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Frontex in the Post-Maastricht Era- a qualitative analysis through the lens of New Intergovernmentalism.

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Abstract

The aim of this bachelor thesis is to analyse to what extent the New Intergovernmentalism as presented by Bickerton et al. is reflected in the expansion of the Border and Coast Guard Agency Frontex. Therefore, the institutional structure, functioning and operational activities of Frontex are analysed through the lens of named theoretical approach.

Textual analysis is used to analyse the newest mandate of Frontex, the regulation of 2019, which acts as the basis of the analysis. With regard to the operational activities special attention is given to Operation Themis, which is carried out by Frontex in cooperation with Italy and shall function as an example of Joint Operations. The analysis shows that New Intergovernmentalism is indeed reflected in the agency, especially when considering that Frontex is located in a policy field, the AFSJ, in which the Community Method applies, hence power was delegated to the agency instead of the Union. Nonetheless the question arises if an agency like Frontex can operate on other than intergovernmental practices since the Member States are still responsible for their external borders. Within Frontex the sovereignty of the Member States encounters the pursuit of further European integration.

List of Abbreviations

AFSJ- Area of Freedom, Security and Justice

EP- European Parliament

EUROSUR- European Border Surveillance System

Frontex- European Border and Coast Guard Agency

JHA- Justice and Home Affairs

JO- Joint Operations

OLAF- European Anti-Fraud Office

RABIT- Rapid Border Intervention Team

SEA- Single European Act

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1. Introduction

The resignation of the Executive Director of Frontex Fabrice Leggeri, who held the position since 2015, triggered a wave of media reports about the EU border agency Frontex in this year's spring. The resignation was preceded by a 200-page investigative report of the European Anti-Fraud Office OLAF, which revealed that Frontex and its Executive Director Leggeri knew about human rights violations as well as pushbacks at EU external borders but did not report them. In addition to that, Leggeri is also accused of harassment of his employees (Rankin, 2022).

However, criticism was already voiced by the EP last year before the OLAF investigation, which accused the agency of failing to respect the rights of migrants (Rankin, 2022). Despite this criticism, Leggeri was able to continue working without further intervention until his resignation at the end of April of this year. Various media sources attribute this to the Member States, which are apparently not deterred by practices such as pushbacks, even support them, and therefore cover for Leggeri (Schiltz, 2022), so that he is 'pretty well protected by the Member States' (Rankin, 2022). Protected above all in the sense that the states of the Schengen acquis are represented in the administrative level of Frontex, the Management Board, hence were in the position to take action against Leggeri, who is portrayed by the media as a 'monarch' (Christides & Lüdke, 2022).

This bachelor thesis deals with the very question, by whom is Frontex governed? Does the Executive Director decide on the agency's actions in a central power role, or does he merely follow the instructions of the Member States, so that it can be concluded that the agency follows intergovernmental practices? Finally, the OLAF investigation shows that Frontex, despite the multiple renewals of its mandates since its launch in 2004, is accountable to the Union level, meaning accountable to Union bodies such as the Commission and the EP.

In view of these power relations within Frontex New Intergovernmentalism will be used for the analysis of these. The theoretical approach debates the position of EU actors in the post-Maastricht era, hence the period after the entry into force of the Maastricht Treaty (Bickerton et al., 2015).

It is to analyse to what extent New Intergovernmentalism is reflected within Frontex, thus if the agency is governed by intergovernmental practices, leading to the expectation that the Member States overtake a significant role regarding the structure, functioning and tasks such as JO.

1.2 Research Question

The aim of this bachelor thesis is to answer the research question '*To what extent does New Intergovernmentalism explain the widening and deepening of the powers conferred to the Border Agency Frontex?*', whereby the following sub-questions shall provide a clear structure for this research:

1. *How has New Intergovernmentalism contributed to European integration theory?*
2. *What are the indicators that can explain the evolution of Frontex?*
3. *To what extent do the reforms of Frontex reflect in fields of institutional structure and functioning the New Intergovernmentalism?*
4. *To what extent do the operations carried out by Frontex in cooperation with the Member States reflect the New Intergovernmentalism?*

The first chapter presents the descriptive part of this thesis, so that New Intergovernmentalism is set in the context of European integration theory and it is discussed what or to better say how this new

theoretical approach, new in the sense that Bickerton et al. published their work in 2015, contributes to already existing approaches in this field. The New Intergovernmentalism presents six testable hypotheses based on which an analytical framework will be derived in chapter two. In this respect, the given hypotheses cannot simply be adopted, as they mainly deal with actors at the Union level, while this bachelor thesis analyses the EU agency Frontex through the lens of New Intergovernmentalism, so not all hypotheses can be considered (Bickerton et al., 2015). The analytical framework established in this chapter provides the structure for the analysis of Frontex in chapter three, which refers to the structure and functioning of the agency as well as its operational activities. Finally, the research question will be answered in the conclusion.

1.3 Theoretical Background and body of knowledge

This section provides the theoretical framework of the thesis and further defines concepts used to answer the overall research question.

1.3.1 Key theories and body of knowledge in the field of EU border policies

Bickerton et al. present in their book 'The New Intergovernmentalism States and Supranational Actors in the post-Maastricht era' six hypotheses about EU actors in the post-Maastricht era, which are 'open to empirical testing, however such testing is defined. They serve not only as a focal point for the remaining chapters in this volume but, we hope, as a basis for further research on the changing dynamics of European integration' (Bickerton et al., 2015: 38).

For instance, Bickerton discusses the preference formation, meaning domestic policy dynamics and how these are affected by political parties as well as civil movements, within the Member States and the role of political parties since the 1970s (Bickerton, 2015), while Cardwell and Hervey debate the role of Law in regard to the apparently declining role of the Community Method in EU policy-making (Cardwell & Hervey, 2015). Other scholars like Peterson and Granger focus on the role of Union bodies, namely the European Council, Commission (Peterson, 2015), EP (Pollak & Slominski, 2015) and Court of Justice (Granger, 2015) and debate how or to what extent their role and power has changed, if so, since the Treaty of Maastricht, especially with regard to the legislative control they hold.

In addition to that, other chapters do not only discuss the role of Union bodies per se but set them in the context of different EU policy domains such as the Common Security and Defense Policy (Smith, 2015), the European Banking Union (Quaglia & Howart, 2015) or the JHA (Wolf, 2015), to examine the extent to which New Intergovernmentalism has emerged in these domains.

Lastly, Hodson is the only scholar taking an approach about De Novo Bodies, which are defined as mainly EU agencies to which the Member States delegated competences which could have been delegated to supranational institutions such as the European Commission. In this case the European Central Bank is analysed (Hodson, 2015). In his article 'De Novo Bodies and EU Integration: What is the Story behind EU Agencies' Expansion?' Scipioni takes a similar approach as he also debates how the two EU agencies Frontex and EASO meet the De Novo Institution definition, whereby he primarily focuses on this definition and does not further incorporate the given six hypotheses of New Intergovernmentalism (Scipioni, 2018).

This bachelor thesis contributes to the existing body of knowledge by analysing the EU agency Frontex through the lens of New Intergovernmentalism. The challenge in this regard is to adapt the given hypotheses to the chosen level of analysis since Bickerton et al. -as well as the scholars who already tested the hypotheses, analyse EU policy and actors on the Union level, while the actor to be discussed

in this thesis is an EU agency. Hence not every hypothesis is (fully) applicable as can be seen in chapter 2.3.

1.3.2 Key concepts, institutions and existing policies

Frontex is one of the EU agencies located in the AFSJ with the main purpose to assist Member States in the management of their external borders in order to prevent cross-border crimes such as human trafficking as well as to help regulate migration flows (Frontex, n.d.-d). The agency is managed by the Executive Director, the position is currently held by Aija Kalnaja after Fabrice Leggeri resigned in April of this year (Frontex, n.d.-b). The Executive Director is appointed by the Management Board, which is formed of two representatives of the European Commission and 26 representatives of each Member State (Regulation (EU) 2019/1896, Article 101(1)). He/ She works in close cooperation with three Deputy Executive Directors. Latter supervise specific tasks and report to the Executive Director. These tasks are performed by a variety of offices, the Permanent Premises for the Frontex Headquarters Task Force, a cabinet and nine divisions (Frontex, n.d.-b).

Since the mandate of 2016 European Border and Coast Guard standing corps, which are composed of Member States' and Frontex staff, further support the Member States at their external borders (Regulation (EU) 2016/1624).

In regard to the JO, the main operations currently carried out by Frontex in cooperation with the Member States are Operation Poseidon in Greece, Operations Minerva and Indalo in Spain, Operations Themis in Italy as well as operations in the Western Balkans, which support Member States most affected by migratory flows such as Croatia. While named operations refer to sea operations carried out by Frontex, there are two more types, land, and sea operations (Frontex, n.d.-c). As can be seen in the appendix, Frontex carries out a number of JO, showing the strong cooperation with the Member States but also the need of Frontex deployment regarding border management.¹

The agency is governed by its latest regulation, Regulation (EU) 2019/1896.

1.4 Scientific approach

The bachelor thesis follows a qualitative method approach to analyse the EU agency Frontex through the lens of New Intergovernmentalism provided by Bickerton, Hudson and Putter (Bickerton et al., 2015).

The data used to answer the research question is composed of policy documents, scientific literature as well as mass media reports. Regarding the policy documents the main document used is the Regulation (EU) 2019/1896 of the EP and of the Council by which the agency is currently governed. The regulation presents the legal basis of Frontex and specifies its structure, tasks, and functioning. The previously mentioned document provides the basis for chapter three of the thesis, whereby previous regulations by which Frontex was governed, such as the Mandates of 2004 (Council Regulation (EC) No 2007/2004), 2011 (Regulation (EU) 1168/2011) and 2016 (Regulation (EU) 2016/1624), are also considered. The regulations were derived from the EUR-Lex platform, which is an official EU website that provides access to EU Law documents.² In addition to named policy documents also scientific literature is used in the first and second chapter, namely Bickerton et al.'s book in which the New Intergovernmentalism is presented (Bickerton et al., 2015). Based on this approach expectations are derived which provide

¹ Appendix 1

² <https://eur-lex.europa.eu/homepage.html>

the analytical framework for the analysis of Frontex regarding its institutional structure, functioning and operational activities in chapter three. Research is limited due to the limited access to documents of Frontex about the JO. Therefore, also mass media reports are considered in chapter one and three regarding current events that relate to Frontex, as its operational activities, whereby special attention is given to Operation Themis.

Textual analysis was used to analyse mentioned data to answer the research question of this bachelor thesis.

2. New Intergovernmentalism and the study of the European Integration process

2.1 New Intergovernmentalism and the European integration process

This chapter will outline what New Intergovernmentalism contributes to existing European integration theory. This new approach is presented as a ‘novel theoretical framework for the study of European Integration in the post-Maastricht era’ (Bickerton et al., 2015: 1), this is to say that the approach is not to be understood as a theory per se but as an expansion or continued approach of the existing theory of Intergovernmentalism. In this regard the starting point, meaning the phase, which is seen as the beginning of New Intergovernmentalism, is the signing of the Maastricht Treaty in 1992, which is seen as a new era in the European integration process and is opposed by Bickerton et al. to the supranational approach of European integration theory as well as the Single European Act, which is stated to be the core of named theoretical approach (Bickerton et al., 2015).

The SEA was signed in 1986 and pursued the establishment of an Internal Market, thus further European integration, while also initiating institutional changes in the EU. Accordingly supranational institutions such as the EP and the Commission, could finally be delegated with implementing powers by the European Council, hence the Commission was delegated ‘powers for the implementation of the rules which the Council lays down’ (Single European Act, 1987, Article 10). EP and Commission were strengthened in their respective positions through the expansion of their powers (Single European Act, 1987). This strengthening of named Union bodies is in line with the supranational approach, according to which the Member States delegate their competences to the Union level, thus autonomous decision-making bodies are created, which weaken the nation states. (Bickerton et al., 2015). That being the case policy-making takes place within the framework of the Community Method, so that the Commission assumes the key role by representing the interests of the EU and thus of the Member States (Dero-Bugny, 2014) and, together with the EP and the Council of Ministers, forms the institutional triangle, which is the main instance of the Community Method (European Commission, 2002).

According to Bickerton et al., a turn in EU policy-making became apparent after the entry into force of the Maastricht Treaty, as the Treaty did not foresee further empowerment of supranational institutions in several of the new EU activities that were introduced in the scope of the Treaty. Furthermore, the newly introduced principle of subsidiarity limited, in their opinion, the Union's power to intervene in policy fields that fall under shared competence, thus policy fields in which the Union does not have an exclusive right to act. In this sense the Union shall only intervene if necessary, meaning when actions taken by the Member States are insufficient (Treaty on European Union (92/C 191/01), Article 3(b)). With regard to the introduced principle of subsidiarity, the so-called integration paradox becomes apparent in the Treaty and the period thereafter, which according to Bickerton et al. means that the Member States still pursue European integration and therefore cooperative practices, but do not want to further strengthen the supranational institutions and therefore do not want to delegate further competences to them. Instead, the European Council and the Council of Ministers are the core decision-making bodies, which can be seen for example in the JHA, so that the right of initiative is shared by the Commission and Council of Ministers (Bickerton et al., 2015). Instead of supranational institutions, the Member States delegate their competences to de novo bodies, hence EU agencies, which act outside the Community Method, thus following intergovernmental practices and allowing the Member States more room for manoeuvre than in the Community Method (Bickerton et al., 2015).

New Intergovernmentalism differs from Hoffman and Moravcsik’s intergovernmental approach in that it does not, like the previous approaches, seek only to explain why Member States do or do not aspire to the European integration process, but why Member States aspire to European integration without

supranational practices after 1992 (Verdun & Laursen, 2020). The post-Maastricht era is seen by Bickerton et al. as a new phase of the European integration process, in which, as in previous intergovernmental approaches, the black box of Member States is to be 'opened up', but above all national dynamics, meaning national preference formation, are decisive for the European integration process. In this new approach, however, it is not clear whether Bickerton et al. see New Intergovernmentalism as the opposite of the supranational approach, since the latter is supposedly no longer sought by the Member States in the post-Maastricht era, while at the same time the scholars describe both approaches as co-existing (Bickerton et al., 2015).

2.2 The six Bickerton hypotheses

Bickerton et al. (2015) propose the following six hypotheses in their approach of New Intergovernmentalism:

1. **Hypothesis:** *'Deliberation and consensus have become the guiding norms of day-to-day decision making at all levels.'*
2. **Hypothesis:** *'Supranational institutions are not hard-wired to seek ever closer union.'*
3. **Hypothesis:** *'Where delegation occurs, governments and traditional supranational actors support the creation and empowerment of de novo institutions.'*
4. **Hypothesis:** *'Problems in domestic preference formation have become stand-alone inputs into the European integration process.'*
5. **Hypothesis:** *'The differences between high and low politics have become blurred.'*
6. **Hypothesis:** *'The EU is in a state of disequilibrium.'*

These hypotheses attempt to explain the integration paradox of the post-Maastricht era, according to which Member States continue to strive for integration but do not want to delegate further competences to supranational institutions. Since New Intergovernmentalism refers to EU institutions and bodies, but this bachelor thesis deals with the EU agency Frontex, the hypotheses mentioned will be adapted to the substantive setting at hand in the following sub-chapter.

2.3 Bickerton hypotheses and the study of Frontex: a proposed analytical framework

The following subchapters shall provide an analytical framework, whereby expectations are derived from the in chapter 2.2. presented six hypotheses of New Intergovernmentalism.

2.3.1 Consensus and deliberation

The first hypothesis³ describes the shift away from the formal decision-making process prescribed by the Treaties towards the increased use of intergovernmental practices such as consensus. According to this hypothesis, supranational institutions such as the Commission follow the impetus of the European Council, which sets the dynamics of decentralized policy-making. Thus, the Member States are more involved, assume more responsibility and pursue policy coordination, instead of delegating their competences to, for instance the Commission (Bickerton et al., 2015).

³ *Deliberation and consensus have become the guiding norms of day-to-day decision making at all levels (Bickerton et al., 2015).*

With regard to Frontex, it has to be examined where consensus and deliberation are to be located within the agency and to what extent we can expect Member States to have a leading role in the decision-making of Frontex. In relation to the structure of the agency, this deliberation takes place in the Management Board, which is composed of two representatives of the Commission as well as 26 representatives of the Member States that signed the Schengen Acquis (Regulation (EU) 2019/1896, Article 101). The Management Board is responsible for the decisions taken by Frontex, thus controlling its functioning (Regulation (EU) 2019/1896, Article 100). It is therefore to be expected that the Management Board is to be understood as an instrument of intergovernmental cooperation and that the leading role thus belongs to the Member States. This increased presence of the Member States goes hand in hand with the limited presence of the supranational institutions, which is the basis of the second hypothesis of New Intergovernmentalism.⁴ According to this, the supranational bodies of the EU do not strive for an ever-closer union, but accept, respectively support decentralization in the post-Maastricht era, in which their competences are more limited than in the traditional Community Method.

The institutions do not pursue further centralization, and are no longer 'power-hungry' (Bickerton et al., 2015: p.18). It can be deduced from this that the Commission, EP and the Council have an inferior role compared to the Member States and can only exercise limited competences in the Frontex case. For the analysis, the above hypotheses can be combined to conceptualize them.

Thus, looking at the structure of Frontex, the main component in which delegation occurs is the Management Board, which should therefore be in focus, as well as the Executive Director.

E1: It is to be expected that consensus and deliberation within Frontex take place in the Management Board, whereby the impetus of the Member States is followed.

2.3.2 Frontex and its powers as an expression of the 'de novo institution' paradigm

The third hypothesis refers to so-called de novo institutions, which are part of the dynamics of the post-Maastricht era and can be assigned to the general agentification trend of this time (Santos Vara, 2018).⁵ Looking back at the first two hypotheses of New Intergovernmentalism, Bickerton et al. once again refer to the decentralisation of EU policy, so that the Member States instrumentalize de novo institutions, delegate their power to them instead of handing over more power to the supranational bodies (Bickerton et al., 2015).

The conceptualization of this hypothesis is to be divided into two steps, so that it must first be examined whether Frontex corresponds to the definition of a de novo institution according to Bickerton et al.. To analyse whether Frontex meets this definition, the structure as well as the functioning, meaning the tasks, are considered in regard to the definition's elements.

In a second step, it should then be examined whether the agency has experienced empowerment.

This empowerment can be understood in the sense that the agency was expanded since its establishment. When New Intergovernmentalism is applicable, the empowerment of Frontex should be demonstrated by an expansion of the agency, so it should be examined whether such an expansion has taken place since the establishment of Frontex in 2004. In this respect, it will be analysed to what extent the mandates launched since 2004 have changed Frontex, meaning whether a widening and deepening has taken place.

E2a: It is to expect that Frontex meets the definition of a de novo institution.

⁴ *Supranational institutions are not hard-wired to seek ever closer union (Bickerton et al., 2015)*

⁵ *Where delegation occurs, governments and traditional supranational actors support the creation and empowerment of de novo institutions (Bickerton et al., 2015)*

E2b: It is to expect that Frontex was expanded by supranational institutions and the Member States, that led to a widening and deepening of its tasks, since its establishment in 2004.

2.3.3 Frontex' operational activities

The increased presence of the Member States, as well as the new position of the European Council as the core institution of the New Intergovernmentalism, also led to a change in the dynamics of the European integration process.⁶ Bickerton et al. argue that the governments of the Member States represent not only their interests but also their social and political relations in EU policy (Bickerton et al., 2015). Accordingly, they embody domestic dynamics that influence the integration process, thus shaping it. While the scholars refer to the mobilization of frustrated societies, such a socio-political analysis is beyond the scope of this bachelor thesis. Instead, this hypothesis can be considered in the sense that the starting point of the European integration process are the Member States and their domestic policy. From this, it can be concluded for the analysis that the agency's actions are primarily based on the will of the Member States, or rather are dependent on them, and Frontex therefore acts in their interest. According to the most current mandate, Frontex was set up to 'ensure integrated European management of the external borders [...] to manage those borders effectively, in full respect of fundamental rights, and to enhance the effectiveness of the Union's return policy' (Regulation (EU) 2019/ 1896, Article 1). In this respect, reference should be made to the operational activities carried out by Frontex, which will be analysed in the light of this hypothesis, under the expectation that Frontex acts according to the interest of the Member States, which are thus the starting point of the operational activities.

E3: Frontex acts in the interest of the Member States.

The fifth⁷ and six⁸ hypothesis put forward by Bickerton et al. exceed the scope of this bachelor thesis and are therefore not included in the analysis.

2.4 Conclusion

Based on the six hypotheses of New Intergovernmentalism four expectations could be derived which serve as analytical framework for the analysis of Frontex in the following chapter. Named hypotheses were adapted to the given substantive setting since they are not fully applicable to the EU agency Frontex as Bickerton et al. debate the role of Union bodies such as the European Council, while the thesis analyses the structure and tasks of the EU agency Frontex.

⁶ *Problems in domestic preference formation have become stand-alone inputs into the European integration process*

⁷ *The differences between high and low politics have become blurred*

⁸ *The EU is in a state of disequilibrium*

3. The creation of Frontex and the development of an integrated border management system

The purpose of this chapter is threefold. After presenting the structure and function of Frontex, the chapter will answer the third and fourth sub question of this research. Therefore, it will first address the sub-question: ‘To what extent do the reforms of Frontex reflect in fields of institutional structure and functioning the New Intergovernmentalism?’, and, finally, ‘To what extent do the operations carried out by Frontex reflect the New Intergovernmentalism?’. In both instances the analytical framework developed in chapter 2.3 will be used.

3.1 The Frontex agency: its institutional and operational framework

The agency Frontex was first established by Regulation 2007/2004 adopted in autumn 2004 (Council Regulation (EC) No 2007/2004) and has since then been amended several times. The most recent amendment of the Frontex regulation occurred in 2019 with the adoption by the Council and the EP of Regulation (EU) 2019/1896. Over the years, the various amendments have broadened the scope of powers of the agency as well as addressed a number of internal governance issues. Before analysing with more details what these characteristics are, it should be borne in mind that Frontex does not replace national border guards or the responsibility for the control and surveillance of external borders that continues to be attributed to Member States.

The regulation is divided in five chapters of which the first, second, fourth and fifth will be analysed in this thesis. Most importantly, section three of chapter four titled “General framework and organisation of the Agency” further explains how the agency is structured and how it is governed. According to Article 99 of the Regulation, the administrative and management structure of the agency includes a Management Board, an Executive Director, Deputy Executive Directors, and a Fundamental Rights Officer (Regulation (EU) 2019/ 1896, Article 99).

3.1.1 Consensus and Deliberation

As laid out in chapter 2.3.1 it is expected that consensus and deliberation within Frontex take place in the Management Board, hence it will be analysed in regard to its functioning and decision-making ability. The Management Board is composed of one representative of each of the 26 Member States that have signed the Schengen acquis, which includes all agreements and declarations regarding the functioning of the Schengen Area, meaning the abolishment of internal borders in the EU (Dostál, 2018) as well as two representatives of the Commission.

The position of a representative requires expertise and experience in regard to operational activities at the external borders as well as budgetary, managerial and administrative skills (Regulation (EU) 2019/ 1896, Article 101). In addition to that the Management Board appoints a chairperson and a deputy chairperson (Regulation (EU) 2019/ 1896, Article 103). The 2019 regulation states that its main task is to take strategic decisions, meaning to reach a consensus with its members. In this regard, it is set that ordinary meetings take place at least twice a year, a vague number considering that these meetings can be convened not only by the chairperson but also at the request of the Commission or at least $\frac{1}{3}$ of the members of the Management Board, with joint meetings with the Management Boards of EASO and Europol also being held if necessary (Regulation (EU) 2019/ 1896, Article 104). Frontex official website, however, states that the Management Board meets five times a year (Frontex, n.d.-b).

It is to be examined whether decision-making takes place in these meetings and whether the impetus of the Member States is followed. In this regard, the voting procedure should be considered. Except in a few cases, such as the appointment of the chairperson, decisions are taken by absolute majority, with each member having one vote, the Executive Director no vote, and 'Representatives of countries associated with the implementation, application and development of the Schengen Acquis' having limited voting rights (Regulation (EU) 2019/ 1896, Article 105). An exception to this is decisions where Frontex carries out special measures at or near the external border of a Member State, so that the consent of this Member State is required (Regulation (EU) 2019/ 1896, Article 100 (3)). This procedure reflects Frontex's mainly assisting role, as the agency cannot operate without the Member State's consent. With regard to the strategic decisions for which the Management Board is responsible, reference should be made to two key policy documents which together define the strategic programming for the agency and are therefore fundamental to the work of the Management Board.

The first policy document to be mentioned is the Multiannual strategic policy cycle for European integrated border management, which 'ensure[s] the effectiveness of European integrated border management' (Regulation (EU) 2019/ 1896, Article 8). This document is drafted by the Commission, submitted to the EP and the Council before it is finally adopted by the Commission. Frontex then implements the document on the decision of the Management Board as well as on the proposal of the Executive Director, which is composed in cooperation with the Commission and the Member States. On this basis, national strategies are then drawn up by the Member States (Regulation (EU) 2019/ 1896, Article 8). Thus, while the Management Board is involved in the implementation process, the Commission provides the impetus for the policy document. Nevertheless, it has to be taken into account that Frontex is one of several EU agencies in its policy field, the AFSJ, so that the overall efficiency in this field depends not only on Frontex itself, but also on the functioning of the other EU agencies such as EASO and Europol, whose objectives and strategies therefore need to be approved at Union level in order to ensure the functioning of the AFSJ.

The second policy document is the single-programming document, which includes the annual programming for the next year as well as the multi-annual programming of the agency and is drafted by the Management Board. Before its implementation, the Commission must first give a positive opinion, and the Council and EP must be informed. If the Management Board does not consider parts of this opinion, this decision must be justified (Regulation (EU) 2019/ 1896, Article 102). The implementation of the above-mentioned policy documents shows that decision-making takes place to a certain extent in the Management Board, whereby following the Member States' impetus, as Frontex operates in an interplay of different institutions, the intervention of the Union level is therefore indispensable. Even if deliberation takes place in the Management Board, the agency needs the approval of the Commission, Council and EP for some decisions, so that the consensus, meaning the decisions, are not only taken within the framework of the board, but beyond this instance at the Union level.

The fact that not all strategic decisions are taken by the Management Board can also be justified with the possibility of the Union's intervention given by the principle of subsidiarity (Treaty on European Union (92/C 191/01), Article 5 (3)). Accordingly, the Commission is granted implementing powers if the functioning of the Schengen area is endangered, for instance if a Member State fails to take the necessary measures, whereby a distinction must be made between two cases. According to paragraph 57, Frontex itself can decide how to implement the Commission's proposal, whereas Article 42 requires the Member State to cooperate with Frontex on the proposal of the Commission. Furthermore, the Commission's intervention is also reflected in Article 40, according to which a Member State that needs further support due to increased migratory pressure turns directly to the Commission itself (Regulation (EU) 2019/ 1896). Only thereafter Frontex is informed, so that there is no deliberation on this decision in the Management Board, whereby Frontex main task is to assist the Member States and manage these migration flows.

While the Management Board is responsible for the strategic decisions of the Agency, Frontex is managed by the Executive Director. According to Article 107 he/she is appointed by the Management Board, but the Commission proposes at least three candidates, and the EP communicates its preferences to the Management Board, so that the final decision lies with the members of the Board but is shaped by the Commission and the EP (Regulation (EU) 2019/ 1896, Article 107). However, the Executive Director, as well as the Deputy Directors, can only be dismissed by the Management Board, so that this authoritative decision can only be made by its members, hence following the members' impetus (Regulation (EU) 2019/ 1896, Article 107). Thus, the Management Board is responsible for general decisions, but the strategic planning of the agency is set by the Union in the policy document Multiannual strategic policy cycle for European integrated border management, as Frontex is part of this border management. Therefore, the interaction with the other EU agencies in the AFSJ must be ensured. It must also be considered to what extent decision-making can take place in the Management Board, as Frontex assists the Member States, hence not only the cooperation of the representatives of the Member States in the Management Board, but also the cooperation of the liaison officers (Regulation (EU) 2019/ 1896, Article 31) and National Contact Points (Regulation (EU) 2019/ 1896, Article 13), thus cooperation with national authorities is essential.

3.2 Frontex and its powers as an expression of the 'de novo institution' paradigm

Bickerton et al. name the creation of de novo institutions as another feature of the New Intergovernmentalism. Accordingly, these have a certain degree of autonomy through executive or legislative power, as well as control over their own resources. Furthermore, their structure includes a mechanism in which the Member States are represented and provide them with information gathering and technical expertise. Lastly, de novo institutions are based outside of Brussels (Bickerton et al., 2015) Frontex, among others, is classified in the scope of New Intergovernmentalism as such an institution, bearing in mind that when the scholars' work was published in 2015, Frontex had not yet been extended by the mandates Regulation (EU) 2016/1624 and Regulation (EU) 2019/ 1896, so that it is the latter mandate that will be used in this chapter to analyse to what extent Frontex meets this definition of a de novo institution.

3.2.1 Control over Resources

In order to implement and enforce operations, such as JO, rapid border interventions or rescue operations (Regulation (EU) 2019/ 1896, Article 37), Frontex requires human and technical resources. Whilst operations are run together with a host nation and other Member States, operations also require technical equipment.

The Technical Equipment Pool comprises the technical equipment that can be used for named operational activities. According to Article 64 the pool is composed of equipment owned by the Member States, Frontex and co-owned equipment and must meet a certain standard. However, only the equipment that belongs exclusively to Frontex is available without restriction, while co-owned equipment may only be used for operational activities after agreement with the respective Member State. Although Frontex needs the approval of the Member State, it is the Management Board which, on the proposal of the Executive Director, sets the conditions for the equipment, such as the minimum number of items (Regulation (EU) 2019/ 1896, Article 64 (6)).

As established by the regulation, Member States must make their equipment available at the request of Frontex, as defined in the Operational Plan (Regulation (EU) 2019/ 1896, Article 64 (10)). This Operational Plan (Regulation (EU) 2019/ 1896, Article 38) is composed by the Executive Director in

agreement with the Member State concerned, on which national territory the JO is to take place. It includes the resources, such as personnel and equipment, to be deployed for the operation. Accordingly, the Operational Plan allows for the organisation of capacities and resources in consultation with the Member State. Part of these resources are the standing corps (Regulation (EU) 2019/ 1896, Article 54), which were introduced in 2016 and will have a capacity of up to 10,000 operational staff. Candidates for the standing corps must meet the necessary qualifications for the position, which according to Article 5 (2) consist of high level of professionalism, high ethical values, and appropriate language skills, to be recruited by Frontex itself. Before being deployed in the JO, they undergo a training organised by Frontex, so that, according to Article 54 (4), the Agency is responsible for the efficient functioning of the latter, showing that the standing corps are part of Frontex, as can also be seen symbolically in their own uniform (Regulation (EU) 2019/ 1896, Article 82).

For the planning and organisation of resources and capacities, Frontex not only refers to the Operational Plan, but also to the Vulnerability Assessment (Regulation (EU) 2019/ 1896, Article 32). Unlike the former, the assessment does not refer to individual JO, but instead measures and evaluates the capacities of Member States required for border control. If weaknesses are identified in a Member State, the Executive Director will make a recommendation to the Member State to remedy the weaknesses within a specified period of time. If this does not happen, the incident is forwarded to the Member State's representative in the Management Board, as well as to the Commission, and further measures are taken, although the Regulation does not specify what form such measures might take (Regulation (EU) 2019/ 1896, Article 32). It can thus be seen that Frontex can exercise control over its resources regarding the Technical Equipment Pool and the standing corps, the latter being distinguished from the national operational staff by their specific training and uniform. Regarding the Operational Plan and the Vulnerability Assessment, the control Frontex keeps is to be understood as an organisational function, as these are assessed and measured through the two aforementioned procedures, so that Frontex can ask Member States to adapt to the agency's plans, thus giving Frontex a certain degree of control over the resources used, despite the mentioned limitations. In regard to the definition by Bickerton et al. this role taken by Frontex further supports the New Intergovernmentalism and the integration paradox, since the agency performs even more than only an advisory function, thus performs a bright scope of tasks. Nevertheless, the Agency's capacities and resources are also monitored at Union level, so that reports must be made to the EP, the Council, and the Commission (Regulation (EU) 2019/ 1896, Article 65), thus Frontex does not decide on them completely autonomously.

3.2.2 Representation of the Member States

As stated by Bickerton et al., a de novo institution should have a mechanism within its structure that represents the Member States. Within the structure of Frontex, this mechanism is the Management Board, in which one representative of each Member State and two representatives of the Commission meet. As the Management Board and its tasks have already been explained in detail in this chapter, no further elaboration will be given here. Regarding E1⁹, it can be concluded that the Management Board embodies the interests of the Member States and acts based on these. Nonetheless the Union level can intervene in the decision-making of the Management Board on the basis of various powers resulting, among other things, from the principle of subsidiarity (Treaty on European Union (92/C 191/01), Article 5 (3)). However, this representation can also be provided by the position of the Executive Director, in the sense that he/she represents the agency and thus also the interests of the Member States.

⁹ E1: *It is to be expected that consensus and deliberation within Frontex take place in the Management Board, whereby the impetus of the Member States is followed.*

In summary, Frontex satisfies this part of the definition, even if the presence and the described powers of the Union level, which can thus intervene in the activities of the agency to a certain extent, represent the agency's dependence on the latter, showing that Frontex cannot act without the consent of the Member States or the Commission for not only operational activities such as JO (Regulation (EU) 2019/ 1896, Article 37), but also in regards to the functioning of the agency, so that the in chapter 3.1. named Multiannual strategic policy cycle, on which basis Frontex operates, is composed by the Commission (Regulation (EU) 2019/ 1896, Article 8).

3.2.3 Choice of the Headquarter and offices

De novo institutions are based outside Brussels. On the one hand, this can be understood in terms of geographical location, hence that the institution's location is not in Brussels, which is true in the case of Frontex, as the agency has its location in Warsaw, Poland (Regulation (EU) 2019/ 1896, Article 93 (5)) and is thus a decentralised EU agency. However, the decentralised nature of Frontex can also be understood in the sense that the agency's activities do not take place in its headquarter, but in the Member States themselves, so that Frontex is currently involved in multiple JO in the Balkans and the Mediterranean (Frontex, n.d.-c).

Apart from the operational activities, the Management Board, where decision-making takes place, is supported by other parts of the agency such as the Antenna Offices (Regulation (EU) 2019/ 1896, Article 60) and National Contact Points (Regulation (EU) 2019/ 1896, Article 13), which aim to improve the coordination of operational activities as well as the communication between Frontex and the Member States (Regulation (EU) 2019/ 1896). In this regard, the Executive Director appoints liaison officers, who will report to the Director on the situation at the external borders. Accordingly, the liaison officers not only contribute to a faster exchange of information, but also monitor the measures deployed by the Member States, or the implementation of the actions prescribed by Frontex on national territory (Regulation (EU) 2019/ 1896, Article 31). Frontex is thus decentralised in nature, carrying out its activities itself in terms of JO and the dedicated standing corps, as the agency assists the Member States and does not only give instructions from its headquarter.

3.2.4 Frontex' tasks

The last point to be analysed regarding the definition of a de novo institution are its tasks, which consist of information gathering and the provision of technical expertise (Bickerton et al., 2015).

Regarding the exchange of information, the mechanism used is EUROSUR, which collects information on surveillance at the external borders in land, air and maritime space in order to prevent criminal activities and illegal immigration, as well as to ensure the protection of migrants (Regulation (EU) 2019/ 1896, Article 19). Based on this, situational pictures are developed, which are divided into three categories: National, European and Specific. Accordingly, National situational pictures (Regulation (EU) 2019/ 1896, Article 25) are developed by the already mentioned National Coordination Centres (Regulation (EU) 2019/ 1896, Article 21), which classify the activities at the borders into 'low', 'medium', 'high', 'very high' and report such incidents to the agency.

Furthermore, the Coordination Centres can restrict access to information concerning the security of their Member State. Instead, the European Situational Pictures (Regulation (EU) 2019/ 1896, Article 26) are drawn up by Frontex based on the National Situational Pictures, while the Specific Situational Pictures are collected by both Frontex and the Member States, as they concern or are used for specific activities (Regulation (EU) 2019/ 1896, Article 27).

Another instrument for information collection and exchange is the risk analysis (Regulation (EU) 2019/ 1896, Article 29), the subject of which is the monitoring of migration flows to record trends with regard

to possible migration routes. Frontex as well as the Member States use the Common Integrated Risk Analysis Model, which is defined in agreement with the Management Board and the Executive Director and applied in line with the Multiannual strategic policy cycle (Regulation (EU) 2019/ 1896: Art 29 (1)). The risk analysis is mainly based on information provided by Member States. An annual risk analysis as well as specific risk analysis for operational activities is forwarded to the EP, Commission and Council. In addition to that, the Management Board as well as the Member States are informed about the results of the risk analysis so that the latter take them into account when planning their activities at the external borders (Regulation (EU) 2019/ 1896, Article 29).

The two mechanisms described, EUROSUR and the risk analysis, show on the one hand that Frontex acts based on an established information network, but it also shows that the cooperation of the Member States is essential, not only to assess the situation at the external borders, but also to be able to organise and coordinate operational activities.

Regarding technical expertise, reference should be made to the operational staff and especially the standing corps. The latter must meet the minimum standards already mentioned and, in addition to training designed by Frontex, undergo various training courses (Regulation (EU) 2019/ 1896, Article 62) which shall teach and inform the standing corps about their powers and tasks. Before their first deployment in JO, standing corps are provided with lessons about Union and international law as well as international protection. These trainings are conducted in training centres in the Member States or in Frontex partner academies in the Member States, all of which must follow the centrally defined curriculum to ensure constant quality, regardless of the location of the training centre (Regulation (EU) 2019/ 1896, Article 62). In this regard, an 'internal quality control mechanism' (Regulation (EU) 2019/ 1896, Article 62 (10)) has also been introduced to ensure that operational staff meet the standards set by Frontex. The training procedure which the standing corps undergo reflects the high standard, which is expected from the operational staff, so that it can be said that the provision of expertise as named in the de novo institution paradigm is fulfilled.

Frontex can be defined as providing information gathering and technical expertise, but it also undertakes other activities that exceed the scope of the above-mentioned tasks, so that the agency can also assist third countries in assistance provided (Regulation (EU) 2019/ 1896, Article 74 (1)) and actions in third countries, thus going beyond assisting Member States. Additionally, the standing corps can exercise executive powers in JO (Regulation (EU) 2019/ 1896, Article 82 (2)).

To conclude this section, the analysis above suggests that Frontex meets almost all elements of the definition of a de novo institution. The agency has a certain degree of control over its resources through the Vulnerability Assessment, the Operational Plan as well as the Technical Equipment Pool, respectively an overview necessary to plan and implement the operational activities in cooperation with the Member States. While Member States are requested to contribute equipment, Frontex cannot use co-owned equipment without their agreement. The Member States are represented in the agency by the Management Board and at the Union level by the Executive Director and, as shown in E1, the Management Board follows the impetus of the Member States in regard to the decision-making, although the Union level can intervene through its powers given in the regulation, such as the subsidiarity principle. Nevertheless, this feature is also present.

Regarding the tasks to be performed, Bickerton et al. mention information gathering and technical expertise. Both are carried out by Frontex through the standing corps and the use of EUROSUR, but since the 2016 mandate Frontex has also carried out monitoring functions and taken on an increased role in relation to third countries, which has changed compared to its original task of assisting Member States in their border management, so this characteristic does not fully apply. However, at the time of the publication of Bickerton et al.'s *New Intergovernmentalism*, Frontex had not yet been expanded with the two mandates of 2016 and 2019, so that, as the 2011 mandate stands, this characteristic is more likely to apply, as will be seen later in this chapter.

3.3 Expansion since 2004

Besides the in chapter 3.2 mentioned elements of the de novo institution paradigm, New Intergovernmentalism also states that these institutions were expanded since Member States as well as Union bodies support them (Bickerton et al., 2015). This sub-chapter aims to analyse whether such an expansion took place in the case of Frontex.

Frontex was launched in 2004 based on the Council Regulation (EC) No 2007/2004 with the main task of assisting Member States in the management of their external borders. Since then, the agency has been extended or to say renewed by four further mandates, so that three years after its launch, Frontex capabilities in JO have been extended by the introduction of Rapid Border Intervention Teams, RABITs in 2007. The team members consist of specially trained experts from the Member States who are deployed for a limited period of time in urgent emergencies, such as a sudden influx of migrants. Frontex is responsible for the training, deployment, and composition of the RABITs (Regulation (EC) No 863/2007). Furthermore, the 2011 mandate further expands the agency's capacity for JO, allowing Frontex to initiate these with the consent of the Member State (Regulation (EU) No 1168/2011, Article 3(1)) and the Executive Director to terminate or suspend them (Regulation (EU) No 1168/2011, Article 1(a)). Under this mandate, the RABITs are renamed European Border Guard Teams. While Frontex's role was mainly the assistance of Member States, the agency can now, through the 2016 mandate, also perform monitoring functions in terms of the Vulnerability Assessments (Regulation (EU) 2016/1624, Article 13) mentioned earlier in this chapter. Furthermore, the now called European Border and Coast Guard Agency shares a shared responsibility with the Member States (Regulation (EU) 2016/1624, Article 5). According to this, both bear responsibility for integrated border management, whereby the Member States remain responsible for their external borders (Regulation (EU) 2016/1624, Article 13 (8)). The mandate sets a capacity of 1,500 operational staff for the border guards, while the 2019 Regulation, the latest mandate, expands the capacity of these now named standing corps up to 10,000 operational staff (Regulation (EU) 2019/ 1896, Article 5). Regarding Frontex expansion, it is stated that its 'tasks have been expanded with full continuity in all its activities and procedures' (Regulation (EU) 2019/ 1896, §3). The agency has 'legal, administrative and financial autonomy' (Regulation (EU) 2019/ 1896, §105). As already mentioned, Frontex has a monitoring role, which is mainly reflected in the Vulnerability Assessment, so that the capacities of the Member States are assessed and, in case of weaknesses, need to be remedied to ensure an efficient implementation of the JO (Regulation (EU) 2019/ 1896, Article 32). This monitoring role can also be related to the risk analysis carried out by Frontex, in which migration trends and risks at the external borders are analysed based on information exchange and, in this respect, above all the application of EUROSUR (Regulation (EU) 2019/ 1896, Article 18). It can thus be seen that Frontex has been extended by the mandates mainly in the operational activities of the agency. One of the most expanded points are the standing corps, which can now be recruited by Frontex itself, whereas its predecessor, the RABITs, were composed of experts from the Member States. Since the 2016 mandate, they have been wearing their own uniforms and are therefore externally distinguishable as operational staff of and thus part of Frontex during JO (Regulation (EU) 2016/1624). While the RABITs assisted the national authorities, the standing corps can also perform tasks that fall under executive powers (Regulation (EU) 2019/ 1896, Article 54 (3)), whose tasks have thus been greatly expanded, as is also evident in Frontex's powers regarding return operations, since Frontex can organise these on its own initiative after consultation with the Member State concerned (Regulation (EU) 2019/ 1896, Article 50). The same applies to return interventions and rapid return interventions.

It can thus be seen that Frontex's role has changed within the framework of Integrated Border Management, or rather that its original role has been expanded by more powers and tasks.

Nevertheless, it should be emphasised that Frontex cannot act without the consent of the Member States, so that JO are carried out at their request (Regulation (EU) 2019/ 1896, Article 37) and the agreement of the Member States is also necessary for the return operations mentioned. Although the Member States can be requested to act by Frontex in various cases, for example if vulnerabilities are found in the Vulnerability Assessment (Regulation (EU) 2019/ 1896, Article 32), the Member States are not limited in their actions by Frontex. In addition to that, the agency is accountable to the Union and thus also to the Member States. This is particularly evident in the numerous reports that Frontex must pass on to the Union level, for instance Vulnerability Assessment or the evaluation carried out by the Commission on the implementation of the Multiannual strategic policy cycle (Regulation (EU) 2019/ 1896, Article 8 (7)). The expansion of Frontex can not only be noted in its mandates but also in its budget that was increased from six million Euro in 2005 to 250 million Euro under the latest Mandate in 2019 and is planned to reach a budget of 543 million Euro in 2021 (Frontex, n.d.-d), showing the Agency's expansion.

3.4 Frontex' operational activities

The following two sub chapters aim to analyse whether Frontex acts primarily in the interest of the Member States. Therefore, the operational activities, and especially Operation Themis are considered.

3.4.1 Rapid Border Interventions and Joint Operations

According to the regulation of 2019, Frontex's main task is to assist and support Member States in the management of their external borders (Regulation (EU) 2019/ 1896, §2). As shown in chapter three, Frontex exercises this role through information gathering and monitoring of the capacities and resources of the agency itself, but also of the Member States.

This sub-chapter will focus on the operational activities carried out by Frontex, to answer the fourth sub-question, while also referring to the expectation that Frontex acts in the interest of the Member States. As established by Article 37, these operational activities can be carried out in the form of JO or rapid border interventions by Frontex in cooperation with the Member States, so that Frontex can provide the necessary resources and capacities, such as equipment from the Technical Equipment Pool, and thus prepare for the challenges at the external borders (Regulation (EU) 2019/ 1896). In addition, an Operational Plan is drawn up, which is binding for Frontex as well as for the host and all other Member States involved. This plan contains, among other things, the objective of the operation, the expected duration, the geographical area, and the responsibilities, hence the tasks and powers of the operational staff that will be deployed for the operation (Regulation (EU) 2019/ 1896, Article 38). Frontex is currently conducting such JO in cooperation with Greece, Spain, Italy and EU states in the Western Balkans (Frontex, n.d.-c).

As with the JO, rapid border interventions are launched on request of a Member State, which is then forwarded by the Executive Director to the Management Board (Regulation (EU) 2019/ 1896, Article 39). The two operations differ in the purpose and length of the activities, so that rapid border interventions are short-termed and initiated in case of an excessive influx of migrants (Regulation (EU) 2019/ 1896, Article 37). The Management Board must decide on the request within 48 hours and then determines an Operational Plan with the Member State concerned as defined in Article 38, which is forwarded to the National Contact Points (Regulation (EU) 2019/ 1896, Article 39). Furthermore, the Executive Director appoints a Coordinating Officer for these operational activities, who acts as an intermediary between Frontex, the host Member State and the operational staff (Regulation (EU) 2019/ 1896, Article 44). The decision is then forwarded to the Member State, which itself informs the

operational staff about its powers and tasks. These must be in conformity with the Operational Plan, as it is binding. If this is not the case, the Executive Director is informed by the Coordinating Officer and appropriate measures are taken, although Article 46 (3) does not specify further how these measures could look like (Regulation (EU) 2019/ 1896, Article 46 (3)).

JO and rapid border interventions are initiated at the request of the Member States, but according to Article 42, they can also be requested by the Union level to cooperate with Frontex, as already mentioned in chapter 3.1.1. Accordingly, Frontex can then initiate return interventions or rapid border interventions, which are monitored by the Commission (Regulation (EU) 2019/ 1896). This specific procedure shows that it is not always the Member States that give rise to operational activities, but if necessary, they are requested to do so to prevent a possible threat to the Schengen area. The Union level thus not only has a monitoring role, in the sense of supervising Frontex and hence also the activities of the Member States, so that the Executive Director reports on the resources of the agency, as well as the operational activities (Regulation (EU) 2019/ 1896, Article 50 (7)) but can also intervene in these if necessary. This is also reflected in the form of the Migration Management Support Teams (Regulation (EU) 2019/ 1896, Article 40), so that in the event of, for instance, large migration flows, Member States can turn to the Commission itself, which provides operational assistance and only then informs Frontex of the Member State's request. According to Article 40 Management Support Teams, which consist of standing corps, are deployed in such scenarios, and assist the national authorities for instance in the identification of migrants. In addition to that the concerned Member State is provided the necessary technical equipment (Regulation (EU) 2019/ 1896, Article 40). Thus, the Commission can 'take over' Frontex's role and provide operational assistance to the Member States. The question arises as to why Frontex is not given further resources to take on these challenges itself, instead of the Commission intervening. Despite this case, the Executive Director has the power to decide on the conduct of the operational activities and to terminate or refuse the request of a Member State if there are already at the beginning of the operation suspicions of possible fundamental rights violations (Regulation (EU) 2019/ 1896, Article 46). Meaning that while Frontex originally was established with the main purpose to assist the Member States and their border control, the agency can under the regulation of 2019 also reject such assistance in the sense of JO, whereby such a decision must be communicated to the Management Board and must be justified, showing that the Executive Director must act in accordance with the Management Board and thus the Member States' representatives (Regulation (EU) 2019/ 1896, Article 46).

3.4.2 Operation Themis

In the last part of this chapter attention is given to Operation Themis, which is carried out by Frontex in cooperation with Italy. Frontex official website indicates 2018 as the start date of the operation (Frontex, n.d.-c). As this regulation does not cover the JO currently carried out by Frontex, I contacted the agency several times to get access to documents concerning Operation Themis. However, Frontex only referred me to the publicly available documents on its website, therefore other sources are used for this subchapter.

Looking at the official website of the agency a short explanatory text and a video are dedicated to each operation currently carried out by Frontex (Frontex, n.d.-c). Operation Themis is performed under the Command of the Italian Ministry of Interior, which is assisted by Frontex in its Border Control in regard to search and rescue, combatting cross border crime, collection of intelligence, whereby the information is also shared with Europol in an attempt to detect terrorist threats (Frontex, n.d.-c). In addition to that the JO has an 'enhanced law enforcement focus' and a strengthened security component, so that Frontex assists Italian authorities in the identification and the registering of migrants in the Central Mediterranean, while the JO is also carried out in international waters, thus monitoring migration from

Maghreb countries such as Tunisia, as well as Libya, Egypt Turkey and Albania (Frontex, n.d.-c). Operation Themis differs from its forerunner Operation Triton mainly regarding the disembarkation of the rescued migrants, meaning that under the current JO rescued migrants do not have to be disembarked to Italian ports but to the closest port available, whereby the Italian regional Maritime Rescue Coordination Center states that the decision to which port the migrants are disembarked is to be decided in each case individually (Mustăţea, 2021).

Contrary under Operation Triton, which was launched from 2014 to 2018, Italy was obliged to take in all migrants arriving even if they arrived on foreign ships, so that in the first half of 2017 out of 100.000 migrants, more than 85.000 were disembarked to Italian ports (Mustăţea, 2021). Consequently, the Italian government requested a change of the Operational Plan to be allowed to disembark migrants to other European ports, which was rejected by other Mediterranean countries like Spain, while also the, at that time, president of the EP Antonio Tajani denied such a change with the justification that the Operational Plan is not to be changed (Bresolin, 2017). In addition to that, the spokesperson of Frontex in 2017 Ewa Moncure stated that it was not in the hands of Frontex to initiate such a change but in the control of the 26 Member States which took part in Operation Themis (Bresolin, 2017).

Nevertheless, the obligation to disembark migrants arriving at Italian ports was changed under Operation Themis, while also the geographical location of deployment was reduced as the operation did not cover Maltese waters anymore (Mustăţea, 2021). Based on the statement made by Ewa Moncure and the mandate of Operation Themis, which allowed the disembarkation of migrants to the nearest port, it can be seen that the impetus of the Member States is followed by Frontex regarding JO also because the information provided by Frontex' official website shows that Operation Themis is carried out under the command of Italian Authorities, whereby it is stated that Frontex has an assisting role (Frontex, n.d.-c).

However, given information is not sufficient to come to a conclusion about the expectation that Frontex acts in the interest of the Member States due to the limited access to documents regarding Operation Themis, for instance the Operational Plan. While the official website provides some publications such as Annual Reports (Frontex, n.d.-e) these documents provide only vague information about the operational activities without further insights on the JO, so that figures as for instance about the number of operational staff employed are missing, even though the agency is obliged under Regulation 1049/2001 to provide the public access to documents 'to ensure the widest possible access to documents' (Regulation (EC) No 1049/2001). Consequently, it can be assumed that the Member States' interest is followed in the sense that Frontex provides assistance in form of JO, hence provides equipment from the Technical Equipment Pool and operational staff, but nonetheless it is not only the host state that decides on actions to be taken during JO as the Operational Plan is composed together with Frontex.

3.4.3 Conclusion

As established by the regulation, JO and rapid border interventions are initiated on the request of the Member States, therefore following their impetus. However, the Executive Director is also allowed to reject such requests. In addition to that also the Union level can intervene in Frontex activities if the Schengen area is threatened (Regulation (EU) 2019/ 1896, Article 42), showing that the impetus of the Member States regarding operational activities is followed only when requested by these and can still be rejected. As no access was provided to the necessary documents such as the Operational Plan of Operation Themis other sources were used in this sub-chapter, which led to the conclusion that while the Member States initiate JO, Frontex degree of autonomy is reflected in its monitoring role regarding the Operational Plan which is composed in cooperation with the Member States.

4. Conclusion

The aim of this thesis was to answer the research question ‘*To what extent does New Intergovernmentalism explain the widening and deepening of the powers conferred to the Border agency Frontex?*’. Four sub questions were formed which provided the structure for this thesis.

The first half of chapter two concerned the first sub question, thus set the theoretical approach of New Intergovernmentalism in the context of European integration theory and discussed what this approach contributes to the existing body of knowledge. It can be concluded that New Intergovernmentalism builds on the previous intergovernmental approaches of Hoffman and Moravcsik but differs as it debates why Member States pursue European integration without supranational practices.

In the second half of the chapter the six hypotheses provided by Bickerton et al. were adapted to the given substantive setting and allowed to form the analytical framework for chapter three, in which Frontex was analysed through the lens of New Intergovernmentalism.

The analysis shows that not all the formed expectations in chapter two could be met.

Regarding expectation E1¹⁰, consensus and deliberation within Frontex could be located in the Management Board of Frontex. The decisions made by the members vary from the adoption of decisions about the structure of Frontex, for instance the appointment of the Executive Director, to decisions on operational activities as the appointment of the operational staff. However, the decision-making process runs not fully independent, so that Union bodies such as the Commission and the EP also have a voice, for instance looking at the Multi Annual Strategic Plan, which is composed on Union level and provides the legal basis on which Frontex operates.

Looking at the de novo institution paradigm it was examined if the three different elements of this paradigm were met by Frontex. As for the control over resources it is to conclude that the agency meets this element when referring to the Technical Equipment Pool, whereby one could go as far and say that Frontex not only has a certain degree of control over these resources, as stated by Bickerton et al., but a high degree of control when also taking into account that the Member States have an obligation to contribute to this pool and that the budget of the agency was increased with each mandate since 2004. Another element of the paradigm is the representation of Member States. As already mentioned in this chapter the Member States are represented in the Management Board by their representatives. While E1 shows that decision-making does not exclusively follow the impetus of the Member States, formally they are represented. Therefore, it is to conclude that Frontex meets this element of the de novo institution paradigm.

The agency is of a decentralised nature. While Frontex’ headquarter is in Warsaw, Frontex main activities, operational activities, take place directly on national territory. In addition to that, offices such as the National Contact Points are essential for information gathering and hence the functioning of the agency. Even if the Union level does not intervene in the process of information gathering per se it is the Commission which predefines the guidelines for the situational pictures, thus decides which information exactly is to be gathered by Frontex and national authorities.

The last element analysed are the tasks performed by Frontex. These tasks exceed the scope of information gathering and provision of technical assistance as given by the paradigm. While both tasks are performed by Frontex using EUROSUR, provision of risk analysis and the training of the operational staff, the two tasks seem to be more of an advisory nature. Other tasks performed by Frontex show that the agency also has a monitoring role. Referring to the control of its resources as well as multiple obligations the Member States have towards Frontex, for instance the provision of information.

¹⁰ E1: *It is to be expected that consensus and deliberation within Frontex take place in the Management Board, whereby the impetus of the Member States is followed.*

In addition to that the Executive Director is in the position to reject the Member States' request of JO. Named aspects lead to the conclusion that Frontex meets this element of the paradigm but not only performs an advisory but also monitoring role. Latter further supports the integration paradox since the agency was granted a brighter scope of tasks and more authority in the execution of those, for instance regarding the in 2016 introduced standing corps that operate in the name of Frontex and wear its uniform.

Undoubtedly, Frontex was expanded since its launch in 2004 as it was renewed by multiple mandates. Chapter 3.4. considered the operational activities to analyse if Frontex acts in the interest of the Member States. Based on the regulation of 2019 it can be agreed that this point is given. However, request can be rejected, and the Union bodies have the possibility to initiate operational activities. It can be concluded that the impetus of the Member States is followed, whereby the Union has 'back-ups', safety measures, to guarantee efficiency in the Schengen area.

Overall E1¹¹, E2a¹², E2b¹³ and based on the regulation of 2019 and the information provided by Frontex official website also E3¹⁴ are met, hence leading to the conclusion that New Intergovernmentalism is reflected in the expansion of Frontex.

Referring to the third¹⁵ and fourth¹⁶ sub question it can be concluded that the structure, functioning and operational activities of Frontex are based on intergovernmental practices. Accordingly, decisions about the functioning of the agency are made in the Management Board, in which the Member States are represented.

To come back to the overall research question of the thesis, New Intergovernmentalism is not only reflected based on the intergovernmental practices Frontex operates on but also looking at the AFSJ, in which the agency is located and the Community Method applies to. Meaning that instead of delegating powers to supranational Union bodies, Frontex was expanded in its tasks and is governed primarily by the Member States, as can be seen in the resignation of the former Executive Director. Leggeri was able to hold his position as the Management Board did not intervene. Furthermore, the Union is limited in its ability to intervene since the Executive Director can only be dismissed by the Management Board. The thesis offers an approach to analyse these power relations within Frontex. The analysis shows that Union bodies and Member States delegate powers to Frontex, hence following an approach outside the Community Method, whereby it is to question if an agency like Frontex could operate on other than intergovernmental practices since in a policy field as the AFSJ European integration is confronted with the sovereignty of the Member States, that are despite the expansion of Frontex' still in control of their external borders.

¹¹ E1: It is to be expected that consensus and deliberation within Frontex take place in the Management Board, whereby the impetus of the Member States is followed.

¹² E2a: It is to expect that Frontex meets the definition of a de novo institution.

¹³ E2b: It is to expect that Frontex was expanded by supranational institutions and the Member States, that led to a widening and deepening of its tasks, since its establishment in 2004.

¹⁴ E3: Frontex acts in the interest of the Member States.

¹⁵ To what extent do the reforms of Frontex reflect in fields of institutional structure and functioning the New Intergovernmentalism?

¹⁶ To what extent do the operations carried out by Frontex in cooperation with the Member States reflect the New Intergovernmentalism?

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Appendices

Appendix 1: List of Joint Operations carried out (or planned to be carried out) in cooperation with the Member States (provided by Frontex on request)

2018

SEA - 6	LAND - 4	AIR – 5	
JO Themis 2018	JO Focal Points 2018 Land	JO Alexis 2018	
JO Poseidon 2018	JO Flexible Operational Activities 2018 Land on Border Surveillance	JO Focal Points Air 2018- Regular Officers and Intermediate Managers	
JO Indalo 2018	JO Flexible Operational Activities 2018 Land on Border Checks	JO Coordination Points 2018 Air	
JO Minerva 2018	Coordination Points 2018 Land	JO Pegasus 2018	
JO Hera 2018		JO Vega Children 2018	
JO Coordination Points Sea 2018			

2019

SEA - 6	LAND - 4	AIR – 3	
JO Themis 2019	JO Focal Points 2019 Land	JO Alexis 2019	
JO Poseidon 2019	JO Flexible Operational Activities 2019	JO Focal Points Air 2019	
JO Indalo 2019	JO Flexible Operational Activities – Western Balkans 2019 in Albania	JO Coordination Points 2019 Air	
JO Minerva 2019	Coordination Points 2019 Land		
JO Focal Points 2019 Sea			
JO Coordination Points Sea 2019			

2020

SEA - 10	LAND - 6	AIR - 2	
JO Themis 2020	JO Coordination Points Land 2020	JO Focal Points 2020 - Operational activities at air BCPs	
JO Poseidon 2020	JO Focal Points 2020 - Operational activities at land BCPs	JO Coordination Points 2020 Air	
JO Indalo 2020	JO Flexible Operational Activities Land 2020		
JO Minerva 2020	JO Flexible Operational Activities - Western Balkans 2020 in Albania		
JO Montenegro - Maritime Operational Activities in Montenegro	RBI Evros 2020		
JO Canary Islands 2020	JO Montenegro Focal Point Debeli Brijeg		
JO Focal Points Sea - Operational Activities in Cyprus 2020			
RBI Aegean 2020			
JO Focal Points Sea - MMO Black Sea			
JO Coordination Points Sea 2020			

2021

SEA - 12	LAND - 6	AIR - 1	AIR, LAND, SEA - 1
JO Themis 2021	JO Focal Points Land 2021	JO Focal Points Air 2021	JO Coordination Points 2021
JO Poseidon 2021	JO Flexible Operational Activities Land 2021		
JO Indalo 2021	RBI Lithuania 2021		
JO Minerva 2021	JO Montenegro Land 2021		
JO Montenegro Sea 2021	JO Albania Land 2021		
JO Canary Islands 2021	JO Serbia Land 2021		
JO Cyprus 2021			
JO Albania Sea 2021			
MMO Black Sea 2021			
JO Constanta 2021			
JO Opal Coast 2021			
JO Neptune 2021			

2022 (currently implemented or planned operations - state of play 30/03/2022)

SEA - 11	LAND - 5	AIR – 1	AIR, LAND, SEA – 1
JO Themis 2022	JO Terra 2022	JO Focal Points Air 2022	JO Coordination Points 2022
JO Poseidon 2022	JO Montenegro Land 2022		
JO Indalo 2022	JO Albania Land 2022		
JO Minerva 2022	JO Serbia Land 2022		
JO Montenegro Sea 2022	JO Moldova 2022		
JO Canary Islands 2022			
JO Ledra 2022			
JO Albania Sea 2022			
MMO Black Sea 2022			
JO Opal Coast 2022			
JO Netherlands 2022			