The Creation of FRONTEX and the Politics of Institutionalisation in the EU External Borders Policy

Sarah Leonard
University of Salford

Abstract

In a context of high politicization, if not securitization, of asylum and migration in Europe, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU – also known under its acronym FRONTEX – was created in 2004. Its activities have drawn a significant amount of attention and have been heavily criticised by human rights and pro-migrant groups. In contrast with most of the literature on FRONTEX, which focuses on its activities, this article examines the institutional issues associated with the creation and the work of FRONTEX, that is, the reasons for which Member States chose to create an *agency*, rather than establish another form of cooperation, and the specific mechanisms that they have put in place to exercise control over the activities of the Agency. The article, which is theoretically informed by the literature on European agencies, unveils a complex institutionalisation process, characterised by the existence of various models for increased cooperation and political struggles amongst the actors involved in the policy-making process.

ASYLUM AND MIGRATION ISSUES HAVE BEEN THE OBJECT OF CONTROVERSIAL DEBATES across Europe in the last few years. They have also been regularly at the top of the policy agenda of the European Union (EU) since it acquired its first competences on these issues with the Maastricht Treaty in 1993. Many scholars analysing the development of the EU asylum and migration policy have argued that it has generally been restrictive, mainly aiming to keep people outside of the EU territory (Joly 1996; Uçarer 2001; Brouwer and Catz 2003; Guild 2004; Levy 2005; Baldaccini and Guild 2007; Chebel d'Appollonia and Reich 2008). Some have even argued that the development of an EU policy on asylum and migration has been mainly driven by Member States' willingness to escape domestic constraints to the adoption of strict immigration rules, such as the control of national courts (Guiraudon 2000, 2003; Lavenex 2006). The development of the EU asylum and migration policy has also been analysed through the prism of the 'securitization' framework developed by Buzan and Wæver (Buzan *et al*. 1998). Drawing upon this theoretical framework, some scholars have claimed that asylum and migration have become 'securitized' (i.e. socially constructed as security issues) in the EU (Huysmans 2000, 2006; Bigo 1998a, 1998b, 2001, 2002; Guild 2003a, 2003b, 2003c; but see Kaunert 2009).

It is in this specific context of high politicization, if not securitization, of asylum and migration that the European Agency for the Management of Operational Cooperation at

the External Borders of the Member States of the EU – also known under its acronym FRONTEX[1] – was created by Council Regulation EC 2007/2004 of 26 October 2004.[2] Article 2 of this Regulation laid down the main tasks of the Agency, which are as follows: (1) coordinating operational cooperation between Member States regarding the management of external borders; (2) assisting Member States in the training of national border guards, including establishing common training standards; (3) conducting risk analyses; (4) following up on developments in research relevant for the control and surveillance of external borders; (5) assisting Member States when increased technical and operational assistance at external borders is required; and (6) assisting Member States in organising joint return operations.[3]

What is particularly remarkable about FRONTEX is the considerable amount of attention that it has attracted since its operational start in 2005, especially from the media and pro-human rights groups. Its activities have generated a significant amount of controversy and have been heavily criticised especially by human rights activists and pro-migrant groups. Some of these groups have even organised protests, notably in front of the seat of the Agency in Warsaw. It is therefore intriguing that there has been only a limited amount of scholarly work on this Agency to date. Most of these papers and articles have focused on the activities of FRONTEX. Focusing on the issue of border management in the EU, Jorry (2007) has examined the extent to which FRONTEX is likely to contribute to the implementation of the concept of 'Integrated Border Management' and can be seen as a major step towards the development of an EU common policy on external borders. Carrera (2007) has also analysed the role played by FRONTEX in the implementation of the EU Border Management Strategy, with a specific focus on the joint operations coordinated by the Agency in the Canary Islands. Pollak and Slominski (2009) have analysed the activities of FRONTEX through the lens of an experimentalist governance approach in order to question the extent to which FRONTEX has acquired organisational autonomy and has been accountable. In addition, Neal (2009) has examined the origins of FRONTEX from a security studies angle, focusing in particular on whether the establishment of FRONTEX resulted from attempts to securitize asylum and migration in the EU. In contrast, there has not been any detailed analysis of the institutional issues associated with the creation and the work of FRONTEX, that is, the reasons for which Member States chose to create an *agency*, rather than establish another form of cooperation, and the specific mechanisms that they have put in place to exercise control over the activities of the Agency.

This article precisely seeks to address this gap in the existing literature on the EU asylum and migration policy. It argues that it is always important to examine these institutional questions, because understanding the "politics of institutionalisation" is necessary to fully understand how an institution subsequently functions (Pierre and Peters 2009: 338). This is particularly relevant in the case of FRONTEX, given the potentially significant impact that FRONTEX and its activities may have on the development of the EU asylum and migration policy - which is itself one of the most dynamic and contentious policy areas in the EU. In order to develop a balanced and sophisticated understanding of the role of FRONTEX, it is necessary to understand the reasons for its creation and its specific mandate, as well as its institutional framework. This article aims to fulfil these goals by drawing upon the rich

---

[1] From '*frontières extérieures*', i.e. 'external borders' in French.

[2] It was later amended by Regulation EC 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams.

[3] In addition, Regulation EC 863/2007 established a mechanism for the creation of Rapid Border Intervention Teams (RABITs). Those are multinational teams of border guards that can be deployed at short notice to support the technical and operational capacities of a state facing a crisis at its borders. At the time of writing, no Member State had requested the deployment of a RABIT yet. However, RABIT training exercises take place regularly.

literature on European agencies. It is structured into two main sections. First of all, it examines the policy debates leading to the establishment of FRONTEX and the choice of an "agency" institutional set-up in the light of the literature on the creation of European agencies. In the next section, which also builds on the existing scholarship on agencies in the EU, the article analyses the various control mechanisms over FRONTEX that have been established, before drawing some conclusions.

The establishment of FRONTEX: why create an agency to increase cooperation in the management of the EU external borders?

In the area of external border management, the main aim of the EU is to develop an integrated management of the borders, with a view to ensuring a high and uniform level of control of persons and surveillance at the external borders. More precisely, within Title IV of the Treaty establishing the European Community, Article 62(2)(a) foresees the adoption by the Council of measures establishing "standards and procedures to be followed by Member States in carrying out checks on persons at such borders", whereas Article 66 concerns the adoption of measures by the Council to ensure cooperation amongst Member States, as well as between Member States and the Commission, in the policy areas covered by Title IV. "Integrated Border Management" (IBM) covers all the activities of the public authorities of the Member States relating to border control and surveillance, including border checks, the analysis of risks at the borders, and the planning of the personnel and facilities required.[4]

Amongst various models for developing such cooperation on external border management, Member States chose to establish a European agency. According to Majone (2006: 191), "agency" is "an omnibus label to describe a variety of organisations which perform functions of a governmental nature, and which generally exist outside of the normal departmental framework of government". They are specialised bodies staffed with experts that generally deal with matters of a scientific or technical nature (Mair 2005). Within the EU, an increasing number of agencies have been created over the last few decades, in three agency-creation waves in the 1970s, 1990s and 2000s respectively (Majone 2006: 191). Interestingly, the EU does not have a formal definition of agencies. A first basic distinction can be made between Community agencies on the one hand and second and third pillar agencies, which operate under the authority of the Council, on the other hand (Groenleer 2006: 161). According to the website of the EU, a "Community agency is a body governed by European public law; it is distinct from the Community institutions (Council, Parliament, Commission, etc.) and has its own legal personality" (European Union n.d.). In addition, within the category of Community agencies, one can distinguish between regulatory agencies and executive agencies. The former perform a variety of roles, set out in their own legal basis, whereas the latter execute more narrowly

---

[4] This concept has influenced the development of the Area of Freedom, Security and Justice since the adoption of the Tampere programme in 1999 and was precisely defined by the Council in 2006. The Council Conclusions on Integrated Border Management outlined the five main dimensions of IBM: (1) border control, which includes border checks, border surveillance and relevant risk analysis and crime intelligence; (2) the detection and investigation of cross-border crime; (3) the "four-tier access control model" (which includes activities in third countries, cooperation with neighbouring third countries, controls at the external border sites, and inland border control activities inside the Schengen area); (4) inter-agency cooperation for border management and international cooperation; and (5) coordination and coherence of the activities of the Member States and institutions, as well as other bodies of the Community and the Union.

defined tasks supporting the management of Community programmes (Commission of the European Communities 2008). Following this typology, FRONTEX can be identified as a Community agency of the "regulatory" type.[5]

Rationales for setting up agencies

The setting up of agencies is often understood with reference to the classic "principal-agent model", which was initially developed in the United States to account for the delegation of executive functions to federal agencies (Magnette 2005: 5). In such a framework, the "principals" are understood as "those institutions (…) that use their authority to establish non-majoritarian institutions through a public act of delegation", whereas "agents" "are those who govern by exercising delegated powers" (Curtin 2005: 92).

The rationales for delegation – or, in other words, the creation of agencies – have received much attention in the academic literature. In general, scholars have identified six main reasons for which delegating some functions to a given agency may be seen as advantageous by policy-makers. Firstly, agencies are seen as being able to provide policy expertise to policy-makers, as they are staffed with professionals characterised by a high level of expertise (Everson 1995). Secondly, it is considered that agencies contribute to enhancing the efficiency of decision-making, as they deal with technical and scientific matters, thereby allowing principals to focus on less technical tasks (Everson 1995; Groenleer 2006; Magnette 2005: 9). Thirdly, agencies, which are insulated from political pressures, are seen as being more capable of pursuing long-term policy objectives than governments, which generally feel the need to be more responsive to political pressures and public opinion (Majone 2006: 193). This claim is based on the following assumptions. Firstly, policy continuity is necessary to ensure policy credibility. Secondly, policy continuity is best ensured by the delegation of powers to agencies, as those are best able to preserve policy continuity despite possible changes in parliamentary majorities. Fourthly, agencies are often presented as giving more visibility to EU policies (Dehousse 2008), especially compared to other institutional arrangements such as the comitology system, thereby increasing their legitimacy and that of the EU in general. In that respect, delegation to agencies often has a strong element of symbolism (Wilks 2002: 148). Fifthly, it is considered that agencies can foster cooperation amongst Member States through information sharing and coordination activities (Magnette 2005: 9). Finally, agencies are generally seen as being able to ensure a greater involvement of stakeholders, for example from the industry or consumer groups, in the EU policy-making process. This involvement can take the form of representation in the Management Board of agencies.[6]

However, several scholars have emphasised that these rationales, although they evidently play an important role in political debates, are not able to fully account for the creation of agencies. The delegation process in the EU is not as neat and simple as suggested by the classic "principal-agent" model. First of all, as argued by Dehousse (2008), it is important to recognise that, in the EU, there are multiple principals – rather than one single clearly defined principal – and that each of them has its own interests. As a result, the analysis of the process of agency creation needs to take into account the political struggles amongst

---

[5] This is the typology recently proposed by the European Commission in its Communication "European Agencies – The Way Forward" of March 2008. Other typologies have been suggested, but discussing those is beyond the scope of this article.
[6] For example, the European Agency for Health and Safety at Work (EU-OSHA) brings together representatives of the European Commission, the Member States, employers and employees.

policy-makers in order to fully account for the delegation of functions in the EU. Evidence for this claim is provided by the case of the six new European agencies created between 1990 and 1994 (Kelemen 2002; Groenleer 2006). On the one hand, the completion of the single market project had increased the workload of the Commission to the point of overstretch. This required additional financial and staff resources. On the other hand, an increase in the size of the Commission was not an option favoured by all Member States in the Council. The compromise between these two positions was the creation of agencies to which tasks could be delegated. The Commission itself played an important role in this delegation process, as it proposed the establishment of these agencies and had a significant influence on their functions, powers and structure (Dehousse, 2008: 793). The creation of the agencies allowed the regulatory capacity of the EU to increase in a manner more acceptable to the Council than a direct expansion of the Commission would have been. Such a solution did not play into the hands of the Eurosceptics bemoaning the ever-increasing 'Eurocracy' in Brussels (Kelemen 2002: 100). Moreover, this institutional design was approved by Member States since it ensured their representation in the Management Board of each of these agencies (Groenleer 2006: 164).

Although it is important to recognise the *sui generis* character of each case of agency creation in the EU, it is also possible to make some general observations concerning the role of each institution of the so-called 'institutional triangle' (European Commission, Council of the EU and European Parliament) in the delegation process based on past examples. First of all, Member States in the Council can block the creation of European agencies, as has been the case with the plans for a European telecom agency (Kelemen 2002: 110). Unsurprisingly, it appears that they do not favour the delegation of tasks to European agencies that would question the very existence of national bureaucracies in a given policy area. In cases where they are willing to delegate some tasks, then they are likely to privilege the setting up of a relatively weak agency, which they can control through its Management Board and which is limited to the coordination of the activities of national bureaucracies in a specific policy area (Magnette 2005). As far as the Commission is concerned, it is likely to resist the delegation of tasks to an agency in policy areas where it has acquired large competences. Given its key-role as agenda-setter and legislation initiator, the Commission occupies a strong position in the agency-creation process. This has been evidenced by its refusal to submit a proposal for an independent European Cartel Office, which would diminish its powers in the competition policy field (Kelemen 2002: 111). Finally, the European Parliament, which is generally involved in the creation of first pillar agencies through the co-decision procedure[7], tends to emphasise issues such as transparency and accountability in the institutional design of agencies. Having examined the various rationales for setting up agencies, as well as the general positions of the institutions of the EU institutional triangle regarding the establishment of agencies, it is now possible to analyse the process leading to the creation of FRONTEX.

The creation of FRONTEX

The establishment of FRONTEX came as a response to the perceived need for an increase in cooperation amongst EU Member States with regard to external border controls. This was prompted by three main factors. First of all, as explained in the introduction to this article, migration has generally become an increasingly contentious issue in Europe since the 1990s, which has led European states to examine ways of reinforcing border controls to restrict the access of migrants and asylum-seekers to their territory (Collinson 1993; Joly 1996; Chebel d'Appollonia and Reich, 2008). Secondly, as the date of the enlargement of

---

[7] It is important to note that, in the case of the Agency that this article focuses on, i.e. FRONTEX, the European Parliament was not involved in the creation of the Agency through the co-decision procedure, but only through the consultation procedure.

the EU to ten new Member States in 2004 drew closer, there were specific concerns that these new Member States would not be able to effectively control the new external borders of the EU. There were increasing calls for strengthening cooperation amongst EU Member States on border controls as a way to alleviate the lack of border control capabilities of the future EU Member States and their difficulties to meet the Schengen/EU border control standards (Monar 2006: 75). In addition, the terrorist attacks on 11 September 2001 led to the identification of a wide range of measures aiming to reinforce "homeland" security, including the tightening up of external border controls (Monar 2005: 147; Mitsilegas 2007: 362). This was particularly visible in the Hague Programme adopted in 2004:

> The management of migration flows (…) should be strengthened by establishing a continuum of security measures that effectively links visa application procedures and entry and exit procedures at external border crossings. Such measures are also of importance for the prevention and control of crime, in particular terrorism.

These three factors explain the identification of the need for increased cooperation on external border controls amongst EU Member States. However, such cooperation could have taken other institutional forms than that of an agency. How and why, then, was it decided to create an agency? Answering this question requires the examination of the political debates and the policy process that led to the creation of FRONTEX.

An ambitious vision: the concept of a "European Corps of Border Guards"

Initially, cooperation on external border controls amongst EU Member States developed outside the EU framework, within the Schengen Group following the signing of the Schengen Agreement of 14 June 1985 (Monar 2006: 74-75). The Schengen *acquis* was integrated into the European Union legal framework by the Treaty of Amsterdam, which entered into force in 1999 (Peers 2006: 169; Kaunert 2005, 2007). Article 62(2)(a), within Title IV of the Treaty on European Community that governs visas, asylum, immigration and other policies related to free movement of persons, gave the Community the power to adopt measures concerning the "standards and procedures to be followed by Member States in carrying out checks on persons" at the external borders. What is important to emphasise with regard to that article is that, like others in Title IV, it was characterised by peculiar rules of decision-making. Indeed, the communautarisation of asylum and migration matters had only been partial, as a transition period of five years was in place until May 1, 2004. During that time, the Commission and the Member States were sharing the right of initiative. In addition, decisions had to be taken unanimously in the Council, whereas the European Parliament was only consulted on legislative proposals, rather than being fully involved in the policy-making process through the co-decision procedure (Kaunert 2005; Peers 2006).

Early 2001, Germany and Italy presented a joint initiative aiming to establish a "European Border Police" to the Council. This was followed by the launch of a feasibility study regarding the creation of a European Border Guard, organised by a group led by Italy and comprising, in addition to this country, Belgium, France, Germany and Spain. These countries were in favour of setting up such a body in order to share the burden of external border controls and increase the efficiency of such controls, notably through the development of technical expertise on the matter. This initiative received financial support from the European Commission based on the Odysseus programme (Monar 2005: 147). However, it is important to note that some Member States were not as enthusiastic about this idea. In particular, the British government favoured increased cooperation on external border controls, but was reluctant to see any centralisation in that policy area. This lack of complete agreement amongst EU Member States was reflected in the carefully worded

Conclusions of the Laeken European Council on 14-15 December 2001. The EU Heads of State or Government agreed on pursuing four objectives: (1) strengthening and standardising European border controls, (2) assisting candidate States in organising controls at Europe's future external borders, through the development of operational cooperation, (3) facilitating crisis management with regard to border control, and (4) preventing illegal immigration and other forms of cross-border crime. Nevertheless, their lack of agreement on the precise institutional form that their reinforced cooperation should take was evident in the vagueness of the call for the Council and the European Commission to elaborate "arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created" (Presidency of the Council of the European Union 2001: 12). Thus, terms such as "European Border Guard" or "European Border Police" were not mentioned in the mandate, although they were used by the media and some governments.

The results of the Italy-led feasibility study were unveiled in May 2002. Those have often been criticised for their lack of precision and clarity, as the study failed to adopt a clear position regarding the establishment of a European Border Police. Actually, this certain degree of confusion only reflected the lack of consensus amongst the Member States involved in the study. The main idea put forward by this feasibility study was that the border guard authorities of the EU Member States should cooperate through a "polycentric" network, which would be based on a common training curriculum, common risk assessment and various *ad hoc* centres specialising in different issues relating to border controls (Monar 2006: 77). Following its Laeken mandate, the European Commission also tabled a Communication in May 2002 entitled "Towards Integrated Management of the External Borders of the Member States of the European Union". Based on an analysis of the challenges and the current situation with regard to the management of external borders, the Commission made several proposals to move towards a "European Corps of Border Guards". Those focused on "five mutually interdependent components: (1) a common corpus of legislation, (2) a common coordination and operational cooperation mechanism, (3) common integrated risk analysis, (4) staff trained in the European dimension and inter-operational equipment and (5) burden-sharing between Member States in the run-up to a European Corps of Border Guards" (Commission of the European Communities 2002: 12).

A first attempt at institutionalisation: the establishment of the External Borders Practitioners Common Unit

Acknowledging that a European Corps of Border Guards could not be established in the short-term, the Commission suggested that the "common coordination and operational cooperation mechanism" could involve at first the establishment of an External Borders Practitioners Common Unit, as well as the gradual development of a "permanent process of exchange and processing of data and information" between the authorities of the Member States. The Commission argued that this common unit "should most probably develop from the SCIFA (Strategic Committee for Immigration, Frontiers and Asylum) working group meeting in its formation of those responsible for the Member States services ensuring controls at the external borders" (Commission of the European Communities 2002: 14). According to the European Commission, this common unit "should play a full multidisciplinary and horizontal role" to gather managers and practitioners carrying out the full range of tasks concerning external borders security, that is, "the police, judicial and customs authorities and EUROPOL" (Commission of the European Communities 2002: 14). It would play four main roles:

1. acting as a 'head' of the common policy on management of external borders to carry out common integrated risk analysis;

2. acting as 'leader' coordinating and controlling operational projects on the ground, in particular in crisis situations;

3. acting as manager and strategist to ensure greater convergence between the national policies in the field of personnel and equipment;

4. exercising a form of power of inspection, in particular in the event of crisis or if risk analysis demands it (Commission of the European Communities 2002: 14).

In addition, the Commission expressed the view that, in the long term, the national services of the Member States should be supported by a European Corps of Border Guards. The proposal of the Commission was generally well-received as it contained at least some points with which each Member State could agree, although some still contested that increased cooperation efforts could ultimately lead to the establishment of a European Corps of Border Guards. This proposal was followed in June 2002 by a Council "Action Plan for the Management of the External Borders of the Member States of the European Union" (Council of the European Union 2002a). This document emphasised the issue of operational cooperation and coordination and endorsed the establishment of a common unit in the framework of the SCIFA. The idea of establishing a "European Corps of Border Guards" was also mentioned, but more cautiously than it had been in the Commission proposal. The Action Plan concluded that "[based] on the experiences of this gradual development, further institutional steps could be considered, if appropriate (…) Such steps could include a possible decision on the setting up of a European Corps of Border Guards, composed of joint teams, which would have the function of supporting the national services of the Member States, but not replacing them" (Council of the European Union 2002a: 27). This was in line with the generally more pragmatic approach of the Council. A few days later, this Action Plan was endorsed by the Seville European Council, which took place in an atmosphere of intense politicization of asylum and migration matters (Ludlow 2002). The Heads of State or Government "applauded" the approval of the Action Plan and "urged the introduction without delay" of the External Borders Practitioners Common Unit within the framework of the Council (Council of the European Union 2002b: 9).

The Common Unit was subsequently created under SCIFA+ (i.e. SCIFA and the heads of national border guards) and took the lead in coordinating various operations and pilot projects relating to border controls from 2002 onwards (Mitsilegas 2007: 365). Those aimed to improve operational standards and coordination. Amongst them, one can mention the "International Airports Plan" led by Italy, and joints operations at the maritime borders such as "Operation Ulysses" under Spanish leadership and "Operation Triton" led by Greece. *Ad hoc* centres were also created, including the Centre for Land Borders (Germany), the Risk Analysis Centre (Finland) and the Centre of Excellence at Dover for developing new surveillance and border control technologies (United Kingdom) (Council of the European Union 2003a).

The limits of pragmatism: challenges to the External Borders Practitioners Common Unit

Soon after their establishment, the effectiveness of the SCIFA+ arrangements began to be challenged, by both the European Commission and some EU Member States. The European Commission argued that experience had shown the structural limits of the SCIFA+ institutional arrangements. In its Communication on the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents tabled on 3 June 2003, the Commission called for the establishment of a body which could pursue border management activities on a more systematic and permanent basis (Commission of the

European Communities, 2003a). It suggested leaving strategic coordination issues with the Common Unit, whilst entrusting operational tasks to a new permanent Community structure, which would be in charge of the daily management and coordination tasks in the area of external border controls. On the same day, the Presidency of the Council released a "Report on the Implementation of Programmes, Ad Hoc Centres, Pilot Projects and Joint Operations", which also highlighted several problems stemming from the institutional arrangements under SCIFA+. The report argued that the various activities approved by SCIFA+ had been hampered by serious deficiencies concerning planning, preparation, evaluation, operational coordination, the treatment of difficulties arising during the implementation of projects, and the commitment of the participating countries (Council of the European Union 2003a). In addition, the Presidency report emphasised the lack of a suitable legal basis for conducting common operations and establishing *ad hoc* centres of cooperation (Council of the European Union 2003a: 8; 33). These various activities were indeed, from a legal point of view, the products of intergovernmental cooperation. The Treaty on European Community had not given the Council "the competence to engage in such coordinating activities, but merely (…) the power to adopt legislation for that purpose" (Rijpma 2009: 9).

In response to the Commission Communication and the Presidency report, the Council adopted its "Conclusions on Effective Management of the External Borders of the EU Member States" on 5 June 2003 (Council of the European Union 2003c). They notably called for the Practitioners Common Unit (PCU) to develop operational cooperation distinctly from SCIFA+, after being reinforced as a Council Working Party by experts seconded from the Member States. These Council Conclusions were in turn endorsed by the Thessaloniki European Council on 19-20 June 2003, which asked the Commission "to examine in due course (…) the necessity of creating new institutional mechanisms, including the possible creation of a Community operational structure" in order to enhance operational cooperation in the management of EU external borders (Council of the European Union 2003d: 4).

A new attempt at institutionalisation: towards the establishment of an agency

The European Commission, which had showed its preference for such a Community structure in the previous years, rapidly seized this opportunity. It responded to this request by tabling a proposal for a Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders in November 2003 (Commission of the European Communities 2003b). The main objective of this Agency, according to the proposal of the European Commission, was to better coordinate operational cooperation amongst Member States in order to increase the effectiveness of the implementation of Community policy on the management of the external borders. The Commission justified the choice of establishing an Agency by highlighting "the clear need for creating an independent, specialised Community operational structure" (Commission of the European Communities 2003b: 7). It further argued that:

> …the Agency will be in a better position than even the Commission itself to accumulate the highly technical know-how on control and surveillance of the external borders that will be necessary (…). Moreover, the establishment of an Agency is expected to lead to increased visibility for the management of external borders in the public and cost-savings with regard to the operational cooperation (…). (Commission of the European Communities 2003b: 7)

The Commission argued that the Agency should have the following functions: (1) coordinating the operational cooperation between Member States on control and surveillance of the external borders, (2) assisting Member States in training national

border guards, (3) conducting risk assessments, (4) following up on the development of research concerning external borders control and surveillance, (5) assisting Member States in circumstances requiring increased assistance at the external borders, and (6) coordinating operational cooperation between Member States on the removal of illegal third country residents (Commission of the European Communities 2003b: 19).

The Council rapidly reached a political agreement on the draft Regulation, despite the requirement for unanimity. It agreed with the tasks allocated to FRONTEX by the Commission. However, and this was the main point of contention between the Commission and the Council, it disagreed with the composition of the Management Board of the Agency (Council of the European Union 2003b), which led to an amendment of this provision in the final text of the Regulation, as will be later explained. Involved in the decision-making process only through the consultation procedure, the European Parliament proposed several amendments aiming to strengthen its "communautarian" character (see below), but those were ignored by the Council.

Two looming deadlines arguably facilitated and accelerated the attainment of an agreement amongst Member States. First of all, the "big bang" enlargement of the EU was due to take place on May 1, 2004. This event had generated fears of uncontrolled migration flows from the East, notably in the media (Lavenex 1999). There was therefore some public pressure on EU Member States to demonstrate that they were taking measures to strengthen controls at the external borders of the EU and to support the future Member States in developing their border control regimes. Another factor that facilitated the swift conclusion of negotiations in the Council was of an institutional nature, as it concerned the move to co-decision on external borders matters. As explained earlier, with regard to measures concerning the crossing of external borders (amongst others), Article 67 of the Treaty on European Community provided for a transitional period of five years, during which exceptional decision-making rules applied. Whilst the European Commission shared the right of initiative with the Member States, the European Parliament was only consulted on the legislative proposals. In addition, the Council had to take decisions according to the unanimity rule. On the basis of Article 68(2) of the Treaty on European Community, the Council decided that measures concerning the crossing of the external borders of the Member States should be adopted according to the co-decision procedure as of 1 January 2005. This meant that the Commission proposal had to be swiftly adopted if the Council wanted to avoid the active involvement of the European Parliament in the adoption of the Regulation, which would have been allowed by the application of the co-decision procedure. At the time of the discussions of the draft Regulation, the European Parliament was only associated with the decision-making procedure through the consultation procedure, which meant that its opinion could be largely ignored.

Thus, it is evident that the establishment of an agency in order to increase operational cooperation on external border management was only one option amongst several. Various models for increased cooperation were considered and explored by the European Commission and the Member States. Following initial discussions that largely focused on the ambitious and rather vague – and also unacceptable for some – idea of a "European Border Police" (or "European Border Guard"), a pragmatic and more modest solution was adopted, in the form of the External Borders Practitioners Common Unit. However, such an institutional arrangement rapidly gave rise to criticisms. This led to a proposal by the European Commission for the establishment of a European Agency, citing some of the classic justifications for agency creation. In particular, it emphasised the policy expertise and technical know-how that the Agency would be able to develop. It also argued that the establishment of FRONTEX would increase the visibility of EU action in the field of border controls, which was significant given the importance of migration issues on the political

agenda of many European governments. These arguments convinced the Member States that an agency should be created to deal with operational cooperation in external border controls. In the Conclusions on the main elements of the Commission proposal on the establishment of FRONTEX, the Council noted that "the creation of an Agency is the most appropriate way to organise and develop the indispensable coordination of operational cooperation at the external borders" (Council of the European Union 2003b: 3).

Although FRONTEX does not embody the same high degree of cooperation on external border controls than a European Corps of Border Guards, it is nevertheless remarkable to observe such a significant development of operational cooperation in that policy area over a short period of time. As some states were initially reluctant to go beyond purely intergovernmental cooperation on external border controls, it was initially attempted to enhance cooperation through the work of SCIFA+. However, it was rapidly claimed by several actors, including the European Commission and the Greek Presidency, that this institutional model hampered successful cooperation amongst EU Member States and that it was necessary to adopt a more centralised model of governance through the creation of a Community structure. The European Commission then proposed the establishment of an agency to fulfil these tasks.

Thus, as observed by Dehousse, one should not under-estimate the role played by the European Commission in the establishment of a first pillar agency such as FRONTEX (Dehousse 2008: 793). In line with the literature on European agencies, it appears that the Commission was not reluctant to propose the establishment of an Agency which would be given tasks that were until then generally fulfilled by Member States, rather than by the Commission itself. Also in line with the literature, the analysis has demonstrated that Member States were able to agree relatively swiftly on the creation of an agency that they would be able to control through its Management Board and other mechanisms (see below) and which would be limited to the coordination of operational cooperation at the external borders. In that respect, documents on FRONTEX emphasise that "the responsibility for the control and surveillance of external borders lies with the Member States" (Article 1) and the role of the Agency is strictly limited to the coordination of Member States' actions. Finally, it is important to note that Member States' positions were particularly unchallenged in the negotiations regarding FRONTEX, as the European Parliament was only consulted on the draft Council Regulation. The lack of involvement of the European Parliament also meant that issues such as transparency and accountability received relatively less attention in the debates leading to the adoption of the Council Regulation.

The controls over FRONTEX

Having examined why EU Member States decided to establish an Agency to increase cooperation in external border management and which tasks they decided to give this Agency, it is now necessary to examine another important issue in any case of agency creation, i.e. the controls exercised over the agency activities. Indeed, as argued by Tallberg, "[every] decision to delegate essentially involves two choices – what powers to delegate and what institutional control mechanisms to craft" (Tallberg 2002: 28).

Such control tools (Everson *et al.* 1999: 13) are seen as necessary by principals, because it is generally considered that agents are likely to develop their own interests over time and may attempt to pursue their own policy (Magnette 2005: 11). This phenomenon is commonly referred to as "drift". According to Kelemen (2002), one can distinguish between "bureaucratic drifts" and "political drifts". The former refer to cases where an agency develops a political agenda differing from that of its political principals, whereas the latter concern cases where "future holders of public authority direct a bureaucratic

agency to pursue objectives different from those of the political coalition that originally delegated authority to the agency" (Kelemen 2002: 96). In that respect, Dehousse (2008: 796) argues that principals mainly fear a specific variant of political drift, that "in which agencies are somewhat 'captured' by one of their institutional rivals in the leadership contest". As a consequence, principals aim to design control mechanisms that will minimise the risk of bureaucratic and political drifts in the future.

This article is based on a broad definition of "control", understood as encompassing *ex ante*, *simultaneous* and *ex post* control mechanisms (also referred to as "accountability" mechanisms) (Busuioc 2009). *Ex ante* control mechanisms refer to decisions made during the negotiations leading to the creation of an agency, with regard to the boundaries of its competencies and activities. For example, if an agency has only limited powers, such as gathering or exchanging information, or has a tightly specified mandate, then it will, by definition, be significantly controlled in its activities. These issues have already been discussed in the previous section analysing the debates on the creation of FRONTEX. The remainder of this section will therefore focus on the various *simultaneous* and *ex post* control mechanisms considered during the negotiations leading to the establishment of FRONTEX, such as work programmes and reports of activities, budgetary control, hearings, the role of the Management Board, reviews of activities and access to documents.

Controls over FRONTEX activities

Management Board

One of the main mechanisms of control on the activities of an agency is the establishment of a Management Board. FRONTEX has such a Management Board, to which the Executive Director is accountable. The Management Board of FRONTEX is composed of one representative of each Member State and two representatives of the European Commission, who are "appointed on the basis of their degree of high level relevant experience and expertise in the field of operational cooperation on border management" (Council Regulation EC 2007/2004, Article 21). Each member of the Management Board has one vote, whereas the Executive Director has no vote, but can take part in the deliberations of the Board. Originally, the Commission had proposed that the Management Board be composed of twelve members and two representatives of the Commission. However, the Council considered that each Member State should have a representative in the Management Board of the Agency (Council of the European Union 2003: 5). In addition, during the consultation procedure, the European Parliament had proposed several amendments concerning the composition of the Management Board, but those were not taken into account by the Council. First of all, with regard to the composition of the Board, the European Parliament was of the opinion that the Council and the Commission should each appoint six members of the Board, bringing the total number of members to twelve. This was an attempt to reinforce the role of the Commission in the Management Board, thereby strengthening the Community character of the Agency, but it was not accepted by the Council (European Parliament, 2004: 18). The European Parliament had also suggested that the Management Board be chaired by a representative of the European Commission, but again, this amendment was rejected by the Council.

The Management Board of FRONTEX fulfils several functions (Council Regulation EC 2007/2004, Article 20). First of all, it appoints the Executive Director of the Agency on the basis of a proposal from the European Commission. In addition, the Management Board exercises disciplinary authority over the Executive Director. Moreover, it is responsible for adopting the general report of FRONTEX activities from the previous year, as well as the work programme of FRONTEX for the coming year after receiving the opinion of the

Commission. The European Parliament would have preferred some of these tasks to be entrusted to the European Commission. During the consultation procedure, it had suggested that the Commission itself should appoint the Executive Director of the Management Board and should have the power to dismiss him/her, but this amendment was not taken into account by the Council (European Parliament 2004: 20).

Thus, the Management Board has been tasked with several important functions regarding the control of the activities of the Agency. Given that it has a strong intergovernmental character, this means that control of the work of the Agency is to a large extent in the hands of the Member States, which have been considered the main stakeholders. It appears that, to date, they have generally been satisfied with the ways in which the Management Board has operated as a control mechanism of the activities of FRONTEX (House of Lords 2008). However, this has not been the opinion of pro-migrant and pro-human rights groups, which, in contrast, have expressed a certain level of dissatisfaction with the use of a Management Board as an accountability mechanism. According to the British Immigration Law Practitioners' Association (ILPA), "[a] Management Board is a weak method of scrutiny and for accountability at the best of times, but is particularly weak in the context of FRONTEX" (quoted in House of Lords 2008: 109). ILPA has also criticised the fact that the Management Board only comprises representatives of the EU Member States and the European Commission.

Work programmes and reports of activities

Another common way of controlling agencies is to require them to produce work programmes and reports of activities. In that respect, the Executive Director of FRONTEX is responsible for preparing, every year, the draft programme and the activity report, which will then be submitted to the Management Board (Council Regulation EC 2007/2004, Article 25). The Management Board is responsible for their adoption (Council Regulation EC 2007/2004, Article 20). Both reports are subsequently forwarded to the European Parliament, the Council, and the Commission, as well as to the European Economic and Social Committee and the Court of Auditors in the case of the activity report only (Council Regulation EC 2007/2004, Article 20). The European Parliament wanted this control mechanism to be reinforced by suggesting, during the consultation procedure, that the annual report on the Agency's activities should also be presented by the Executive Director to the European Parliament (European Parliament 2004: 22). However, this amendment was not included in the final text of the Regulation.

Budgetary control

One of the most powerful ways of controlling an agency is to adopt measures relative to its budget. For the European Parliament, which was sidelined during the negotiations of the Draft Regulation establishing FRONTEX and whose amendments to the legislative text were ignored, budgetary control is the main instrument at its disposal to exercise some control over FRONTEX activities. According to Article 29 of the Council Regulation establishing FRONTEX, the budget of the Agency has four different strands: (1) a Community subsidy, (2) a contribution from the countries associated with the implementation, application and development of the Schengen *acquis*, (3) fees charged for the services provided, and (4) any voluntary contribution from the Member States. When consulted on the Commission proposal, the European Parliament had suggested adding a fifth source of income, namely a contribution from the host Member State (European Parliament 2004: 23), but this amendment was rejected by the Council. In practice, the Community subsidy is by far the most important income strand for FRONTEX, which gives the European Parliament a substantial amount of leverage on the Agency. It

made use of it in October 2007, for example, when the Budget Committee of the European Parliament voted in favour of an increase of 30 million euros for the 2008 budget of FRONTEX, but at the same time voted to put in reserve up to thirty per cent of the Agency's administrative budget (EPP-ED Group 2007; House of Lords 2008).[8] In addition to the control by the budgetary authority, the Court of Auditors also gives its observations on the accounts of the Agency (Council Regulation EC 2007/2004, Article 30).

Hearings

In general, the activities of agencies can also be controlled through hearings. On the basis of Article 25 of Council Regulation EC 2007/2004, both the European Parliament and the Council "may" invite the Executive Director of FRONTEX to report on the activities of the Agency. During the consultation procedure, the European Parliament had expressed the opinion that this provision should be rephrased as to read "The European Parliament (…) or the Council *shall* invite the Executive Director of the Agency to report on the carrying out of his/her tasks". From the European Parliament's point of view, this amendment aimed to convey the idea that "Parliament should exercise political scrutiny as of right, and not simply as an option" (European Parliament 2004: 20). This amendment did not find its way into the final version of the Regulation. However, in practice, this has not prevented the European Parliament from managing to convey the importance, if not the necessity, of attending hearings to FRONTEX representatives, thanks to its budgetary powers.[9]

Reviews of activities

Another way of controlling agencies is to review their activities and make subsequent organisational changes. Article 33 of Council Regulation EC 2007/2004 stipulates that an independent external evaluation of FRONTEX will be commissioned within three years from the date at which it took up its responsibilities, and every five years thereafter. This disposition is rather vague as to the exact content of this evaluation, as it merely indicates that the evaluation should examine the effectiveness of the Agency, its impact and its working practices, and that it should include the views of "stakeholders at both the European and national level". When consulted on the Commission proposal, the European Parliament had expressed its preference for a closer control of the activities of the Agency, through the commissioning of the first independent external evaluation within two years of FRONTEX taking up its activities, and every two years thereafter. With regard to the content of the evaluation, the European Parliament had suggested that it should give particular attention to the following issues: the respect for fundamental rights, the need and feasibility of setting up a European Border Guard, and the added value of the Agency (European Parliament 2004: 24). The European Parliament had also suggested the insertion of an amendment to the effect that, like the Council, it would also receive the documents relating to the evaluation of the Agency. However, these proposals were not included in the final text of the Regulation.

Access to documents

Requiring agencies to give access to their documents is also another mechanism aiming to control their activities. Article 28 of Council Regulation EC 2007/2004 stipulates that FRONTEX is subject to Regulation EC 1049/2001, which concerns access to EU documents

---

[8] This decision was justified at the time on the grounds that the Agency had to improve both its accountability and its effectiveness.

[9] According to MEPs Moreno Sanchez and Deprez, "[at] the beginning [FRONTEX] did not come [to the European Parliament], but now they do (…) because they understand that they have to present their programme to the committee in the Parliament" (quoted in House of Lords 2008: 28).

that have not been publicly released. During the consultation procedure, the European Parliament had asked for Regulation EC 45/2001 to apply to the processing of personal data by the Agency (European Parliament 2004: 23), but this amendment was not taken into account by the Council.

Thus, this section has demonstrated that several control mechanisms have been put in place to avoid any unwanted "drifts" in the activities of FRONTEX. When it was consulted on the Commission proposal, the European Parliament put forward several amendments aiming to reinforce its own control powers and those of the European Commission over the Agency. However, in a context where the European Parliament was weak because of the consultation procedure, they were not accepted by the Council and were not included in the Council Regulation in the end. As a result, the various mechanisms of control over FRONTEX are firmly in the hands of the main stakeholders (i.e. the Member States), with the important exception of budgetary control, where the European Parliament can play (and has already played) a crucial role.

Conclusions

Drawing upon insights from the literature on European agencies, this article has shed light on FRONTEX by focusing on its institutional nature as an *agency*. It has analysed the process that led to the creation of FRONTEX, identifying and examining the various institutional configurations for increasing cooperation on external border management that were considered and, in some cases, even implemented on a temporary basis. It has also discussed the various justifications given by the Commission and the Council for establishing FRONTEX, whilst showing how the creation of FRONTEX can also be understood as the product of power struggles within the EU. Finally, it has examined the various control mechanisms designed to avoid possible "drifts" in the activities of the Agency.

In addition to shedding light on the origins of FRONTEX, this analysis of the "politics of institutionalisation" has also strengthened our understanding of the activities of FRONTEX since it became operational. In particular, it has demonstrated the lack of influence of the European Parliament, whose proposed amendments – aiming to increase its control over the Agency - were all rejected. This explains why the European Parliament has made a significant use of the budget control instrument to date, as it is the only significant control mechanism over FRONTEX that it has at its disposal. The isolation of the European Parliament – the traditional human rights champion in the EU - in the negotiations also contributes to explaining the relative low priority given to human rights issues in the activities of the Agency.

<p align="center">***</p>

References

Baldaccini, A. and E. Guild (eds) (2007). *Terrorism and the Foreigner: A Decade of Tension around the Rule of Law in Europe*. Leiden: Martinus Nijhoff.

Bigo, D. (1998a). "Europe passoire et Europe forteresse: La sécurisation/humanitarisation de l'immigration" in Rea, A. (ed.), *Immigration et racisme en Europe*. Bruxelles: Complexe, pp.203-241.

Bigo, D. (1998b). "L'Immigration à la Croisée des Chemins Sécuritaires", *Revue Européenne des Migrations Internationales*, 14 (1), pp.25-46.

Bigo, D. (2001). "Migration and Security" in Guiraudon, V. and C. Joppke (eds), *Controlling a New Migration World*. London: Routledge, pp.121-149.

Bigo, D. (2002). "Security and Immigration: Toward a Critique of the Governmentality of Unease", *Alternatives*, 27 (Special Issue), pp.63-92.

Brouwer, E. and P. Catz (2003). "Terrorism and the Struggle for Competence in Community Law" in Brouwer, E., Catz, P. and E. Guild (eds), *Immigration, Asylum and Terrorism: A Changing Dynamic in European Law*. Nijmegen: Instituut voor Rechtssociologie/Centrum voor Migratierecht, KU Nijmegen.

Busuioc, M. (2009). "Accountability, Control and Independence: The Case of European Agencies", *Research Paper (Europe Award 2009)*. The Hague: Montesquieu Institute, available at: http://www.montesquieu-institute.eu, accessed on 15 October 2009.

Buzan, B., Wæver, O. and J. de Wilde (1998). *Security: A New Framework for Analysis*. London: Lynne Rienner.

Collinson, S. (1993). *Beyond Borders: West European Migration Policy Towards the 21st Century*. London: Royal Institute of International Affairs.

Carrera, S. (2007). "The EU Border Management Strategy: FRONTEX and the Challenges of Irregular Immigration in the Canary Islands", *CEPS Working Document 261*. Brussels: Centre for European Policy Studies.

Chebel d'Appollonia, A. and S. Reich (eds) (2008). *Immigration, Integration, and Security: America and Europe in Comparative Perspective*. Pittsburgh, PA: University of Pittsburgh Press.

Commission of the European Communities (2002). "Communication from the Commission to the Council and the European Parliament: Towards Integrated Management of the External Borders of the Member States of the European Union", COM (2002) 233, 07 May 2002.

Commission of the European Communities (2003a). "Communication to the European Parliament and the Council on the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents", COM (2003) 323, 03 June 2003.

Commission of the European Communities (2003b). "Proposal for a Council Regulation Establishing a European Agency for the Management of Operational Cooperation at the External Borders", COM (2003) 687, 20 November 2003.

Commission of the European Communities (2008). "Communication from the Commission to the European Parliament and the Council: European Agencies – The Way Forward", COM (2008) 135, 11 March 2008.

Council of the European Union (2002a). "Plan for the Management of the External Borders of the Member States of the European Union", 10019/02, 14 June 2002.

Council of the European Union (2002b). "Presidency Conclusions of the Seville European Council, 21 and 22 June 2002", 13463/02, 24 October 2002.

Council of the European Union (2003a). "Report on the Implementation of Programmes, Ad Hoc Centres, Pilot Projects and Joint Operations", 10058/03, 03 June 2003.

Council of the European Union (2003b). "Council Conclusions on the Main Elements of the Commission Proposal for a Council Regulation Establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union", 15446/03, 28 November 2003.

Council of the European Union (2003c). "Effective Management of the External Borders of the EU Member States", 10274/03, 06 June 2003.

Council of the European Union (2003d). "Presidency Conclusion of the Thessaloniki European Council, 19 and 20 June 2003", 11638/03, 01 October 2003.

Curtin, D. (2005). "Delegation to Non-majoritarian Agencies and Emerging Practices of Public Accountability", in Geradin, D., Muñoz, R. and N. Petit (eds), *Regulation through Agencies in the EU: A New Paradigm of European Governance*. Cheltenham: Edward Elgar, pp.88-119.

Dehousse, R. (2008)."Delegation of Powers in the European Union: The Need for a Multi-principals Model", *West European Politics*, 31 (4), pp.789-805.

EPP-ED Group (2007). "EP Committee votes to double FRONTEX budget", 03.10.2007, available at: http://www.eppgroup.eu/Press/, accessed on 05 February 2008.

European Parliament (2004). "Report on the Proposal for a Council Regulation Establishing a European Agency for the Management of Operational Cooperation at the External Borders (COM (2003) 687 – C5-0613/2003 – 2003/0273 (CNS))", A5 – 0093/2004, 24 February 2004.

European Union (n.d.) "Agencies of the European Union: Community Agencies", available at: http://europa.eu/agencies/community_agencies/index_en.htm, accessed on 12 March 2009.

Everson, M. (1995). "Independent Agencies: Hierarchy Beaters?", *European Law Journal*, 1 (2), pp. 180-204.

Everson, M., Majone, G., Metcalfe, L. and A. Schout (1999). "The Role of Specialised Agencies in Decentralising EU Governance: Report Presented to the Commission", available at: http://ec.europa.eu/governance/areas/group6/contribution_en.pdf, accessed on 20 February 2008.

Groenleer, M. (2006). "The European Commission and Agencies", in Spence, D. (ed.) *The European Commission*, 3rd edition. London: John Harper, pp.156-172.

Guild, E. (2003a). 'International Terrorism and EU Immigration, Asylum and Borders Policy: The Unexpected Victims of 11 September 2001', *European Foreign Affairs Review*, 8(3), pp.331-346.

Guild, E. (2003b). "Immigration, Asylum, Borders and Terrorism: The Unexpected Victims of 11 September 2001" in Gökay, B. and R. B. J. Walkers (eds), *11 September 2001: War, Terror and Judgement*. London: Frank Cass, pp.176-194.

Guild, E. (2003c). "The Face of Securitas: Redefining the Relationship of Security and Foreigners in Europe" in Craig, P. and R. Rawlings (eds), *Law and Administration in Europe: Essays in Honour of Carol Harlow*. Oxford: Oxford University Press, pp.139-153.

Guild, E. (2004). "Seeking Asylum: Storm Clouds between International Commitments and EU Legislative Measures", *European Law Review*, 29 (2), pp.198-218.

Guiraudon, V. (2000). "European Integration and Migration Policy: Vertical Policy-making as Venue Shopping", *Journal of Common Market Studies*, 38 (2), pp.251-271.

Guiraudon, V. (2003). "The Constitution of a European Immigration Policy Domain: A Political Sociology Approach", *Journal of European Public Policy*, 10(2), pp.263-282.

House of Lords (2008). *FRONTEX: The EU External Borders Agency*, 9th Report of Session 2007-2008. London: Stationery Office.

Huysmans, J. (2000). "The European Union and the Securitization of Migration", *Journal of Common Market Studies*, 38(5), pp.751-777.

Huysmans, J. (2006). *The Politics of Insecurity: Fear, Migration and Asylum in the European Union*. London: Routledge.

Jolly, D. (1996). *Haven or Hell? Asylum Policies and Refuges in Europe*. Basingstoke: Macmillan.

Jorry, H. (2007). "Construction of a European Model for Managing Operational Cooperation at the EU's External Borders: Is the FRONTEX Agency a Decisive Step Forward?", *Challenge Research Paper 6*. Brussels: Centre for European Policy Studies.

Kaunert, C. (2005). "The Area of Freedom, Security and Justice: The Construction of a 'European Public Order'", *European Security*, 14 (4), pp.459-483.

Kaunert, C. (2007). "Without the Power of Purse or Sword': The European Arrest Warrant and the Role of the Commission", *Journal of European Integration*, 29 (4), pp. 387-404.

Kaunert, C. (2009). "Liberty versus Security? EU Asylum Policy and the European Commission", *Journal of Contemporary European Research*, 5 (2), pp.148-170.

Kelemen, R. D. (2002). "The Politics of "Eurocratic" Structure and the New European Agencies", *West European Politics*, 25 (4), pp.93-118.

Lavenex, S. (1999). *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*. Budapest: Central European University Press.

Lavenex, S. (2006). "Shifting Up and Out: The Foreign Policy of European Immigration Control", *West European Politics*, 29(2), pp.329-350.

Levy, C. (2005). "The European Union after 9/11: The Demise of a Liberal Democratic Asylum Regime?", *Government and Opposition*, 40 (1), pp.26-59.

Ludlow, P. (2002). *The Seville Council*. Brussels: EuroComment.

Magnette, P. (2005). "The Politics of Regulation in the European Union", in Geradin, D., Muñoz, R. and N. Petit (eds), *Regulation through Agencies in the EU: A New Paradigm of European Governance*. Cheltenham: Edward Elgar, pp.3-22.

Mair, P. (2005). "Popular Democracy and the European Union Polity", *European Governance (EUROGOV) Paper C-05-03*, available at: http://www.connex-network.org/eurogov/pdf/egp-connex-C-05-03.pdf, accessed on 05 June 2009.

Majone, G. (2006). "Managing Europeanisation: The European Agencies" in Peterson, J. and M. Shackleton (eds), *The Institutions of the European Union*, 2nd edition. Oxford: Oxford University Press, pp.190-209.

Mitsilegas, V. (2007). "Border Security in the European Union: Towards Centralised Controls and Maximum Surveillance", in Baldaccini, A., Guild, E. and H. Toner (eds), *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy*. Oxford: Hart, pp.359-394.

Monar, J. (2005). "The European Union's 'Integrated Management' of External Borders" in DeBardeleben, J. (ed.) *Soft or Hard Borders? Managing the Divide in an Enlarged Europe*. Aldershot: Ashgate, pp.145-161.

Monar, J. (2006). "The External Shield of the Area of Freedom, Security and Justice: Progress and Deficits of the Integrated Management of External EU Borders" in de Zwaan, J. W. and F. A. N. J. Goudappel (eds), *Freedom, Security and Justice in the European Union: Implementation of the Hague Programme*. The Hague: T. M. C. Asser Press, pp. 73-88.

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

Peers, S. and N. Rogers (eds) (2006). *EU Immigration and Asylum Law: Text and Commentary*. Leiden: Martinus Nijhoff.

Pierre, J. and B. G. Peters (2009). "From a Club to a Bureaucracy: JAA, EASA, and European Aviation Regulation", *Journal of European Public Policy*, 16 (3), pp. 337-355.

Pollak, J. and P. Slominski (2009). "Experimentalist but not Accountable Governance? The Role of Frontex in Managing the EU's External Borders", *Journal of Common Market Studies,* 32 (5), pp.904-924.

Presidency of the Council of the European Union (2001). "Presidency Conclusions of the European Council Meeting in Laeken, 14 and 14 December 2001", SN 300/1/01 REV 1.

Rijpma, J. J. (2009). "EU Border Management after the Lisbon Treaty", Paper presented at the Jean Monnet Seminar "Advanced Issues of European Law", 7th Session on "Boundaries of EU Law after the Lisbon Treaty", 19-26 April 2009, IUC Dubrovnik, available at: www.pravo.hr/_download/repository/Jorrit_Rijpma.doc, accessed on 05 July 2009.

Tallberg, J. (2002). "Delegation to Supranational Institutions: Why, How, and with What Consequences?", *West European Politics*, 25 (1), pp.23-46.

Uçarer, E. M. (2001) "Managing Asylum and European Integration: Expanding Spheres of Exclusion?", *International Studies Perspectives*, 2 (3), pp.288-304.

Wilks, S. with I. Bartle (2002). "The Unanticipated Consequences of Creating Independent Competition Agencies", *West European Politics*, 25 (1), pp. 148-172.

***