood & Garry, 2003). Content analysis is nowadays used for the study of messages that are published in different media, which includes books, policy documents, scientific articles, regulations, work programmes, evaluations, internet pages and press releases (Bryan et al., 2008). As Babbie (1999) states: "The purpose of content analysis is to draw meaning from a text by coding the text on basis of what it contains or does not contain" (Babbie, 1999). By this means it is possible to "attain a condensed and broad description of the phenomenon, and the outcome of the analysis is concepts or categories that are describing the phenomenon" (Elo & Kyngäs, 2008). In this research, I create a system to 'code' the messages (concepts of output legitimacy) in the collected data and use these data in order to make observations about these messages, in other words, analyse and write down the results and draw the corresponding conclusions on the extent of output legitimacy (effectiveness) of the analysed data.

The content analysis method is considered a suitable research method for answering my research question for different reasons. First of all, since a quantitative method in this policy and legal analysis will not lead to any sufficient conclusions on the output legitimacy of the agency, a qualitative research method is needed. Secondly, it allow for precise and explicit examination and analysis of evaluation studies. Thirdly, this method makes it possible to break down large units of analysis into smaller, categorized indicators, which allows for structured and meaningful results. Since this methodological approach is providing a broader picture of output legitimacy and the extent of effectiveness of working practices, it is considered the most useful one.

This analysis compares the output legitimacy of FRONTEX with the output legitimacy of EBCGA to come to a conclusion on whether the new mandate has been able to improve output legitimacy in the current situation. Using the framework for assessing legitimacy, the differences in output legitimacy between the different agencies and frameworks can be highlighted.

3.2. Data Collection

When conducting a comparative content analysis, different sets of data are needed to analyse which differences the output legitimacy are in place. A list of all the data sources that are to be consulted for this analysis can be found in the appendix section. First of all, there will be looked at the European regulations on European external border management and the way they function.

These Regulations on the Agency are all part of the constantly renewing policy area of external border management. The regulations are used for analysing which articles and actions following from the renewed mandate of the Agency are either lacking, or are improving the agency's output legitimacy. The regulations follow a time-span of more than 10 years to provide proper insight in the changes through this period in the regulative aspect of output legitimacy. Within this period, changes in European Treaties also occurred, that is why the Treaty of Lisbon (2009), as an updated form of the Treaty on the European Union (TEU) is also used for the methodology part. As a result of the regulations and the amendments in these, a report by the Council on measures for reinforcing the protection of the external borders and combating illegal immigration is used for analysis.

Besides the legal regulations, a closer look is taken at policy and legitimacy evaluations of FRONTEX, both from internal and external sources. From external sources, the COWI evaluation of Frontex and the External Evaluation of Ramboll Management Consulting are informed. The COWI evaluation from January 2009, assessed the working practices, the effectiveness and the impact that the Agency has (COWI, 2009). This Report by the Danish consultancy firm COWI A/S is the first official external evaluation of the agency, requested by the EC to ensure transparency and accountability in the allocation and spending of EU funds[28]. The report consists of multidisciplinary evaluations, allowing for objective findings and constructive conclusions on the working practices of the Agency.

The second external evaluation of FRONTEX by Ramboll Management Consulting and Eurasylum (2015) examined how efficiently and effectively Frontex is fulfilling its mission in the period from July 2008 until July 2014. It also analysed the impact that the Agency

---

[28] See Evaluation for the EU Commission at the firm's website
http://www.cowi.com/menu/service/economicsmanagementandplanning/evaluationandimpactassessment/evaluation-for-the-eu-commission/

has and how the working practices are executed. This second external evaluation of the agency takes into account the views of stakeholders, from both national and European level. The evaluation entails extensive fieldwork at both the headquarters in Warsaw and in selected MSs. It examines to what extent the Agency has been effectively fulfilling its mission and implementing its founding Regulation. The report also highlights some concrete and implementable recommendations to its client, the European Commission. It should be taken into consideration that COWI A/S as well as Ramboll carried out these reports for the EC and therefore the outcomes are perhaps not fully objective with regard to some more critical points of the working practices. In order to provide the reader with a more objective view of the Agency, sources of academic authors and other relevant independent sources will be added.

With regard to internal evaluations, several evaluations are included in the data set. To start with the 2008 report on the evaluation and future development of FRONTEX by the Commission of European Communities (CEC). This report evaluates the achievements of the Agency between 2005 and 2007. Next to this, a report by the House of Lords (HoL) (2008), that evaluates the working practices of FRONTEX. This report provides a different insight, where it is written from a UK perspective on FRONTEX . In 2010, FRONTEX also published an evaluation on its own work, named Beyond the Frontiers: Frontex: The First Five Years. In this report the agency evaluates the highlights and achievements of it in their first five year of existence. This contributes to the analysis where the report shows where FRONTEX' practical contributions take place in joint operations and other working practices. To provide more recent information of the working practices of the Agency, in special the human rights aspect, two more papers are added for analysis. The normative assessment of the aims and practices of FRONTEX by the Refugee Studies Centre (2012) provides an insight to the fundamental rights aspect of the Agency's working practices. In a report on the guarantee of fundamental rights, the Green Group of the EP critically analyses the work of Frontex. This report is from March 2012 and provides recent insights on the violation of fundamental rights aspects of the Agency.

Furthermore, two reports on the impact assessment of Frontex, one by the EC in 2009 on the guidelines of the impact assessment, and the working document of the Commission in 2010 are added to the collection of data for analysing the impact of the Agency.

To further assess the working practices of Frontex, the ARAs, the PoWs and the general reports of the Agency for the years 2011 to 2016 are used. Due to analysis of these reports there can be looked at the changes that are implemented over the years and whether these changes are in line with the listed shortcomings and deficits as mentioned in the academic discussion, and to what extent these possible changes can contribute to the improvement of output legitimacy. To add to this, analysis on the annual reports and provide insight in the working practice of the new mandate, the EBCG already published two reports on risk analysis after its implementation in October 2016. Last but not least, the FRONTEX ' Strategy and Multi Annual Plan (MAP) 2016-2019 is added to refer to the strategic business plan that the external borders agency aims at.

Summed up, the data that are going to be used for this research are all from different visions and angles with regard evaluations on both FRONTEX and the EBCGA with regard to output legitimacy.

3.3. Operationalisation of Output Legitimacy

In order to find a suitable answer to the research question and indicate to what extent the mandate of the EBCG is able to improve the output legitimacy, all the data will be consulted. The units of meaning refer to concepts of output legitimacy. These concepts are effectiveness, flexibility and subsidiarity. Due to the matter of time, this thesis will only focus on the concept of effectiveness. The concept will be operationalized and indicators for measuring effectiveness are highlighted.

3.3.1. Effectiveness

Effectiveness is assessed on the basis of the coherence between the objectives and goals listed in the programmes and general reports of the EU's External Borders Agency (COWI, 2009). The operationalization of effectiveness consists of ten indicators which are used in order to analyse whether the Agency implements its tasks and executes its working practices as how are they described in the mandate.

The first indicator is (1) the effectiveness of the Agency's coordination of JOs. This coordination aspect is one of the Agency's most important activities and is in line with Council Regulation from 2004[29] stating that; "the Agency shall evaluate, approve and coordinate proposals for joint operations and pilot projects made by MSs, including the requests of MSs related to circumstances requiring increased technical and operational assistance". The second indicator for assessing the effectiveness of the Agency's working practices is (2) carrying out of high quality and accurate risk analyses. These risk analyses are consisting of a range of strategic and operational risk analysis products, which provide "actionable intelligence of a broad range of subjects related to the management of the external borders of the EU (Ramboll, 2015). The results of these analyses by the Agency are originally destined to be the basis for strategic and operational decisions that will contribute to allocation of resources for border checks and surveillance. (3) Assistance to MS on training national border guards. This training of national border guards includes an establishment of common training standards by the Agency. (4) Participation in development and dissemination of research relevant for control and surveillance of external borders. This indicator relates to Art. 6 of the FRONTEX Regulation[30] that the Agency shall monitor and contribute on a proactive way, to the developments in research that are relevant for the surveillance and control of the external borders. This information should be disseminated to the EC and the MSs. (5) Facilitation of deployment of relevant technical equipment and human resources in the MS. This is done via the Pooled Resource Unit (PRU) which is responsible for the management of technical and human resources that are made available to the Agency for different operational activities. (6) Support of coordination and organisation of Joint Return Operations (JRO) of MS. According to Art. 9 of the founding regulation of the external border agency[31], the Agency is to provide MS with necessary support for coordinating or organising JROs. Art. 9 (2) adds to this where it states that the Agency will cooperate with Third Countries in order to identify the best practices when it comes to the achievement of travel documents and the return of illegally staying Third Country nationals. (7) Facilitation of the exchange of relevant information with the Commissions and the MS. This indicator focuses on the extent that the Agency has provided ICT infrastructure appropriately for information exchange and whether it has established an effective mechanism for operational information exchange with the Commission and MS.

---

[29] See Article 3(1) of Council Regulation (EC) 2007/2004
[30] See Article 6 of the Council Regulation (EC) 2007/2004
[31] See Article 9 and 9 (2) of the Council Regulation (EC) 2007/2004

(8) Facilitation of operational cooperation with authorities in third countries. The key areas in which the Agency performs operational cooperation with authorities in third countries are information, exchange, risk analysis, training, research and development, joint operations and pilot projects. It is of importance that these cooperation with authorities are proper facilitated. The ninth indicator of effectiveness is (9) the enhancement of the cooperation of the Agency with other relevant EU agencies and international organisations. Analysis on this cooperation provides the possibility to improve the outcome of their activities and be able to evaluate the role and the functions of the agency in the EU inter-institutional environment. The final indicator (10) looks at to what extent the Agency is guaranteeing, protecting, and promoting fundamental human rights. In order to do so, it is important that the Agency has an efficient and independent evaluation and monitoring system (Keller et al., 2012). Most of the documents with regard to the ongoing and past operations of the Agency are disclosed to the public. This leads to a lack of external oversight regarding the Agency's practices and operations, and increases the risk of disrespect for human rights. Figure 1 provides an overview for these indicators in order to assess the effectiveness of the working practices of the EU's external border agency.

Effectiveness

- Coordination of joint operations
- Risk analysis
- Training national border guards
- Participation in Research & Development
- Facilitation of technical equipment and human resources
- Support and coordination of joint return operations
- Facilitiation of the exchange of information
- Operational cooperation with authorities in third countries
- Cooperation with EU agencies and IOs
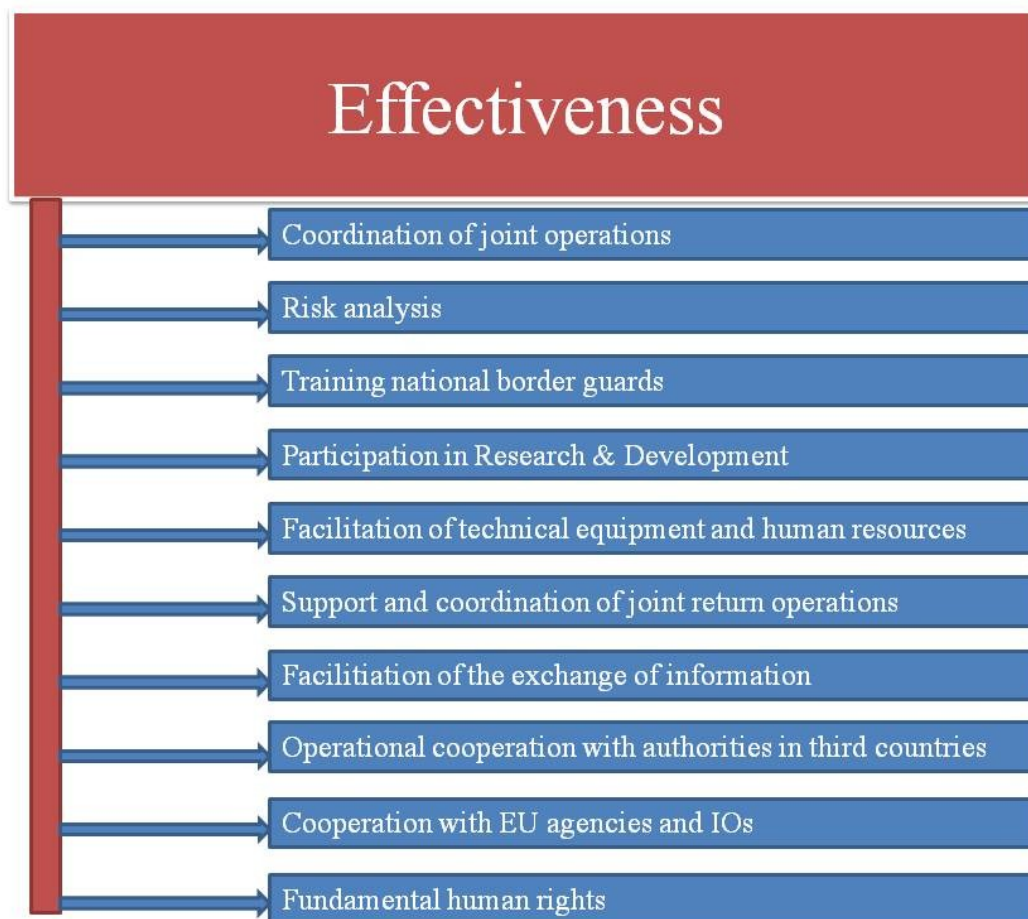- Fundamental human rights

Figure 1: Indicator overview for assessing effectiveness of the external border agency. (Source: Own compilation)

3.4. Data Analysis

In order to come to an answer for the sub-questions and eventually to the main question, it is essential that the concept of effectiveness as part of output legitimacy is analysed through the indicators of effectiveness as can be seen in Figure 1. By analysing the levels of output legitimacy of the agencies for European external border management and comparing the outcomes of these analyses, the extent to which the new mandate of the EBCG has improved the effectiveness part of output legitimacy can be determined. The data on which the research is based will be critically evaluated and assessed. The results of this analysis provides the answers to the second, third and fourth sub-question and after these are answered it is possible to provide the thesis with an answer to the main research question and draw conclusions.

4. Analysis

The section consists of two main parts, which both consists of two sub-parts. The main parts are the focus on the output legitimacy of FRONTEX and the focus on the output legitimacy of the EBCGA. Each of the main parts is analysing the extent of effectiveness as concept of output legitimacy. The subsection consists of an effectiveness evaluation and a concluding part. As can be read in the methodology section, the concept of effectiveness relates to ten indicators. Each of the indicators forms a small section of this analysis chapter. Per indicator there is looked at to what extent the involved agency operates properly, following its own PoWs, protects the fundamental human rights and provides proper risk analyses.

4.1. FRONTEX

4.1.1. Effectiveness

With reference to the theory section on this concept, effectiveness relates to the extent to which the working practices and the outcomes of it are in line with the PoW of FRONTEX. The analysis compares the outcomes of reports throughout the years, which are deriving from both internal as external sources. FRONTEX will be assessed accordingly through the ten indicators stated for effectiveness.

4.1.1.1. Coordination of joint operations

The coordination of JOs is one of the key aspects in evaluating the working practices of FRONTEX. This coordination consists of assisting on matters of coordination between two or more MS with a view to challenging and tackling the problems encountered at the EU's external borders and sending experts to support national authorities during the operations (COWI, 2009). It should be taken into account that the Agency shares the responsibility for this coordination with the MS, who have the full authority over administrative and operational decisions in the context of the JO (Ramboll, 2015). FRONTEX has been the largest EU operational actor in contesting joint maritime activities and other operations in the Atlantic Ocean and in the Mediterranean. They managed to achieve significant results by doing so (Frontex, 2016a).

In each operating year of FRONTEX, the Agency tries to take the way forward in performing and coordinating JOs. However, one of the aspects that needed improvement, is that the host country of JOs should be more involved in the drawing up of the report, FRONTEX should be responsible for these reports (House of Lords, 2008). By this means, the lesson that could be learned from these reports, is been put to good use, not only for the Agency but also for the MS in the future. Deriving from the COWI report (2009), the agency is criticised by some MSs for delays, uncoordinated response and improper reception of participants. Also, there were concerns about the usage of information, this

is partly due to the missing competence of FRONTEX, where they are not entitled to process personal information. MSs also indicate that they would like an actual assessment of the impact of the various operations and that the evaluation reports by the agency are less descriptive and more analytic (COWI, 2009).

The topic of coordinating the operations has been very controversial as there are cases where migrants have drowned during the deployment of the operation (Leonard, 2010). Therefore the Agency is criticised for not upholding to the extra task they have, which is the responsibility for the events during the JOs under their coordination. The JOs are considered securitising practices, to deal only with security threats and therefore illegal in some respects (Leonard, 2010). Impact assessment of FRONTEX by the Commission is stating that there is inefficient coordination and follow up of JOs and that the Agency should get either a more leading role in implementing the JOs or a more responsible role in drawing up the operational plan in cooperation with the hosting MS. By this means the role of the Agency in preparing, coordinating and implementing operations is improved (European Commission, 2010).

According to Ramboll (2015), "there is a need for the objective and scope of Joint Operations to be clarified" (Ramboll, 2015). Adding to this, uncertainty exists on the legal inconsistencies of the JOs, the central aspect of EU-refugees-law is not part of the legal foundation of its operations and therefore no consensus exists on how to operate (Klepp, 2010). Furthermore, the operations are under scrutiny for not being under responsibility of the Agency but of the MS and not in full consistency with international and European law. The protections and the guarantees that these offer, therefore not apply (Carrera, 2007; Papastavridis, 2010).

Evidence collected shows that the coordination of FRONTEX on JOs is experienced as effective (Ramboll, 2015). In terms of coordination and the development of operational plans, the Agency showed to successfully have carried out its tasks. Besides the fact that the Agency has been able to ensure sufficient resources for the JOs, there is room for improvement on this aspect.

4.1.1.2. Risk Analysis
This indicator focuses on the carrying out of high quality and accurate risk analyses. Next to the coordination of JOs, this is one of the Agency's main tasks and contributions to the external border management. Carrying out risk analyses is done by developing and applying a common integrated risk analysis model, preparing general and tailored risk analysis and incorporating the results of the integrated risk analysis in the development of the common core curriculum (CCC) for border guards' training[32]. The Risk Analysis Unit (RAU) is responsible for carrying out these analyses and threat assessments (Carrera, 2007). The RAU produces four kinds of reports: general risk assessments of security conditions, tailored risk assessment for specific situations at the request of MSs, bulletins for specific issues and support risk assessments for operational activities. The reports are focusing on mobility and actions of groups but are not collecting specific information on individuals (Marenin, 2010). It should be taken into consideration that FRONTEX' risk analysis is not a simple collection of data for operational border controls and surveillance activities, but that the analyses should be perceived as a particular form of knowledge with important political effects (Horii, 2016).

---

[32] See Article 4 of the Council Regulation (EC) No 2007/2004

Since 2006, FRONTEX presents each year its ARA. With the ARA, the Agency contributes to the Organised Crime Threat Assessment report (OCTA) and collaborates with institutions like Europol (European Police Office) for presenting aspects of the report with regard to high risks routes across the European external border. These assessments of annual risks support the MSs in reacting to new dangers, risks, and threats at the border (CEC, 2008). In a Commission evaluation and future development report of the Agency, it is recommended that the annual risk analyses should be integrated more with Europol and other international organizations, as well as the inclusion of "more geographical and/or theme oriented joint risk analysis" (CEC, 2008). As of 2010, the Agency did this and started on creating quarterly risk analyses for specific regions. These reports appeared for among others the Western Balkan (WB) route and the Eastern borders. The Frontex Risk Analysis Network (FRAN), a network that consists of MSs and Schengen Associated Countries (COWI, 2009), created a more theme oriented version of the quarterly risk analysis.

According to Neal (2009), the risk analysis model of FRONTEX has been split into two by directing at both the movement of people and the capacities of the MS border systems. In order to integrate the both aspects into their analyses, the 'risks' and 'weaknesses' should be assessed into one report. By this means the effective management of migration could be increased (Neal, 2009).

Resulting from COWI (2009), it can be concluded that the risk analysis has gained a good reputation in the working practices of FRONTEX, 95% of what is discovered during the joint operations at sea was already predicted by the RAU. The problems with the usefulness of the risk analyses are with regard to the limited mandate of FRONTEX, which not let the Agency gather or analyse personal data from people that are stopped and arrested. This leads to ineffective ways of work, where these tasks should be done by Europol and other national police units in the involved MS (COWI, 2009). The outcome of Ramboll evaluation, is in line with this argument and states there are three gaps noticeable in the risk analysis tasks and activities by FRONTEX. The first is the aforementioned framework for the processing of personal information, which is still not functional. The second is with regard to the performance of risk analyses to challenge cross-border crime, this should be implemented by the Agency. The last noted gap is the missing performance of a vulnerability assessment (Ramboll, 2015), in order to assess the readiness and ability of MSs to support FRONTEX' operations and the capacity to face upcoming challenges (Carrera & den Hertog, 2016).

As a result of one of the noticed gaps in risk analysis, the Agency started with observing a rising number of large merchant vessels in the Central and Eastern part of the Mediterranean, suspected of being used for the smuggling of people. In addition with this observing of migrant-smuggling vessels, FRONTEX coordinated maritime operations that uncovered other types of cross-border crime. Over 340 drug traffickers, carrying mainly hashish and cocaine were arrested in the Western and Central Mediterranean Area (RAU, 2015). In May 2015, the Commission even sets out a EU Action Plan in order to efficiently tackle the criminal networks facilitating irregular migration (Frontex, 2016a).

4.1.1.3. Training of national border guards

The training of national border guards and other related training activities is established in the Frontex regulation[33]. "It shall establish and further develop a common core

---

[33] See Article 5 of the Council Regulation (EC) No 2007/2004

curriculum for border guards' training and provide training at European level for instructors of the national border guards of Member States." Training is also regarded as a strategic tool to enhance the relations with third countries and improve the standards of their border guards (Pollak & Slominski, 2009). The CCC, which aim is to standardise the training for European border guards all over Europe, should be more specialised in order to contribute to the full respect of norms on European and international rules on asylum and fundamental rights. By means of these specialised training courses, border guards are increasingly able to improve the situations involving search and rescue operations (CEC, 2008). HoL (2008), adds to this by stating that the training courses provided by the Agency should mainly focus on the humanitarian background to illegal migration and its causes (House of Lords, 2008). The working practices of FRONTEX should be adjusted so that they are in line with asylum law, the law of the sea and fundamental rights. Areas in which the training of national border guards could be improved are better planning and more lead time to prepare courses at partnership academies. The latter regards to formal agreements with partner academies which are perceived as too superficial and therefore do not always reflect on the actual scope of the services that are needed for a specific training goal (COWI, 2009).

The Agency started with fundamental rights training sessions, language courses, sessions on new approaches to appraisal, risk management training and training on EU Staff Regulations (Frontex, 2016a). Due to the fact that the Agency was criticised for not acting in full compliance with the CFREU, when operating at the external borders, it started with the Fundamental Rights Report (FRR), with the aim of more emphasis on this critical point of their working practices. Part of the FRR is Fundamental Rights Training, with three objectives. The first one regards to knowledge and teaches the learners to understand the basics and principles of human rights. The second objective leads to the ability of the learners to apply the human rights perspective in their field of work. The last objective is that the learners accept the fundamental rights aspect as relevant to their work. By following and completing this training, border guards are able to operate according to the principles of the CFREU (Frontex, 2016a).

In the founding regulation of the Agency, there is a missing explicit obligation to integrate international human rights standards into the curriculum (Fischer-Lescano, Löhr & Tohidipur, 2009). In order to solve this deficit, the Agency signed a working agreement with UNHCR which is leading to inclusion of human rights in the CCC. By laying down such provisions in the Regulation the training standards could be improved. Furthermore, the knowledge of legal and linguistic vocabulary is an important element for a successful operation (Jorry, 2007), therefore more focus must be laid on the language courses. Currently present language barriers are still leading to inefficient operations, due to difficulties of speaking with officials and agents (Burridge, 2012).

The weaknesses of the training of national border guards, including the establishment of common training standards are laying at the national level and are related to the willingness of MSs to implement the standards and tools which are develop by the Frontex Training Unit (FTU) (Ramboll, 2015). According to their collected evidence, Ramboll (2015) states that the assistance to MSs on training of national border guards by Frontex is positively assessed but there are improvements possible.

4.1.1.4. Participation in Research & Development

This indicator relates to the extent to which FRONTEX is participating in Research and Development (R&D) and finds it origin in the founding regulation[34]. The Agency is required to follow-up on development of research which is ought to be relevant for surveillance and control of the external border of the EU. This information should be distributed to the MSs and the Commission. With regard to IBM, R&D is a crucial element and therefore the Agency should keep a close participating role in developments of scientific research (Jorry, 2007). FRONTEX has a special Research and Development Unit (RDU), which publishes studies and organises seminars in which MS, industries, end-users and research institutes can participate. It further seeks to establish links with MS border guards and also provide assistance in developing methodologies for assessing the value of new technologies (COWI, 2009; Marenin, 2010).

FRONTEX has a unique role in making sure that the national border guard authorities are able to involve in research practices, as well to keep those authorities informed about the latest developments in their area of operation. This unique role should, according to the Commission, (2008) be extended to more practical projects aiming at real life operations in which new technologies are tested. Within these assessments, the feasibility and impact of such technologies is tested and is it possible to integrate them within other operations of European institutions (CEC, 2008). In 2015, this use of technologies led to a new discussion on the implications these technologies have for the fundamental rights of people that are crossing the border. By the use of X-ray devices, body scanners and surveillance and tracking, some attributes of the fundamental rights of people are heavily impacted (Frontex, 2016a).

In 2014 there was a high demand for information about the activities of the Agency, not only by the media on the transparency of its practices, but also from citizens, researchers and students in the relevant fields of study (Frontex, 2015a; RAU, 2014). In order for more integration with the field work, FRONTEX welcomed over 500 students and researchers at the headquarters to be involved with this part of R&D. The participation in R&D could be further improved when the outcomes of the working practices are more needs-driven instead of driven by interests from the industry (Ramboll, 2015). When engaging only in the case of security issues, the activities of R&D are also identified as securitising practices, which do not contribute to the harmonisation of the asylum and migration of the EU (Leonard, 2010). The Agency should not fall for any commercial pressure, but should focus on their core tasks when it comes to involvement in R&D. Furthermore, R&D could be improved by focusing more on the 'non-technologies or people topics' (Marenin, 2010). By this, the effectiveness of vulnerability assessments and human interactions could be enhanced.

4.1.1.5. Facilitation of technical equipment and human resources

Next to the main tasks of FRONTEX already mentioned, the facilitation of technical and operational assistance at the external borders of the EU is considered of great importance. The efficient management of human and technical resource pools is key for the ability of MSs to provide the Agency with the required number and quality of resources for their operations (Frontex, 2013a) In Art. 8 of the FRONTEX regulation[35], the Agency should provide assistance on coordinating matters between two or more MSs, with the goal of tackling problems at the external borders. The Agency should also send

---

[34] See Article 6 of the Council Regulation (EC) No 2007/2004
[35] See Article 8 of the Council Regulation (EC) No 2007/2004

their own experts in order to support the national authorities. In the 2007 amending Regulation, the creation of Rapid Border Intervention Teams (RABITs)[36] was introduced, with the goal of dealing with urgent and exceptional pressures at the external borders (Papstavridis, 2010). The involved MSs could request FRONTEX to perform such an intervention (COWI, 2009). However, these RABITs should be provided with more operational powers, enabling them to operate with their own equipment for border control and surveillance (CEC, 2008). Further criticism on the facilitation of technical equipment and human resources flow from the academic world where the members of the RABITs still remain national border guards of their home MS and thus are operating under willingness of the MS. As a result of this, the Agency is entirely dependent on the involved MSs, where it also dependent on receiving equipment, because there is no legal obligation to provide these (Carrera, 2007; Pollak & Slominski, 2009; Papastavridis, 2010; Burridge, 2012).

The Commission suggested that there should be a technical equipment pool with compulsory contributions of equipment by the MS or that the Agency is allowed to buy their own equipment in order to properly perform their working practices (European Commission, 2010). The Operational Resources Management Application (OPERA) was introduced within the Agency in May 2013. OPERA enables both MS and the Agency to allocate, maintain and distribute resources accurate and in time, and it also monitors the minima of quantities of resources that are needed in order to perform operations properly (Frontex, 2013a). The introduction of this tool is assessed as good and contributes positively to the effectiveness of the management of pooled resources.

The main argument for stating that FRONTEX' activities to facilitate the deployment of technical and human resources has not yet been fully effective is that there is not sufficient operational experience present among the human resources available (Ramboll, 2015). This could be improved by stationing liaison officers with expanded powers at locations, providing more language courses and by providing the Agency with a broadened mandate which states that they are allowed to acquire their own equipment and not be dependent of the willingness of MSs.

4.1.1.6. Support and coordination of joint return operations
In Art. 9 on 'Return cooperation' of the founding regulation[37], it is highlighted that the Agency shall provide the necessary assistance for organising JROs. It also stipulates that the Agency performs its best practices on the acquisition of travel documents and the removal of illegally present third-country nationals to their country of origin. With the enforcement of a Directive[38], this article is extended. This extension partly consists of the development of a Code of Conduct (CoC) for the return of illegally present third-country nationals. This CoC will apply during all JROs and describes the standardised procedures which should simplify the JROs and make sure that the returns are exercised on a humane matter and in accordance with the fundamental human rights.

From a CEC report it can be concluded that in some of the JROs the Agency did not possesses its own equipment for border control and surveillance and that this could be improved in order to improve the smoothness and effectiveness (CEC, 2008). In 2010, the Commission proposes a revision in the mandate of FRONTEX with concern to the

---

[36] See the Regulation (EC) No 863/2007
[37] See Article 9 of the Council Regulation (EC) No 2007/2004
[38] See Directive 2008/115 EC of the European Parliament and of the Council

coordination of JROs; the Agency should be provided with a more coordinating role, and should take over the responsibility for the whole JRO (European Commission, 2010).

FRONTEX started testing the so-called 'collecting' JROs in order to reduce the costs of returning migrants to their country of origin. In 2014, four collecting JROs were carried out and with success. The problem however, lies with the fact that "the professional standards of Third Countries' escorts and procedures needed to be harmonized with those of the EU" (Frontex, 2015a), and due to that, extra training and development of common standards are necessary. Besides this, some Third Country standards are far away from being standardised according to the EU Fundamental Rights.

The coordination of return operations have been criticised for several reasons. First of all, the Agency has been criticised by placing more emphasis on security than on freedom and justice. With that it contributes to the securitisation practices mentioned before (Jorry, 2007; Leonard, 2010). Furthermore, due to the fact that it is not specified and agreed upon by the Council, the activities of the Agency in the field of return of irregular migrants are leading to a high degree of juridical uncertainty. Especially in this area, where the protection of individuals and also the rule of law is very important, the activities of the Agency must be in line with legal provisions (Carrera, 2007). Papastavridis (2010) adds to this by stating that it does not matter how many of the operations of the Agency are perceived as positive or effective, it should be in full consistency with international law (Papastavridis, 2010).

FRONTEX has to deal with the question of how to cope with civil liberties and human rights in "security-driven external activities" (Trauner, 2016). This also counts for its Return Operations. According to the EU Ombudsman in 2015, the Agency could improve in handling humanitarian and fundamental rights in this context. The Agency was advised to establish a complaints mechanism, independent fundamental rights observers and to separate pregnant women and children from the other returnees (Trauner, 2016).

In 2015, as a result of increased migration flows, the number of returnees increased by 64% in the context of FRONTEX' operations (Frontex, 2016a). With these operations the technical support came from the MS, in this case Denmark who chartered an aircraft for Greece. With this aircraft the return operation for illegally staying Pakistanis in Greece was made possible. Linking the support by Denmark to one of the notices shortcomings in the effectiveness of the working practices of FRONTEX with regard to the support and coordination of JROs, is that the Agency should take a more leading role in organising these charter flights, something which could be done if the Agency's mandate should be revised and empowered with a more operational role. The improved involvement of FRONTEX would lead to fully integrated border control operations with a result that the operations are applied to both European and national law provisions, ensuring rights and juridical provisions (Tondini, 2010). Overall, the evaluation of FRONTEX assessed its role as supporter and coordinator of JROs as very effective (Ramboll, 2015).

4.1.1.7. Facilitation of exchange information
This indicator focuses on the extent to which the Agency facilitates the exchange of information to the MSs and the Commission[39]. This relates to the establishment of a proper ICT structure for the support of the exchange of information as well as to the establishment of an effective mechanism for operational information change (Ramboll,

---

[39] See Article 11 of the Council Regulation (EC) No 2007/2004

2015). Besides these two aspects, facilitation also relates to the extent of transparency in the Agency's working practices and how its operations are exercised. The best guarantee that fundamental rights will be respected during FRONTEX' joint operations and other procedures in which vulnerable individuals are involved is the transparency of those procedures (Keller et al., 2012). According to the Agency, it acts as "a flexible, transparent and agile organisation (..). Sound and transparent governance strengthens cost-effective and the positive reputation of the Agency" (Frontex, 2015b; Frontex, 2016a), this statement is contested later in this sub-section.

Due to tragic events in Lampedusa in October 2013, the interest of mass media reached a peak and transparency about the working practices of the Agency was demanded by civil society, citizens and journalists. In 2014, FRONTEX established a Field Press Officer (FPO), who received the role of assisting visiting journalists in the operating field, arranging interviews for them and support them in obtaining the necessary resources for photography and video (Frontex, 2015). With the introduction of the FPO, the Agency tries to improve the transparency of its operations by deploying this officer to the operations coordinated by the Agency. The year later, the Agency continued on striving for more transparency and facilitation of information to the general public and other stakeholders. It invested in building future communication tools to improve communication with civil society, the media and the citizens. Next to this, the Agency decided on making its EaP-RAN, WB-reports and ARAs available to all public on its website and also increased engagement in different social media platforms (Frontex, 2016a).

Though the activities of FRONTEX are aimed at providing transparency, states Jorry (2007), the EP is to a large extent isolated to this information and is not involved in any follow-up regarding the Agency's activities. In theory, this 'accountability' to the EP does not play a role in the assessment of effectiveness of the Agency, but as part of the exchange of information, transparency does. By involving the EP more in the exchange of information, the transparency of the working practices of the Agency could be improved (Jorry, 2007; Puntscher & Riekmann, 2008, p.30; Pollak & Slominski, 2009). According to Jeandesboz (2008) the Agency finds itself in a position where it does not participate in a breach in the principle of protection of human rights but also participated in practices of securitisation, which is the contradiction of the Union's principles of democratic scrutiny and transparency (Jeandesboz, 2008; Léonard, 2010).

The points of improvement in this area are on the incompatibility with the ICT systems, communication from within the Agency on the exchange of information (Ramboll, 2015), communication to the Commission should be more on the relationship between the Agency and involved MSs, as well as the provision of information on the procedures for implementing joint operations (Keller et al., 2012). Main point of improving the facilitation of exchange information focuses at providing the stakeholders with more transparency. This could be done by increasingly involve the EP and by providing the stakeholders with the necessary information, including risk assessments.

4.1.1.8. Operational cooperation with authorities in third countries

The JOs coordinated by the Agency are involved in a great external dimension, demanding proper cooperation with third countries (Carrera, 2007). According to the founding Regulation of the Agency[40], FRONTEX shall "facilitate the operational

---

[40] See Article 14 of the Council Regulation (EC) No 2007/2004

cooperation between the Member States and third countries, in the framework of the European Union external relations policy". The Agency is allowed to cooperate with third countries on the competences that are legally provided in the regulation. There are two roles FRONTEX has in the so-called 'Working Agreements' (WA). WAs aim at developing a cooperation partnership between the Agency and the authorities of a respective third country. Among the aims of the negotiating of a WA are: countering irregular migration, challenging cross-border crime, and strengthening of security at the borders (Fink, 2015). The first role is where FRONTEX facilitates the operational cooperation between a third country of the EU and a MS, and the second is where the Agency itself develops a bilateral cooperation with a third country. In order to expect third countries to cooperate with the Agency on implementing EU external migration policy, the countries must be actively involved in determining the content and the goals of such a cooperation (Reslow, 2012).

In line with COWI (2009), the Agency's working practices regarding operational cooperation with authorities in third countries could be more extended. However, the allocation of human and financial resources does not allow for achieving the planned targets. Where many MSs see this aspect of a very important one for achieving success in JOs and JROs, there is room for improvement here (COWI, 2009; European Commission, 2010). This could be done by increasing the Agency's annual budget for providing technical assistance in third countries and allow FRONTEX to deploy its own liaison officers. Amending the Regulation 2007/2004, Council Regulation in 2011 introduces these liaison officers whose task is, in compliance with Union law and in accordance with fundamental human rights, to establish and maintain contact with competent third-country authorities to contribute to the prevention of and fight against irregular migration, return of illegal migrants and third-country cross-border crime[41].

With regard to the irregular migration along the maritime routes of the Mediterranean in 2014, FRONTEX paid special attention to cooperating with countries like Egypt, Morocco, Senegal and Tunisia. WAs, accompanied with the renewing of negotiations with the authorities are concluded in order to challenge irregular migration (Frontex, 2015b). In 2015, as result of a decision by the Management Board, the first liaison officer of FRONTEX was sent to Turkey to facilitate operational cooperation with the Turkish border management and contribute to the EU-Turkey Action Plan in the field of migration (Frontex, 2016a). According to Fink (2012), it is remarkable that the form of concluding WAs is not a treaty under international law. FRONTEX is perceived as a non-international organisation and therefore the WAs they negotiate are not regarded as international agreements (Horii, 2015). In the Regulation, it is stated that the Agency shall have legal personality and therefore possesses the capacity to act within the national legal systems of the MS. This does not mean that the same is true for the international system. The cooperation that is secured through WAs is established by administrative authorities and under the boundaries of the treaties. The nature of WAs therefore allows them to escape requirements as provided by the treaties (judicial review, involvement of EP and obligation to inform the public), and does not trigger "concerns regarding political participation, as they are inherently not political" (Fink, 2012).

Concluding, in the area of cooperation with third countries there is room for improvement. The results of the study provided evidence for the fact that the Agency does not provide sufficient capacity building resources in these countries and by that the

---

[41] See Regulation (EU) No 1168/2011

possible contributions of the agency to the operational cooperation is not optimally satisfied. The Agency should adopt a third-country strategy in order to coordinate third-country activities better and prioritise the activities related to these countries in a more effective way (Ramboll, 2015). Furthermore and to speak in the words of Fink (2012), the WAs could be upgraded to treaties in order to provide for the possibility of involvement of the EP and other requirements provided in the treaties. By that, the arrangement could be reviewed judicially and the cooperation could take place in the framework of the treaties.

4.1.1.9. Cooperation with EU agencies and International Organizations

The indicator of cooperation with EU agencies and international organisations finds its legal basis in the amended Frontex Regulation[42]. FRONTEX has been provided with the power to not only evaluate but also to improve current proposals in collaborations with regard to external border management (Monar, 2006). The Agency is allowed to cooperate with agencies like Europol, European Asylum Support Office (EASO), the Fundamental Rights Agency (FRA) and other bodies of the EU. When International Organizations (IOs) are competent in the legal framework that is provided by the Regulation, WAs can also be concluded with them. There is also a WA concluded with the UNCHR, which "constitutes a fair balance between the very different remits of FRONTEX and UNHCR and a common goal to promote an efficient EU IBM system which is fully compliant with human rights" (Trevisanut, 2009). However, despite the fact of such a WA in place, FRONTEX is still being accused of not upholding fundamental human rights.

The cooperation with Europol, in order to challenge cross-border criminal activities, is strengthened in 2015 by an Agreement on Operational Cooperation[43] to improve the process of tackling this sort of activities. The exchange of information, further development of risk analysis and joint planning of operational activities are aspects of this new agreement. However, the transfer of personal data is limited only to data collected by MSs during operational activities by FRONTEX (Carrera, 2007; Frontex, 2016a). This cooperation could be strengthened when the Agency is provided with more competences with regard to the collection and transfer of personal data. This is acknowledged by Ramboll (2015) stating that the cooperation between FRONTEX and other EU agencies and IOs is contributing on a positive way to the working practices of FRONTEX, but there is room for improvement in the area of cooperation on cross-border crime between the Agency and Europol. It should be added that also the cooperation with regard to fundamental human rights should be enhanced.

4.1.1.10. Fundamental human rights

The last indicator is perhaps one of the most important, considering the fact that FRONTEX has been criticised a lot for not upholding to this part of the regulation and violating fundamental human rights (Fink, 2012; Spengeman, 2013; Fink, 2015; Vara, 2015; Vara & Sánchez-Tabernero, 2016). The complexity here lies with the following, there is a balancing danger between security and control on the one hand and international and European fundamental rights and commitments on the other (COWI, 2009). In order to properly perform external border control and contribute to the IBM system, one should carefully consider not to move towards one particular side of the balance. When moving too close to one side, there is the possibility of not satisfying the

---

[42] See Article 13 of the Regulation (EU) No 1168/2011
[43] See Agreement on Operational Cooperation between Frontex and Europol on 12/4/2015

MS and European interest, but when moving too close to the other side, fundamental human rights could easily be violated.

As a response to the mounting pressure with regard to protecting and guaranteeing human rights, an human rights discourse started inside the Agency and more references to human rights are found in their publications, PoWs and ARAs (Perkowski, 2012). In nearly all articles describing the agency, there is a reference found to the fundamental human rights and that all working practices should be in full compliance with these. In the amended FRONTEX Regulation, there is a 'Fundamental Rights Strategy' (FRS) added to effectively monitor the respect for fundamental rights in all the activities that are performed by the Agency[44]. The in 2012 established Fundamental Rights Officer (FRO) focused in its first year of operation mainly on monitoring and reporting, support to operations and capacity building in the area of protection and guarantees of fundamental rights during operations and other FRONTEX-related activities (Frontex, 2014b). During 2014, the FRO proposed a comprehensive concept for monitoring operations to ensure that the working practices of the Agency are more coordinated and coherent with regard to the protection of fundamental rights and by that become more effective (Frontex, 2015b). This system provides better insights in how fundamental rights are observed in practice.

FRONTEX can talk in humanitarian terms, call for action in light of humanitarian aspects, and manage risk in name of human beings, but with recent accusation of violation of human rights, it cannot uphold these rights, neither can the Agency bear the responsible role of ensuring territorial security. The area of border policing and human rights is where the MSs remain responsible and where FRONTEX only could play the role of the manager of risk, where it is using humanitarian reasoning to encounter criticism and aims for securing the external borders through interventions which are most of the times justified in terms of humanitarian aspects (Pallister-Wilkins, 2015). This relates to the origins of FRONTEX, according to Neal (2009) where FRONTEX' conceptual language in their rationale, working practices is consisting merely of risk. These same shortcomings are discussed by Vara & Sanchez-Tabernero (2016), where they discuss the fact that people picked up in EU territorial water could still have the right to ask asylum and the secrecy of operational plans leading to the fracture of guaranteeing fundamental rights (Vara & Sanchez, 2016). The principle of non-refoulement, which applies to all operations, including involved third-countries, seems hard to hold upon to. This is the obligation for a participating MS not to reject or return (refouler) intercepted asylum-seekers (Papstavridis, 2010). It seems to be very problematic since it is very likely that people on board of intercepted vessels would be forced to return to their home countries. However, when returned there is a great chance of being persecuted or subjected to torture or other forms of inhumane treatment, therefore these people cannot be sent back without further investigation or without violating the principle of non-refoulement (Papstavridis, 2010).

In September 2015, the Agency decided on a new composition of the FRONTEX Consultative Forum (CF). This Forum serves as an independent body which advises the management board and the executive director in fundamental and humanitarian rights issues (FRONTEX, n.d.). This mandate for the CF will last until the end of 2018. The CF and the more extensively involved collaborations with NGOs and IOs are examples of newly emerging collaborations with the common goal of cooperation in order to make the

---

[44] See Article 26a of the Regulation (EU) No 1168/2011

European borders clear of extreme forms of human suffering and even death (Perkowski, 2016).

The regulation on FRONTEX does not guarantee the right to access to an asylum procedure nor access to effectively response during asylum applications made at sea. There should be a greater commitment for human rights in sea operations coordinated by FRONTEX (Vara & Sánchez-Tabernero, 2016). Furthermore, there could be done more to clarify and give guidance to how the principles of the FRS are to be translated into practice. The differences in monitoring systems occur throughout the MSs and this is leading to ineffective working practices and less respect for the protection of human rights (Ramboll, 2015). A more harmonised and standardized approach to monitoring JROs could lead to more respect for fundamental rights and result in improved effectiveness of the working practices of the Agency.

4.1.2. Conclusion
The outcome of this analysis provides an answer to the second sub-question of this thesis. This question relates to the output legitimacy of FRONTEX. After analysing FRONTEX on the basis of the ten provided indicators for measuring the extent of effectiveness of the outcome of the working practices, it can be concluded that the Agency's working practices with regard to effectiveness are, in general, positively assessed. It could be said that, based on external evaluations, the Agency's outputs are positive, but whether these outputs are also leading to positive outcomes is not clear on all areas (Marenin, 2010). For each of the indicators, some more than others, points of improvement are visible, or made visible by external evaluations, policy reports or academic articles. The main challenges in tackling output legitimacy issues for the EBCGA are; the improvement of the collection of personal data, more guarantees for fundamental human rights during JROs and JOs, providing increased technical and human resources, optimisation of risk analyses and continuation on operational cooperation with third-countries, EU agencies and IOs. The points of improvement give hopefully room for the EBCGA to improve their working practices and by this means, increase its output legitimacy.

4.2. European Border and Coast Guard Agency
4.2.1. Effectiveness
The EBCG Agency, enforced at October 6th 2016, flows from a regulation in which the main idea is to provide the Agency with more competences, staff and equipment by bringing resources from FRONTEX together with the EU MSs (Carrera & den Hertog, 2016). The new EBCG Agency will be assessed on the basis of the ten before mentioned indicators to assess whether it is capable of improving shortcomings in the working practices of FRONTEX. In its four months of operation there are not that much sources available for assessing its working practices, but by analysing both EBCG internal and external sources, the outcome of this sub-section could highlight to what extent the EBCG is able to improve output legitimacy of the external borders agency.

4.2.1.1. Coordination of joint operations
The coordination of joint operations follows from the Regulation on the EBCG Agency[45]. It states that the Agency shall perform different tasks that would lead to an efficient, high and uniform level of border control and returns. The Agency shall assist MSs on technical and operational level when this is necessary, by coordinating and organising JOs. When

---

[45] See Articles 8(1d,1g,1h), 14(2a) and 15(1) of the Regulation (EU) 2016/1624

performing this task, taking into account that the situations in which such an JO is necessary may involve humanitarian emergencies and fundamental rights. Besides this, the Agency shall set up and deploy EBCG teams and a technical equipment pool.

In order to relieve the high pressures on MSs at external borders of reception responsibilities, the EU introduced the 'hotspot approach' (UNESCO, 2016). This approach is part of the immediate action to assist MSs at their external border in meeting the challenges stated by high migratory pressures. In the 2015 European Agenda on Migration, the Commission proposed to develop this 'Hotspot' approach (Statewatch, 2015). The approach consists of a platform for EASO, Europol and the EBCG Agency, where they can intervene in frontline MSs when this is needed, due to crisis or other disproportionate migratory pressure. A hotspot is defined and characterized by specific migratory pressure, mainly linked to human trafficking, where a MS could request for support and assistance to deal with this pressure (Statewatch, 2015). The work of the agencies involved in the Hotspot approach will be complementary to one another and therefore improves the efficiency. This approach, when used for carrying out JOs are in line with operational concepts. These concepts foresee mixed operational activities not only covering one type of border but more of them. Furthermore, this approach leads to simplification and provision of additional flexibility, which is leading to better working practices on operational level (Frontex, 2016b). However, the hotspot approach is criticised for lacking a legal framework and therefore is a dangerous risk to the violation of fundamental rights of people who are trying to reach European shores (Oxfam, 2016). Limitations of the hotspot approach also include overcrowded refugee centres, unsanitary conditions, lack of screening to identify and meet protection needs, and lack of access to basic facilities. Due to the fact that the hotspot approach prevents migrants to reach the bigger cities, their possibilities to immigration services are diminished. This leads to inadequate legal and medical supports and also the risk of violating human rights like the right to asylum (UNESCO, 2016; Oxfam, 2016). There is asked for a specification in the procedures and operations of this approach and to ensure that identification and registration procedures are in full compliance with human rights. This could be done by an independent body who is supervising these phases of integration and guarantee full examination of migrants, before they are forced to return to their, unsafe, home countries (Oxfam, 2016).

4.2.1.2. Risk Analysis

The external border agency before the EBCG had two roles, knowing a regulatory and operational role. With the new mandate for the EBCG this is extended and a supervisory role is added (Rijpma, 2016). This supervision plays a role in the vulnerability assessments. Next to the responsibility that the Agency has in performing high quality and accurate risk analyses with regard to all aspects of IBM[46], it has the possibility to assess the capacity and readiness of MSs to face threats and challenges at the external border. During this assessment the Agency takes into account whether the involved MS is able to carry out all tasks that are involved in border management, this includes the capacity of the MS to deal with the potential arrival of large numbers of irregular migrants or other persons on their territories. The measures stated in the regulation of the EBCG are aimed at eliminating vulnerabilities and increase capabilities, technical equipment and resources. The fact that the outcome of such a vulnerability assessment is passed through to the involved MS, creates a better and more transparent

---

[46] See Articles 8(1a) and 11 of the Regulation (EU) 2016/1624

environment for carrying out risk analyses and the exchange of the outcomes of these analyses.

4.2.1.3. Training of national border guards

The working practices of the EBCG Agency with regard to the training of national border guards for the coming four years includes four types of training. Knowing the CCC, to establish, maintain and develop educational standards for Border Guarding. The CCC shall aim to promote the highest standards and best practices in the implementation of EU border management legislation[47]. The second is the European Border and Coast Guard training, to improve capability, capacity and performance. Thirdly, Complementary Disciplines are offered in order to complement national programmes in which professionals are trained to become border guards. The fourth aspect is the setting up of Training Networks, in order to maintain and develop supporting networks for training activities (Frontex, 2016b).

The development of specific training tools and provision of border guard activities shall be done by the Agency, this legal basis can be found in the EBCG regulation[48]. By the installation of European Border and Coast Guard Teams (EBCGT), the dependency on national level could be decreased. The Agency establishes an exchange programme for border guards participating in the EBCGTs, which makes it possible for them to acquire knowledge and experience from other MSs than their own. By this means the border guards are turning more into Europeans instead of nationals.

4.2.1.4. Participation in Research & Development

The participation in innovation, research and development of the Agency flows from its Regulation. From Art. 37[49] one could conclude that the Agency is contributing positively to the research and innovation activities which are relevant for all actors involved in European Integrated Border Management (IBM). The Agency will assist the MSs and Commission in identifying and developing key research themes. The results of research performed by the EBCGA will be distributed to the EP, the Commission and to the MSs for providing full transparency and improving the surveillance technologies that are used in IBM. The Framework Programme for Research and Innovation (FPRI) will be further delegated from the Commission to the Agency and with this delegation the Agency shall have the following tasks[50]:

a. Managing some stages of programme implementation and some phases in the lifetime of specific projects on the basis of relevant work programmes adopted by the Commission
b. Adopting the instruments of budget execution for revenue and expenditure and carrying out all the operations necessary for the management of the programme
c. Providing support in the implementation of the programme

As can be read in the multi-annual programme (MAP) for the coming five years of operations of the Agency, it shall focus on four more aspects with regard to its participation in R&D. First of all the Agency aims at (1) harmonization of border control capacities of the MSs by developing best practices with help of research and by providing technical resources, like the provision of new surveillance technologies in order to identify capability gaps. The second aspect is (2) the technical assistance that the Agency is

---

[47] See Article 11(7) of the Regulation (EU) 2016/1624
[48] See Article 36 of the Regulation (EU) 2016/1624
[49] See Article 37 of the Regulation (EU) 2016/1624
[50] See Article 37(3) of the Regulation (EU) 2016/1624

going to provide to both the Commission and to the MSs in order to further improve border control capacities. Lower on the priority scale of the agency but as well important to R&D is (3) the assessment of border control technologies in order to make the needs of these technologies more needs-driven and not be steered by industry. The final aspect (4) regards to Art. 37 of the regulation and consists of more innovation in external border management. (Frontex, 2016b).

4.2.1.5. Facilitation of technical equipment and human resources
The EBCGA provides in her MAP for 2016-2019 an overview which aspects of this facilitation are emphasised in the coming years. Three aspects are placed high on its priority list. First of all, the Agency wants to provide technical assistance in support to JOs by effectively procuring operational technical equipment and human resources. This is done by extensively reporting and analysing the use of these operational resources. Secondly, the Agency aims at strengthening the already existing resource pool mechanisms. This entails improving the technical equipment of the EBCGTs and the management of human resources. As a final aspect, the Agency aims at developing a capacity pool with solutions to acquire technical equipment and services. With developing this capacity pool, the Agency is able to bridge gaps between the responsibility debate between MSs and Agency of who should deploy technical and human resources (Frontex, 2016b).

Following from the EBCGA Regulation, the Agency shall "ensure regular monitoring of all Member States' management of the external borders through liaison officers of the Agency"[51]. These liaison officers act on behalf of the Agency and are among others responsible for communication of relevant information between Agency and MSs, including information about ongoing or future-planned operations. However, as flows from the ARA of the year 2016, the border authorities are not equipped to deal with the large flows of irregular migrants. Due to time issues and lack of personnel, rising numbers of migrants succeed to cross the borders without being detected. Technical issues occur, like the incompatibility between the operating system and the Eurodac database, and poor quality of the fingerprinting detection (RAU, 2016).

The new mandate for the Agency provides the acquisition of technical resources more by the Agency itself and making it thus less dependent on the willingness of MSs to involve their technical and human resources into EBCGA-led operations. This acquisition of technical equipment can be done by the decision of the executive director in consultation with the Agency's management board[52]. These technical resources can be used for joint operations, pilot projects, rapid border interventions, return operations and technical assistance in other projects of the Agency (Rijpma, 2016). Furthermore, the Agency's staff will be more than doubled and no longer shortages of staff or equipment for Agency's operations will occur (Ferraro & de Capitani, 2016).

4.2.1.6. Support and coordination of joint return operations
In accordance with the regulation on the EBCGA[53], the Agency shall coordinate, provide assistance, organise and finance JROs with full respect for fundamental rights and general principles of Union, and international law. Return organisations have become an increasingly important element in the EU's migration policy and also of the work of the external borders agency (Rijpma, 2016). The new mandate introduces three new officials

---

[51] See Article 12 of the Regulation (EU) 2016/1624
[52] See Article 38(2) of the Regulation (EU) 2016/1624
[53] See Articles 27 and 28 of the Regulation (EU) 2016/1624

in order to make JROs more smoothly; forced return monitors, forced return experts and return specialists. The forced return monitors consists of competent bodies, according to the FRO, who carry out the forced return monitoring activities. The forced return experts pool consists of competent national bodies who are responsible for executing the return operation in accordance with the requirements for JROs mentioned in the EBCGA regulation[54]. The return specialists pool shall consist of national bodies and from the staff of the Agency and will carry out tasks that are related to identification of third-country nationals, acquisition of travel documents and facilitation of consular cooperation in third-countries. The three new pools of officials together form a European return intervention team which is deployed during JROs.

The development of solutions to improve the system for return operations takes time. It cannot be within the scope of just a few months that such a system is improved. But due to identification missions and the sharing of these data between the different MSs, the practices of these operations turn out to be more effective (FRAN, 2016). With regard to the effectiveness of the JROs it can be seen that the number of enforced returns increased from 930 in the first quarter of 2016 to over 1 500 in the second quarter of 2016. This indicates a strong increase in the effectiveness of these operations.

4.2.1.7. Facilitation of exchange information

The facilitation of exchange of information[55] is addressed by the Agency in its multi-annual programme or work, where one of the key objectives with regard to information exchange is to increase transparency and improve the reputation of the Agency by means of active communication, improved production processes regarding publications and social media. The focus of the Agency's online presence must be highlighted (Frontex, 2016a; Frontex, 2016b). This is also addressed in a Communication from the Commission that states when the Union wants to deliver better border management, better use of the tools and databases must occur, developing new tools for enhanced communication and new cooperation mechanism are key aspects in order to provide the external borders of the EU with effective security. By making full use of the EU Entry-Exit System (EES) and the European Travel Information Authorisation System (ETIAS), mobility and security can be achieved through this form of stronger border management and an effective way of information exchange (CEC, 2016). The EES is a system aimed at collecting data, when persons are entering or leaving the EU. This modern system, which replaces 'stamping of passports', will improve the effectiveness of border controls and prevents delays in the operations as a result of growing numbers of migrants and travellers. The ETIAS is an automated system established to examine the eligibility of a visa exempt third country nationals to move inside the borders of the EU. By using such a system, it is possible for the authorities to check whether a visa applicant is for example not subject to an alert in the Information System of Europol or any other potential risk to the security of the EU (CEC, 2016).

With the entry of the new Regulation, the Agency is allowed to process personal data of persons that are suspected of being involved in cross-border criminal activities. This is an improvement to the previous regulation, where one of the key obstacles of the effectiveness of the cooperation with Europol was due to the lack of competence in sharing personal data (Rijpma, 2016). By this means the Agency becomes a central hub of information exchange, receiving all the relevant information from the MSs and

---

[54] See Article 8(4) of the Regulation (EU) 2016/1624
[55] See Article 44 of the Regulation (EU) 2016/1624

distribute these to the involving agencies like EASO, Europol and other MSs. The role of the facilitation and exchange of information is improved.

4.2.1.8. Operational cooperation with authorities in third countries

Just like its predecessor, the Agency shall, by legal basis of its Regulation[56], facilitate and encourage technical and operational cooperation with third countries. This cooperation consist among other things of cooperation with authorities regarding the acquisition of travel documents. This cooperation facilitates the smoothness of return operations. Liaison officers positioned in third countries shall establish and maintain contacts with the competent national authorities in order to prevent and fight against illegal immigration and the return of illegally staying third-country nationals. The cooperation with third countries can now also take place at third-country territory, enabling the Agency to contribute more to the process of effective border and migration management (Rijpma, 2016). Regarding its multi-annual strategy, the Agency aims at establishing and maintaining operational and capacity building cooperation with and amongst authorities of third countries. This is done through concluding WAs with third countries (like Turkey, Senegal, Mauritania, Kosovo, Egypt and Libya), managing the implementation of these WAs and develop closer cooperation with the national authorities in these countries (Frontex, 2016b).

4.2.1.9. Cooperation with EU agencies and International Organizations

As mentioned in the exchange of information section, the competence that the agency has to process personal data is extended. This enhances the cooperation with agencies like Europol and EASO. It also contributes to the aim of the Agency to strengthen the cooperation with partners in the field of European internal security and the prevention of cross-border crime. The aims of the Agency for the coming years are to further improve the cooperation with EU agencies and other international organisations. This is done by developing, coordinating, evaluating and consolidating these collaborations (Frontex, 2016b). Besides this, the Agency wants to maintain relations with the executive agencies of the EU and thereby contribute to EU decision making[57]. Due to improvements in data access and more operational competences, the Agency can contribute to a greater extent to solutions at European decision-making level and ensure more transparency towards EP and EC.

4.2.1.10. Fundamental human rights

Coming to one of the most important aspects of the working practices of the European external border agency, the uphold, guarantee, promotion and protection of human rights. In its multi-annual working programme the Agency has, with high priority, two main objectives with regard to this aspect. It wants to enhance the strategic cooperation with its CF, which contributes to fundamental rights monitoring, and to embed the respect for the fundamental rights in the culture and in the working practices of the Agency (Frontex, 2016b). Furthermore, in Art. 34 of its Regulation, the EBCG shall "guarantee the protection of fundamental rights in the performance of its tasks" and, while performing this tasks, shall ensure that no single person is involved in the principle of non-refoulement[58].

According to Ferraro and de Capitani (2016), the new Regulation is bad news for the fundamental rights of migrants and refugees, and that the EU is moving into a direction

---

[56] See Article 54 of the Regulation (EU) 2016/1624
[57] See Article 52 of the Regulation (EU) 2016/1624
[58] See Article 34 of the Regulation (EU) 2016/1624

of 'war against an imaginary enemy'. But this negative assessment of the new regulation is not shared by the institutions of the EU and the Commission welcomed the EBCG with the words: "a system turning into reality the principles of shared responsibility and solidarity among the Member States and the Union.." (Ferraro & de Capitani, 2016). Taken this into account together with the contents of Art. 5 of the Regulation, stating that the EBCG shall implement European IBM as a shared responsibility with the national authorities, and that the involved MSs shall retain the primary responsibility for the management of their sections of the external border[59], it can be stated that the Agency could to a lesser extent, be accused of violating fundamental human rights (Rijpma, 2016). In order to address the fundamental rights issue even more, the Agency will set up a complaints mechanisms for individuals who are affected by actions of the staff in an operation of the Agency and who considers him or herself to have been subject of a breach into her protection and promotion of fundamental human rights. By the setting up of such a mechanism, the Agency opens up more for the surveillance and protection of fundamental human rights in the areas it is operating in.

4.2.2. Conclusion

To wrap it up, the effectiveness of the new EBCG Agency is assessed as positive, it contributes effectively to the working practices of the Agency, as well as its predecessor FRONTEX,. However, it can be stated that in the areas of coordination, participation in R&D, exchange of information, acquisition and facilitation of technical and human resources, protection of fundamental rights and cooperation with both IOs, EU agencies and third countries, the EBCG could improve the outcomes of effectiveness as part of output legitimacy. This part of the analysis provides an answer to the third sub-question of this thesis. Taken into account that the EBCG Regulation is able to improve several shortcomings of the working practices of FRONTEX, it can be stated that the output legitimacy of the EBCG is even further improved. The new Agency will be strengthened and reinforced to address all the shortcomings in effective external border management (Ferraro & de Capitani, 2016). In the results section, more concrete emphasis will be laid on the differences in output legitimacy of the different mandates of the European external borders agency.

5. Results

In the following section the results of the analysis will be provided. There is looked at to what extent the assessed output legitimacy of FRONTEX differs from the assessed output legitimacy of the EBCG. The differences are highlighted and possible improvement points are described. After providing this overview of differences and improvements, an answer to the fourth sub-question can be given.

First of all, let me highlight the encountered shortcomings per field of work of FRONTEX. Besides the fact that in general the working practices of effectiveness of the Agency were assessed as positive, there are some critical points, several times addressed by scholars, that needed improving.

Following the analysis on the working practices on the JOs of FRONTEX, the outcome consists mainly of positive aspects, where the effectiveness of these operations is positively assessed. However, during the years of operation, several issues arise regarding the coordination of the Agency. This role of coordinator could be improved by involving the organising MSs more in the drawing of a report on the effectiveness of the

---

[59] See Article 5 of the Regulation (EU) 2016/1624

JOs and by these means create a more responsible role in drawing up future operational plans in cooperation with the hosting MS. Furthermore, the missing link between the processing of personal data and effectively carrying out JOs came to the horizon. Due to the fact that FRONTEX is not allowed to collect and process personal data, the effectiveness of certain JOs dramatically decreased. By allowing the Agency to process personal information, the cooperation between actors involved and the outcome of goal-oriented JOs are improved. The outcome of external evaluations acknowledged this and adds to the criticism that objectives and scope of the JOs need clarification in order to be more effective. One way of clarifying objective and scope is by extensive cooperation with MSs and provide them with a more involving role in the setting up of JOs and the evaluation reports afterwards.

The new mandate for the EBCG encounters some of the problems regarding the effectiveness of JOs by providing a new approach to JOs which lead to simplification and flexibility, which ultimately leads to better working practices on operational level. By providing the Agency with a more supervisory role, allowing them to perform vulnerability assessments, the effectiveness of JOs could increase to a large extent. Furthermore, cooperation between third-countries, MSs and other agencies is perfected through the decision of allowing the Agency to, to a certain extent, process and collect personal data in order to challenge cross-border crime.

Regarding the performance of carrying out high quality and accurate Risk Analysis, three gaps of improvement were addressed in the analysis, knowing; processing of personal information, challenging cross-border crime and the performance of vulnerability assessments. As stated before, the EBCG obtains a more operating role in the processing of personal data. By this means, the Agency is able to narrowly cooperate with Europol in challenging cross-border issues and tackle large numbers of drug traffickers. The ability of the Agency to carry out the vulnerability assessments should lead to an improvement in this aspect of the effectiveness.

Outcomes of the working practices of FRONTEX with regard to the training of national border guards address several points of criticism to the protection and guarantee of human rights. Improvement areas are among others better planning, more cooperation with academic partners. It is stated that some cooperation agreements with academic partners do not reflect upon the real goals for the training of national border guards. With the focus on training more on the fundamental rights aspect, the Agency tried to improve this aspect. However, willingness of the MS to implement the standards created by the Agency still lacks and therefore the effectiveness of the working practices could be improved. In order to improve capability, capacity and performance in the border guard training aspect, the EBCG introduces EBCGTs, teams that are trained to more effectively operate during operations at the external borders. This leads to a lesser dependence on MSs and therefore solves one of the missing links of the working practices of FRONTEX. The border guards are more de-nationalised and become more European instead.

Participation of the agency in research and development increased already over the last years. The Agency became active on Social Media and increasing accesses are provided to researchers, students and media in order to improve this aspect. Main point of criticism derives from the fact that the Agency must be aware of the fact that it should not fall into commercial pressure and thereby lose its role as participator in R&D. The Agency should invest more in development in the field of needs-driven practice, like improvement in the management of external borders, instead of in commercial interests

of other actors involved. The EBCGA tries to tackle these points by improving the FPRI, aiming to harmonize border control capacities, providing technical assistance in R&D and provide the MSs with new technologies for effective border management.

The main argument for stating that the facilitation of technical equipment and human resources by FRONTEX is not fully effective, is that there is not sufficient operational experience presence among the human resources and that the Agency remains too much on the willingness of the MSs to provide technical equipment. These points of criticisms could be solved by stationing liaison officers of the Agency, providing the agency with a mandate allowing it to acquire or lease its own equipment and decrease the dependence on the willingness of the MSs to participate. The new mandate provides the Agency with these competences and provides it with the ability to acquire its own technical equipment and provides regular monitoring through the stationing of liaison officers.

Regarding the role that FRONTEX has in organising and performing JROs, it can be concluded from the analysis part that there is room for improvement. The Agency should take a more operational role in order to smoothly perform organised return flights and should have more competences to acquire technical equipment necessary for these operations. Besides this, in some countries where return operations are leading to, the standards set by government, are not in line with the fundamental rights standards as they are set by the CFREU. The mandate for the EBCG responded to this and introduced three new officials in order to enhance JROs. The pools of return specialists, forced return experts and forced return monitoring are leading to higher effectiveness in JROs, as measured over the second quarter of 2016 (FRAN, 2016).

Coming to the indicator for effectiveness relating to the facilitation of the exchange of information, FRONTEX already improved a lot over the last few years. More transparency in their working practices is provided and new communication tools are developed in order to improve communication with civil society, media and the citizens. However, the incompatibility between ICT systems present in the working field and at higher levels of government are leading to delays in information exchange and therefore less effective working practices. This is also leading to less smooth communication between the Agency, involved MSs and the European institutions.

Following the analysis on the operational cooperation with authorities of third countries, FRONTEX shows some points of improvement. The capacity building resources provided by the Agency in third countries are not sufficient and the contributions the Agency does to operational cooperation are not optimally satisfied. By deploying liaison officers in those countries, the operational cooperation could be improved. Cooperation with authorities in third country could be enhanced through joint operations regarding the fight against cross-border crime, irregular migrations and the return of migrants. As stated before, the mandate for the EBCG optimises the deployment of these liaison officers, and thereby possibly improve the operational cooperation with authorities there. Through the negotiating of new WAs with third-countries like Turkey, Senegal and Egypt, the Agency aims at establishing and maintaining better operational cooperation and improve capacity building in these countries.

Acknowledgements by external evaluations on the working practices of FRONTEX conclude that the cooperation with EU agencies and other IOs is positively contributing to the effectiveness of the Agency. By enhancing however, the cooperation between FRONTEX and Europol in the field of sharing personal data for efficiently tackle cross-

border crime issues, this aspect of the working practices could be improved even more. This issue is tackled by the provision of more competences for the new EBCG to process personal data and with that enhance the cooperation with Europol. The working programme of the Agency also states that it wants to improve and maintain the relations with the executive agencies of the EU. By improving data access and operational cooperation with these institutions, the role of the Agency in European IBM could be increased.

With regards to the protection, promotion and guarantee of fundamental human rights, much can be done. The Agency has been criticised in the past for not operating in full compliance with the conditions regarding fundamental rights in the CFREU. FRONTEX should to a greater extent commit itself to human rights in sea operations, asylum procedures and other activities. Monitoring systems differ all over the MSs and through this, less effective ways of securing human rights occur. A more harmonized, standardised approach to the uphold of human rights is necessary in order to improve the working practices of the Agency. The EBCGA states in its annual working programme that the focus for the coming five years will be more on the protection, guarantee and promotion of human rights. By setting up an individual complaints mechanism, individuals, who consider themselves subject to a violation of his or her fundamental rights, can make use of this mechanism. Through the implementation of such a mechanism, breaches of fundamental rights can easily be detected and solved. By stating expressly that the European IBM will be implemented as a shared responsibility in the regulation[60], the Agency can, to a lesser extent, be accused of violating human rights. Where the MSs retain the prime responsibility for the exercise of external border management, they could be designated as violators of human rights. Furthermore, the cooperation with the CF, which contributes to effective fundamental rights monitoring, is enhanced under the EBCG.

Turning towards the fourth sub-question and how the output legitimacy of the European external borders agency can be improved, I focus on six aspects of the working practices of the Agency that are to be improved. First of all, the introduction of the vulnerability assessment makes it visible for the Agency to assess the capacity of an MS of participating in operations of the Agency. Such assessments lead to more effective JROs. JOs and more accurate risk analyses. Secondly, by expanding the powers that guest (liaison) officers have in MSs, as well as in third countries, the cooperation between Agency and third countries is enhanced. With the new mandate, the Agency is able to acquire its own technical equipment, leading to more effective operations and less delays in organising return flights. The fourth aspect is the improved attention towards fundamental human rights. With the introduction of an individual complaints mechanism, the Agency is able to spot violations and act swiftly upon them. By introducing EBCGTs and by legal basis on the regulation, the Agency is able to intervene in crisis situations, where immediate intervention is ought necessary. By providing the Agency with these operational task, operations are performed more effectively. The final point of improving the output legitimacy regarding the effectiveness is the right to processing personal data. By this means, the Agency is able to improve its cooperation with EU agencies like Europol, organise more effectively JOs and JROs and provide citizens, media and civil society with more accurate and higher quality risk analyses.

---

[60] See Article 5 of the Regulation (EU) 2016/1624

6. Discussion & Conclusion

In this final chapter the results of my research will be summarised into an answer to the general research question. In the discussion section, I will reflect upon the research and the thesis, on the strengths but also on the weaknesses and provide recommendations for future research. In the conclusion part, the final answer to the research question will be given along with other final remarks.

6.1. Discussion

The main aim for this thesis was to focus on the possible improvements of the output legitimacy of the EU's external border agency. Beforehand, it was not foreseen how big the impact of the three aspects of this form of legitimacy would be. The aspects, knowing effectiveness, subsidiarity, and flexibility, where at such too extensive concepts to include them all in this thesis. It would have taken twice as much time and at least twice as much words to analyse and describe the impacts that flexibility and subsidiarity would have on the working practices of the Agency. Therefore it is decided to focus only on the aspect of effectiveness of the working practices. By narrowing down on one aspect of the concept of output legitimacy, it could be stated that this analysis does not fully cover the theoretical implications the concept possesses. Furthermore, the analysis is describing the effectiveness of the working practices of an European agency which has only been operational since three months (at the moment this thesis was written). One could argue that, and especially in the case of policy outcomes, it is too early to draw conclusions on the improved output legitimacy of the new EBCGA. Once the Agency has been operating for several years, carried out several risk analyses and published general reports describing their outcomes and results of their working practices, it could be fully evaluated to what extent the Agency really contributes to the improvement of output legitimacy. Recommendations to future research with regard to this aspect are thus to monitor and observe the working practices of the new Agency, with special relevance to their new competences, and after that analyse the effectiveness of their working practices again. In the case that the outcomes do not depart much from the results provided in this study, one could conclude that the output legitimacy crisis really decreased. Furthermore, to provide the reader with a more detailed overview of the extent to which the output legitimacy is improved, future research should also include subsidiarity and flexibility, as those aspects are also important to assessing output legitimacy.

Moving towards another possible point of criticism, and also described by Rijpma (2016) in his article on the EBCGA, is that the improvements mentioned in the results section and derive from the analysis should prove to turn out as effective as stated on paper. The promises made are not yet proved in practice and according to him it would be naïve of people to think that an increase of the Agency's power would and a name change would lead to a remedy of the structural deficiencies that are currently present in some MS' external border management systems (Rijpma, 2016). By this he stipulates that time should point out to what extent the improvements of the new mandate could really lead to solving the current ' refugee and migration crisis'.

When looking at the outcomes of the analysis, strong points of this research are that it accurately provides, divided over ten indicators of effectiveness, the possible points of improvement that the new mandate could provide. By taken together different external evaluations, working papers, general reports, ARAs, quarterly risk analyses, impact assessments and EU institution' papers, an extensive analysis of the effectiveness of the working practices of FRONTEX is given. By comparing the implications of the new EBCGA

with this analysis, an overview of to what extent improving output legitimacy is possible under the new EBCGA is given. This research contributes to the assessment of the effectiveness of the Agency and provides it also with recommendations in the near future to even further improve the outcomes of its working practices.

6.2. Conclusion

The main goal of this thesis was to investigate to what extent the new mandate for the European Border and Coast Guard Agency could improve the output legitimacy crisis under which its predecessor FRONTEX is currently criticised. This research objective was accompanied by the following general research question:

"To what extent can the new mandate of the European Border and Coast Guard agency improve the output legitimacy of the European Union's external borders agency?"

The analysis of the ten indicators of the effectiveness of the working practices of the EU's external borders agency led to several visible gaps in their effectiveness. FRONTEX was overall assessed as effective and contributed positively to the broader aspect of external border management, but several aspects that needed improvement were picked up during the analysis. During this analysis, it is noticed that on the areas of processing personal data, technical and human resources, protection of fundamental rights and its operational role, the Agency could improve a lot. The new mandate for the EBCGA provides the external borders agency with a more operational role, expansion of powers, more emphasis on fundamental rights, right to intervene, possibility to assess vulnerability assessments and more competences with regards to the processing of personal data. The renewed mandate thus provided the EBCGA with an expansion of powers. This could, in theory, lead to an improvement in the effectiveness of its working practices, where FRONTEX was criticised for not having a leading role in purchasing its own technical equipment and not optimal cooperation with third countries and IOs. Under the new mandate, the EBCG is able to acquire or lease its own technical equipment, expand the operational role of liaison officers in third countries to increase the effectiveness in return operations and thus improve its capabilities on human resource aspects. The right to intervene with the EBCGT is also part of the new mandate and provides the Agency with more operational capacities and thus more effective working practices. With the competence received with regards to personal data, the Agency is able to renew and maintain its cooperation with EU Agencies like Europol and EASO. Due to the fact that the processing of personal data is, to some extent, allowed, the information exchange between both parties, in order to more effectively challenge cross-border crime, is enhanced.

With reference to the theory section, the Agency should be focusing on three challenges, autonomy issues and the constant state of emergency, structural capacity and institutional standards and the processing of asylum and human rights. Under the new mandate, autonomy and constant state of emergency are partly tackled. By intervention of the Agency in situations that require this and by providing the Agency with more autonomy, these challenges are 'accepted'. Regarding structural capacity, the mandate improves operational powers and increases its role of coordinator. The sensible point of asylum and human rights is also addressed within the new mandate. Taken the new competences and the improvement of other, earlier received competences under the new mandate into account, it could be stated that the EBCGA is in theory able to improve output legitimacy as regards to effectiveness of their working practices. However, it

remains to be seen whether this 'new' agency is able to implement its new competences in practice and improve the output legitimacy of external border management of the EU.

7. Bibliography

Aas, K., & Gundhus, H. (2015). Policing Humanitarian Borderlands: Frontex, Human Rights and the Precariousness of Life. *British Journal of Criminology, 55*, 1-18.

Amnesty International. (2012). *We Are Foreigners, We Have No Rights: the Plight of Refugees, Asylum-Seekers and Migrants in Libya.* London: Amnesty International.

Babbie, E. (1999). *The basics of social research.* Belmont: Wadsworth Publications.

Beetham, D., & Lord, C. (2014). *Legitimacy and the European Union.* New York: Routledge.

Borràs, S., Koutalakis, C., & Wendler, F. (2007). European agencies and input legitimacy: EFSA, EMEA and EPO in the post-delegation phase. *European Integration, 29*(5), 583-600.

Bozorgmehr, K., & Razum, O. (2015). Disgrace at EU's external borders. *International Journal of Public Health*(60), 515-516.

Buess, M. (2015). European Union agencies and their management boards: an assessment of accountability and demoi-cratic legitimacy. *Journal of European Public Policy, 22*(1), 94-111.

Burridge, A. (2012). The 'Added Value' of RABITs: Frontex, Emergency Measures and Integrated Border Management at the External Borders of the European Union. *RISC Consortium Working Papers, 1*.

Busuioc, M. (2009). Accountability, Control and Independence: The Case of European Agencies. *European Law Journal, 15*, 599-615.

Busuioc, M. (2012). European agencies and their boards: promises and pitfalls of accountabilty beyond design. *Journal of European Public Policy, 19*(5), 719-736.

Carrera, S. (2007). The EU Border Management Strategy: FRONTEX and the Challenges of Irregular Immigration in the Canary Islands. *Centre for European Policy Studies*.

Carrera, S., & den Hertog, L. (2016). A European Border and Coast Guard: What's in a name? *CEPS Paper in Liberty and Security, 88*.

Carrera, S., & den Hertog, L. (2016). A European Border and Coast Guard: What's in a name? *CEPS Paper in Liberty and Security in Europe*(88), 1-19.

Carrera, S., den Hartog, L., & Parkin, J. (2013). The Peculiar Nature of EU Home Affairs Agencies in Migration Control: Beyond Accountability versus Autonomy? *European Journal of Migration and Law, 15*, 337-358.

Caviedes, A. (2016). European Integration and the Governance of Migration. *Journal of Contemporary European Research, 12*(1), 553-566.

Cohen, J. (1997). Deliberation and democratic legitimacy. In D. Matravers, & J. Pike, *Debates in Contemporary Political Philosophy: An Anthology* (pp. 342-360). New York: Routledge.

Commission of the European Communities. (2008). *Report on the evaluation and future development of the FRONTEX Agency.* Brussels: European Commission.

Council of the European Union. (2003). *Report on the implementation of programmes, ad hoc centres, pilot projects and joint operations.* Brussels: CCLS.

Council of the European Union. (2004). Council Regulation (EC) No 2007/2004. *Official Journal of the European Union*, 1-11.

COWI. (2009). *External evaluation of the European Agency for the Management of Operational Cooperation at the External Borders.* Kongens Lyngby: COWI A/S.

Dehousse, R. (1997). Regulation by Networks in the European Community: The Role of European Agencies. *Journal of Public Policy, 4*(2), 246-261.

Del Sarto, R. A. (2016). Normative Empire Europe: The European Union, its Borderlands, and the 'Arab Spring'. *Journal of Common Market Studies, 54*(2), 215-232.

Den Heijer, M., Rijpma, J., & Spijkerboer, T. (2015). Coercion, Prohibition and Great Expectations: The Continuing Failure of the Common European Asylum System. *CMLR*.

Dowling, J., & Pfeffer, J. (1975). Organizational legitimacy: Social values and organizational behavior. *Pacific sociological review*, 122-136.

Elo, S., & Kyngäs, H. (2008). The qualitative content analysis process. *Journa of Advanced Nursing, 62*(1), 107-115.

European Added Value Unit. (2016). *The Costs of Non-Schengen: Civil Liberties, Justice and Home Affairs aspects.* Brussels: European Parliamentary Research Service.

European Commission. (2010). *SEC(2010) 150: Impact Assessment of Frontex .* Brussels: European Commission.

European Commission. (2015). European Agenda on Migration: Securing Europe's External Borders. *European Commission - Fact Sheet*(MEMO/15/6332).

European Commission. (2016). *The EU and the Refugee Crisis .* Luxembourg: Publications Office of the European Union.

European Union. (n.d.). *Decentralised agencies*. Retrieved 4/1/2017 from European Union Website: https://europa.eu/european-union/about-eu/agencies/decentralised-agencies_en

Ferraro, F., & de Capitani, E. (2016). The new European Border and Coast Guard: yet another "half way" EU reform? *European Rights Academy*.

Fink, M. (2012). Frontex Working Arrangements: Legitimacy and Human Rights Concerns Regarding 'Technical Relationships'. *Utrecht Journal of International and European Law, 28*(75), 20-35.

Fink, M. (2015). A 'Blind Spot' in the Framework of International Responsibility? Third Party Responsiblity for Human Rights Violations: The Case of Frontex. In T. Gammeltoft-Hansen, & J. Vedsted-Hansen, *Human Rights and the Dark Side of Globalisation: Transnational Law Enforcemetn.* New York: Routledge.

Fischer-Lescano, A., Tillmann, L., & Tohidipur, T. (2009). Border Controls at Sea: Requirements under International Human Rights and Refugee Law. *The Author*, 256-296.

Føllesdal, A. (2006). Survey Article: The Legitimacy Deficits of the European Union. *Journal of Political Philosophy, 14*, 441-468.

Fotiadis, A. (2016). *E.U. Border Agency Still Unaccountable on Refugees' Rights.* Retrieved 21/12/2016 from News Deeply: https://www.newsdeeply.com/refugees/community/2016/11/18/e-u-border-agency-still-unaccountable-on-refugees-rights

FRA. (2013a). *Fundamental rights at Europe's southern sea borders.* Luxembourg: Publication Office of the European Union.

FRA. (2013b). *Fundamental Rights-based Police training.* Luxembourg: Publication Office of the European Union.

Frontex. (2007). *General report 2006.* Warsaw: FRONTEX.

Frontex. (2013). *Programme of Work 2014.* Warsaw: Frontex.

Frontex. (2014a). *General Report 2013.* Warsaw: FRONTEX.

Frontex. (2014b). *Programme of Work 2015.* Warsaw: Frontex.

Frontex. (2015a). *Frontex at a Glance.* Warsaw: FRONTEX.

Frontex. (2015b). *General Report 2014.* Warsaw: FRONTEX.

Frontex. (2015c). *Programme of Work 2016.* Warsaw: Frontex.

Frontex. (2016a). *Frontex' Single Programming Document 2016-2019.* Warsaw: FRONTEX.

Frontex. (2016b). *General Report 2015.* Warsaw: FRONTEX.

Frontex. (n.d.). *Operations: Roles and Responsibilies* . Retrieved from 4/1/2017 Website of the European Border and Coast Guard Agency: http://frontex.europa.eu/operations/roles-and-responsibilities

FRONTEX. (n.d.). *General Information Consultative Forum*. Retrieved 27/1/2017 from Frontex - European Border and Coast Guard Agency: http://frontex.europa.eu/partners/consultative-forum/general-information/

Frontex Risk Analysis Network. (2016). *FRAN Quarterly.* Warsaw: European Border and Coast Guard Agency.

Grabbe, H., & Lehne, S. (2016). *How to Build a More Flexbile EU After Brexit?* Retrieved 28/12/2016 from Carnegie Europe: http://carnegieeurope.eu/2016/09/08/how-to-build-more-flexible-eu-after-brexit-pub-64507

Groenleer, M. (2009). *The autonomy of European agencies.* Delft: Uitgeverij Eburon.

Harwood, T., & Garry, T. (2003). An overview of content analysis. *The Marketing Review, 3*, 479-498.

Horeth, M. (1999). No way out for the beast? The unsolved legitimacy problem of European governance. *Journal of European Public Policy, 6*(2), 249-261.

Horii, S. (2015). *Shifting out of Border Control to Keep 'Unwanted' People Away: the Case of the EU.*

Horii, S. (2016). The effect of Frontex's risk analysis on the European border controls. *European Politics and Society, 17*(2), 242-258.

House of Lords. (2008). *FRONTEX: The EU External Borders Agency.* London: The Stationery Office.

Human Rights Watch. (2012). *Boat Ride to Detention: Adult and Child Migrants in Malta.*

Iglesias-Rodríguez, P. (2012). The Regulation of Cross-Border Clearing and Settlement in the European Union from a Legitimacy Perspective. *European Business Organization Law Review, 13*, 441-474.

IOM. (2010). *International Migration Law and Policies: Responding to Migration Challenges in Western and Northern Africa.* Geneva: International Organization for Migration.

Jeandesboz, J. (2008). Reinforcing the Surveillance of EU Borders: The Future Development of FRONTEX and EUROSUR. *CEPS Working Papers, 11*.

Jorry, H. (2007). Construction of a European Institutional Model for Managing Operational Cooperation at the EU's External Borders: Is the FRONTEX Agency a decisive step forward? *CEPS Research Paper, 6*.

Katsiaficas, C. (2014). FRONTEX's Integrated Border Management. *Bridging Europe Working Paper*.

Keller, S., Lunacek, U., Lochbihler, B., & Flautman, H. (2012). *Frontex Agency: Which guarantees for human rights?* Brussels: Greens/EFA in European Parliament.

Klepp, S. (2010). A Contested Asylum System: The European Union between Refugee Protection and Border Control in the Mediterranean Sea. *European Journal of Migration and Law, 12*, 1-21.

Laitinen, I. (2006). Keynote Speech. *Security, Technology, Borders: EU Respones to New Challenges.* Brussels: Centre for European Policy Studies.

Léonard, S. (2009). The Creation of FRONTEX and the Politics of Institutionalisation in the EU External Borders Policy. *Journal of Contemporary European Research, 5*(3), 371-388.

Léonard, S. (2010). EU border security and migration into the European Union: FRONTEX and securitisation through practices. *European Security, 19*(2), 231-254.

Majone, G. (1996). *Regulating Europe.* London: Routledge.

Majone, G. (1998). The Regulatory State and its Legitimacy Problems. *Political Science Series*(56).

Majone, G. (2000). The Credibility Crisis of Community Regulation. *Journal of Common Market Studies, 38*, 273-302.

Majone, G. (2002). Functional Interests: European Agencies. In J. Peterson, & M. Shackleton, *The Institutions of the European Union.* Oxford: Oxford University Press.

Marenin, O. (2010). Challenges for the Integrated Border Management in the European Union. *DCAF Occasional Paper, 17*.

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.

Monar, J. (2006). Cooperation in the Justice and Home Affairs Domain: Characteristics, Constraints and Progress. *Journal of European Integration, 28*(5), 495-509.

Morehouse, C., & Blomfield, M. (2011). *Irregular Migration in Europe.* Washington, DC: Migration Policy Institute.

Mungianu, R. (2013). Frontex: Towards a Common Policy on External Border Control. *European Journal of Migration and Law, 15*, 359-385.

Mungianu, R. (2016). *Frontex and Non-Refoulement: The International Responsibility of the EU.* Cambridge: Cambridge University Press.

Nagel, T. (1987). Moral conflict and political legitimacy. *Philosophy & Public Affairs, 16*(3), 215-240.

Neal, A. (2009). Securitization and Risk at the EU Border: The Origins of FRONTEX. *Journal of Common Market Studies, 47*(2), 333-356.

Oxfam . (2016). *Hotspot. rights denied.* Firenze: Oxfam Italia.

Pallister-Wilkins, P. (2015). The Humanitarian Politics of European Border Policing: Frontex and Border Police in Evros. *International Political Sociology, 9*, 53-69.

Papastavridis, E. (2010). 'Fortress Europe' and FRONTEX: With or Without International Law? *Nordic Journal of International Law*, 75-111.

Perkowski, N. (2012). A normative assessment of the aims and practices of the European border management agency Frontex. *Refugee Study Centre Working Paper Series, 81*.

Perkowski, N. (2016). Deaths, Interventions, Humanitarianism and Human Rights in the Mediterranean 'Migration Crisis'. *Mediterranean Politics, 21*(2), 331-335.

PICUM. (2009). *Why 'Undocumented' or 'Irregular'?* Brussels: Picum.

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. In E. Guild, & F. Geyer, *Security Versus Justice?: Police and Judicial Cooperation in the European Union* (pp. 19-34). London: Routledge.

Raffaelli, R. (2016). *The Principle of Subsidiarity.* Strasbourg: European Parliament.

Ramboll Management Consulting. (2015). *External Evaluation of the Agency under Art. 33 of the Frontex Regulation: Final Report.* Copenhagen: Ramboll Group A/S.

Reslow, N. (2012). The Role of Third Countries in EU Migration Policy: The Mobility Partnerships. *European Journal of Migration and Law, 14*, 293-415.

Rijpma, J. (2010). Frontex: Successful Blame Shifting of the Member States? *Real Instituto Elcano: ari*, 1-6.

Rijpma, J. (2016). The proposal for a European Border and Coast Guard: evolution or revolution in external border management? *Civil Liberties, Justice and Home Affairs*.

Risk Analysis Unit. (2014). *Annual Risk Analysis 2014.* Warsaw: FRONTEX.

Risk Analysis Unit. (2015). *Annual Risk Analysis 2015.* Warsaw: FRONTEX.

Risk Analysis Unit. (2016). *Annual Risk Analysis 2016.* Warsaw: FRONTEX.

Risk Analysis Unit. (2016). *Eastern Partnership Risk Analysis Network Quarterly Q2.* Warsaw: European Border and Coast Guard Agency.

Risk Analysis Unit. (2016). *Western Balkans Quarterly Q2.* Warsaw: European Border and Coast Guard Agency.

Scharpf, F. (1999). *Governing in Europe: effective and democratic?* Oxford: Oxford University Press.

Scharpf, F. (2003). Problem-solving effectiveness and democratic accountability in the EU. *MPIfG working paper, 3*(1).

Schmidt, V. (2011). Democracy and Legitimacy in the European Union Revisited. *KFG Working Paper Series*(21), 1-31.

Schmidt, V. (2015). *The Eurozone's Crisis of Democratic Legitimacy: Can the EU Rebuild Public Trust and Support for European Economic Integration?* Luxembourg: Publications Office of the European Union.

Schout, A. (2011). "Framework for assessing the added value of an EU agency". *Journal of Public Policy, 31*(3), 363-384.

Spengeman, A. (2013). Upholding the legitimacy of Frontex: European Parliamentary Oversight. *European Security Review, 65*, 1-9.

Statewatch. (2015). *Explanatory Note on the "Hotspot" approach.* Luxembourg: Publications Office of the European Union.

Tondini, M. (2010). Fishers of Men? The Interception of Migrants in the Mediterranean Sea and Their Forced Return to Libya. *INEX Paper*.

Trauner, F. (2016). *New kids on the CFSP block: The JHA agencies.* Brussels: European Union Insititute for Security Studies.

Trevisanut, S. (2009). Maritime Border Control and the Protection of Asylum-Seekers in the European Union. *Touro International Law Review, 12*, 157-161.

UNESCO. (2016). *Cities Welcoming Refugees and Migrants.* Paris: UNESCO.

UNHCR. (2016, December 4). *Syria Regional Refugee Respons - Inter-agency Information Sharing Portal*. Retrieved from United Nations High Commissioner for Refugees: http://data.unhcr.org/syrianrefugees/regional.php

United Nations High Commissioner for Refugees. (2016). *Mediterranean: Dead and Missing at Sea.* The UN Refugee Agency.

Vara, J. (2015). The External Acticities of AFSJ Agencies: The Weakness of Democratic and Judicial Controls. *European Foreign Affairs Review, 20*, 118-136.

Vara, J., & Sánchez-Tabernero, S. (2016). In Deep Water: Towards a Greater Commitment for Human Rights in Sea Operations Coordinated by Frontex? *European Journal of Migration and Law, 2016*(18), 65-87.

Wolff, S. (2008). Border management in the Mediterranean: internal, external and ethical challenges. *Cambridge Review of International Affairs, 21*(2), 253-271.

Wolff, S. (2010). EU Integrated Border Management Beyond Lisbon: Contrasting Policies and Practice. In Zapata-Barrero, *Shaping the normative contours of the European Union: a Migration-border network* (pp. 23-36). Barcelona: CIDOB.

Wolff, S., & Schout, A. (2012). Frontex as Agency: More of the Same? *Perspectives on European Politics and Society, 14*(3), 305-324.

Yang, K., & Miller, G. (2008). *Handbook of research methods in public administration* (Vol. 2). New York: M. Dekker.

8. Data appendix
Sources used for data analysis:

Carrera, S., & den Hertog, L. (2016). A European Border and Coast Guard: What's in a name? CEPS Paper in Liberty and Security, 88.

Commission of the European Communities. (2008). Report on the evaluation and future development of the FRONTEX Agency. Brussels: European Commission.

Council of the European Union. (2010). Council conclusions on 29 measures for reinforcing the protection of the external borders and combating illegal immigration. Brussels: Press Office Europe.

COWI. (2009). External evaluation of the European Agency for the Management of Operational Cooperation at the External Borders. Kongens Lyngby: COWI A/S.

European Commission. (2010). SEC(2010) 150: Impact Assessment of Frontex . Brussels: European Commission.

European Parliament and the Council of the European Union. (2004). Council regulation (EC) 2004/2007. Official Journal of the European Union.

European Parliament and the Council of the European Union. (2007). Regulation (EC) No 863/2007. Official Journal of the European Union.

European Parliament and the Council of the European Union. (2011). Regulation (EU) No 1168/2011. Official Journal of the European Union.

European Parliament and the Council of the European Union. (2016). Regulation (EU) 2016/1624. Official Journal of the European Union.

Frontex. (2010a). Beyond the Frontiers. Warsaw: Frontex Information and Transparency Team.

Frontex. (2010b). Programme of Work 2011. Warsaw: Frontex.

Frontex. (2011). Programme of Work 2012. Warsaw: Frontex.

Frontex. (2012a). General Report 2011. Warsaw: FRONTEX.

Frontex. (2012b). Programme of Work 2013. Warsaw: Frontex.

Frontex. (2013a). General Report 2012. Warsaw: FRONTEX.

Frontex. (2013b). Programme of Work 2014. Warsaw: Frontex.

Frontex. (2014a). General Report 2013. Warsaw: FRONTEX.

Frontex. (2014b). Programme of Work 2015. Warsaw: Frontex.

Frontex. (2015a). General Report 2014. Warsaw: FRONTEX.

Frontex. (2015b). Programme of Work 2016. Warsaw: Frontex.

Frontex. (2016b). Frontex' Single Programming Document 2016-2019. Warsaw: FRONTEX.

Frontex. (2016a). General Report 2015. Warsaw: FRONTEX.

Frontex Risk Analysis Network. (2016). FRAN Quarterly. Warsaw: European Border and Coast Guard Agency.

Horii, S. (2016). The effect of Frontex's risk analysis on the European border controls. European Politics and Society, 17(2), 242-258.

House of Lords. (2008). FRONTEX: The EU External Borders Agency. London: The Stationery Office.

Keller, S., Lunacek, U., Lochbihler, B., & Flautman, H. (2012). Frontex Agency: Which guarantees for human rights? Brussels: Greens/EFA in European Parliament.

Perkowski, N. (2012). A normative assessment of the aims and practices of the European border management agency Frontex. Refugee Study Centre Working Paper Series, 81.

Ramboll Management Consulting. (2015). External Evaluation of the Agency under Art. 33 of the Frontex Regulation: Final Report. Copenhagen: Ramboll Group A/S.

Rijpma, J. (2016). The proposal for a European Border and Coast Guard: evolution or revolution in external border management? Civil Liberties, Justice and Home Affairs.

Risk Analysis Unit. (2011). Annual Risk Analysis 2011. Warsaw: FRONTEX.

Risk Analysis Unit. (2012). Annual Risk Analysis 2012. Warsaw: FRONTEX.

Risk Analysis Unit. (2013). Annual Risk Analysis 2013. Warsaw: FRONTEX.

Risk Analysis Unit. (2014). Annual Risk Analysis 2014. Warsaw: FRONTEX.

Risk Analysis Unit. (2015). Annual Risk Analysis 2015. Warsaw: FRONTEX.

Risk Analysis Unit. (2016a). Annual Risk Analysis 2016. Warsaw: FRONTEX.

Risk Analysis Unit. (2016b). Eastern Partnership Risk Analysis Network Quarterly Q2. Warsaw: European Border and Coast Guard Agency.

Risk Analysis Unit. (2016c). Western Balkans Quarterly Q2. Warsaw: European Border and Coast Guard Agency.

Vara, J., & Sánchez-Tabernero, S. (2016). In Deep Water: Towards a Greater Commitment for Human Rights in Sea Operations Coordinated by Frontex? European Journal of Migration and Law, 2016(18), 65-87.