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**FRONTEX REFORM IN THE CONTEXT OF THE MIGRATION CRISIS:
EXPLAINING THE FAILURE TO UPGRADE THE AGENCY'S MANDATE**

MA thesis

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I have written this Master's thesis independently. All viewpoints of other authors, literary sources and data from elsewhere used for writing this paper have been referenced.

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Abstract

The Migration crisis has brought significant attention to Frontex inability to tackle the crisis and the necessity to reform the agency had a common understanding between EU actors. However, after the reform process, agencies mandate was not upgraded. This master thesis states that EU member states are those who are not willing to upgrade Frontex mandate and it aims to find the main factors that influenced the failure to upgrade its mandate.

To answer the research question, supranationalism, intergovernmentalism, EU agency theory and principal -agent framework was used. With process tracing method used, the document analysis and national member states positions were analyzed in order to see what interests all of the actors involved in decision making process had.

The main argument was approved as member states were those who were not willing to delegate more power to the Frontex.

Keywords: EU specialized agencies, European integration, power delegation, Frontex, autonomy

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Introduction

Over the past few years, migration crisis has been one of the main challenges not only for the EU but for the whole international community. Situation in Syria, South Sudan, Iraq, Afghanistan and other countries experiencing civil wars and conflicts is the main source for increased flows of asylum seekers and refugees. The period starting from 2015 has been characterized as “worst refugee crisis since the end of World War II.”¹ The international community has devoted extensive attention to millions of people who have died during the attempt to reach the coast of the European continent, human suffering, the death of children, violation of human rights, human traffickers etc.

Migration crisis can be characterized as a serious challenge for the whole EU asylum policy, and its capabilities to protect external borders. Moreover, it has been also a challenge for such main principles as European solidarity, which has been at the core of the European integration for decades. In his speech, European Commission’s President Jean-Claude Juncker at the 20th anniversary of the European Policy Centre said: “When crisis came, it put extreme pressure on our system, and it found our weakness. Like water against a dam, it found the gaps and the cracks. It put our very foundation to the test.”² Migration crisis has made the EU to critically overlook its asylum policy and integration process, its capabilities to protect external borders, organize return operations, and to control illegal migration.

After the beginning of the European Migration crisis, the European Border and Coast Guard Agency Frontex has been one of the main EU agencies that has received a significant amount of attention and criticism about its effectiveness, inability to tackle

¹ Europarl.europa.eu. (2017). Europe’s migration crisis. News. European Parliament. [online] Available at: <http://www.europarl.europa.eu/news/en/headlines/society/20170629STO78631/europe-s-migration-crisis> [Accessed 20 Mar. 2018].

² European Commission's Press Release Database. (2018). Press release - Speech by European Commission President Jean-Claude Juncker at the 20th anniversary of the European Policy Centre - "The road to Rome: from crisis management to governing the EU". [online] Available at: http://europa.eu/rapid/press-release_SPEECH-16-3433_en.htm [Accessed 20 Mar. 2018].

migration crisis or to take action against the deaths of asylum seekers, the legality of its actions, human rights violations etc³. One of the examples of unsuccessful Frontex work is the agency's inability to help to control EU's southern maritime border, which is one of the biggest entry points for illegal migrants^{4 5}. However, I believe, that when making conclusions about the effectiveness of the Frontex and its actions during the crisis, one has to look not only at the agency as such but also at the European level. Agencies are EU bodies that are made to perform specific tasks and only the EU has the right to decide what tasks and to which extent an agency will have the right to carry out, or how the mandate of an agency will look like. Frontex does not have a monopoly over the external border control and management which strongly influence the work of the agency as it has to work according to the mandate given under EU treaties.

The main goal of this MA thesis is to understand why the 2015 Frontex reform process led to an outcome of not upgrading the agency's mandate. The research question that the thesis seeks to answer is as follows:- What explains the failure to upgrade the mandate of the Frontex in the context of the migration crisis? The main argument I am making is the powers of the agency have remained limited because EU member states are not willing to give bigger powers to Frontex.

The two main reasons for why it is important to study this topic include the context of the Migration crisis and the Frontex reform process. As mentioned before, after the beginning of the European Migration crisis, the attention devoted to the *Frontex* has increased. Not only human rights organizations and other NGOs are writing about the agency but also different scholars. However, most of the literature focuses on law-related topics, such as accountability, legitimacy etc. Literature that is particularly

³ Human Rights Watch. The EU's Dirty Hands. Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece. (2016). [pdf] p.2. Available at: https://www.hrw.org/sites/default/files/reports/greece0911webwcover_0.pdf [Accessed 23 Nov. 2016].

⁴ Jorrit, R. (2010). *Frontex: Successful Blame Shifting of the Member States?*. [online] Realinstitutoelcano.org. Available at: http://www.realinstitutoelcano.org/wps/portal/web/riecano_en/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/ARI69-2010 [Accessed 15 Mar. 2018].

⁵ M. Fink. A 'Blind Spot' in the Framework of International Responsibility? Third Party Responsibility for Human Rights Violations: The Case of Frontex. (2015). 1st ed. [pdf.] pp.6.-8. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2591126 [Accessed 23 Nov. 2016]

interested in why Frontex can not effectively tackle migration crisis, is lacking. Numerous analyses describe how the Agency has changed after the reform process but research about why it is so, is lacking. This work is a contribution to the understanding of power delegation to specialized agencies. The study is case centric as Frontex plays a special role among EU agencies as the field in which it is operating is border management - sensitive field as borders are a crucial part of sovereignty. This topic is important also for practical reasons to understand how to improve the work of Frontex in order to use the agency to help answer one of the biggest challenges the EU is facing. European Commission's President Jean-Claude Juncker in his 2015 State of the Union speech emphasized the necessity to reform Frontex⁶. The same year Commission's proposal for a regulation of the European Parliament and of the Council on the European Border and Coast Guard was published. With this, the EU legislation process for the Frontex reform started. The urgency granted for the issue shows its importance at the European level and this master thesis will give a critical assessment of the Union's attempt to solve it.

To answer the research question, the structure of this thesis consists of three main sections - theoretical part, methods and data, and analysis. After that main results will be presented and conclusions will be made.

The first chapter is the theoretical chapter where a literature overview of power delegation is presented. The theoretical part will first explain how two of the major theories of European integration supranationalism and intergovernmentalism approach the issue of power delegation to supranational institutions. The main aim here is to understand particularly, how these theories see power delegation in the process of European integration. As mainly all European integration theories at its core explain the reasons why national governments of the member states have decided to delegate power

⁶ European Commission's Press Release Database. (2018). Press release - Speech by European Commission President Jean-Claude Juncker at the 20th anniversary of the European Policy Centre - "The road to Rome: from crisis management to governing the EU". [online] Available at: http://europa.eu/rapid/press-release_SPEECH-16-3433_en.htm [Accessed 20 Mar. 2018].

to the supranational institutions, after the explanation of general theory ideas, the power delegation process will be adopted to the power delegation to the specialized agencies.

As the concept of "power delegation" is quite broad, it is important to explain, which aspect of power is analyzed in this thesis. Power in the sense of the technical resources, budget or personnel will not be looked at. The main focus will be on the mandate of the Frontex - who governs the agency - how the institutional structure has been made, to whom the agency has to be accountable, has the agency the right to intervene in a member state, what decisions is the agency allowed to make, and what are the duties where the agency can operate independently.

Taking into consideration that mostly these theories are looking at power delegation from another angle - between national and EU level, the next subsection will look at principal-agent framework which explains the relations between principals and agents. The last subsection looks at the academic literature regarding EU agencies. With this, the main aim is to understand why were agencies created, why and how national governments and supranational institutions decide to delegate power, what are the specifics of power delegation to specialized agencies. The main aim of the theoretical part is to understand, what might be the possible reasons behind the failure to upgrade the mandate of Frontex.

After the theoretical overview, the main observable implications will be highlighted in order to see what explanations of failure to delegate power to a specialized agency each of the theories can provide. The observable implication then will be used during the analytical part and conclusions will be made about which theory best can provide factors explaining the failure to upgrade Frontex mandate.

In this MA thesis, the policy-making process will be analyzed. I will look at the policy-making process and analyze the differences between each amendment of the original documents that were produced in the decision-making process. In the empirical (analytical) part, the process tracing method of outcome explanation will be used in order to see what led to concrete Frontex reforms - why these and not other reforms

were made. The analysis will consist of two parts - firstly, document analysis, secondly, media and press release analysis of member states' official position on the Frontex reform. The main aim of the empirical part is to understand what were the things that were offered by supranational actors and which of them were not acceptable for intergovernmental actors.

The empirical part will start with a situation prior to the reform overview after which the regulation establishing Frontex will be analyzed. After that six documents will be analyzed: Commission's proposal for a regulation of the European Parliament and of the Council on the European Border and Coast Guard on December 2015, Council mandate for negotiations on April 2016, European Economic and Social Committee opinion on May 2016, European Parliament report in LIBE Committee May 2016, and the Final legal act Regulation 2016/1624 of The European Parliament and of the Council of 14 September 2016. I will try to understand how those documents differ from each other and which reform ideas were acceptable to which actors. These six documents were chosen as they are the ones that influenced the negotiations and bargaining process and can give an overview of different preferences of the actors involved in the decision - making process.

Most documents used for analysis introduce different reforms such as regulatory and operational, and significant attention is devoted to resources such as financial, technical and personnel. In order to answer the research question, the thesis will analyze only those reforms that influence the mandate of Frontex and the delegation of power to the agency.

In this master thesis, I will refer to the European Coast and Border Guard as the Agency or as Frontex - the official short version of the name of the agency before and after the reform process.

1. Delegation of power to EU agencies. Insights from integration theories

The unique process of the European integration that significantly influences the political situation in the region has been bringing a substantial amount of political scientists attention from all over the world at different times. Processes of European integration has been one of the main research topics related to EU studies since the end of the WWII when different scholars, diplomats, political practitioners and politicians were trying to answer the main question of that time - how to prevent another war from happening? This gives the political science-rich literature of different political science theories and also critical articles that analyze European integration theories and talk about their limitations. All those theories differ by the scope (regional, international), usage, time (pre - theories) and the main ideas on which those theories are built. Nevertheless the fact that question about how to prevent war between European countries is not actual anymore, scholars are still coming up with new ideas and theories on European integration, develop the existing ones that allows getting a broader understanding of how the machinery of the European Union is working.

This master thesis will analyze the reasons behind the failure to upgrade Frontex mandate in the context of the Migration crisis through the prism of two major European integration theories schools - supranationalism and intergovernmentalism. The debate between those two major European integration has a significant history and rich literature. The debate can be seen as a driving force for both schools as they have been emerging as a response or critique to each other leading to generating new ideas and also the generation of other integration theory schools. Each of them can better explain numerous of these integration aspects but none of those can give a full explanation of how the mechanism works.

EU is a unique phenomenon, complex machinery that is working on different levels and is affecting everyday lives of its citizens. Its policy-making processes and the power delegation involves so significant amount of actors from different institutions and levels that using one concrete theory is complicated. That is the reason why in this master thesis both major debate sides of European integration theories will we analyzed and

applied to the Frontex lacking power case. After this theoretical overview, observable implications will be concluded and applied to the case study. The reasons for choosing numerous and not only one theory is also rooted in the process tracing method used in this thesis. Broader explanations will be provided in the second chapter of the methods and data.

1.1. Supranationalism

In order to understand the supranational side of the debate, the foundations must be built around one of the main theories of this school - neo-functionalism. This school of thought was developed in the 1950s by Haas as a further development and critique of functionalist ideas and nowadays is one of the best known European integration theory. Haas' theory is the first one that has been representing the school of the supranationalism, however, as it will be shown further in this work, only decades after the neofunctionalism ideas, other supranational theories were developed. So this means that for a long time the main integration discussion was not between supranationalism and intergovernmentalism, as it is now, but between neofunctionalism and intergovernmentalism.⁷

The leader of neofunctionalism school and the founding father is Haas, who offered his ideas and understanding of the "United Europe"⁸ in the regional integration's perspective. The neofunctionalism ideas started after scholar's understanding that integration pre-theories are not able to explain enough integration process in Europe. Haas saw the European integration as a process which by the time is not controlled by the member states. The main purpose of his investigation was to show the logic of the process of the political community and reaction of the states in terms of the creating this new actor in the international dimension.⁹

Neofunctionalism tries to understand, why a state makes a decision to be a part of a supranational institution and this is strongly connected with the question, why states

⁷ Sweet, A. and Sandholtz, W. (1997). European integration and supranational governance. *Journal of European Public Policy*, [online] 4(3), pp.298. Available at: <https://pdfs.semanticscholar.org/6f98/8948df42703ad04d1023aa98765569f38cc1.pdf> [Accessed 20 May 2018].

⁸ Haas, E. (1958). *The Uniting of Europe: Political, Social, and Economic Forces*. The Stanford University Press, pp.138.- 143.

⁹ Haas, E. (1958). *The Uniting of Europe: Political, Social, and Economic Forces*. The Stanford University Press, pp.138.- 143.

decide to delegate power to supranational institutions. It is a theory of regional integration with three main concepts that characterize loyalty, spillover effect, and supranational institutions.¹⁰

Spillover effect is the main idea behind the neofunctionalism understanding of integration process, which was defined by one of the main school thinkers and was defined as: “situation in which a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action..”¹¹ In other words, spillover effect brings to a situation in which integration in one economic sector automatically triggers integration in other sectors. To control this process, a transnational authority is needed. Neofunctionalists claimed that elites would see the benefits of so close cooperation and would see integration as a tool to solve national economic problems. Neofunctionalists are talking about different kinds of spillovers – functional, political. In the framework of this master thesis, looking at political spillover plays a more important role.¹²

Neofunctionalism has a clear explanation of how power delegation happens in the regional integration process and its main focus is on domestic factors. Neofunctionalists claim that not only national governments are those who influence power delegation process - there are other actors such as political parties, interest groups etc, who can influence power delegation process and by the time develop supranational loyalties.¹³

According to neofunctionalist theory, supranational institutions become more influential and strong thanks to further integration and the amount of switched loyalties, they can more formulate their own agendas. The decision to give larger scope of functions comes from the national governments. The initial function of supranational institutions is to administrate closer cooperation of countries in different policy areas. By become more

¹⁰ Eilstrup Sangiovanni, M. (2006). *Debates in European Integration*. Basingstoke: Palgrave Macmillan, pp.89. -104.

¹¹ Lindberg, L. (1963). *The Political Dynamics of European Economic Integration*. Stanford University Press, p.10.

¹² Haas, E. (1958). *The Uniting of Europe: Political, Social, and Economic Forces*. The Stanford University Press, pp.138.- 143.

¹³ Haas, E. (1958). *The Uniting of Europe: Political, Social, and Economic Forces*. The Stanford University Press, pp.138.- 143.

stronger and influential, supranational institutions pressure national governments to give more functions to them. Then by the time, the functions get wider.¹⁴ For this tendency it is possible to find numerous examples. Starting from the foundation of EU institutions, their functions are gradually expanding and number of supranational institutions are also growing. Reforms after the Maastricht Treaty is the best example of this neofunctionalist assumption (Co-decision- procedure). Or, for example, the creation of European External Actions Service. In the EEAS case, an institution was made to serve as a diplomatic institution concerning EU foreign policy. Delegation of more functions to the supranational institutions, makes them stronger and more influential.

The special role of economic interests is emphasized - according to Haas, not national governments are those who push the integration process but different societal groups for whom further integration is seen as being in their interests and a solution for problems. Integration is a tool to the desired ends and self-interest of the groups are at the core of the willingness to delegate power. Interest groups who lobby their economic interests are the main sources for loyalty transfer. Supranational loyalties and loyalty transfer is another aspect that leads to the power delegation as by the time actors try to turn to supranational bodies directly and skipping national governments in order to their interests to be represented.¹⁵ Neofunctionalism has been one of the most studied schools of the European integration, not only because of its ideas but also because of Haas who declared his own theory as obsolete during the empty chair crisis. However, this did not stop the evolution of supranationalism school of thought. 1990s brought new, prominent ideas to the supranational school. One of them is the notion of supranationalism that emphasizes the role of the networks: “since the cooperation on this level must result in the establishment of community, which is a type of a network”¹⁶. European Community is seen as: “more complex and pluralistic political structure,

¹⁴ Ibid.

¹⁵ Eilstrup Sangiovanni, M. (2006). *Debates in European Integration*. Basingstoke: Palgrave Macmillan, pp.89. -104.

¹⁶ Ruskowski, J. (2009). Supranationalism between nation-state and international cooperation. *Journal of public administration and policy research*, 1 (1), p.5.

less firmly under the control of member-state governments”¹⁷. This clearly shows the initial supranationalists understanding of supranational institutions as the main drivers behind the European integration process.

Supranational governance which became prominent in 1990s and is known mostly by Sandholtz’s and Stone Sweet’s idea of European Union transformation into supranational polity. Supranational governance has been seen as an opposition to the liberal intergovernmentalism ideas and as a combination of neofunctionalism and transactionalism. Both authors try to explain how the supranational governance has been created.¹⁸

Supranationalism main idea is based on the understanding that supranational institutions have a capability to influence all actors, even national governments of member states. According to Stone Sweet and Sandholtz, the transformation process has happened because of two reasons. Firstly, because of transactional exchange and communication such as trade, networks and different association, that has strongly expressed cross-border features. This further creates a social demands that escalates the need to produce more rules at the EU level. In order to govern the rules produced because of the social demand, there is bigger need for the supranational institutions. The second reason of the transformation process is the institutionalization that follows the strong place of the EU institutions.¹⁹

Power delegation to agencies under supranationalism

The logic of loyalty transfer and change in the expectations and behavior also builds the supranational understanding of agency establishment. Scholars emphasize that agencies

¹⁷ Pierson, P. (1998). The path to European Integration: A Historical-Institutionalist Analysis. In European Integration and Supranational Governance. edited by Sandholtz and Stone Sweet. Oxford University Press, p.25.

¹⁸ Sweet, A. and Sandholtz, W. (1997). European integration and supranational governance. Journal of European Public Policy, [online] 4(3), pp.297. Available at: <https://pdfs.semanticscholar.org/6f98/8948df42703ad04d1023aa98765569f38cc1.pdf> [Accessed 20 May 2018].

¹⁹ Sweet, A. and Sandholtz, W. (1997). European integration and supranational governance. Journal of European Public Policy, [online] 4(3), pp.297-317. Available at: <https://pdfs.semanticscholar.org/6f98/8948df42703ad04d1023aa98765569f38cc1.pdf> [Accessed 20 May 2018].

are an attempt to centralize regulatory power to Union level.²⁰ European Commission, according to supranational logic, is the main promoter of agency establishment and power delegation to them. However, there are some disagreements between the supranationalists of how exactly the power delegation is happening. For example, Sandholtz and Stone Sweet explain the power delegation as an aim from the side of EU institutions to make agencies as agents of integration. Other scholars such as Coen, Thatcher, Boin, Trondal tend to claim that power delegation to agencies happened because of the shift from network governance rooted in consensus to agency model supported by supranational actors.^{21 22 23}

Neofunctionalism is one of the most prominent European integration schools, developed by Haas. The main concepts of this theory are the spillover effect, transfer of loyalty. According to neofunctionalists, the domestic interest groups, especially political elite, is the one which by the time transfer their loyalties to a different - supranational level, pressuring the power delegation process. The main supranationalists claim is that the European integration process is controlled by supranational institutions and they support activities that would lead to further integration. European Commission is seen as the main promoter of power delegation to agencies.

Observable implications

If the supranationalist approach is right, then supranational institutions (the Parliament and the Commission) support bigger power delegation to the Frontex as that would positively influence further European integration. The commission is the main promoter for bigger power delegation to the Frontex.

²⁰ Haas, E. (1958). *The Uniting of Europe: Political, Social, and Economic Forces*. The Stanford University Press, pp.138.- 143.

²¹ Olsen, J. (2007). *Europe in Search of Political Order. An Institutional perspective on unity/diversity, citizens/their helpers, democratic design/historical drift, and the co-existence of orders*. Oxford: Oxford University Press, p.331.

²² Olsen, J. (2007). *Europe in Search of Political Order. An Institutional perspective on unity/diversity, citizens/their helpers, democratic design/historical drift, and the co-existence of orders*. Oxford: Oxford University Press, p.331.

²³ Majone, G. (2001). 'The Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance. *European Union Politics*, 2(1), p.119.

1.2. Intergovernmentalism

Two European integration theories - intergovernmentalism and liberal intergovernmentalism are related theories as both represent the intergovernmental logic of European integration. Intergovernmentalism is a regional integration theory that was initially developed by Hoffmann and further developed by Moravcsik into liberal intergovernmentalism. Both theories are playing a major role in analyzing the European integration process. Intergovernmentalism as a reaction to the neofunctionalism has been among the most important discussions in the academic world in the mid-1960s and has been a starting point for other theories and developments in the academic discussion. Liberal intergovernmentalism also has played a major role in the understanding of integration process.^{24 25}

Intergovernmentalist theory, where national governments are the main actors in the integration process, was developed by Hoffmann (1966) as a reaction to neofunctionalism integration theory and was based on realist assumptions. The main distinctive feature of intergovernmentalism is the understanding that EU integration process takes place within a specific international environment, where national governments having their interests, involve in the bargaining process and play a specific role in the global system.²⁶

By these assumptions Hoffmann made a serious challenge to neofunctionalists for whom the integration was seen as a snowball effect of co - operation and spillover effect process and national governments were losing the influence because of elite pressures. He started his intergovernmentalist assumptions from entirely different points than Haas and Lindberg. Hoffmann also saw the functional method as limited.²⁷

²⁴ Werdun, A. (2002). *European Integration Theory and Economic and Monetary Union*. 1st ed. Oxford: ROWMAN & LITTLEFIELD PUBLISHERS, INC, pp.9-11.

²⁵ Hoffmann, S. (1966). 'Obstinate or Obsolete? The Fate of the Nation State and the Case of Western Europe. *Daedalus*, No. 95, pp.892 -908.

²⁶ Hoffmann, S. (1966). 'Obstinate or Obsolete? The Fate of the Nation State and the Case of Western Europe. *Daedalus*, No. 95, pp.892 -908.

²⁷ Richardson, J. (2001). *European Union*. 2nd ed. London [u.a.]: Routledge, pp.60-65.

National governments have the possibility to block supranational institutions' try to integrate sectors that are closely related to the question of sovereignty. Based on this assumption, intergovernmentalists state that integration is only possible in low politics such as economics and welfare and not high politics such as defense, security, and foreign policy. Hoffmann emphasizes the importance of the vital interests of member states where losses and gains are not the ones national governments are ready to agree upon. Vital interests are those over which national governments will want to maintain control by minimizing uncertainty. Mostly vital interests are considered as coming from high politics such as defense, security etc.²⁸ As one of the great examples for this assumption is the "Empty Chair Crisis", where the importance of the vital interests was at the sake of France decision to not participate in European institutions ending by the Luxembourg compromise. De Gaulle refused to participate in EU institutions as France was not satisfied with the financing model of agriculture. This paralyzed the work of the Community and resulted in the creation of the veto power of member states that can be used by a member state in cases, when their veto interests are in danger.

Another suitable example of the intergovernmentalism ideas is the decades long discussion between the member states and supranational institutions about the plenary sittings in Luxembourg. The official seat of the European Parliament is located in Strasbourg, so every month MEPs go from Brussels to Strasbourg to have plenary sittings there. This way of work has been often criticized and called "travelling circus"²⁹. Average expenses that arise from moving from Brussels to Strasbourg is about 114 millions EUR.³⁰ This process has been criticized for years as expensive and ineffective and in 2012 EP a voting about this question was carried out, where 429 MEPs voted for a single seat and 184 against. Parliament had an intention to make changes in a treaty to make Brussels as the only seat, however in the case of making changes in a treaty requires unanimity, what gives France an opportunity to block this

²⁸ Wiener, A. and Diez, T. (2004). *European integration theory*. 1st ed. New York: Oxford University Press, pp.75 -86.

²⁹ Mendick, R. (2014). *The farce of the EU travelling circus*. [online] Telegraph.co.uk. Available at: <https://www.telegraph.co.uk/news/worldnews/europe/10565686/The-farce-of-the-EU-travelling-circus.html> [Accessed 13 May 2018].

³⁰ euractiv.com. (2014). *Auditors put price tag on EU Parliament 'travelling circus'*. [online] Available at: <https://www.euractiv.com/section/future-eu/news/auditors-put-price-tag-on-eu-parliament-travelling-circus/> [Accessed 11 Mar. 2018].

process. This is an example when one MS national interests prevail an idea of a supranational institution.³¹

After some stagnation period in European integration and loss of interest in the integration theory, the relaunch of the Community by the Single European Act brought integration theories into a new phase. Scholars were trying to understand the negotiation process of the Single European Act by trying to return to previous integration theories, revise and adjust them. One of such scholars was Moravscik, who returned to the realist school and intergovernmentalist theory assumptions developed mainly by Hoffmann. Moravscik argued that Britain, France, and Germany were those which in interstate bargaining process influenced the creation of the Single European Act and that member state was guarding their sovereignty by stopping the further transfer of sovereignty.^{32 33}

Moravscik (1993) elaborated intergovernmentalist theory into liberal intergovernmentalism. He understood the integration process through specific assumptions such as that actors are politically rational, involving in interaction based on their self - interest and risk - aversion: European integration is a “series of rational choices made by national leaders”³⁴. National governments are setting the integration pace and directions based on their interests and they are superior over supranational institutions. At the same time, national governments are pressured by the domestic society which influences the way how governments behave in international negotiations. This assumption at some point can be considered as similar to the neofunctionalism reasoning where political elites pressure for further integration as both these units are

³¹ Reuters Staff (2017). European parliament not moving from Strasbourg, France says. [online] uk.reuters.com. Available at: <https://uk.reuters.com/article/uk-france-eu/european-parliament-not-moving-from-strasbourg-france-says-idUKKBN1DX011> [Accessed 21 Mar. 2018].

³² Ibid7.

³³ Werdun, A. (2002). European Integration Theory and Economic and Monetary Union. 1st ed. Oxford: ROWMAN & LITTLEFIELD PUBLISHERS, INC, pp.21 - 39.

³⁴ Bindi, F. (2011). Italy and the European Union. 1st ed. Washington, D.C.: Brookings Institution Press, p.14.

from the domestic level. However, neofunctionalists do not see that national governments are important actors in the integration chain.^{35 36}

Liberal intergovernmentalism sees integration process as national government preference setting, bargaining, and regimes. According to Moravscik, integration process involves policy preference formation, inter - state bargaining and institutional delegation and is characterized by two-level game. Both theories - intergovernmentalism and liberal intergovernmentalism - are similar in their main assumptions that national governments are the main driving force behind the integration process, that these governments have their interests and they involve in the bargaining process. The biggest critique devoted to both theories is that they undermine the role of the supranational institutions. Interesting is the fact that neofunctionalist Lindberg has stated that some of Moravscik's assumptions can be used for some neofunctionalist claims.³⁷ Moravscik also used the model of principal-agent that will be explained further in this master thesis, which is trying to explain the complex system, relationships, and interactions of EU institutions.

In order to understand, can the upgrade of Frontex mandate be against vital interests of EU member states national governments, it is important to understand if borders are connected with the concept of sovereignty and can be classified as high politics. Borders have been always attached to a territory of a state. The treaty of Westphalia with which the territorial state was established, brought the understanding of the divisions between states and the concept of sovereignty. In recent decades, the understanding of the borders has changed. More and more academics write about globalization's influence on borders when talking about how accessible information and free movement of people are as a part of everyday life. The understanding of the state as a "nation - state" often have been exchanged by the concept of "multiculturalism".

³⁵ Ibid.

³⁶ Michelmann, H. and Soldatos, P. (1994). *European integration*. 1st ed. Lanham: University Press of America, pp.9-10.

³⁷ Richardson, J. (2001). *European Union*. 2nd ed. London [u.a.]: Routledge, pp.60-65.

Scholars agree that the nation - state is changing and transitioning into other phenomenon.³⁸

However, there is still common understanding of the role of borders as a part of states sovereignty. Salter defines borders as “.. a unique political space, in which both sovereignty and citizenship are performed by individuals and sovereigns.”³⁹ Balibar in his book "We, the people of Europe" explains, how concepts of sovereignty, borders have historically seen as interconnected and that the main reason for that comes from the concept of balance of power. While explaining the need for identity, he emphasizes that borders nowadays are more needed for institutions at the same time using the concept of citizenship without communities “..representation as it is, essential as it is, for state institutions”⁴⁰. Borders, which are used by institutions he calls "political borders"⁴¹ Kapferer sees the border as obvious part of states sovereignty and even describes borders as a territorial entity of sovereignty: “..constitutes peace within the borders of the order of its sovereignty”⁴² There have been trying to directly understand, what intergovernmentalisms mean by "high politics". in the chapter "Conditional intergovernmentalism or who decides what high politics is?"⁴³ And according to the academic research, borders are a part of high politics. Even if the role of the borders in the influence of globalization has changed, it still is considered as inseparable part of countries territorial integrity and sovereignty.

³⁸ Richardson, J. (2001). European Union. 2nd ed. London [u.a.]: Routledge, pp.60-65.

³⁹ Salter, M. (2008). When the exception becomes the rule: borders, sovereignty, and citizenship. *Citizenship Studies*, [online] 12(4), p.335. Available at: <https://www.tandfonline.com/doi/pdf/10.1080/13621020802184234?needAccess=true> [Accessed 15 Apr. 2018].

⁴⁰ Balibar, E. and Swenson, J. (2003). *We, the people of Europe? Reflections on Transnational Citizenship*. Princeton University Press, p.304.

⁴¹ Ibid.

⁴² Kapferer, B. (2013). *State, Sovereignty, War*. New York, NY: Berghahn Books, p.1.

⁴³ Edwards, G. and Pijpers, A. (1997). *The politics of European Treaty reform*. London, UK: Pinter, pp.233-235.

As stated above, according to intergovernmentalism theory, national governments are the main actors that, based on signed and ratified Treaties establish institutions, delegate power and set rules and mechanisms for those institutions.

Power delegation to EU agencies according to liberal intergovernmentalism

Intergovernmental explanation follows the logic that the delegation of power to agencies have occurred because of national governments decision to do that. National governments approve policies that will be managed at the EU level and there is a necessity to implement and monitor them. Power is delegated to the agencies with an aim to fulfill this necessity.⁴⁴ Power preference formation and institutions, including agencies, dependency on the resources of member states is at the core of power delegation according to Pollack. If looking at power delegation from Moravscik's liberal intergovernmentalism perspective, the European integration holds on three arguments - national preference formation, bargaining between EU and national actors and interstate commitments. If the intergovernmental logic is rights, then EU agencies should take into account also different national stakeholders of member states.

Intergovernmentalism and liberal intergovernmentalism are the main theories shaping the intergovernmental logic. The main idea is that national governments are controlling the European integration process and they will not allow the integrate sectors that are from high politics and would include vital interests of member states. Power preference formation, bargaining, dependency on resources, national stakeholders are influencing the power delegation according to intergovernmentalists.

Observable implications

⁴⁴ COEN, D. and THATCHER, M. (2007). Network Governance and Multi-level Delegation: European Networks of Regulatory Agencies. *Journal of Public Policy*, [online] 28(01), pp.51-53. Available at: [http://eprints.lse.ac.uk/21588/1/Network%20governance%20and%20multi-level%20delegation%20\(lsero\).pdf](http://eprints.lse.ac.uk/21588/1/Network%20governance%20and%20multi-level%20delegation%20(lsero).pdf) [Accessed 6 Apr. 2018].

If the intergovernmental logic is right, national governments control the integration process and are against further integration in high politics such as border management resulting in the failure to upgrade Frontex mandate.

1.3. Principal-agent framework

One of the mostly used frameworks in the analysis of the power delegation to the agencies is the principal-agent framework, which is used and adopted by most European integration theories, also supranationalism and intergovernmentalism. Moreover, this framework has been used not only in political science but also in other fields such as economics, finance, and others. The usage of this model in political science has been diverse as numerous theories also such as liberal intergovernmentalism and supranationalism has used it in different ways. It has been used also to study not only topics related to European studies, but also international relations and American studies.⁴⁵ Despite its broad usage, there are numerous ways of how to refer to it - framework, logic or model. This framework has been adopted also by the EU agency theory thinkers such as Dehousse that will be described later in this master thesis in EU agency theory subsection. The principal-agent model comes from the rational - choice theory and is the one which has been often used to explain complex institutional relations.

The principal-agent framework was introduced by Ross in 1973⁴⁶. Since then numerous scholars have been using, adjusting and trying to develop it. This framework aims to explain the complex relationships between an agent and a principal. Hussein Kassim has characterized the model as: “Agency relationships are created when one party, the principal, enters into a contractual agreement with a second party, the agent, and delegates to the latter responsibility for carrying out a function or set of tasks on the principal’s behalf”⁴⁷. In this model principal decides to delegate some power to an agent

⁴⁵ Bendor, Glaser, Epstein, Majone, Pollack, Hawkins etc.

⁴⁶ Ross, A. (1973). The Economic Theory of Agency: The Principal's Problem. The American Economic Review, 63(2), pp.134. -139.

⁴⁷ Kassim, Hussein, Menon and Andan (2003). The principal-agent approach and the study of the European Union: promise unfulfilled?. Journal of European Public Policy, 10(1), pp.121-139.

who will carry out some tasks on the behalf of the principal. Moravscik used the term “agency slack”.⁴⁸

The principal-agent framework looks at such aspects as for why a principal decides to delegate power to an agent, at different interests and an attempt to control the agent at the same time trying not to lose the benefits of the power delegation. According to principal-agent model, member states are principals, who delegate power to agents (institutions - agencies in this case). In the framework of this master thesis, member states have delegated part of border management function to an agency - Frontex (external border management is a shared responsibility). Principal-agent model is often used to analyze relationships between EU member states and EU institutions.^{49 50}

One of the main questions that are at the core of this framework similarly as it will be explained further in the EU agency theory, is why the principle decides to delegate power to the agent. Principals understand that an agent can do the delegated duty or task better than the principal, mostly because of lower transaction costs, technical expertise, commitment, access to information etc.⁵¹

Principal-agent model states that agents are complex social entities with their own interests and the model at the same time foresee the situation when by the time an agency can obtain preferences that are different from those that their principals have. According to Tallberg, member states can decide to delegate functions also because of distrust between member states in the certain area. One of the main questions principal-agent model scholars have been searching for an answer is - under which circumstances principals are ready to delegate powers to the agents?⁵²

⁴⁸ Ibid 12.

⁴⁹ Ibid. pp.121-139.

⁵⁰ Pollack, M. (2005). Theorizing the European Union: International Organization, Domestic Polity, or Experiment in New Governance?. *Annual Review of Political Science*, 8(1), p.357-398.

⁵¹ Ibid.

⁵² Ibid.

Principal-agent framework explains the complex relationship between principals and agents. The framework reveals that by the time the agents can emerge the interests that are not the same as the ones of their principals. Based on the principal - agent model, and its main understanding that agents by the time can develop their own interests and preference that might differ from the one that the principal has, the idea may also play a role in the case of the Frontex reform process. Frontex as an agent might develop its own preferences in the field of border management that are different from national governments' preferences. If in the reform process member states would give to the agency bigger rights to act on their own, it might lead to the situation, when the agency would act not according to national governments' interests. According to the principal - agent model, the caution of the member states might be based on this idea.⁵³

In the case of Frontex and the framework of this research it is more important not to look at previously named circumstances but to look at the post - delegation process . Frontex has been established by the decision of member states (principals) but at the same time the principal has not given proper amount of operational rights to the agent to operate effectively.

1.4. EU Agencies

EU policy-making process and the institutional structure is often characterized as complex machinery because of the numerous actors, interest groups, working procedures, rules, norms, principles and the *acquis communautaire* that is governing the everyday functioning of the Union. If comparing both - policy-making and institutional structure of the today's EU with the one that the European Coal and Steel Community, founded in 1952, had, the growth of the complexity is evident. The building of the new supranational authority after the Schuman plan was based on a structure of four institutions - High Authority, Special Council of Ministers, Common Assembly and Court of Justice. High Authority made from members of the states had the right to proposal, the Special Council of Ministers were making decisions on the matters proposed by the High authority members, Common Assembly was working as an

⁵³ Pollack, M. (2005). *Theorizing the European Union: International Organization, Domestic Polity, or Experiment in New Governance?*. *Annual Review of Political Science*, 8(1), p.357-398.

advisory body and the main duty of the Court of Justice was to check the legality of the work of High authority and settle disputes between the member states.⁵⁴

Today EU is made from numerous institutions, bodies, and agencies that are all formed in order to assure uninterrupted and effective work of the Union. Institutions such as European Parliament, European Commission, Council of the EU which are the law - making institutions, European Council which sets the strategic guidelines are all part of the EU. Also other bodies such as European Central Bank, Court of Justice of the EU, European External Action Service, European Committee of the Regions, European Ombudsman etc. have such duties as representation, law interpretation, coordination of EU's external action and others.⁵⁵ In addition to all institutions and bodies, there are also "separate legal entities set up to perform specific tasks under EU law"⁵⁶ - agencies. EU has divided all agencies into four categories - decentralized agencies, agencies under under Common Security and Defence Policy, Executive agencies, EURATOM agencies and bodies and other organizations. Agency typology by the tasks there are doing is the most common also in the academic literature.

There is no common definition of an agency in the academic literature, however, the understanding of an agency as a legal entity, with specialized tasks and specialized mandate is present. First of all, the Commission itself has defined what an agency is: "... any autonomous legal entity set up by the legislative authority, in order to help regulate a particular sector at European level and help implement a Community policy"⁵⁷. One common feature among definitions is the clarity element - when it comes to agencies, their tasks are clear just as it is with the mandates of agencies.⁵⁸

⁵⁴ McCormick, J. (2015). Organizing Postwar Europe. In: J. McCormick, ed., European Union Politics, 2nd ed. London: Palgrave, pp.70. - 74.

⁵⁵ European Union. (2018). Institutions and bodies - European Union - European Commission. [online] Available at: https://europa.eu/european-union/about-eu/institutions-bodies_en [Accessed 2 Apr. 2018].

⁵⁶European Union. (2018). Agencies and other EU bodies - European Union - European Commission. [online] Available at: https://europa.eu/european-union/about-eu/agencies_en [Accessed 2 Apr. 2018].

⁵⁷ Draft Interinstitutional agreement on the operating framework for the European regulatory agencies COM(2005)59 final, 25.02.2005

⁵⁸ Daniel Kelemen, R. (2012). European Union Agencies. In: E. Jones, A. Menon and S. Weatherill, ed., The Oxford Handbook of the European Union. Oxford: Oxford University Press.

The interest in EU specialized agencies is high. Dehousse has characterized the agency creation process as: “.. one of the most interesting developments of the past 15 years in European public administration”⁵⁹. The academic research with a focus on EU agencies has been growing in last decades as the interest in this new mode of EU governance has been increasingly interesting for the scholars. Wonka and Rittberger explain that with the growing number of agencies that influence the institutional build-up of the EU and the expanding tasks that have been delegated to those agencies.⁶⁰ Tallberg raises numerous questions that can be asked about national governments decision to delegate power to supranational institutions such as why such a decision is made at the national level? Why national governments prefer specific international governance forms than others?⁶¹

The vast majority of EU agency theory is looking at the concept of “agencification” by trying to explain the creation of the agencies. Agencification concept explains agency creation as a broader trend in the political environment. This concept has been used in other theories connected with public administration and governance and it means a process when a portfolio is divided by numerous bodies, including agencies. Specific mandate, the field of activity and duties are characteristics of agencification. They search for general explanations in the gradual shift of “regulatory capitalism”⁶² influenced by the industrialized world. ⁶³ Political and functional interests have been seen at the core by Curtin and Dehousse.⁶⁴

⁵⁹ Dehousse, R. (2007). Delegation of Powers in the European Union: The Need for a Multi-principals Model. [ebook] Centre d'études européennes de Sciences Po. Available at: http://www.sciencespo.fr/chaire-madp/sites/sciencespo.fr.chaire-madp/files/renaud_dehousse.pdf [Accessed 11 Apr. 2018].

⁶⁰ Arndt Wonka & Berthold Rittberger (2010) Credibility, Complexity, and Uncertainty: Explaining the Institutional Independence of 29 EU Agencies, *West European Politics*, 33:4, 730-752, DOI:

⁶¹ Jonas Tallberg (2002) Delegation to Supranational Institutions: Why, How, and with What Consequences?, *West European Politics*, 25:1, 23-46, DOI: 10.1080/713601584

⁶² Levi -Faur, D. and Jordana, J. (2005) ‘The rise of regulatory capitalism. The global diffusion of a new order’, *Annals of the American Academy of Political and Social Science* 598: 12–32.

⁶³ Berthold Rittberger & Arndt Wonka (2011) Introduction: agency governance in the European Union, *Journal of European Public Policy*, 18:6, 780-789, DOI: 10.1080/13501763.2011.593356

⁶⁴ Curtin and Dehousse, ‘EU Agencies: Tipping the Balance?’, in Busuioc, Groenleer, and Trondal, *supranote* 15, 194.

When thinking about EU Agencies, one of the most discussed questions is why were those EU bodies even created? This is one of the most analyzed questions in the EU agency literature. What necessity pushed EU institutions and member state governments to delegate tasks and powers to them? One of the common aspects in academic literature emphasized by numerous scholars is that delegation of power can happen only when EU institutions - Commission, Parliament, and Council have agreed on doing that and agreed on how the agencies will be built. One of the scholars who also supports this thought is Kelemen: "The design of EU agencies is the result of a compromise between EU's political principals, each of them favoring institutional designs they think will promote their interests"⁶⁵. He also emphasizes that "... designed to serve the interests of - the EU's three main political principals - the Council, the Parliament, and the Commission"⁶⁶. That means that the creation of an agency can be not based only on one institution's interest in doing that. The creation of an agency should be beneficial to the all-Union together.

Limited capacity and technical expertise of the Commission has been one of the main reasons behind agency creation according to the majority of academic literature. This has been also the earliest explanations developed in 1997 ⁶⁷, which still till nowadays is popular between the scholars. For example, Majone explains the attractiveness of the EU agencies in the fact that after the creation of agencies, Commission can focus on its primary tasks such as legislation proposal making at the same time, keeping the control over them and having a body that has very technical expertise in the given field.⁶⁸

The combination of supranationalism and intergovernmentalism ideas is at the core of EU agency theory basic explanations of power delegation. Academics agree that all three institutions - Parliament, Commission, and Council of the EU have different preferences, interests, and reasons why they are ready to delegate power to EU agencies

⁶⁵ Daniel Kelemen, R. (2012). European Union Agencies. In: E. Jones, A. Menon and S. Weatherill, ed., The Oxford Handbook of the European Union. Oxford: Oxford University Press.

⁶⁶ Daniel Kelemen, R. (2012). European Union Agencies. In: E. Jones, A. Menon and S. Weatherill, ed., The Oxford Handbook of the European Union. Oxford: Oxford University Press.

⁶⁷ Dehousse, R. (1997) 'Regulation by networks in the European community: the role of European agencies', *Journal of European Public Policy* 4(2): 246-61

⁶⁸ Majone, G. (2005). *Regulating Europe*. London: Routledge, p.342.

and how they think agencies should look like. Moreover, some academics tend to classify agencies as "community" and "Council Agencies", which supports this argument.⁶⁹

The case of the Frontex has been a research object in understanding why national governments decide to delegate power to an agency. One of such research is made by Ekelund who aimed to understand the Frontex establishment in 2004, which has been accompanied by numerous controversies and difficulties. For example, Ekelund when analyzing the creation of the Frontex from the new institutionalism perspective, writes: "Its creation and activities have been surrounded with controversy within and beyond the EU institutions."⁷⁰ Similarly to this master thesis, Ekelund in her research conducts document analysis and emphasize the complexity of understanding the diverse interests of all three institutions.⁷¹

Power delegation and the establishment of an agency can happen only when three sides - Council, Commission and the Parliament find a compromise between each other to do so. Scholars have managed to theorize the main interests of all three institutions have in the power delegation process. Every actor involved in the decision-making process of the power delegation process have their own interests what they are trying to pursue.⁷²

The **European Parliament** is an actor that wants to achieve bigger integration and it would be in its interests to promote the creating of agencies. However, the way how the work of the agencies should look like is different for the Parliament than for the Council or the Commission. In its interests, it is to have agencies that are well controlled with transparent working procedures. Parliament would oppose the situation when an agency

⁶⁹ Daniel Kelemen, R. (2012). European Union Agencies. In: E. Jones, A. Menon and S. Weatherill, ed., The Oxford Handbook of the European Union. Oxford: Oxford University Press.

⁷⁰ Helena Ekelund (2014) The Establishment of FRONTEX: A New Institutional Approach, Journal of European Integration, 36:2, 99-116, DOI: 10.1080/07036337.2013.809345

⁷¹ Ibid.

⁷² Daniel Kelemen, R. (2012). European Union Agencies. In: E. Jones, A. Menon and S. Weatherill, ed., The Oxford Handbook of the European Union. Oxford: Oxford University Press.

is slipping away from political control. As it has no right to control the work of agencies, Parliament would support an agency accountability to actors that are close to it.⁷³

The main interest in power delegation process of the **European Commission** is to keep the agencies as close to it as possible. Agencies with good resources, staffing is a way to expand Commission's regulatory power and that is definitely in its interests. If it is not possible to keep the agencies in direct Commission's control, then it would tend to support agencies that member state governments would not have direct supervision over. More autonomous agencies would be the second choice of the Commission but they should be as close, dependent and tied to it as possible.⁷⁴

Council of the EU would tend to agree on the establishment of an agency to avoid bureaucratic drift that has been present from the early existence of the Community. Bureaucratic drift is a situation when member states delegated powers to a supranational body (the Commission) and by the time it has managed to acquire unexpected autonomy and push the process of European integration further, despite the fact that it was not the initial intention of the national governments. So in agency building process, the Council's main interest is to keep a possibility to control of the established agencies and to lessen their dependency on the Commission. Agencies management board made from national representatives is supported by the Council.

In this interest division, the combination of intergovernmentalist and supranationalist ideas are present. The supranational institution's interests are to keep the control of the agencies as close to them as possible and push the integration process further. National governments want to control the agencies and them to be not dependent on the Commission to avoid previously noticed bureaucratic drift.

Numerous academic research has been done also to analyze the activities of the Frontex. Such aspects as Frontex activities in border management system, involvement in RABIT operation to Greek – Turkish border are analyzed by Carrera, Jorry, Guild.

⁷³ Ibid.

⁷⁴ Ibid.

Some academics explain this trend with the controversies and complexity that has been surrounded Frontex political aspects⁷⁵.

The reasons behind the decision to delegate power and create agencies are one of the main EU agency theory academic discussion cornerstones. In this theory, the power delegation is seen as a compromise between the Council, Commission, and Parliament. EU agency theory scholars have developed the behavior, preference and interest expectations of all those three actors. These expectations have a combination of the ideas of intergovernmentalists and supranationalists.

Observable implications

If the EU agency theory is right, then in the Frontex reform process:

- 1) *The Commission will be in favor of giving to the Frontex bigger autonomy and upgrade its mandate, keep the control of the agencies work in its responsibility, would be against the bigger control of national governments.*
- 2) *The Parliament will be in favor of keeping a political control over the agency and would support a supervision of an actor that is close to it.*
- 3) *The Council will be in favor of an agency over which it would have a control and it would not be controlled or dependent on the Commission in order to lessen the bureaucratic drift.*

⁷⁵ Helena Ekelund (2014) The Establishment of FRONTEX: A New Institutionalist Approach, Journal of European Integration, 36:2, 99-116, DOI: 10.1080/07036337.2013.809345

2. Methods and data

In this master thesis, single case analysis is used as one concrete political process of power delegation (mandate upgrading) will be analyzed and the thesis author is interested in one particular phenomenon - power delegation to specialized agencies. The power delegation process to the Frontex will be analyzed in depth and in detail. The main aim of the usage of a case study is to understand, what are the factors that led to the failure of not upgrading Frontex mandate. Harrison and Callan in their book writes that : “doing .. case studies is a complex task that cannot be accomplished through occasional, brief investigations”⁷⁶. In this thesis, the author aims to give a qualitative analysis that would produce a narrative of a policy process of Frontex reform after 2015 in the light of Migration crisis, by doing a deep and detailed investigation.

Process tracing

The method used in this master thesis is a process- tracing. This method is used in qualitative researches and this MA thesis, empirical part will be made based on qualitative data that will form the narrative about the Frontex reform process that started after 2015 in the context of Migration crisis. The method of process tracing is becoming more popular in recent decades as it is used in many scholars research and has been a subject for a research of numerous academics.⁷⁷

Although there is no common definition for this tool, it is visible that academics have a similar understanding of what this tool is and what it aims to achieve. According to Hall, simple explanation of the main purpose of process tracing tool is to “..investigate causal relationship in the political world”⁷⁸. Searching for causal relationship and mechanism is one of the elements emphasized by numerous academics. Also, Collier emphasizes that “process tracing can contribute decisively both to describing political and social

⁷⁶ Harrison, L. and Munn, J. (2013). Key research concepts in politics & international relations. 1st ed. London: Sage, p.10.

⁷⁷ Yataganas, X. (2018). Delegation of Regulatory Authority in the European Union. [online] Jeanmonnetprogram.org. Available at: <https://jeanmonnetprogram.org/archive/papers/01/010301.html> [Accessed 22 Apr 2018]

⁷⁸ Hall, P. (2012). Tracing the progress of process tracing. [ebook] Cambridge: Minda de Gunzburg Center for European Studies, Harvard University, p.1. Available at: https://scholar.harvard.edu/files/hall/files/hall2012_eps.pdf [Accessed 7 Apr. 2018].

phenomena and to evaluating causal claims."⁷⁹ In this master thesis, I aim to understand the factors that influenced a particular outcome - so to find a causal relationship.

The process - tracing method was chosen as the main aim of this study is to understand, why the Frontex reform process resulted in such reforms - what actors were involved in decision-making process, what were their interests, what were the points for conflicts and most important - whose interests prevailed? Shortly, it is important to understand, why the specific outcome was reached by determining causal mechanism.

Process - tracing tool is mostly used in single - case studies such as this research and the main aim of it is to trace causal relationships: "the cause-effect link that connects independent variable and outcome is unwrapped and divided into smaller steps; then the investigator looks for observable evidence of each step."⁸⁰ There are three different types of process tracing tool - theory testing, theory building and explaining the outcome. The main similarities between those three types are that they all seek to explore the causal mechanism that leads to a concrete outcome. The main difference between theory testing and building and explaining outcome process tracing is that first two are theory-centric and the last one - case centric. Theory centric ones more tend to aim to generalize the single case and move beyond it to generalize the conclusions.⁸¹

Despite the fact, that first two types are theory-centric and the explaining outcome is case-centric, a theory still plays an important role in the third type and is described as a theory-guided analysis. In this master thesis, numerous theories were used in order to find the possible factors that might influence the outcome of Frontex reform process. With explaining outcome process tracing complicated cases are analyzed to which it is not possible to apply one theory: "Cases are always too complicated to vindicate a single theory, so scholars who work in this tradition are likely to draw on a *mélange* of theoretical traditions in hopes of gaining greater purchase on the cases they care

⁷⁹ Collier, D. (2011). Understanding Process Tracing. PS: Political Science & Politics, [online] 44(04)pp.823-830. Available at: <http://www.ukcds.org.uk/sites/default/files/uploads/Understanding-Process-Tracing.pdf> [Accessed 3 Mar. 2018].

⁸⁰ Van Evera, S. (1997). Guide to Methods for Students of Political Science. Ithaca: Cornell University Press, p.64.

⁸¹ Process-Tracing Methods in Social Science. (2017). [ebook] Oxford Research Encyclopedias. Available at: <http://politics.oxfordre.com/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-176> [Accessed 11 Apr. 2018].

about.”⁸² This is visible in this master thesis, as it is not clear, which European integration theory - intergovernmentalism, supranational theories, EU agency theory or principal-agent framework can offer the best theoretical background for the case analyzed. The overview of all these approaches is given with an aim to achieve a broader understanding of possible factors that might have influenced the outcome of Frontex reform process in 2015 and test them in the analytical part.⁸³

In the cases, when it is evident that existing theoretical ideas can not give sufficient explanation for the specific case, it indicates that theory-centric process tracing will not be suitable in such case. That leads to a conclusion that explaining outcome process tracing can be used. It starts with using deductive or inductive path. In deductive path, alternative theoretical explanation will be searched for. If it is visible that also deductive path cannot provide a researcher with an explanation, the inductive path can be used to search for explanations brought from an empirical evidence. mostly this is done in not broadly studied phenomena and is bottom-up research. ⁸⁴

Minimal sufficient explanation is the core of explaining outcome process tracing type . In cases that are analyzed with this type of process tracing it is complicated to find systematic mechanisms. On contrary, as these cases are unique in the space or timing, non - systemic mechanisms are those who can bring a researcher to an explanation of an outcome⁸⁵. In order to find minimal sufficient explanation: “.. we often also have to work backward from a known outcome by tracing the empirical process that led to it.” ⁸⁶ The case analyzed in this master thesis is unique as the European Migration crisis has been an unprecedented challenge for the EU, also Frontex by its nature is an agency that is operating in the "high politics" of border management and, most important, the reform process that was influenced by the EU's incapability to tackle the Migration crisis.

⁸² Evans, P. (1995). Contribution to symposium The Role of Theory in Comparative Politics. *World Politics*, 48(1), p.4.

⁸³ Beach, D. and Pedersen, R. (2013). *Process Tracing Methods. Foundations and Guidelines*. 1st ed. University of Michigan Press, p.248.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

In this master thesis explaining outcome process tracing will be used as this is a case-centric research aiming to reach and sufficiently understand the explanation of the outcome.⁸⁷ At the beginning of the empirical part, only outcome (B) is certain. What has influenced (A) that outcome is not certain and the author wants to find out what caused B to happen.

Process tracing tool is used by breaking the process of interest meaning to break down the events that led to an outcome⁸⁸ – i.e. the 2015 Frontex reform process and numerous events that have happened during this process. The European Council's statement about more powerful Frontex is used as the process starting point and the adoption of the final legal act (regulation) of the establishment of the EBCG is the outcome of the reform making process.

The main aim of the process tracing process in this master thesis is to find out who are the main actors involved in the reform process, what are their interests and what reforms are they supporting and against which they object, what are the main conflicts of these actors and which interests prevail. Explaining outcome process tracing is trying to “ .. enables us to capture actor choice”⁸⁹ and this is exactly what I want to achieve by this master thesis.

Despite the high interest in the process tracing, this method is new in political science and lacking precise usage framework which leads to disagreements on how the tool should be used. As it was mentioned before, the main purpose of process tracing is to explore causal mechanism but there is also confusion about how that should be done. Another critique specifically about explaining outcome process tracing is the absence of the understanding when a minimally suitable explanation is found. According to Beach and Pedersen, this is a subjective assessment and depends on the decision of the researcher. In order to achieve the best results by using the process tracing method and

⁸⁷ Beach, D. and Pedersen, R. (2013). *Process Tracing Methods. Foundations and Guidelines*. 1st ed. University of Michigan Press, p.248.

⁸⁸ Beach, D. and Pedersen, R. (2013). *Process Tracing Methods. Foundations and Guidelines*. 1st ed. University of Michigan Press, p.248.

⁸⁹ *Ibid.* p.36.

to control method's limitations⁹⁰, Beach and Pedersen's book "Process Tracing Methods. Foundations and Guidelines"⁹¹ will be used.

In recent years the usage of process tracing method in social science research is growing. For example, explaining outcome process tracing has been used in such research as Schimmelfennig's 2001/2003 analysis of EU enlargement and Robert Jervis, *Why Intelligence Fails: Lessons from the Iranian Revolution and the Iraq War*. Jervis in his paper is analyzing cases by trying to answer the question if it is possible to avoid intelligence agencies mistakes. With the help of explaining outcome process tracing, he is trying to find mechanisms of failure⁹². One of the most classical cases of process tracing method is Cuban missile crisis. Allison in 1971 used explaining - outcome process tracing in order to understand the complicated puzzle of the Cuban missile crisis by applying three models of decision-making process.⁹³

In this master thesis, the only exit point for the research is the outcome - the failure to upgrade the mandate of Frontex. The upgrade of mandate in this master thesis has been linked to the concept of power delegation. Already in the introduction, I have emphasized that in this research only specific aspects of power delegation will be analyzed, however, it is important to elaborate more on this aspect. The upgrade of the mandate has been used in connection with the concept of "independence" or "autonomy" of the agency. In academic literature concepts of autonomy and independence are used as synonymous and to describe the same phenomena. Agency independence is: "...how far the relationship between the agencies and its political masters allows for independent decision - making"⁹⁴. In this master thesis the concept of

⁹⁰ Beach, D. and Pedersen, R. (2013). *Process Tracing Methods. Foundations and Guidelines*. 1st ed. University of Michigan Press, p.248.

⁹¹ Ibid.

⁹² Jervis, R. (2018). *Why Intelligence Fails: Lessons from the Iranian Revolution and the Iraq War* (Cornell Studies in Security Affairs). 1st ed. Cornell University Press, p.248.

⁹³ Allison, G. (1969). *Conceptual Models and the Cuban Missile Crisis*. *American Political Science Review*, 63(03), pp.689-718.

⁹⁴ Busoiu, Madalina and Groenleer (2013). *The Theory and Practice of EU Agency Autonomy and Accountability: Early Day Expectations, Today's Realities and Future Perspectives*. In: Everson, Monda and Vos, ed., Busoiu, Madalina and Groenleer, Martijn L. P., *The Theory and Practice of EU Agency Autonomy and Accountability: Early Day Expectations, Today's Realities and Future Perspectives* (April 15, 2013). To be published in: M. Everson, C. Monda and E. Vos (eds.), *European Agencies in between Institutions and Member States*, Alphen aan den Rijn: Kluwer Law International.

independence will be used as this concept more refers to a being free of political constraints⁹⁵ and this research aims to look at the political side of power delegation.

Why is it important to analyze the independence of an agency? Because it influences the way how an agency behaves. There is no agreement which of the concepts - independence or autonomy should be used. For example, Busoiu and Groenleer claims that the concept of autonomy should be used instead of independence because of the level of accountability, dependence, and control.⁹⁶ Also, Vos agrees with that by emphasizing the hybrid character of the agencies that is excluding the possibility for them to be independent. In the context of this research, Vos typology of independence will be used as she is offering the most suitable types according to the research question.⁹⁷

Institutional, staffing, financial and functional independence are four types used by Vos⁹⁸. As it was mentioned before, this master thesis does not aim to look at the financial part. To answer the research question, two types of the independence will be analyzed - institutional, staffing and functional. The institutional independence concerns the institutional design, particularly, the management board. Functional independence means the autonomy to act and make decisions without asking for an approval to other institutions.⁹⁹ All the six documents Commission's proposal for a regulation of the European Parliament and of the Council on the European Border and Coast Guard on December 2015, Council mandate for negotiations on April 2016, European Economic and Social Committee opinion on May 2016, European Parliament report in LIBE

⁹⁵ Svedin, L. (2011). The Autonomy of European Union Agencies: A Comparative Study of Institutional Development. *Journal of Comparative Policy Analysis: Research and Practice*, 13(3), pp.343-343.

⁹⁶ Busoiu, Madalina and Groenleer (2013). The Theory and Practice of EU Agency Autonomy and Accountability: Early Day Expectations, Today's Realities and Future Perspectives. In: Everson, Monda and Vos, ed., Busoiu, Madalina and Groenleer, Martijn L. P., *The Theory and Practice of EU Agency Autonomy and Accountability: Early Day Expectations, Today's Realities and Future Perspectives* (April 15, 2013). To be published in: M. Everson, C. Monda and E. Vos (eds.), *European Agencies in between Institutions and Member States*, Alphen aan den Rijn: Kluwer Law International. p. 287,

⁹⁷ Vos, E. (2016). *EU Agencies and Independence*. Oxford: Oxford University Press, pp.DOI:10.1093/acprof:oso/9780198769798.003.0007.

⁹⁸ Ibid.

⁹⁹ Ibid.

Committee May 2016, and the Final legal act Regulation 2016/1624 of The European Parliament and of the Council of 14 September 2016. will be analyzed in these lines.

Academics agree that there are numerous types of independence, however, the typologies in the literature vary. For example, Barbieri and Ongaro claim that there should be three types of independence - financial, managerial, strategic¹⁰⁰. Wonka and Rittberger write about the formal mandate, the rules of appointing the director and management board, selection of the staff, and how relations with the principals are organized.¹⁰¹

When looking at how EU specialized agencies are created and why national governments decide to create them, an important aspect is to know, how does the EU law regulate power delegation process to the agencies. Just the same as principles of proportionality and subsidiarity, which are at the core of the functioning of the EU and assures that the Union can act to a certain degree and extent and in certain areas, there are also limitations of how much power it is allowed to delegate to the agencies. Yataganas, when writing about the power delegation, explains that “.. the Community institutions delegate powers which have been conferred on them by the Treaty to bodies having their own legal personality, such delegation must be limited to implementing powers clearly defined and entirely supervised by the delegating institution on the basis of specific and objective criteria.”¹⁰² EU institutions, when delegating power, has to act according to EU law.

The main principles concerning institutional balance come from the Meroni doctrine¹⁰³ and the Article 114 TFEU. Meroni non - delegation doctrine is based on two judgments of the Court of Justice of the European Union (C-9/56 and C-10/56) and works as the basis for institutional balance. The first Court ruling comes from 1956 so-called "Meroni case". The core of the Meroni non - delegation doctrine claims that EU

¹⁰⁰ Barbieri, D. and Ongaro, E. (2008). EU agencies: what is common and what is distinctive compared with national-level public agencies. *International Review of Administrative Sciences*, 74(3), pp.395-420.

¹⁰¹ Wonka, A. and Rittberger, B. (2010). Credibility, Complexity and Uncertainty: Explaining the Institutional Independence of 29 EU Agencies. *West European Politics*, 33(4), pp.730-752.

¹⁰² Yataganas, X. (2018). Delegation of Regulatory Authority in the European Union. [online] *Jeanmonnetprogram.org*. Available at: <https://jeanmonnetprogram.org/archive/papers/01/010301.html> [Accessed 22 Apr. 2018].

¹⁰³ Judgment of the Court of 13 June 1958. - Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community. - Case 9-56

institutions can delegate power to agencies but this possibility has to be limited. The logic behind that is that EU member states have delegated power to the EU institutions and not their agencies, so if at the EU level there is a decision to make such a delegation, the delegation has to be "...under precise rules and within boundaries carefully defined by the EU legislator."¹⁰⁴

In the framework of this master thesis, its author claims, that national governments of the member states are those, whose interests prevail in Frontex reform making process. As the author aims to produce an in-depth qualitative narrative, different sources will be used. Firstly, document analysis that will be made by using official legal documents from EUR-lex (the data base of the EU law) and also from other official EU websites. These texts are chosen as all of them have been made in the process of decision making and shows the interests of the involved actors that is at the core of this research. Secondly, speeches, media coverage (Politico, Reuters etc.), interviews, government reports that might unfold the member states attitude towards the Frontex reforms. The analytical part will start with the examination of the situation before the reform process, namely, Frontex mandate before the reforms in 2015 in order to have a basis for a comparison. After that, the process tracing of the 2015 reform process will start. Firstly, a document analysis will be made. All six public documents that were published and are concerning the decision-making process will be made. In order to provide a document analysis with which it is possible to make structured conclusions, all analyzed documents will focus on two main aspects of the Frontex mandate, derived from the previously explained theoretical independence/ autonomy explanations. these are:

1. Institutional independence
2. Functional independence

The method used in this thesis is the explaining outcome process tracing, this case - centric research built on numerous theories in order to find the factors that can explain the failure to upgrade the Frontex mandate in the context of the Migration crisis. As it

¹⁰⁴ Pelkman, J. and Simoncini, M. (2014). Mellowing Meroni: How ESMA can help build the single market. [online] Ceps.eu. Available at: <https://www.ceps.eu/system/files/Mellowing%20Meroni.pdf> [Accessed 22 Apr. 2018].

was explained before, one of the main critiques of this method is the subjectivity as it is not certain what is the moment when with the used theories is enough. This leads to a situation when the author cannot be sure that all possible factors are revealed.

The materials that are not publicly available, for example, the Council discussions that would reveal the positions of the national governments. This is a problem as an official position can differ from the internal voting in the Council as in the process of bargaining in the reality the responsible minister can vote against the official position of its country and as the voting is not always public, no one would know that this has happened.

In this master thesis the official positions of national governments will come from the publicly available sources, so the limitation is that these positions can differ from the ones that were in the reality. Also, not all member states have given official positions on the reform process that limits the access to the information.

3. Analysis of Actors' interests in the Frontex Reform Process

3.1. Situation prior to the reform

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union also known as the Frontex was established in 2004 with the location of its headquarters in Poland (Warsaw). The main document, under which agency was established is Council Regulation (EC) 2007/2004, which clearly presents the main tasks of the agency. The initial tasks of the agency at the time of its establishment included: coordinate cooperation of the EU member states, make risks analysis of how capable are the Member states to protect their external borders (only the technical aspects), help member states to train their national border guards, if necessarily, provide technical or operational help to them.¹⁰⁵

The understanding of the necessity to change the way *Frontex* work has not left unnoticed at the EU level as in 2016 the agency underwent numerous reforms. The president of the European Council Donald Tusk after the reforms have said: "To save Schengen, we must regain control of our external borders. A new European Border and Coast Guard Agency is being created"¹⁰⁶. This quote serves as the understanding of the importance of the Frontex work as the agency is seen as a tool to change the complicated situation at the Union's external borders. The agencies name was changed to European Border and Coast Guard in 2016 with the new regulation¹⁰⁷. All the initial process of the reform planning seemed as an opportunity to a new agency which will successfully act in the border management questions.

¹⁰⁵ Frontex.europa.eu. (2016). *COUNCIL REGULATION (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*. [online] Available at: http://frontex.europa.eu/assets/About_Frontex/frontex_regulation_en.pdf [Accessed 23 Nov. 2016].

¹⁰⁶ Sadet, R. and Cerdeira, V. (2016). European Border and Coast Guard: final approval - Consilium. [online] Consilium.europa.eu. Available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/09/14/european-border-coast-guard/> [Accessed 16 May 2018].

¹⁰⁷ REGULATION (EU) 2016/1624 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 September 2016. (2016). [ebook] Official Journal of the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1624&from=EN> [Accessed 12 Apr. 2018].

The initial plan was to make the agency bigger, double the budget, add more staff members and the most important - let the agency work independently in urgent situations by intervening in the member states without an official invitation. From the beginning of the *Frontex* work, one of the lacking factors was the inability to act in member states territory without its permission. To make any activities in the member states territory, the agency had to receive an invitation from the national government, so only member state could decide to receive any help from Frontex. The agency had no right to initiate any such kind of activities. The initial plan of the reforms was to allow to do it without the permission¹⁰⁸.

The Commission's plans included in the proposal, which would possibly make *Frontex* more effective, were not included in the real reforms. The reforms made were strongly criticized by different think tanks, policy practitioners, and mass media, calling that "new name, old agency"¹⁰⁹ and stating that: "The migrant crisis has spurred reforms to Europe's border agency Frontex, but it can only be as strong as member states allow it to be."¹¹⁰ The beginning of the reform process was characterized as the possibility to change the agency, give it an opportunity to be more effective, however during the decision - making process, the Council and the Parliament agreed on different reforms that did not upgrade the Frontex mandate significantly.

The reform process started with the European Council's call for action. (see Appendix 1). European Council is the institution that is setting the strategic direction of the Union and in this case, it used its rights and asked the institutions to work on the problem. The European Commission as the only institution having the right to make a legislation proposal, introduced with its proposal on December 2015, after which European Council made a call for a political agreement between the Council of the EU and Parliament as the legislative procedure, in this case, was the ordinary legislative procedure. After that the Council prepared its position of negotiations with the

¹⁰⁸ The proposal for a European Border and Coast Guard: evolution or revolution in external border management? LIBE Study. (2016). [ebook] European Parliament's Committee on Civil Liberties, Justice and Home Affairs and committee. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556934/IPOL_STU\(2016\)556934_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556934/IPOL_STU(2016)556934_EN.pdf) [Accessed 13 Mar. 2018].

¹⁰⁹ ECFR. (2018). The European border guard: New in name only?. [online] Available at: https://www.ecfr.eu/article/commentary_the_european_border_guard_new_in_name_only_7035 [Accessed 22 Apr. 2018]

¹¹⁰ Ibid.

Parliament and Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee requested for a study. This file received the right for inter - institutional negotiations¹¹¹ (see Appendix 1), after which the negotiation process started, resulting in a political agreement. The Parliament's position was accepted in the first reading and the final text was finally adopted by the Council. The time frame for the adoption was short if compared with an average time for making a legislation. The process started in December 2015 and the final regulation text was adopted in September 2016 (see Appendix 1).

In order to understand how the Frontex mandate has changed after the reforms, it is crucial to understand, how its mandate looked before the reform process. To do that the analysis of the regulation with which the Agency was established, will follow.

3.2. Frontex before the Reform¹¹²

Regulation establishing Frontex in 2004 was made based on the Commission's proposal¹¹³. European Parliament and European Economic and Social Committee gave their opinions. As in 2004, the ordinary legislative procedure was not used in so significant scope of legislative procedures, the agency was made according to the consultation procedure. The main aim of the establishment of the Frontex in 2004 was to improve: "...the coordination of operational cooperation between the Member States in the field of external border management"¹¹⁴. The agency has been established to work in the field of a integrated management of operational cooperation at the external

¹¹¹ E].uoparl.europa.eu. (2015). Interinstitutional negotiations. [online] Available at: <http://www.euoparl.europa.eu/committees/en/interinstitutional-negotiations.html> [Accessed 22 Apr. 2018]

¹¹² Frontex.europa.eu. (2016). *COUNCIL REGULATION (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*. [online] Available at: http://frontex.europa.eu/assets/About_Frontex/frontex_regulation_en.pdf [Accessed 23 Nov. 2016].

¹¹³ The proposal for a European Border and Coast Guard: evolution or revolution in external border management? LIBE Study. (2016). [ebook] European Parliament's Committee on Civil Liberties, Justice and Home Affairs and committee. Available at: [http://www.euoparl.europa.eu/RegData/etudes/STUD/2016/556934/IPOL_STU\(2016\)556934_EN.pdf](http://www.euoparl.europa.eu/RegData/etudes/STUD/2016/556934/IPOL_STU(2016)556934_EN.pdf) [Accessed 13 Mar. 2018].

¹¹⁴ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Border and Coast Guard. (2015). [ebook] European Commission. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation_on_the_european_border_and_coast_guard_en.pdf [Accessed 8 Mar. 2018].

borders as better results can be achieved at the European level than by each member state separately. In the original regulation, the duties are strictly divided between the member states of the EU and the agency. Member states are responsible for external border surveillance, control in the lines with the Union's policies.¹¹⁵

The regulation foresaw close cooperation between the agency and different actors such as member states, different bodies such as Europol, third countries etc. Agencies duty was to facilitate the Communities existing and future measures taken by the member states, assist in different external border's operational tasks, make risk analysis, organize trainings, inform member states and the Commission about the newest scientific developments, collect information about the technical capabilities of the member states, coordinate joint operations and pilot projects, assist member states with operational and technical resources when need etc. Based on the risk analysis, the Union would work towards establishing integrated management of the external borders by working on the measures in order to eliminate threats and risks. One of the important agencies tasks already from the beginning has been the return operations of illegal third - country nationals. In the regulation, it is explained that return operations can be better carried out at the European level (principle of subsidiarity) so Frontex should assist in organizing joint return operations.¹¹⁶

In urgent cases when a member state had to face circumstances that required increased technical and operational assistance, a member state could ask for a help from the agency and Frontex had the right to assure that kind of assistance, requested from a member state. When the agency was providing such help, it had to comply with all national rules and laws of the particular member state.¹¹⁷

The regulation clearly set the question of the Frontex autonomy. It was stating that the agency is independent in such aspects as “..technical matters and have legal,

¹¹⁵ Frontex.europa.eu. (2016). *COUNCIL REGULATION (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*. [online] Available at: http://frontex.europa.eu/assets/About_Frontex/frontex_regulation_en.pdf [Accessed 23 Nov. 2016].

¹¹⁶ Ibid.

¹¹⁷ Ibid.

administrative and financial autonomy”¹¹⁸. Frontex, according to the regulation, had to have its own budget.

Institutional independence

Member states and the Commission would have strong control over the agency as national experts and Commission had to be represented in agencies management board which was deciding on all matters of the agencies work and also electing the Executive director: “the Management Board shall be composed of one representative of each Member State and two representatives of the Commission”¹¹⁹.

Management board decided on the internal operational decision-making procedures, approve the budget, supervise the work of the Executive director, decide on the rules of procedures etc. Also the Chairperson and the Deputy - Chairperson had to be elected from the members of the management board. This means that all the upper management mostly would consist from the national representatives and the Commission's experts. The most important decisions would be made by those representatives, assuring that the work of the agency is controlled by member states and the Commission. But when looking of how many there would be member states representatives and how many Commission experts, it is visible that the member states would mostly keep the control over the Frontex as each Management Board member has one vote and voting type - absolute majority or two - thirds.¹²⁰

Functional independence

The initial role of the Frontex has been seen more as a policy coordinator body between member states that mostly worked on the operational level. Most words such as “assist”, “coordinate”, “support”, “facilitate”¹²¹ in this regulation shows that the tasks were supplementary to those, done by the member states. There were just a small amount of tasks that would be done independently and mostly these tasks are not directly

¹¹⁸ Frontex.europa.eu. (2016). *COUNCIL REGULATION (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*. [online] Available at: http://frontex.europa.eu/assets/About_Frontex/frontex_regulation_en.pdf [Accessed 23 Nov. 2016].

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

connected to the external border management, for example, following the newest scientific research in the field of border management.

The regulation gives a lot of space to maneuver for the member states. Even in the information exchange process, the regulation does not foresee that a member state had the duty to provide the agency with an information. In general, from this regulation, it is visible that in 2004 establishment of the Frontex the agency had to work as a middle piece between the Union and member states. It had to provide, support, assist, help and collect information from the member states, coordinate activities between member states, make risk analysis to know in what condition the external management situation is in each member state and provide this information to the EU institution for further usage in policy making and decision-making process.¹²²

By the establishment of the Frontex, no big differences how member states managed their external borders were made. The most important tasks of surveillance and control were still the duty of the national institutions. The only change was that there was an agency working as a platform which coordinated activities and policies, assisted and supported member states in external border management and this body in urgent cases could provide technical and operational support¹²³.

The regulation states that the main aim of Frontex was to work as a supplementary entity that would help member states to control the external borders and to fulfil coordinator's function: "(the Agency) is hereby established with a view to improving the integrated management of the external borders of the Member States of the European Union."¹²⁴ As border management still remained in each member state's competence, Frontex' function could be seen as supplementary to those activities member states are undertaking and co-coordination function.

¹²² Frontex.europa.eu. (2016). *COUNCIL REGULATION (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*. [online] Available at: http://frontex.europa.eu/assets/About_Frontex/frontex_regulation_en.pdf [Accessed 23 Nov. 2016].

¹²³ Ibid.

¹²⁴ Ibid.

3.3. The main tasks after the reform

The main tasks of the Frontex after the reform process were: monitoring migratory flows, carrying out a vulnerability assessment, monitoring the management of the external borders, coordinating and organizing joint operations and rapid border interventions to assist Member States, supporting search and rescue operations, deploying European Border and Coast Guard teams, providing support at hotspot areas with screening, debriefing, identification and fingerprinting and other. These tasks emphasized agencies supplementary role. In the time of agencies' existence, it has carried out numerous operations which main aim was the patrolling EU's land, sea, and air external borders. Not only Frontex was "ill-equipped" by the ability to act and power but also by budget, personnel, and the equipment.¹²⁵

3.4. Reform comparison - from FRONTEX to European Border and Coast Guard Agency

European Commission is the only EU body that has the right to propose a legislation, so in the case of Frontex reform, Juncker's Commission in 2015 passed a proposal in order to transform Frontex to tackle the Migration crisis. The reform process was described as having a political priority. In Juncker's 2015 State of the Union speech, migration was named as one of ten EU's priorities. Juncker in his speech also emphasized the need for a stronger Frontex: "We need to strengthen Frontex significantly and develop it into a fully operational European border and coast guard system..This is why we will propose ambitious steps towards a European Border and Coast Guard before the end of the year."¹²⁶At the end of the same year, Commission's proposal followed.

Proposal for a regulation of the European Parliament and of the Council on the European Border and Coast Guard was published in the December 2015¹²⁷. The

¹²⁵ REGULATION (EU) 2016/1624 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 September 2016. (2016). [ebook] Official Journal of the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1624&from=EN> [Accessed 12 Apr. 2018].

¹²⁶ European Commission (2018). European Border and Coast Guard agreed. [online] Available at: http://europa.eu/rapid/press-release_IP-16-2292_en.htm [Accessed 11 Apr. 2018].

¹²⁷ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Border and Coast Guard. (2015). [ebook] European Commission. Available at:

legislative procedure that was used is the ordinary legislative procedure. In the process of making the proposal Commission has consulted with European Economic and Social Committee and Committee of Regions. The proposal is made from four chapters: European Border and Coast Guard, European Border and Coast Guard Agency, General Provisions and Final Provisions.

The proposal starts with general situation overview and the background of the problem called “explanatory memorandum” by explaining objectives and reasons of the proposal, consistency with the existing policy and Union policies, legal basis, consultation of interested parties, budget matters etc.¹²⁸

It is emphasized that in order to keep Schengen zone working, the security of the Union’s external border plays a crucial role: “Throughout the current migration crisis, it became clear that the Schengen area without internal borders is only sustainable if the external borders are effectively secured and protected.”¹²⁹ At the same time it is declared that at the moment of the proposal, EU bodies are not capable to solve the migration crisis: “The sheer scale of the mixed migratory flows .. demonstrated that existing structures at Union and Member State level are inadequate to address the challenges arising from such a large influx.”¹³⁰ The main base for the proposal was used the existing Border policy, however this proposal “..brings it to a qualitatively different level”¹³¹. Interesting is the fact that subsidiarity principle is also explained in the proposal. Commission is emphasizing that the target be better achieved at the Union’s and not national level: “Since the control of the Union’s external borders is a common and shared interest which must be carried out in accordance with high and uniform Union standards”¹³².

Commission numerous times emphasize the role of the Parliament and the Council of

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation_on_the_european_border_and_coast_guard_en.pdf [Accessed 8 Mar. 2018].

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

the EU in the process of idea shaping.¹³³ Both institutions are mentioned as the ones who have raised the question of the reform in the field of Union's external border management: "the Commission has relied upon the discussions that have been regularly taking place in the European Council and in the Council of Ministers, as well as in the European Parliament on border management and the measures needed to address the migratory crisis."¹³⁴ Moreover, The European Council, according to the Commission is the one, who was asking for an action to solve the problem: "On 25 and 26 June 2015, 12 the European Council called for wider efforts in resolving the migrant crisis in a comprehensive manner, including through the reinforcement of the management of borders to better manage growing mixed migratory flows."¹³⁵ The European Council is the institution, made from head of the states and governments that are setting strategic guidelines for the whole Union.

The first chapter "European Border and Coast Guard" is more an explanatory one, where the subject of the matter, definitions are explained. In this proposal the term "European integrated border management" is used 48 times¹³⁶. In the first chapter components of integrated border management system are named. According to the component, this term describes number of activities that must be carried out in order to achieve the main goal. And according to the proposal, reaching a functioning integrated border management is an ultimate goal of the proposal of the regulation: "The present proposal has the objective of setting up a European Border and Coast Guard in order to ensure a European integrated border management of the EU's external borders".¹³⁷ And European Border and Coast Guard is the body who has to assure that this system will be reached by establishing working integrated border management strategy and also assuring that this system is functioning within the member states. Each member state has to develop its national strategy but they have to be compatible with the previously mentioned one.

¹³³ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Border and Coast Guard. (2015). [ebook] European Commission. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation_on_the_european_border_and_coast_guard_en.pdf [Accessed 8 Mar. 2018].

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

Commission emphasizes that national governments together with European Border and Coast Guard are responsible for the management of the external borders. This is emphasized in the section "shared responsibility", where it is emphasized that the main duties of the European Border and Coast Guard is "reinforcing, assessing and coordinating the actions of Member States ".¹³⁸

Functional independence

The proposal, in general, has shared responsibility nature, however, it also gives the Agency bigger mandate when it comes to crisis situations. There is a term used in the proposal "vulnerability assessment" that is working together with "Schengen evaluation mechanism"¹³⁹. This means that in the case if a member state is lacking resources or is not carrying out activities at the Union's external border that could lead to a crisis situation, Commission has the right to deploy European Border and Coast Guard in the member state without asking for its permission: "Where a Member State would.. risk putting in jeopardy the functioning of the Schengen area, the Commission can adopt an implementing decision requiring the direct intervention by the Agency on the ground."¹⁴⁰The Agency would be responsible for vulnerability assessment by evaluating if a member state is capable to manage the external border and prevent threats.

Member states duties would be to provide the Agency with an information about their capabilities - technical equipment, staff and financial resources that are used for border control. This information exchange process is characterized as "general obligation to exchange information"¹⁴¹ in the proposal. The main aim of this mechanism is to prevent future crisis and urgent situations when member states are receiving disproportional pressure on the external borders by evaluating a states capabilities to deal with threats. One member states incapability to deal with an urgent situation can endanger the whole Schengen area.

¹³⁸ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Border and Coast Guard. (2015). [ebook] European Commission. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation_on_the_european_border_and_coast_guard_en.pdf [Accessed 8 Mar. 2018].

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

Vulnerability assessment mechanism is with a mandatory nature - “The decision of the Executive Director shall be binding on the Member State and shall lay down the time-limit within which the measures are to be taken.”¹⁴² Mandatory nature is visible also in different aspects of the proposal, for example: “..when implementing their obligations with regard to the control of the external borders.”¹⁴³ Joint operations is another important duty of the Agency.

Border and Coast Guard have to organize and implement joint operations. A member state has a right to ask the Agency to organize that kind of operation or Agency can decide that on its own: "the European Border and Coast Guard Agency should, at the request of a Member State or on its own initiative, organize and coordinate joint operations for one or more Member States..."¹⁴⁴

Rapid border interventions is also another new introduction: “with a situation of specific and disproportionate pressures, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State illegally, the Agency may deploy a rapid border intervention for a limited period of time on the territory of that host Member State.”¹⁴⁵ When talking about rapid border interventions, nothing is written about the Agency asking consent for that from the side of the member states. The decision to start a rapid border intervention (or joint operation) is based on the risk analysis of the vulnerability assessment done by the Agency.

Institutional independence

In the Commission's proposal the Management board, who is working close together with the executive director, has a significant role. Management board can decide on launching the rapid border intervention. The decision would be made by the board and

¹⁴² Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Border and Coast Guard. (2015). [ebook] European Commission. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation_on_the_european_border_and_coast_guard_en.pdf [Accessed 8 Mar. 2018].

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

the member state would have only the possibility to decide where exactly the intervention would be launched. The management board would be the one who would make the initial decision in an urgent situation to take measures in the member state without an invitation. The management board would have to inform the Commission about that kind of decision and afterward the Commission would consult with the Frontex and make the final decision. But management board is the structure that can initiate the beginning of the intervention process. The executive director has the right to propose activities to the management board and the cooperation between the executive director and the board is close. They decide about the number of border guards, yearly goals, different measures etc.¹⁴⁶

The composition of the management board is as follows - two Commission's representatives and highest level national experts from each member country. Every member of the management board would have one vote. The executive director would be elected by the board by a list of candidates would come from the side of Commission. In the proposal, it is not written that it has to be a representative of the member state. Although officially the management board is composed mostly of the national experts, the final decisions on politically sensitive questions such as intervention would be made by the Commission.¹⁴⁷

3.5. Council's position¹⁴⁸

After Commission has introduced its proposal on Frontex reform, the Council's of European Union Permanent Representatives Committee made their changes on the Commission's proposal and published its mandate for the negotiations with the European Parliament. In these documents, the Council made changes to the proposal text and it shows the Council's position.

¹⁴⁶ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Border and Coast Guard. (2015). [ebook] European Commission. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/legal-documents/docs/regulation_on_the_european_border_and_coast_guard_en.pdf [Accessed 8 Mar. 2018].

¹⁴⁷ Ibid.

¹⁴⁸ Council's Mandate for negotiations with the European Parliament. (2016). [ebook] The Council of the EU. Available at: <http://data.consilium.europa.eu/doc/document/ST-7649-2016-INIT/en/pdf> [Accessed 10 Mar. 2018].

First of all, the most noticeable change made by the Council is the name of the agency. To change Frontex name from European Agency for the Management of Operational Cooperation at the External Borders as it was originally named to European Border and Coast Guard Agency was the intention of the Commission. The Council opposed to this intention and wanted to change the name to European Border Guard Agency, leaving the word "Coast" out.¹⁴⁹

Fundamental independence

One of the corner changes introduced by the Commission in its proposal, was the vulnerability assessment, based on which the Executive Board has the right to suggest corrective measures to a country which fails to manage their external borders and in the case if a member state fails to improve the situation, agency would have the right to intervene without an invitation. Commission proposed to give bigger rights to the agency in situations when member state incapacities are jeopardizing the overall situation of Schengen area. In these cases, the responsibility to manage borders would go from member states to the agency. The Council strongly opposed this idea by taking this suggestion out. "[Agency] shall be responsible for the management of the external borders in the cases foreseen in this Regulation, in particular where the necessary corrective measures based on the vulnerability assessment are not taken".¹⁵⁰ The Council is not opposing the idea that the Agency should make vulnerability assessment to evaluate member states capacities and consult on the corrective measures, however, the Council is against updating Agencies mandate when it comes to taking owner the right to manage the external borders when the member state is not able to improve the situation.

The Council is not excluding the possibility for the EU to intervene in urgent situations based on the vulnerability assessment made by the Agency, but the decision to use appropriate measures would be not made by the agency but by the Council of the EU: "the Council, based on a proposal from the Commission, may adopt without delay a

¹⁴⁹ Council's Mandate for negotiations with the European Parliament. (2016). [ebook] The Council of the EU. Available at: <http://data.consilium.europa.eu/doc/document/ST-7649-2016-INIT/en/pdf> [Accessed 10 Mar. 2018].

¹⁵⁰ Ibid.

decision..”¹⁵¹ The Council instead of letting the agency to enter the territory of the member state, introduced the possibility to ask a member state to re - introduce internal border control to up to six months but not more than three times. This decision would be made by the Council and only in cases, when the situation would correspond to a long list of characteristics: “. .. the overall functioning of the Schengen Area is at risk.., as a last resort and as a measure to protect the common interests within the Schengen, and insofar as those circumstances constitute a serious threat to public policy or internal security within the Schengen Area..”¹⁵² However, also here the wording used is “the Council may recommend”¹⁵³ so that means that that kind of decision would not be binding for the member state. If the member state decides not to implement that kind of a measure, it has to provide the Commission with their arguments explaining that kind of a decision.

It is visible that the Council is not allowing the Commission to decide Frontex to intervene in the fields that are qualified as high politics. Member states emphasize that there may occur situations when decisions made by Frontex will be about politically sensitive questions and that should be left in the control of the Council : “The implementing power to adopt such a decision should be conferred on the Council because of the potential politically-sensitive nature of the measures to be decided, often touching on national executive and enforcement powers”.¹⁵⁴

Institutional independence

The Council is not excluding the Commission from the place in the management board and the composition introduced by the Commission has not been changed by the Council. The management board also would have the right to decide about launching a rapid interventions. The Council has lessened the independence of the executive director and give more powers to the management board. Also, Council broadens the fields in

¹⁵¹ Council's Mandate for negotiations with the European Parliament. (2016). [ebook] The Council of the EU. Available at: <http://data.consilium.europa.eu/doc/document/ST-7649-2016-INIT/en/pdf> [Accessed 10 Mar. 2018].

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

which the management board should consult and decisions would be made by the Council and not the Commission.¹⁵⁵

3.6. LIBE study¹⁵⁶

The Parliament starts its document with a justification of why the Commission's proposal is just strengthening of the agency, why it is evolution and explaining that also further it would have just a coordination function as the agency will not have their own border guards and it will not have a control over member states border guards.

Functional independence

The LIBE report is critical about the Commission's proposal, underlining that there are numerous unclear things, especially, in the division of power that might make the environment more chaotic. Also, in this document LIBE is showing its attitude that the Commission's proposal is placing "...unrealistic expectations on the Agency"¹⁵⁷. Already at the beginning of the documents, LIBE is showing its skeptical attitude towards member state potential agreement on this proposal: "It seems contradictory that the Member States would be willing to accept more binding obligations under this proposal"¹⁵⁸. Also sceptical is Committees attitude about the basic idea of the upgrade of the agencies mandate and its ability to improve capabilities of the member states to manage their borders in the Migration crisis: "it would be naïve to think that greater powers and a new name for Frontex might suddenly remedy structural flaws in some Member States' external border management systems"¹⁵⁹.

The LIBE report starts with general context description of the situation and the negative influence of the Migration crisis on the Schengen system. LIBE emphasize the existing

¹⁵⁵ Council's Mandate for negotiations with the European Parliament. (2016). [ebook] The Council of the EU. Available at: <http://data.consilium.europa.eu/doc/document/ST-7649-2016-INIT/en/pdf> [Accessed 10 Mar. 2018].

¹⁵⁶ The proposal for a European Border and Coast Guard: evolution or revolution in external border management? LIBE Study. (2016). [ebook] European Parliament's Committee on Civil Liberties, Justice and Home Affairs and committee. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556934/IPOL_STU\(2016\)556934_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556934/IPOL_STU(2016)556934_EN.pdf) [Accessed 13 Mar. 2018].

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

at that moment external border management system as the reason for member states to rethink the internal border control necessity: "Failure to adequately guard the external borders and manage refugee flows has resulted in the reinstatement of controls at the internal borders of a number of Member States."¹⁶⁰ The Commission's proposal is seen as a logic step in the improvement of the situation.

In LIBE report, the proposal is criticized because of lacking a clear division of duties between member states and agency. It is clearly explained how the information should be exchanged between those two parties but nothing much is said about other duties.

According to the Commission's proposal, the agency would have rights to intervene in member states without a special invitation in urgent situations, when national government has not been able to comply with the decision of Management Board based on the vulnerability assessment made by the agency. An urgent situation according to the Commission is the one in which not taking a proper action might threaten the whole Schengen system. The LIBE Committee has described the right to intervene as doable but politically and legally not desirable: "The right to intervene under the Commission's proposal raises serious concerns as regards Articles 4(2) TEU and 72 TFEU. It would be legally, but probably also politically, undesirable to maintain this provision."¹⁶¹

LIBE considers the above described Council's amendment of right to intervene more acceptable than the one proposed by the Commission, as this question is seen as politically sensitive: "as per the Council's amended text are more in line with the EU's constitutional set-up and would be in line with existing provisions under the Schengen Borders Code."¹⁶² The willingness of the Council to keep the control is seen as understandable. However, even in the case of the Council amendment, Committee considers the instrument as not fully explained and suggests for clearer description.

Institutional independence

The Commission's proposal is seen as having a negative impact on the existing measures of agencies accountability by the LIBE. Similarly, as Council, LIBE is

¹⁶⁰ The proposal for a European Border and Coast Guard: evolution or revolution in external border management? LIBE Study. (2016). [ebook] European Parliament's Committee on Civil Liberties, Justice and Home Affairs and committee. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556934/IPOL_STU\(2016\)556934_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556934/IPOL_STU(2016)556934_EN.pdf)

¹⁶¹ Ibid.

¹⁶² Ibid.

opposing the Commission's proposal on the internal structure of the decision making. Introduction of the Management Board which according to Commission's proposal would receive an increased amount of rights and power in decision – making process, especially the Executive director, is one of the sources in the decreasing of accountability.¹⁶³

Despite Committee's skeptical attitude of Frontex reform and its ability to tackle migration crisis based on its mandate upgrade, LIBE sees the external border management as a necessary tool to control the migratory flows. Although the Committee has devoted a lot of criticism to the proposal, it also emphasizes the Commissions ability to prepare such kind of proposal in such a short time frame and pressure: "The European Commission has performed a Herculean task in presenting an elaborate proposal within a short space of time." The title of the Committees report is "Proposal for European Coast and Border Guard: evolution or revolution in border management?" and at the main conclusion made at the end of the report is that the proposal is not bringing anything revolutionary.¹⁶⁴

3.6. European Economic and Social Committees opinion ¹⁶⁵

European Economic and Social Committee gave its opinion on the Commissions proposal. It is not as specific and detailed as the other documents and mostly gives a general opinion on the proposal, more focusing on such topics as saving asylum seekers lives, human rights violations etc.

Functional independence

Already at the beginning of the document European Economic and Social Committee stresses out that Frontex has been established because of Committee's suggestion as it was the first institution coming up with that idea. Bigger emphasis is put on overall

¹⁶³ The proposal for a European Border and Coast Guard: evolution or revolution in external border management? LIBE Study. (2016). [ebook] European Parliament's Committee on Civil Liberties, Justice and Home Affairs and committee. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556934/IPOL_STU\(2016\)556934_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556934/IPOL_STU(2016)556934_EN.pdf)

¹⁶⁴ Ibid.

¹⁶⁵ Anon, (2015). European Economic and Social Committee. Opinion on European Border and Coast Guard. [online] Available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-border-and-coast-guard> [Accessed 22 Apr. 2018].

Schengen area description and Asylum policy as such. EESC is underlining the Commission's attempt in reforming the Agency and sees that as an opportunity to improve the EU's external border; "The Commission's proposal to establish a European Border and Coast Guard is one of the measures to strengthen the management and security of the EU's external borders"¹⁶⁶.

Committee has a supportive attitude for the Commission's proposal on agencies upgrade of the mandate to intervene in member states in urgent situations without an invitation, however the sensitivity of this proposal is underlined: "The Agency's right to intervene, even when a Member State has not requested it to do so, is the most sensitive measure in the Commission's proposal. The EESC is in favor of the Commission having the ability to decide to deploy the Agency at the external borders."¹⁶⁷ However, the EESC is calling for more transparent procedures and accountability tools.

An important feature in Committee's opinion is that this is the only document, except Commission's proposal which directly talks about the necessity to upgrade Frontex mandate and give to it bigger powers and sees the lack of power as the reason why the agency is not able to tackle the migration crisis: "The current crisis is highlighting the limitations in how the external borders are managed, as well as the insufficient mandate currently held by Frontex."¹⁶⁸ As it will be shown below, member states also talk about the necessity to reform the agency but in the sense that it is lacking personnel, technical and financial resources and not that the agency is lacking the power to act.

EESC is not giving its opinion about the institutional independence. The document is with more general and normative nature, more focusing on the broader picture of the Migration crisis than on direct reforms that should be made to upgrade mandate and delegate power to the Frontex.¹⁶⁹

¹⁶⁶ Anon, (2015). European Economic and Social Committee. Opinion on European Border and Coast Guard. [online] Available at: <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-border-and-coast-guard> [Accessed 22 Apr. 2018].

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

3.7. The final adopted regulation¹⁷⁰

The regulation that was adopted at the end of the decision - making process in the framework of the ordinary legislative procedure is the outcome which shows what all involved parties managed to agree upon in order to reform the Agency. The European Parliament adopted its version in the 1st reading and then Council voting followed. As the result of the political agreement, a regulation of the Council and Parliament was published on September 2016. The main question in focus now will be - how the Frontex mandate was upgraded and how this regulation differs from the one, with which the agency was established in 2004.

The name of the agency has been changed from European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union to European Border and Coast Guard. Nevertheless the new name and new regulation organizing the work of the agency, it still has the same legal personality and the same short name - Frontex. At the beginning of the regulation, it is emphasized that the proposal of the Commission and the opinion of the European Economic and Social Committee are influenced by the regulation.¹⁷¹

The final Regulation that was a result of the ordinary legislative procedure, approved in the first reading of the Parliament and approved by the Council. This regulation was built on the basis of 2004 regulation and amended all the previous documents that regulate the work of the agency. The main element of border management system has been retained from the Commission's proposal.¹⁷²

Functional independence

¹⁷⁰ REGULATION (EU) 2016/1624 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 September 2016. (2016). [ebook] Official Journal of the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1624&from=EN> [Accessed 12 Apr. 2018].

¹⁷¹ Ibid.

¹⁷² Ibid.

Already at the beginning of the regulation, it is clearly written that external border management is the responsibility of member states and not the Agency.

Agency is responsible for the development of the border management system strategy.

One of the differences between the pre-reform regulation that established the agency and post-reform regulation is that in 2016 there is a section that calls external border management a shared responsibility, where the agency is responsible for the

Integrated border management system and member states are responsible for the border control and surveillance that is in their national and common Union interests: “The European Border and Coast Guard shall implement European integrated border management as a shared responsibility of the Agency and of the national authorities responsible for border management”¹⁷³. It is emphasized that the primary responsibility for external border management is the duty of member states.

Most Frontex duties are the same if compared with the previous regulation. The new one is the vulnerability assessment that was one of the new tools introduced in the Commission’s proposal and rapid border intervention. Another new duty is the monitoring of the migratory flows.¹⁷⁴

In the 2004 regulation foreseen the necessity of cooperation between the agency and third countries. Now it can also provide technical and operational assistance to third countries.

The words used in 2016 regulation is similar to the one used in the regulation establishing the agency. However, if the 2004 regulation was more talking about agencies duty to support member states in external border management in order to assist countries in European measures usage, then now its duty is to “.. shall facilitate and render more effective the application of existing and future Union measures relating to

¹⁷³ REGULATION (EU) 2016/1624 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 September 2016. (2016). [ebook] Official Journal of the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1624&from=EN> [Accessed 12 Apr. 2018].

¹⁷⁴ Ibid.

the management of the external borders”¹⁷⁵. After the reform process, the range of duties of the Frontex has expanded. Also now the member states will not have the chance to choose the cooperation but will have duties: "subject to a duty to cooperate in good faith and an obligation to exchange information”¹⁷⁶. In the final regulation, the Council's requirement to give member states an opportunity not to share information that might be concerning national security.

Institutional independence

The agency has to be accountable to the Council more than to the Commission. Although the Commission still plays a role in the activities of the agency, the final decisions are made by the Council and by the Commission. The executive director would be still appointed from the candidates proposed by the Commission. The management board, according to the final regulation, would have less possibility to decide on questions that might influence the functioning of the border management system. It still would have the right to make proposals and consult, however, the main decisions would be made by the Council and not the Commission.¹⁷⁷

3.8. Analysis of member state national positions

One of the EU member states which have been influenced the most by the Migration crisis is Germany. The country is an attractive final destination for asylum seekers as it is visible in the image that Germany in 2015 has received the biggest number of asylum claims.¹⁷⁸

Germany officially has an EU external border with Switzerland, however, when thinking about this border it is important to emphasize the tight cooperation between the EU and Switzerland in many areas such as economic and trade. The relationship

¹⁷⁵ REGULATION (EU) 2016/1624 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 September 2016. (2016). [ebook] Official Journal of the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1624&from=EN> [Accessed 12 Apr. 2018].

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

between the EU and Switzerland is organized by such documents as EU-Swiss Free Trade Agreement 1972 and other bilateral agreements also in such sectors as free movement of people. The most important fact is that despite Switzerland not being an EU member country, it, together with Norway and Liechtenstein are Schengen Area member states. In reality that meant that the same as EU member countries which are in the Schengen Area, in 2008, based on the agreement signed in 2004, all land border controls between Germany and Switzerland were abolished.

Germany's official position on EU's external border protection is clear - it supports more powerful Frontex. In Business Insider interview, German Chancellor Angela Merkel said: "We have now made progress, fortunately, due to the EU-Turkey Agreement and the increased support for the EU border protection agency Frontex. All of us have understood that we have to better protect the EU's external borders and to fight the causes of flight."¹⁷⁹ After the European Commission unveiled its proposal to upgrade Frontex mandate and to give to the agency rights to intervene in member states without an invitation in urgent situations, Reuters and Politico were writing about Germany and France being "largely supportive for the idea"¹⁸⁰ of European Commission. Different media sources were even writing about interior ministers written letter to the Commission in December 2015 in which they supported the idea to let Frontex in exceptional cases intervene in EU member states without an invitation: "...urged the Commission.. to extend the Schengen Borders Code so that Frontex could itself decide to help control an external border and take the initiative of deploying emergency border protection teams in "exceptional circumstances"¹⁸¹.

Also after the Commission published its proposal, there has been a support for the upgrade of Frontex mandate in Germany. Christian Democratic Union even supported the idea to renew internal border control between member states in urgent situations. An

¹⁷⁹ US', A. (2016). ANGELA MERKEL: I want a border control system 'modeled on the US'. [online] Business Insider. Available at: <http://www.businessinsider.com/angela-merkel-i-would-open-the-borders-for-refugees-again-2016-9> [Accessed 9 Apr. 2018].

¹⁸⁰ Baume, M. (2015). Countries balk at EU border force proposal. [online] POLITICO. Available at: <https://www.politico.eu/article/countries-balk-at-eu-border-force-proposal-migration-security-frontex/> [Accessed 11 Mar. 2018].

¹⁸¹ Policyreview.co.uk. (2015). The Schengen area called into question – EU media comments | Policy Review | Policy and networking for the digital age. [online] Available at: <http://www.policyreview.co.uk/the-schengen-area-called-into-question/> [Accessed 9 Apr. 2018].

expert group made from Angela's Merkel's party members (Christian Democratic Union) in their meeting clearly showed they support by saying: “The agency should be able to “intervene on national territory ... even without the authorization of the member country” if it fails to protect its borders.”¹⁸² This statement directly reflects the support to the Commission's proposal to let Frontex in urgent situations to intervene in EU member states in order to prevent a common threat to all Union.

Sweden is the second EU member state by the asylum claims and also in principle having EU's external border with Norway. At the same time, Norway has had a long history of cooperation with the EU in Foreign and Security Policy, the country is a member of European Economic Area and the most important - participate in Schengen cooperation and in the Frontex.¹⁸³ Norway also is a part of EU's internal free - travel area, so that in reality means, that EU's external border can be seen as transferred further to Norway's responsibility.

Sweden already has had a special relationship with Frontex already from the beginning of its establishment. The technical support provided from Sweden to Frontex has increased since the beginning of Migration crisis which can be explained by Sweden being one of the world's biggest donor and seeing as their duty to help to prevent asylum seekers death in the sea: "The situation in the Mediterranean is extremely serious. We are now giving the go-ahead for the Swedish Coast Guard to offer its resources so as to prevent more disasters”¹⁸⁴ Despite the fact that Sweden supports bigger resources to Frontex, this country already from the beginning of Frontex reform has been against Commission’s proposal to give the agency rights to intervene in EU member states without an invitation in urgent situations. In the interior minister’s meeting, Swedish minister Anders Ygeman clearly showed Sweden’s position: “Border

¹⁸² Goulard, H. (2016). Angela Merkel’s party calls for more EU border protection. [online] POLITICO. Available at: <https://www.politico.eu/article/angela-merkels-party-calls-for-more-eu-border-protection-refugees-immigration/> [Accessed 13 Apr. 2018].

¹⁸³ Norgesportalen. (2018). Mission of Norway to the EU: Schengen Cooperation. [online] Available at: <https://www.norway.no/en/missions/eu/areas-of-cooperation/schengen/> [Accessed 21 Apr. 2018].

¹⁸⁴ Regeringskansliet. (2015). Government gives Swedish Coast Guard green light to participate in rescue operations in Mediterranean. [online] Available at: <http://www.government.se/articles/2015/05/government-gives-swedish-coast-guard-green-light-to-participate-in-rescue-operations-in-mediterranean/> [Accessed 7 Apr. 2018].

control is the competence for the member states, and it's hard to say that there is a need to impose that on member states forcefully"¹⁸⁵ and also described shortly the general attitude in Sweden as sceptical: "the general skepticism towards such plans hasn't changed"¹⁸⁶

Hungary has been in the hotspot of the Migration Crisis already from its beginning because of its non-compliance with EU rules, building a border fence¹⁸⁷ to stop the migrants and ending with Hungary's prime ministers Orbán's controversial attitude and statements¹⁸⁸ towards Migration crisis and the EU in general. Orbán in his interviews has numerous times stated, that Hungary is one of the rear EU member states, who are being able to successfully protect its external borders. He cannot say the same about the countries such as Greece and Italy, who, in his opinion, are problematic countries, that "... are unable to protect the outer borders [of the Schengen zone],"¹⁸⁹ although it "would have been their duty" to guarantee that no one should enter the territory of Europe unchecked"¹⁹⁰. He has many times emphasized that Frontex is not able to perform its duties, mostly criticizing the lack of agencies resources. For example, in one of his interviews, he said: "These people aren't involved in border protection – they are immigration officials, passport-checkers, and fingerprint-takers; the European Union is clearly not sending them to Italy and Greece to stop illegal immigration, but to manage the problem and facilitate the fastest possible legal immigration to the EU."¹⁹¹ Although, Hungary has been one of the countries supporting the need to reform Frontex, they look completely different in upgrading agencies mandate.

¹⁸⁵ Baume, M. (2015). Countries balk at EU border force proposal. [online] POLITICO. Available at: <https://www.politico.eu/article/countries-balk-at-eu-border-force-proposal-migration-security-frontex/> [Accessed 11 Mar. 2018].

¹⁸⁶ Ibid.

¹⁸⁷ Dunai, M. (2017). Hungary builds new high-tech border fence - with few migrants in sight. [online] Reuters.com. Available at: <https://www.reuters.com/article/us-europe-migrants-hungary-fence/hungary-builds-new-high-tech-border-fence-with-few-migrants-in-sight-idUSKBN1692MH> [Accessed 14 Apr. 2018].

¹⁸⁸ Schultheis, E. (2018). Viktor Orbán: Hungary doesn't want 'Muslim invaders'. [online] POLITICO. Available at: <https://www.politico.eu/article/viktor-orban-hungary-doesnt-want-muslim-invaders/> [Accessed 13 Apr. 2018].

¹⁸⁹ Kovacs, Z. (2016). PM Orbán: Frontex 'not dealing with border protection' as EU members disagree over migration. [online] Abouthungary.hu. Available at: <http://abouthungary.hu/blog/pm-orban-frontex-not-dealing-with-border-protection-as-eu-members-disagree-over-migration/> [Accessed 16 May 2018].

¹⁹⁰ Ibid.

¹⁹¹ Baume, M. (2015). Countries balk at EU border force proposal. [online] POLITICO. Available at: <https://www.politico.eu/article/countries-balk-at-eu-border-force-proposal-migration-security-frontex/> [Accessed 11 Mar. 2018].

None of the EU member states are satisfied with the work of Frontex before the reforms. The lack of personnel, technical and financial resources has been emphasized by numerous EU member states. Common is the opinion that the Agency has to be reformed and given bigger power but mostly EU member states are against the upgrade of Frontex mandate as it is seen as an intervention in the sovereign matter of the country and non - democratic practices.

Latvia, Lithuania, and Estonia for a long time have been seen as EU member countries with the most vital part of EU external border because of its neighboring country Russia who after its aggression in Georgia and Ukraine has seen as a threat for all three Baltic states.

All three Baltic countries agree with the necessity to strengthen the capacities of the Agency and the necessity to provide the agency with bigger resources, however, Latvia, Lithuania, and Estonia are not supporting the upgrade of the Frontex mandate according to the proposal made by the Commission. For example, Lithuanian president Dalia Grybauskaitė has emphasized the support for the reform process of the Frontex and stated the importance for Lithuania to have a strong external border of the EU, however also Lithuania's position against the idea of Frontex intervention without the invitation of member states is negative and unacceptable. Dalia Grybauskaitė claimed that "Lithuanian position is that European Border Guards deployment in member states has to be made with a consent or member states request"¹⁹².

Greece characterizes the Commission's proposal as too rapid and premature. It also argued that the proposal is in the lines with the existing treaties as it is violating the principle of sovereignty and democracy: ""We have said that the process and regulation for Frontex can certainly change, but any change must be in line with articles 72 and 79

¹⁹² Baltictimes.com. (2015). Grybauskaitė questions European Commission's border service strategy. [online] Available at: https://www.baltictimes.com/grybauskaitė_questions_european_commission_s_border_service_strategy/ [Accessed 14 Apr. 2018].

of the Treaty on the European Union, which prioritizes each member state's sovereign interests with regard to defending its security and the immigration issue."¹⁹³

Poland's attitude towards Commission's proposal is skeptical as to it the accountability and control of the Frontex are unclear. It also saw this proposal as try to make Frontex more as an agency that is separating from the member states: "a structure that is independent of member states is astounding. There would be an undemocratic structure reporting to nobody knows who."¹⁹⁴

Most countries have been against and skeptical about the Commission's proposal. The main problem seen in this proposal is that it has been seen as a try to make Frontex independent from member states with the possibility to make undemocratic decisions against the will of member states and decision's concerning their sovereignty. Also, the lack of control and accountability is an issue.

The initial proposal of the Commission contained numerous plans on the Frontex mandate upgrade both from the functional and institutional independence. The most significant and revolutionary one - the possibility to intervene in the member state in urgent situations without the invitation of the national government's consent.

¹⁹³ Baume, M. (2015). Countries balk at EU border force proposal. [online] POLITICO. Available at: <https://www.politico.eu/article/countries-balk-at-eu-border-force-proposal-migration-security-frontex/> [Accessed 11 Mar. 2018].

¹⁹⁴ Baume, M. (2015). Countries balk at EU border force proposal. [online] POLITICO. Available at: <https://www.politico.eu/article/countries-balk-at-eu-border-force-proposal-migration-security-frontex/> [Accessed 11 Mar. 2018].

Results

From the document analysis, it is visible that the Commission was the main actor who was pushing towards the upgrade of the Frontex mandate by introducing vulnerability assessment. The biggest agency mandate upgrade would come from the proposed possibility to intervene in member states in urgent situations without an invitation of the member state. The Commission's proposal introduced the agency reforms with which the significant amount of accountability and control would come from the Commission.

The Commission tried to push the European integration further. In its interests was an agency with functional and institutional independence from the Council and member states, at the same time keeping the control over the agency from the side of the Commission. It supported the upgrade of the agency's mandate.

The Parliaments position was the most interesting from the all three institutions as, despite the theoretical expectations, it did not support the functional independence and mandate upgrade proposed by the Commission as it was seen as unrealistic. Also, the institutional changes were not supported by the Parliament as they were seen as having a negative affect on the accountability of the agency.

Parliament was against the upgrade of the mandate of Frontex and also did not support the institutional independence proposed by the Commission. In Parliament's interests was to have an agency that is transparent and accountable.

The Council's position was the most stable - it did not allow the Commission or the Agency to make decisions that might touch the politically - sensitive questions. It was also against the Commission's control over important decisions but added the idea that that kind of decisions should be made by the Council.

The final regulation contained most of the ideas that were included in the Council's mandate for the negotiations with the Parliament and the basic Commission's ideas that would upgrade the Frontex mandate were not adopted. The most control functions were transferred from the Commission to the Council.

The Council and the member states were against the proposed mandate upgrade by the Commission as it was seen as undemocratic and would threaten the sovereignty of the

member states. It was against the proposed functional and institutional independence and the control was transferred from the Commission to the Council.

After the analysis made, it is seen that the behavior and interests of the Council, Parliament and the Commission that was expected by the EU agency theory has approved also in the case of the reform process of the Frontex. The Commission supported bigger Frontex autonomy and tried to keep it accountable to the Commission. It was the main promoter of the mandated upgrade as it was expected by the EU agency theory. Parliament wanted to keep the agency under political control by not letting to upgrade its mandate. Council wanted to keep the control of the agency in its responsibility and was supporting less dependency on the Commission.

The research question of this master thesis is - What does explain the failure to upgrade the mandate of the Frontex in the context of Migration crisis? And the main argument I was making was that member states are those who are stopping the process of the upgrade of the Frontex mandate. However, during this research it is visible that this argument was not approved as not only Council was the one that was against the proposed reforms. Also, Parliament did not support bigger functional and institutional independence of the agency and preferred bigger political control over it.

The main aim of this thesis was to understand what factors influenced the outcome of not upgrading Frontex mandate in the context of the Migration crisis. As it was explained in the theoretical part of this research, power delegation and mandate upgrade can happen only based on the consensus between three institutions - Council, Parliament, and Commission. Each of those actors has different interests and in this case, the mandated upgrade of the Frontex in the way offered by the Commission was against Parliament's and member states interests. Parliament did not support the proposal because of the lack of political control. From the national position analysis, it was clear that the Commission's proposal is concerning the vital interests of the member states.

Conclusion

The European Union is a complex machinery that has been a result of the European integration with different levels of governance, where specialized agencies who are

carrying out operational duties play increasingly significant role. As the number of agencies has been growing in the recent years, the interest in researching this phenomenon also has increased.

The power delegation process is at the core of supranational institution formation, including the function delegation to the agencies. The intergovernmentalism and supranationalism explain the power delegation mostly in the national government to European level institution formation, however with an increasing interest in the agency formation, the ideas of both European integration schools have been adjusted also to the agencies.

Principal - agent framework has been widely used by most of the European integration schools, also supranationalism and intergovernmentalism. The framework looks at the principal (the EU institutions) and agent (Frontex) relationships by explaining the situation, when by the time the agent can develop its own interests and preferences.

After the beginning of increased attention on the agencies starting from 1990s, the EU agency literature has been trying to answer the question of why power is delegated to the agencies and why EU institutions decide to create an agency. This is the core question this master thesis was aiming to look at as the Frontex reform process was aiming to recreate the Frontex.

EU agency theory emphasizes that an agency can be created only when three actors the Parliament, the Commission and the Council have managed to agree on that by reaching a consensus. Every of these actors has their own interests and preferences that makes the negotiation and bargaining process more complicated. EU agency theory has clear theoretical expectations of what are the interests of the Parliament, the Commission and the Council when it comes to the power delegation to the agencies. These expectations were adjusted to the case of Frontex and used in the analytical process.

When defining the expected interests and preferences of the actors according to the EU agency theory, it was visible that this theory has absorbed the combination of the supranationalism and intergovernmentalism ideas, what was a significant contribution to this research as in the analytical process it was visible that none of the European integration theories is able to explain the failure to upgrade the Frontex mandate. As the

EU agency theory has the characteristics of both schools, it allowed to define the expected behaviour more clearly.

Explaining outcome process - tracing method was used in this master thesis as this was a case centric research. This method foresees the cases when one theory cannot give a sufficient explanation of the phenomenon. As at the beginning of this master thesis the factors that might have influenced the failure to upgrade Frontex mandate were not clear, supranationalism, intergovernmentalism, principal - agent framework and EU agency theory was used in order to develop sufficient set of factors that might have influenced the reform outcome.

In order to achieve a comprehensive research based on which strong arguments about actors' interests and preferences in Frontex reform process could be made, the concept of agency independence/ autonomy was used. Based on that, two sides of power delegation were analyzed - the institutional and functional independence. Those two sides of independence were chosen as the main aim of this master thesis was to look at the political side of the mandate upgrade, particularly on the reforms that can influence the internal decision making system, the degree of independent decisions made by the Frontex and accountability. After the document analysis, the national positions were analyzed in order to understand the patterns of national governments' logic of not upgrading Frontex mandates.

The main results of the thesis are that the interests and preferences set by the EU agency theory were present in the Frontex reform process that means that there are specific interest patterns that, according to this research, can be expected in the power delegation process. The main patterns were that the Commission is the main power delegation to the agencies promoter and supporter, which aims to keep the agency as dependent and tied to the Commission as possible. The Parliament support the political control over the agencies and wants to keep them transparent and accountable. The Council of the EU aims to keep the control over the agencies and supports them to be controlled by the Council and not by the Commission.

One of the crucial aspects of this master thesis was the sensitive nature of the field in which Frontex operates. Despite the globalization process, border management still is

strongly connected with the sovereignty and territorial integrity which was visible in the member states national position analysis. The decision to not support the Commission's proposal to give to Frontex the right to intervene in member states territory in urgent situations without an invitation of the receiving country, was clearly connected with the sovereignty question. This proposal was described as undemocratic and not acceptable for the member states.

The principal - agent framework foreseen the possibility that by the time agents might start to "live a life" separate from its principal. According to this thesis, it might be one of the reasons, why such actors as the Council did not support the upgrade of the Frontex mandate. Frontex as an agent might develop its own interests in the border management and by having upgraded mandate might act not according to the preferences of its principal. In this research this theoretical assumption could not be tested because of the limited access to the negotiation process. During the national position analysis, I was not able to gather an information that might support the ideas of the principal - agent model. As it was mentioned above, the main reasons for the opposition from the national governments' was the question of the political sensitivity and sovereignty.

One of the interesting sides that was observed during this analysis, was the gap between the understanding and the interests of the actors. As it was emphasized numerous times during this research, all of the actors involved in the decision - making process - the European Council, the Parliament, the Commission and the Council of the EU agreed that Frontex has to be reformed as with the pre - reform mandate it cannot effectively tackle the Migration crisis. However, during the decision - making process, it was visible that the member states interests prevailed. Many scholars has been describing this as a situation when the initial intention of the reforms was powerful and would make Frontex as a strong actor in the border management leading to the outcome when it can effectively work to improve the critical situation in the framework of the Migration crisis. However, in this situation the interests of the member states prevailed and the mandate of the Frontex was not upgraded.

The research question of this master thesis was: What explains the failure to upgrade the mandate of the Frontex in the context of the migration crisis? The main factors were the

different interests of the Parliament, the Council and the Commission. The Commission was the main promoter of the power delegation, however The Council and the Parliament were not so supportive of the ideas proposed by the Commission. The Council was the actor who opposed the upgrade of the mandate the most and as it was visible during the analysis, the main reasons for that were the sensitivity of the border management question and Council's opinion of the Commission's proposal being undemocratic and not transparent.

At the beginning of the thesis I made an argument that member states are those who are not willing to delegate more power to the Frontex. This research has confirmed this argument as the Council interests prevailed and as a result, the mandate of the Frontex was not upgraded.

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