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EU AGENCIES PROCEDURE – IS THERE A POSSIBILITY FOR AN INTER-AGENCY AND CROSS-SECTORAL APPROACH IN MATTERS OF SECURITY

ABSTRACT

The European Agenda on Security of April 2015 indicates that the Union needs a more joined-up inter-agency and cross-sectorial approach. Explicitly, it states that “given the increasing nexus between different types of security threats, policy and action on the ground must be fully coordinated among all relevant EU agencies, in the area of Justice and Home Affairs and beyond.” Furthermore, it suggests that the Union needs to bring together all internal and external dimensions of security. This paper will take a look at the new Regulation (EU) 2016/1624 on the European Border and Coast Guard (Frontex) and analyse whether there has been improvement in the possibility for an inter-agency and a cross-sectorial approach for agencies from the Area of Common Foreign and Security Policy. The paper will try to answer the question of prospect of progress in joining internal and external dimensions of security of the Union, considering the rising threat of terrorism and the continuing migration crises that have been shaking EU since the adaptation of the European Agenda on Security.

Keyword: EU agencies, European Agenda on Security, inter-agency cooperation, Frontex, CFSP

1. INTRODUCTION

Agentification is a phenomenon affecting not only the Member States of the Union, but also the Union itself. According to the EU Agencies website, the EU Agencies Network comprises 45 EU Agencies.¹ The many studies of EU agencies² in literature clearly demonstrate that due to the non-existence of legal provisions

¹ EU agencies network, URL=<https://euagencies.eu/> . Accessed 10 February 2017.

² See for example : Everson, M., *Independent Agencies: Hierarchy Beaters?* European Law Journal , Vol 1, No 2 , 1995, pp 180-204; Everson, M, *Administering Europe ?* , Journal of Common Market Studies, Vol 36, No 2, 1998, pp 195-215; Vos, E., *Reforming the European Commission: What Role to Play for EU Agencies*, Common Market Law review , Vol 37, 2000, pp 1113-1134.; Craig, P; *EU Administrative law*, Oxford University Press, Oxford, 2006, pp 143-190; Busuioc, E.M., *European Agencies : Law and Practice of accountability*, Oxford University Press, Oxford, 2013.; Chamon, M.; *EU Agencies – Legal and Political Limits to the Transformation of the EU Administration*, Oxford University Press, Oxford, 2016.

there is no academic agreement on many legal aspects regarding EU agencies. Accordingly, without any prejudice to the existing academic debates on the topic of EU agencies, the paper shall first identify the basic terms and definitions relating to EU agencies, then move on to defining inter-agency and cross-sectoral cooperation (approach) and what it would entail in the selected field of study (Union security). The research in this paper derives from two sources: legal and policy documents. The legal document sources include among others Treaty provisions, basic agency regulation and agency annual reports), whereas policy documents include Commission communications and European Parliament regulations. Building on these sources and focusing on the possibility of cross-sectoral and inter-agency cooperation of EU agencies that are engaged in matters of Union security, especially bearing in mind the new Regulation (EU) 2016/1624 on the European Border and Coast Guard (Frontex), the paper will conclude with a possible answer to the underlying question: is there progress in joining internal and external dimensions of security of the Union?

2. WHAT ARE EU AGENCIES?

There is no definition of EU Agencies in the Treaties, but there are several definitions in secondary EU legislation and policy documents. For example, EU Staff Regulations refer to agencies as “*Union bodies to whom these Staff Regulations apply under the Union acts establishing them.*”³The European Commission refers to EU agencies in various policy documents regarding EU Agencies, two of which contain further definitions. The 2002 Communication of the Commission on the European Regulatory Agencies states that “[...] *various decentralised organisations which can be grouped together under the general umbrella of European agencies have certain formal characteristics in common: they were created by regulation in order to perform tasks clearly specified in their constituent Acts, all have legal personality and all have a certain degree of organisational and financial autonomy.*”⁴The 2005 Communication of the Commission changes the definition slightly: “*European Regulatory Agency shall mean 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.*”⁵

³ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community

⁴ Communication from the Commission - The operating framework for the European Regulatory Agencies COM (2002) 718 final, p. 2-3.

⁵ Communication of the Commission on the operating framework for the European regulatory agencies COM (2005) 59 final, definition.

Furthermore, there is no consensus on the definition of EU agencies in academic debates. For example, Everson in 1995⁶ and Vos in 1997⁷ found that the definition of EU agencies was lacking. According to more recent definitions by e.g. Busuioc(2013), “*agencies are specialised, non-majoritarian bodies, established by secondary legislation, which exercise public authority and are institutionally separated from the EU institutions and are endowed with legal personality*”⁸, and Chamon (2016): “*EU agencies may be defined as permanent bodies, under EU public law, established by the institutions through secondary legislation and endowed with their own legal personality.*”⁹ Building on the said authors’ findings and the above-mentioned EU legal document, we propose a definition of EU agencies for the purpose of this paper: EU agencies may be defined as hybrid sui generis permanent bodies with legal personality, autonomous but created by EU institutions on the basis of EU legislation to perform specific tasks.

As previously mentioned, the Treaties do not offer a definition of EU Agencies, but there are numerous legal bases for the establishment of EU Agencies in secondary legislation as well. Communication of the Commission (2005) states that agencies are an instrument for implementing a particular Union policy, and that its basic act must be built on the provision of the Treaty which forms the specific legal basis of the policy in question.¹⁰ Aside from this policy-related legal basis, Article 352 (1) TFEU is also used as a legal basis in exceptional cases.

According to the EU agencies website, there are 45 agencies¹¹ and the consensus is that they had developed over a three-generation period, starting with the first two agencies: The European Centre for the Development of Vocational Training (CEDEFOP), and The European Foundation for the Improvement of Living and Working Conditions (EUROFOND) in 1975. The second generation followed in 1990 and the third, ongoing one in 2000.¹² However, there is no consensus in

⁶ Everson, op. cit. note 1, p. 185.

⁷ Vos, op. cit. note 1, p.1114.

⁸ Busuioc, op. cit. note 1, p. 21.

⁹ Chamon, op. cit. note 1, p. 10.

¹⁰ COM (2005) 59 final, legal basis. Current legal basis for EU Agencies: Articles 19 (2) TFEU 43 TFEU; 66 TFEU, 74 TFEU; 77 TFEU, 78 TFEU, 82 TFEU, 83 TFEU, 85 TFEU, 87 TFEU, 88 TFEU, 91 TFEU, 100 (2) TFEU, 114 TFEU; 153 TFEU; 168 TFEU; 192 TFEU; 28 TEU; 42 TEU, 45 TEU. See more on legal basis in: Chamon, op. cit. note 1, p. 18 -21.

¹¹ EU agencies network, URL= <<https://euagencies.eu/>> Accessed 10 February 2017.

¹² See more on the “*agentification*” process in the EU: Vos, E.; *European Agencies and Composite EU Executive* in Everson, M; Cosimo, M.; Vos, E. (ed.), *European Agencies in between Institutions and Member States*, Kluwer Law International, Alphenaan den Rijn, 2014, p. 11 – 20; Busuioc, op. cit. note 1, p. 13 ; Chamon, M.; op. cit. note 1, p. 13-18.

the literature or in the Commission's official documents on how these 45 existing agencies should be classified.

Authors provide different classifications of agencies, drawing mainly on their functions prescribed in the respective constituent acts.¹³ Academics strongly disagree with the Commission's simplification of classifying agencies as regulatory and executive. For example, in the 2002 Communication, the Commission defined regulatory agencies as "*agencies that were created by regulation in order to perform tasks clearly specified in their constituent Acts, all have legal personality and all have a certain degree of organisational and financial autonomy*", and executive agencies as "*agencies that are responsible for purely managerial tasks, i.e. assisting the Commission in implementing the Community's financial support programmes and are subject to strict supervision by it.*"¹⁴ Today the EU distinguishes between decentralised agencies (set up by the EU to perform technical and scientific tasks that help the EU institutions in implementing policies and decision-making), executive agencies, agencies under common foreign and security policy, and EUROATOM agencies.¹⁵

By moving from regulatory to decentralised agencies, the European Commission shifted the terminology, thus oversimplifying it for any serious debate on the classification of agencies. Although relevant for other studies, a detailed classification of agencies is not relevant for the present one. The differences between Common Foreign and Security Policy (CFSP) agencies and other EU Agencies (called regulatory and executive in the Commission's terminology and other literature) are evident even without analysing the typology and classification that exist in literature: their legal basis, the EU policy they belong to and the Union's competences in terms of related policies. The chapters below will discuss the possibility of cooperation between the CFSP agencies and agencies from the Area of Freedom Security and Justice, with reference to the call of the European Agenda on Security from April 2015 for a more joined-up inter-agency and cross-sectorial approach of the Union especially in bringing together all internal and external dimensions of security.

¹³ Vos, E.; *Agencies and the European Union*, In Verhey, L. and Zwart, T. (ed.) *Agencies in European and Comparative Perspective*, Intersentia, Antwerp, 2003, pp. 119-121.; Craig, P.; op. cit. note 1, pp 154-159; Busuioc, op. cit. note 1, p 37 – 42; Chamon, op. cit. note 1, p. 18-45

¹⁴ COM (2002) 718 final, p. 2-3.

¹⁵ Decentralised agencies, URL= https://europa.eu/european-union/about-eu/agencies/decentralised-agencies_en. Accessed 12 February 2017

3. INTER-AGENCY AND CROSS-SECTORAL APPROACH

As stated above, aside from having different legal bases, the today's 45 EU agencies operate in different regulatory areas (security, human rights, food, financial sector, space, CFSP etc.). Before analysing the possibility of an inter-agency and cross-sectoral approach in the field of the EU security, it is necessary to define inter-agency cooperation (collaboration) and cross-sectoral collaboration (cooperation).

Cross-sectoral cooperation or collaboration as a need of the modern world is growing. Bryson, Crosby and Middleton Stone offer a framework for understanding cross-sectoral collaborations, and define them as “*linking or sharing of information, resources, activities, and capabilities by organizations in two or more sectors to achieve jointly an outcome that could not be achieved by organizations in one sector separately.*”¹⁶ Cross-sectoral collaboration presumes collaboration of at least two organisations (entities) that hardly relate to each other, but need to address same problem. In literature, collaboration (or cooperation) is determined according to various elements: leadership, resources, role of organisation, reputation etc.¹⁷ Considering the sources from the literature, one can assume that inter-agency cooperation (collaboration) of EU Agencies can be a form of cross-sectoral cooperation, where two or more agencies from different sectors (i.e. regulatory areas) that hardly relate to each other cooperate to achieve joint outcome.

The possibility of an inter-agency and cross-sectoral cooperation arises from the European Agenda for Security. The Agenda was introduced by the European Commission in April 2015. It implements the political guidelines of the Commission in the area of security and replaces the previous Internal Security Strategy (2010-2014). In the light of new and complex security threats to the EU and its Member States, in its Agenda the Commission highlights the need for further synergies and closer cooperation at all levels of security. Among other security relevant issues, the Agenda calls for “*a more joined-up inter-agency and a cross-sectorial approach. Given the increasing nexus between different types of security threats, policy and action on the ground must be fully coordinated among all relevant EU agencies, in the area of Justice and Home Affairs and beyond. These agencies provide a specialised layer of support and expertise for Member States and the EU. They function as information hubs, help implement EU law and play a crucial role in supporting operational cooperation,*

¹⁶ Bryson J.M., Crosby B.C., Middleton Stone M. *The Design and Implementation of Cross-Sector Collaborations: Propositions from the Literature*, Public Administration Review, (Special Issue), 2006, pp. 44-55, p. 44 ; See more in literature on cross-sectoral collaboration: Crosby B.C., Bryson J.M., A Leadership Framework for Cross-Sector Collaboration, Public Management Review, No 7, Issue 2 , 2005, pp 177-201

¹⁷ Busuioc, M.; *Friend or foe? Inter-agency Cooperation, Organizational Reputation, and Turf*; Public administration, Vol. 94, No. 1, 2016 (40–56), p. 41.

such as joint cross-border actions. It is time to deepen cooperation between these agencies. The Commission will launch a reflection on how to maximise their contribution, through closer inter-agency cooperation, coordination with Member States, comprehensive programming, careful planning and targeting of resources.”¹⁸The Agenda lists and defines EU agencies in the Area of Freedom, Security and Justice as follows: the EU law enforcement agency (Europol), the EU agency for the management of operational cooperation at the external borders (Frontex), the EU judicial cooperation agency (Eurojust), the European police college (Cepol), the EU agency for large-scale IT systems (eu-LISA), and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). However, it does not define what the agencies “beyond” these are. The list of the agencies “beyond” must be read from other Union documents on security.

When considering the external and internal security issues in the EU, the focus should be on the new EU Global Strategy on Foreign and Security Policy: Shared Vision, Common Action: A Stronger Europe (EUGS). The EUGS was presented on 28 June 2016 by the High Representative and adopted by the European Council in October 2017. The EUGS identified priorities for Union security: the security of the EU; the neighbouring countries (State and Societal Resilience to our East and South); how to deal with war and crisis (An Integrated Approach to Conflicts and Crises); stable regional orders across the globe (Cooperative Regional Orders); and effective global governance (Cooperative Regional Orders).¹⁹Most importantly, the EUGS called for strengthening of the internal and external security.²⁰Furthermore, the joint Council conclusions on implementing the EU global strategy in the area of security and defence stress the need for strengthening the nexus between internal and external policies, updating existing or preparing new regional and thematic strategies and stepping up public diplomacy efforts.²¹

¹⁸ The European Agenda on Security (COM(2015) 185 final), URL= <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0185>, see more on European Agenda on Security in: Ham van, P.K. The EU’s joined-up approach to security | Clingendael Report, September 2016 URL=<https://www.clingendael.nl/sites/default/files/Clingendael_report_The_EU's_joined_up_approach_to_security.pdf>Accessed 12 February 2017

¹⁹ See more on EUGS: Duić, D. *EU Global Strategy on Foreign and Security Policy and the role of High Representative of the Union for Foreign Affairs and Security* in Primorac, Z., Bussoli, C., Recker, (ed.), Economic and Social Development – 16th International Scientific Conference on Economic and Social Development – “The Legal Challenges of Modern World” Split: Varaždin Development and Entrepreneurship Agency, 2016, pp. 289-299.

²⁰ EU Global strategy on foreign and security policy: Shared Vision, Common Action: A Stronger Europe. URL=http://www.eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf. Accessed 12 February 2017

²¹ Council conclusions on implementing the EU global strategy in the area of security and defence, 14009/16 CFSP/PESC 889 CSDP/PSDC 629 COPS 321 POLMIL 122 CIVCOM 214, URL=<<http://www.consilium.europa.eu/media/14009/16/CFSP/PESC/889/CSDP/PSDC/629/COPS/321/POLMIL/122/CIVCOM/214/160916CFSP/PESC889CSDP/PSDC629COPS321POLMIL122CIVCOM214.pdf>>

The documents of the European Commission, the European Council, the Council and the High Representative show that there is a consensus on the aspiration to achieve cohesion of internal and external security aspects in Union policies. According to the Union division of competences, Security is covered by two main policies: Common Foreign and Security Policy (CFSP - external security of the Union) and Area of Freedom Security and Justice (AFSJ - internal security of the Union).

Both policies were introduced into the EU legal system by the Maastricht Treaty with the creation of the Union pillar structure.²² The CFSP was at the time Second pillar regulated under Title V TEU, and Area of Freedom Security and Justice (*Justice and home affairs* at the time) was Third pillar regulated under Title VI TEU.²³ The Title VI TEU Amsterdam was changed from *Justice and home affairs* to *Police and judicial cooperation in criminal matters*, and regulation of external borders, visa, asylum, immigration and other policies were moved from the Third Pillar to Title IV TEC.²⁴ In the current Treaty regulation under Lisbon Treaty, the Third Pillar was abolished – the result is that today all policies relating to “internal security” of the Union form Title V (Area of Freedom, Security and Justice) of the Treaty on the Functioning of the European Union (TFEU). For the Area of Freedom Security and Justice, the following applies: ordinary legislative procedure, ordinary types of legal instruments, and full power of EU institutions including the Court of Justice of the European Union (CJEU). The CFSP remained different from all other EU policies. All provisions of this policy can still be found in the Treaty on European Union (TEU). It has special legal instruments and sui generis competences, and EU institutions have special competences in the area of the CFSP.²⁵

www.consilium.europa.eu/en/press/press-releases/2016/11/14-conclusions-eu-global-strategy-security-defence/

²² See more on pillar structure: Wessel, R., *The Inside Looking Out: Consistency and Delimitation in EU External Relations*, Common Market Law Review; Issue. 37: No. 5; 2000 pp. 1135-1171

²³ Art J – J 11 (CFSP) and Art. K- K9 Maastricht Treaty

²⁴ Art. 29–42 TEU Amsterdam Treaty

²⁵ See A 21–27 TEU

Table 1. Articles from Treaties relevant for the security of the Union

External security (CFSP)²⁶ Title V TEU (Article 23–46 TEU)	Internal security (AFSJ) Title V TFEU (Article 67–89 TFEU)²⁷
<ul style="list-style-type: none"> • Common provision (23-41 TEU) • Common security and defence policy (42-47 TEU) 	<ul style="list-style-type: none"> • general provision (67-76 TFEU) • policies on border checks, asylum and immigration (77-80 TFEU) • judicial cooperation in civil matters; (81 TFEU) • judicial cooperation in criminal matters (82-86 TFEU) • police cooperation (87-89 TFEU)

When considering the possibility of inter-agency and cross-sectorial approach in the matters of Union security, it could be inferred that the possibility of such cooperation could be achieved through the cooperation between CFSP agencies and AFSJ agencies.

As previously mentioned, there are six EU agencies in the Area of Freedom, Security and Justice: the EU law enforcement agency (Europol), the EU agency for the management of operational cooperation at the external borders (Frontex), the EU judicial cooperation agency (Eurojust), the European police college (Cepol), the EU agency for large-scale IT systems (eu-LISA), and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). On the other hand, there are three EU agencies in the CFSP: the European Defence Agency (EDA), the EU Foreign and Security Policy Institute, and the European Union Satellite Centre (EUSC).²⁸

Of the above agencies, the one that has been in focus for the last few years is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) established

²⁶ See more on the Common foreign and security policy in general : Cardwell, P. J. ; EU external relations law and policy in the post-Lisbon era. T.M.C. Asser Press, The Hague; 2012.;Eeckhout; Piet; EU External Relations Law; Oxford University Press, Oxford, 2011.; Eckes, C. ; External Relations Law: How the Outside Shapes the Inside. In: D. A. Arcarazo& C. Murphy (Ed.), EU Security and Justice Law: After Lisbon and Stockholm (pp. 186-206). Hart Publishing.; Oxford, 2014 , pp 186-206 ;

²⁷ See more on Area of freedom security and Justice in general : Peers, S.; Mission accomplished? EU Justice and Home Affairs law after the *Treaty of Lisbon*. *Common Market Law Review*, 48(3), 2011, pp. 661–693. Peers, S.; EU Justice and Home Affairs Law, 3rd edition. Oxford University Press, Oxford 2011.

²⁸ Types of EU agencies: URL= https://europa.eu/european-union/about-eu/agencies/decentralised-agencies_en#search-for-an-agency. Accessed 13 February 2017

by Council Regulation (EC) 2007/2004 (which was repealed by Regulation (EU) 2016/1624 establishing European Border and Coast Guard Agency (Frontex) on 14 September 2016). Given that these are the last amendments to the regulation on the AFSJ agencies, the paper will analyse the new Regulation (EU) 2016/1624 on the European Border and Coast Guard (Frontex)²⁹ to answer whether there has been improvement to the possibility for an inter-agency and cross-sectorial approach with the CFSP agencies.

4. EUROPEAN BORDER AND COAST GUARD AGENCY (FRONTEX)

The legal bases for the establishment of the European Border and Coast Guard Agency (Frontex) are Articles 74 TFEU and 77(2)(c) TFEU (ex 66 TEC and 62(2)(c) TEC)).³⁰ Frontex is an Area of Freedom Security and Justice agency, first established in 2004 with the task of improving the integrated management of the Union's external borders.³¹ The number of the today's main tasks of Frontex has been increased: under the new Regulation, the agency has been tasked with ensuring a coherent European integrated border management: *“The key role of the Agency should be to establish a technical and operational strategy for implementation of integrated border management at Union level; to oversee the effective functioning of border control at the external borders; to provide increased technical and operational assistance to Member States through joint operations and rapid border interventions; to ensure the practical execution of measures in a situation requiring urgent action at the external borders; to provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea; and to organise, coordinate and conduct return operations and return interventions.”*³² Moreover, the list of

²⁹ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC

³⁰ Article 74 TFEU: “The Council shall adopt measures to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Title, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to Article 76, and after consulting the European Parliament.” Article 77 (2) (c) The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning any measure necessary for the gradual establishment of an integrated management system for external borders.

³¹ Article (1) Council Regulation (EC) 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

³² Article (11) Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 Sep-

task has grown from six main tasks under Article (8) of Council Regulation (EC) 2007 to twenty-one specific tasks under Article (6) of the current Regulation.³³ Although the current tasks are more specific, they can still be divided into regulatory tasks (assistance to the Commission and Member States) and operational tasks (joint operational activities).³⁴ Finally, it is important to mention that Frontex, unlike any other AFSJ agency, has autonomous decision making powers.³⁵

In terms of cooperation possibilities, Articles 13 and 14 of the Council Regulation (EC) 2007 previously very briefly regulated Frontex cooperation with Europol and international organisations (Article 13) and cooperation with third countries.³⁶ The new Regulation states: “*For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the Agency may cooperate with Union institutions, bodies, offices and agencies as well as with international organisations in matters covered by this Regulation in the framework of working arrangements concluded in accordance with Union law and policy. Those working arrangements should receive the Commission’s prior approval.*”³⁷ Article 52 further states: “*The Agency shall cooperate with the Commission, other Union institutions, the European External Action Service, EASO, Europol, the European Union Agency for Fundamental Rights, Eurojust, the European Union Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency as well as other Union bodies, offices and agencies in matters covered by this Regulation, and in particular with the objectives of better addressing migratory challenges and preventing and detecting cross-border crime such as migrant smuggling, trafficking in human beings and terrorism.*”³⁸ Interestingly, the number of EU agencies and bodies that Frontex is able to cooperate within creased from just one (Europol) to eight specific EU agencies (but not excluding cooperation with other bodies and agencies), with the possibility of cooperation

tember 2016 on the European Border and Coast Guard

³³ Art (6) (2), Art (8) Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard

³⁴ Rijpma, J.; *Hybrid agentification in the area of Freedom, Security and Justice and its inherent tensions: the case of Frontex* in M Busuioc, M Groenleer, and J Trondal (eds), *The agency phenomenon in the European Union* (pp. 84 -102), Manchester University Press, Manchester, 2012, p- 90 – 91

³⁵ *Ibid*, p. 89

³⁶ See more in literature on this subject: Ott, A.; Vos, E.; Coman-Kund, F.; *European Agencies on the Global Scene: EU and International Law Perspective* in Everson, M.; Monda, C.; Vos, E. (eds.) *European Agencies in between Institutions and Member States* (pp 87 – 123), Kluwer Law International, Alphen aan den Rein, 2014, p 109-111; Vara, J. S.; *The External Activities of AFSJ Agencies: The Weakness of Democratic and Judicial Controls*; *European Foreign Affairs Review*, Issue 20, No. 1, 2015, p 115-136, p 121

³⁷ (43) Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard

³⁸ *Ibid* Art 52.

being determined according to specific objectives. Reading this *stricto sensu*, if a new security objective appears, it will be hard to manage the cooperation of Frontex with any other Union body of agency considering the fact that the list of objectives that presume cooperation under Article 52 is finite.

Conclusively, the aspects mentioned in this chapter (tasks of the agency and cooperation) are more explicitly regulated under the new Regulation. Although this can be regarded as an improvement, it should be noted that over-regulation of tasks gives less opportunity for cooperation with other actors and less possibility to adjust to new unforeseeable situations (as for example the migration crisis of 2015).

5. AGENCIES IN THE COMMON FOREIGN AND SECURITY POLICY

The three EU agencies in the CFSP are the European Defence Agency (EDA), the EU Foreign and Security Policy Institute, and the European Union Satellite Centre (EUSC).

The European Defence Agency (EDA) was established by Council Joint Action in 2004 as an agency in the field of defence with a mission to support the Council and the Member States in their effort to improve the EU's defence capabilities in the field of crisis management.³⁹ The Treaty of Lisbon introduced a specific provision on the EDA (Article 45 and 42(3) TEU).⁴⁰ Consequently, in July 2011, the Council adopted Decision 2011/411/CFSP replacing Council Joint Action from 2004. The Agency's tasks involve contributing to identifying EU countries military capability and evaluating observance of their capability commitments, promoting the harmonisation of operational needs; putting forward multilateral projects to fulfil military capability objectives; ensuring coordination of programmes implemented by member states and management of specific cooperation programmes; supporting defence technology research and coordinating and planning joint research activities.⁴¹

³⁹ Art. 2 Council Joint Action 2004/551/CFSP of 12 July 2004 on the establishment of the European Defence Agency,

⁴⁰ Article 45 and Article 42(3) TEU.

⁴¹ Art 5 Council Decision 2011/411/CFSP of 12 July 2011 defining the statute, seat and operational rules of the European Defence Agency and repealing Joint Action 2004/551/CFSP. See more on EDA in literature: Ferrar, S. L.; *The European Defence Agency: Facilitating Defence Reform or Forming Fortress Europe?*; Transnational Law and Contemporary Problems, 16, 2007, p. 570 – 600; Heuninckx, B.; *Towards a Coherent European Defence Procurement Regime? European Defence Agency and European Commission Initiatives*; Public Procurement Law Review Volume 17, Issue 1, 2008, pp. 1-20.

The EU Foreign and Security Policy Institute was created by Council Joint Action in 2002 as an agency under the Common Foreign and Security Policy and is now regulated by Council Decision 2014/75/CFSP. The Institute is set to contribute to development of EU strategic thinking in the CFSP field including conflict prevention and peace-building and strengthening the EU's analysis, foresight and networking capacity in external action.⁴²

The Council adopted Joint Action 2001/555/CFSP and established the European Union Satellite Centre (SATCEN) in 2001.⁴³ This Joint Action was replaced with the Council Decision 2014/401/CFSP that now governs the European Union Satellite Centre (SATCEN). The SATCEN products and services result from the exploitation of relevant space assets and collateral data, including satellite and aerial images.⁴⁴

6. IS THERE A POSSIBILITY FOR AN INTER-AGENCY AND CROSS-SECTORIAL APPROACH BETWEEN FRONTEX AND CFSP AGENCIES?

To answer the research question of whether there has been progress in joining internal and external dimensions of security of the Union on the case study on EU agencies, the paper will move on to a specific analysis of the possibility of an inter-agency and cross-sectorial approach between Frontex and the CFSP Agencies. The conclusion will be drawn by comparing CFSP Agency functions (tasks) with Frontex functions (tasks) specified in their founding acts.

Inter-agency cooperation (collaboration) of EU Agencies has previously been defined as a possible form of cross-sectoral cooperation, wherein two or more agencies, that hardly relate to each other, from different sectors (i.e. regulatory areas), cooperate to achieve a joint outcome. Moreover, it has been found that although their activity addresses security, CFSP Agencies and Frontex come from different sectors (regulatory areas, i.e. EU policies). Frontex has been put in focus due to the fact that a new Regulation that has been in force since September 2016 made important changes to said founding acts. The founding acts of CFSP agencies were changed after entry into force of the Lisbon Treaty and they all date from 2011 and 2014.

⁴² Council Decision 2014/75/CFSP of 10 February 2014 on the European Union Institute for Security Studies.

⁴³ Council Joint Action of 20 July 2001 on the establishment of a European Union Satellite Centre (2001/555/CFSP).

⁴⁴ Council Decision 2014/401/CFSP of 26 June 2014 on the European Union Satellite Centre and repealing Joint Action 2001/555/CFSP on the establishment of a European Union Satellite Centre.

Firstly, the new Frontex Regulation provides a list of EU agencies and bodies that Frontex is expected to collaborate with. The only CFSP agency on the list is the European Union Satellite Centre (SatCen).⁴⁵ SatCen produces results from the exploitation of relevant space assets and collateral data including satellite and aerial images which can be of use to Frontex in its operational tasks. Conclusively, pursuant to the regulation in the founding act of Frontex, the possibility of cooperation with SatCen is provided for, possible and can be considered as an improvement in the inter-agency and cross-sectoral approach considering the fact that in previous Frontex Regulation the only possibility provided for was the cooperation with Europol.⁴⁶

The European Defence Agency function, in accordance with Article 5 of Council Decision 2011/411/CFSP, is to support the Council and the Member States in matters of defence capabilities development, research, acquisition and armaments.⁴⁷ This function is incompatible with the functions of Frontex listed in Article 8 of Regulation 2016/1624⁴⁸ and by deduction there is no possibility for direct inter-agency cooperation. There could however be indirect cooperation in the sense that some equipment used by Frontex be developed through research supported by the European Defence Agency.

Lastly, the EU Foreign and Security Policy Institute, whose function is foreign policy analysis, is an agency that can cooperate with Frontex to a large degree in tasks relating to monitoring migration flows and risk analysis, assessment of threats and challenges at external borders etc.⁴⁹ If the EU Foreign and Security Policy Institute was added to the list from Article 52 of bodies and agencies that Frontex shall cooperate with, the cooperation would be much easier.

7. CONCLUSION

This article offers two definitions for the purpose of this research. Firstly, it defines EU agencies as hybrid *sui generis* permanent bodies with legal personality, autonomous but created by EU institutions on the basis of EU legislation in order to perform specific tasks. Further, drawing on literature sources, it considers that

⁴⁵ Art 52 Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard

⁴⁶ Art 13 Council Regulation (EC) 2007/2004

⁴⁷ Art 5 Council Decision 2011/411/CFSP of 12 July 2011 defining the statute, seat and operational rules of the European Defence Agency and repealing Joint Action 2004/551/CFSP

⁴⁸ Art 8 Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard

⁴⁹ Ibid.

inter-agency cooperation (collaboration) of EU Agencies can be a form of cross-sectoral cooperation, where two or more agencies that hardly relate to each other, from different sectors (i.e. regulatory areas), cooperate to achieve a joint outcome.

It is established that, in the matter of Union security, cross-sectoral and inter-agency approach is the cooperation between CFSP and AFSJ agencies. The decision to analyse cross-sectoral and inter-agency approach through a case study of EU agencies stems from the fact that the most exposed AFSJ Agency in the last few years has been Frontex, which has undergone substantial changes as a result of the new Regulation (EU) 2016/1624 on the European Border and Coast Guard. Frontex tasks are more explicitly regulated in the new Regulation and this can be considered an improvement. However, over-regulation of tasks gives less opportunity for cooperation with other actors and less possibility to adjust to new unforeseeable situations. The aspects of the Regulation as analysed indicate that the number of EU agencies and bodies that Frontex is able to cooperate with has been increased and that the possibility of cooperation is determined by specific objectives. Regarding the cooperation between Frontex and the three CFSP agencies, it was found that the possibility for cooperation has been provided for in the new Frontex Regulation for European Union Satellite Centre and that there can be cooperation with the EDA and the EU Foreign and Security Policy Institute, but that the Frontex Regulation does not explicitly provide for cooperation with these two agencies.

The overall conclusion is that the new Regulation (EU) 2016/1624 on the European Border and Coast Guard (Frontex) offers better possibilities for inter-agency and cross-sectoral approach in the matters of Union security. It remains to be seen whether these improvements will be implemented in practice.

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