

EUROPEAN MIGRATION CRISIS.
ASPECTS OF BORDER
CONTROL

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Dedication

“Per aspera ad astra”

To my husband, Kuba for his love and patience.

To my parents for their love and confidence in me.

To my grandparents for all great memories from my childhood.

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THESIS

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Chapter 1: Introduction

PURPOSE OF THE THESIS

“For 40 days only I stayed in Athens. I saw the situation. Everyone was stealing, and I could not [...] I left Afghanistan in order to live, not to become worse here, to steal and do many things. That’s why I left Greece”. “If I stay in Athina (Athens), I have to sell drugs for food for anything. [...] I hate drugs. Some of them sell cds, some sell drugs. But I don’t like that [...]” (Triandafyllidou and Maroukis 2012, 158). These two statements come from interviews with migrants residing in Greece. One may say that they reflect the European migration crisis in a nutshell.

This thesis focuses on the problem of the aspects of border control of the European migration crisis. Being aware that the topic of the European migration crisis (which will be explained in the following subsections) is too complicated to comprehend, I decided to focus on one aspect of it, namely, border control. The question I am asking in my research is: What should the European Union do to improve control over its borders? My goal is to propose public policy recommendations. Hence, my thesis took a shape of public policy analysis. Since the analyzed actor in my thesis is the EU, proposed recommendations need to be consistent with the EU policy direction, namely, the second pillar of the European Agenda on Migration – “saving lives and securing external borders” (European Commission 2015a).

Why the aspects of border control? First, the crisis begins at borders. The fact that we do have borders imposes some implications. The EU as a huge bureaucratic giant created a lot of laws regulating its borders, in order to maintain control over its frontiers. Hence, once some kinds of irregularities pertaining to border control are discovered, it deserves attention in academia and may encourage to develop policy analysis. The Schengen Evaluation Report on Greece has shown

serious difficulties with compliance with EU border regulations. According to the report, there was border control inspectors' negligence regarding identification and registration of migrants. Furthermore, they were not correctly fingerprinted and checked "in crucial security databases such as SIS, Interpol and national databases" (European Commission 2016a). Moreover, almost 2 million people crossed the EU border irregularly in 2015, which as compared with previous years shows that there is a serious problem with border control in the EU.

In the next subsection of this Chapter, I discuss my research design and methods. After that, I move on to the definition of the European migration crisis and differentiation between refugees and migrants. I talk also about the causes of the migration crisis and its effects, such as tensions between member states, security problems. Finally, I describe the EU response to the crisis and the cooperation with third countries (i.e. countries that are not members of the EU) that was undertaken in order to mitigate the problem.

Before I move to the next section, let me briefly describe the content of the following chapters. In Chapter 2: The Rise and Fall of Frontex I introduce the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union known as Frontex. I discuss how the agency was created and how it worked, its structure and functions and how it worked before the reform that took place in October 2016, which is analyzed in Chapter 4. In Chapter 2, I also touch on the wide criticism that Frontex has received recently. I analyze and categorize the criticism leveled at Frontex.

In Chapter 3: Policy Alternatives, I propose policies that may help to improve the border control in Europe. I analyze them taking into consideration evaluative criteria, cost and benefits analysis and political feasibility. I wrap up the chapter with the proposition of two of the best in my opinion policy alternatives that are analyzed in the two following chapters.

In Chapter 4: The Reform of Frontex, I discuss the 2016 reform of the agency, which established the European Border and Coast Guard (EBCG) agency on the grounds of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. First, I look at the process of creating the new agency, examining the legislative path of the project and debate in the European Parliament (EP) about the project. Then I move to the analysis of the introduced changes and I assess whether they can truly contribute to the agency's work.

In Chapter 5: The Cooperation between the EU and NGOs on Search and Rescue Operations, I examine the second-best policy alternative. I start this Chapter with the review of previous successful cooperation between the EU and NGOs, looking for a pattern that could be used in search and rescue (SAR)¹ operations. Then I analyze the Frontex Consultative Forum which is an institution that facilitates a dialogue between Frontex and NGOs and as far as I know was not analyzed in academia. I assess the effectiveness of this body, trying to investigate whether it could be as a platform for cooperation on SAR operations. In Chapter 5, I also examine whether my expectation that NGOs are more efficient in SAR operations than the EU is true and also whether proposed cooperation would meet my other evaluative criteria. In addition, I outline the ways in which the EU and NGOs could cooperate. I close this Chapter with the discussion about constraints of the cooperation.

In the final Chapter 6: Conclusions and Recommendations, I sum up my work by proposing steps that should be undertaken in order to improve control over the EU borders. I once again explain why the cooperation with NGOs would be beneficial and I discuss what steps should be undertaken to improve effectiveness of Frontex. I call for establishing a permanent border guard

¹ The term will be explained in Research Design section.

officers at the disposal of the agency. In addition, I propose changes in the regulation that would help to avoid ambiguity and equip the agency with some kind of enforcement capabilities. Some more general recommendations are also discussed. Finally, I wrap it up by indicating the directions for future research.

My findings show that the European Migration Crisis is one of the biggest challenges in the EU history. It causes tensions between member states and shows the lack of a firm and thoughtful plan on how to mitigate the problem. In addition, I also explain the impact that the crisis has on the security of Europeans and migrants. The EU ineffectiveness in combating the crisis permits to agree with the scholars arguing that organizational limitations of Frontex was one of the biggest constraints of European border control. Deriving from the US public policy literature I argue that Frontex experienced “responsibility without authority” (Staudt 1985, 62).

The results of my research show that the cooperation between EU and NGOs organizations on search and rescue operations and the reform of Frontex are the best solutions to improve border control in the EU. I indicate that there are available tools that could be used to institutionalize and finance such a cooperation. My analysis of Frontex Consultative Forum on Fundamental Rights proves the effectiveness of this body. Although the efficiency of NGO in SAR operations is lower than expected the cooperation can still meet the evaluative criteria. Finally, the analysis of Frontex reform shows that it is more than just renaming; however, it still does not resolve all limitations that the agency was facing. The reform influenced such aspects as fundamental rights and accountability, but did not significantly address the dependence on member states and the compromise between states’ sovereignty and the agency’s competencies.

RESEARCH DESIGN AND METHODS

This is a public policy analysis, covering the time period 2015-2016. The time-frames were dictated by the year when the crisis emerged (2015) and continued (2016). Since this is a policy analysis, I will mainly implement methods used in this field. I will follow the “Steps in the Public Policy Process” proposed by Kraft and Furlong (2015). The first step is to define and analyze the problem, which will be presented in subsections of this Chapter. There is no reason to repeat this content; therefore, in Chapter 3, I will move to other steps of the analysis – examination of the policy alternatives using evaluative criteria such as security, efficiency, and social acceptability. Since they are particularly relevant for all my work, they should be discussed in this introductory Chapter. Security concerns are one of the aspects of the current crisis. Therefore, following Deborah Stone’s rationales, I would argue that security should be one of the evaluative criteria in this public policy analysis (Stone 2012, 139).

Naturally, there are different types of security; Stone (2012, 139) differentiates such categories as: economic security, food security, cybersecurity, environmental security, safety, and personal security. The conceptualization that is used in this research refers to the latter category – personal security. Stone (2012, 129) describes it as “not being vulnerable to crime, domestic abuse, and other forms of violence.” The problem I analyze needs a solution that would provide the highest personal security for European citizens, but also equally importantly – for migrants. In regard to European security, the best policy alternative would be based on the control and correct registration of people arriving in Europe. However, such measures are also important from migrants’ or asylum seekers’ points of view. Once they are registered it is easier to analyze their cases and to provide them with help. Moreover, from the perspective of migrants, the best policy alternative would also require an answer to tragic situation at the Mediterranean Sea, where people

lose lives on their way to Europe. Thus, integrating security as an important criterion would be beneficial for both sides – Europeans and asylum seekers.

Efficiency would be the next evaluative criterion. One should remember that Greece which because of its location happens to be a hot spot of huge migration waves, still undergoes serious economic difficulties. Therefore, expecting Greece to invest great amounts of money in resolving this problem would be naïve. Italy and Malta are also tired of providing funds to fight the crisis (Scherer and Binnie 2016). On the other hand, the current EU policy is also based on austerity, which was severely criticized by Alexis Tsipras and Antonio Costa as evidence of the lack of solidarity with Southern European countries dealing with the problem (Lewin 2016). Therefore, the balance between money spent and achieved effects is really important. In addition, the effects need to be visible in a timely manner, since the next waves of immigration are expected really soon.

Finally, the last evaluative criterion would be social acceptability. The migration crisis got great publicity in Europe. People talk about it a lot and some of them are really emotional about it. Moreover, Europeans tend to be polarized when it comes to this issue. Thus, the perfect solution should take into consideration social acceptability. The most important factor is that the implemented solution ought to be acceptable by EU public opinion.

Also, in Chapter 3, taking into consideration evaluative criteria, I will employ a costs/benefits analysis of all proposed alternatives, which help me to assess the available options. The analysis enabled me to choose two policy alternatives as the most promising. In order to investigate them more carefully, I have decided to discuss each one of them in the separate chapters (Chapter 4 and Chapter 5). Finally, the last stage proposed by Kraft and Furlong is to present policy recommendations, which will be done in the last final chapter.

Besides the guidelines in “Steps in Public Policy Process,” I will employ a couple of other qualitative methods in this analysis. One of them is legal documents analysis. In Chapter 2, I talk about “old” Frontex, i.e. the agency before the reform from October 2016. In order to present the image of the “old” Frontex I analyze the following regulations: 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; Regulation (EC) No. 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No. 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers; Regulation (EU) No. 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

Whereas, Chapter 4 is mainly based on the Regulation (EU) No. 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) No. 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. In addition, in various chapters I also studied other EU documents such as factsheets, treaties, press releases, and other resources available at the websites of the European Commission, the European Council, the European Parliament, the European External Action Service, and last but not least, Frontex. Another important part of my analysis was documents released by Frontex such as general reports

and risk analyses, as well as reports published by the Sea Watch and the Migrant Offshore Aid Station (two analyzed in Chapter 5 NGOs), together with information available at their websites.

Moreover, as I will show in the following subsection, I am going to compare the performance of non-governmental organizations (NGOs) and the European Union in regard to search and rescue (SAR) operations. In order to do so, I will employ a “structured, focused comparison” method (George and Bennett 2005, 67). According to George and Bennett (2005, 69), there are three steps that should be realized to successfully complete this method. First, a researcher needs to identify a class or subclass of events. In my case, it will be search and rescue operations. The second step is to differentiate classes within the analyzed phenomenon. In my research, there will be search and rescue operations run by two non-governmental organizations (the Sea Watch and the Migration Aid Offshore Station) and Frontex SAR operations. Finally, the researcher has to employ a set of variables and compare them among all classes. My variables would be monetary commitments, the number of rescued migrants, and the length of operations. Monetary commitments will be expressed in euros and the length of operations in months. Since I have already mentioned operationalization, let me also explain how other concepts are understood in this thesis. NGOs in this research are understood as organizations working non-profit, often based on volunteers’ work with a precise declared mission or goal (European Parliament 2010, 16). Search and rescue operations are missions that consist of searching for migrants’ boats at sea and then rescuing them by taking them to the safe ports.

DEFINITION OF EUROPEAN MIGRATION CRISIS

The broad topic analyzed in this thesis is the European migration crisis. The European migration crisis in this thesis is understood according to the definition of International Organization of Migration (IOM): “*Migration crisis* is short for “*crisis with migration*

dimensions, ” which takes place on the territory of the European Union and requires a response from this international organization. Naturally, this crisis does not solely affect the EU, but other countries as well. However, the focus of my research is the European Union; therefore, I will be speaking about the European Migration Crisis.

It is also in order here to identify a few features of IOM migration crises: they “can generate internal or cross-border population movements, are shaped by migration patterns that existed prior to the crisis, can change migration patterns in the aftermath of the..., [and] can increase the vulnerability of affected populations” (IOM Infosheet 2013). In fact, almost all of them are true for the European migration crisis. Indisputably, we can say that during this crisis, cross-border population movements occur. They are partly shaped by already existing patterns, since the nationalities of newcomers have not changed drastically over time; what differs is the growth in the volume of migrants. For instance, Afghans have been coming to Europe in recent years, but not in such great numbers as they are now. Indisputably, the European migration crisis increases the vulnerability of migrants. In fact, this feature of the crisis got the greatest media coverage, since we have been exposed to many examples of footage showing people drifting on rubber rafts, on which they were placed by smugglers and traffickers. The problem of people smuggling and trafficking migrants is also one of the biggest issues pertaining to this crisis. Criminals take advantage of desperate people and put their lives in danger. There is actually one more important feature of this crisis that was not covered by IOM characteristics: namely, the crisis also affects the lives of citizens of so-called receiving or transit states. I will elaborate on that in the security section of this chapter.

Is this an unprecedented situation for the European Union citizens? Have they ever experienced migration crises before? Doubtlessly, not all of them have; however, for many the

term “unprecedented humanitarian crisis” sounds familiar. As Carrera (2007, 13) points out, the situation that took place in 2006 in the Canary Islands was also presented as an unprecedented crisis. In 2006, 31,600 illegal border crossings were detected in this migratory route, which compared with previous years’ 9,388 in 2003, 8,426 in 2004 and 4,790 in 2005 may, in fact, permit the situation to be called unprecedented. However, Carrera argues that southern EU countries have the tendency to use the word ‘emergencies’ to get EU support and to use it as a scapegoat of their ineffective policies (Carrera 2007, 13). The Canary Island crisis was resolved, thanks to bilateral agreements that Spain signed with Senegal and Mauritania, which allowed for sending back migrants that were intercepted in territorial waters of those countries (Carrera 2007, 21).

Normally, migrants do not appear over just one night, over even one year. However, it seems that Greece’s example is different. Mathew Carr highlights that 2009 was the year when Greece has become the center of illegal border crossing in Europe (Carr 2012, 85). He argues that between 2006 and 2008 the number of people illegally crossing the border by sea rose from 7,000 to 30,000 a month. In addition, he also points out the 11,000 newcomers that reached Malta between 2002 and 2009, who, although in the European scale do not seem to be many, for Malta inhabited by 400,000 was a huge change (Carr 2012, 68).

As Figure 1.1 shows, in 2015 there were over 1,800,000 detections of illegal border crossings in the European Union (Frontex 2016a). In 2014, there were “only” 282,962 detections (Frontex 2015a), in 2013, 107, 000 and in 2012, 73,000 (Frontex 2015a, Frontex 2014a, Frontex 2013). It is apparent that the number reached in 2015 is a record, which allows us to describe this situation as critical and unprecedented, since the number of illegal crossings has never before increased by six times in one year.

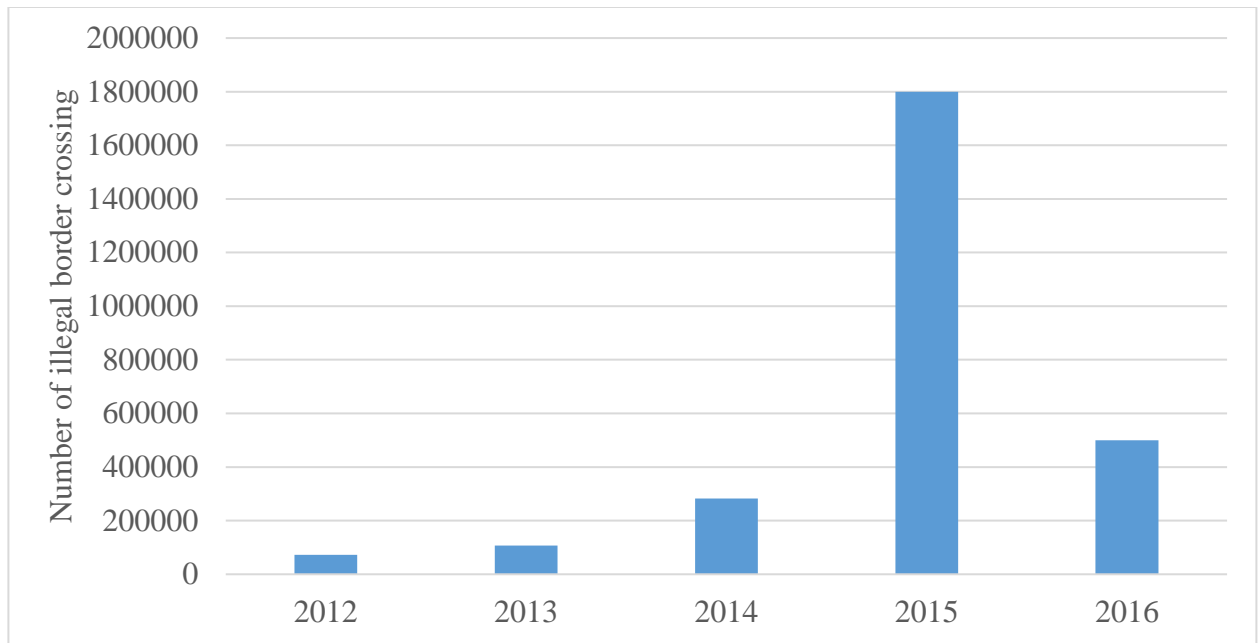


Figure 1.1: Detections of illegal border crossing in the EU.

Doubtlessly, frontline states, especially Greece, was not prepared for such a great number of people trying to cross the border illegally, which reached 885,386 in 2015, as compared to about 50,000 in 2014 (Frontex 2016a). According to the Frontex 2016 Risk Analysis, 33% of detected illegal crossings were perpetrated by Syrians; however, it should be noted that the second largest group of about 31% constitutes of “not specified” migrants. The third group was Afghans (15%), followed by Iraqis (6%) and others (6%). What is definitely striking and concerning is the number of “not specified” migrants. It is hard to determine whether a person should be granted asylum if it is unknown where he or she comes from.

In 2016, the number of detected illegal crossings dropped to 500,000 (Frontex 2017a). Syrians did not constitute the largest group of those crossers anymore, since they represented 17% of all detected crossings. The largest group were “others,” 22%, followed by “not specified,” 20% (Frontex 2017a). This data shows that it is hard to view the crisis as “Syrian refugee crisis,” since Syrians have never represented the majority of people coming to Europe, although they used to

qualify as the largest part of all crossers. In addition, Frontex acknowledges that in fact, it is hard to determine the number of “real” Syrians coming to Europe, since many other nationals claim to be Syrians (in a situation when they do not have any documents) or used forged Syrian documents (Frontex 2016a). I will talk about this problem in more detail in the section about security.

MIGRANTS OR REFUGEES?

The differentiation between asylum seekers, refugees, and economic migrants became a politicized issue in the context of the analyzed crisis. Naturally, an acknowledgment that a person is an asylum seeker requires compliance with the UN 1951 Refugee Convention, which precisely describes the status of refugees: “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (United Nations 1951, Article 1). The differentiation is not eased by the fact that what the EU decision-makers have to deal with is so called mixed migration flows, which means that refugees and economic migrants use the same routes (Fargues and Bonfanti 2014, 8). Fargues and Bonfanti (2014, 10) propose a method that may help in making such a distinction. They compare whether the nationalities of people, who illegally cross the border, match with nationalities of top asylum seekers in a country.

Let me now use their method to analyze such data at the European level. In 2015, 586,405 Syrians crossed EU borders illegally (Frontex 2016a); this figure does not match with the number of asylum claims made by Syrian populations, which reached 362,775 (Eurostat 2016a). What does this difference tell us? It may be proof, confirming Frontex’s hypothesis, that many migrants

declare themselves as Syrians (although they are not) or use fake Syrian passports in order to get to the EU easier, and, after that, they do not apply for asylum, since they may be simply economic migrants. Such a discrepancy pertains also to Afghans – 266,872 Afghans crossed the EU border illegally in 2015 and 178,230 applied for asylum (Frontex 2016a, Eurostat 2016).

The differentiation is also complicated by so-called “welfare tourism” (Gros 2015, 3). About 10% of asylum applications in 2015 were submitted by Albanians and Kosovars, whereas none of these two countries is experiencing a conflict right now. The increased number of claims coming from the Balkan countries may be explained by “welfare tourism.” Nationals of those countries take advantage of the number of asylum claims in Europe, which skyrocketed in 2015. As a consequence of this, time needed to process each application is longer, and as Gros (2015, 3) points out, during this time applicants are granted social benefits and are even given money.

The capacity of the European Union is limited; therefore, people in need should be treated with high priority. In order to help them in an effective way, the EU has to implement a quick and detailed examination of particular cases. Otherwise, the situation will get worse, since refugee camps will become overpopulated. This will then again lead to another problem: people will become frustrated and desperate, which can drive them to aggressive behaviors. Such tensions will obviously trigger a negative reaction among citizens of the European Union and spark the vicious circle of discrimination. Moreover, many of migrants are not granted temporary stay visas or any other documents. This prevents them from working, which again may encourage them to start illegal activities (Castles and Miller 1993, 196-197). Thus, as one can see, the differentiation between migrants is highly important and has a political dimension because of its consequences for the society.

Apparently, it is not an easy task to determine whether a person is a refugee or migrant. Therefore, I have decided to use a broad term – migrants, and consequently migration crisis, although, it does not mean that I am not aware that among people coming to the EU there is a gross number of refugees seeking international protection. In addition, I believe that speaking of “refugee crisis” would be in fact harmful for refugees, since it would imply that all people coming to the EU are refugees, which is not true. Such an understanding can harm “real” refugees because violent behaviors of some migrants would be extrapolated to all newcomers, including refugees.

It seems that the EU does not have a coherent terminology pertaining to the analyzed situation, since both “refugee crisis” and “migration crisis” can be seen in the EU press releases and in speeches made by EU officials. In regard to Frontex’s use of terminology, the interesting pattern can be named – in documents from 2015 the term “refugee crisis” appeared more frequently; however, in 2016, it was taken over by the “migration crisis.” One may hypothesize that the crisis underwent some kind of change and from “refugee crisis” transfigured to “migration crisis.” However, explaining such a possibility lies far beyond the scope of my thesis. Another explanation of the change in terminology may be the acquired information. After one year, Frontex employees were equipped with more information about, for instance, people coming to Europe, which allowed them to conclude that what the EU is facing is a migration crisis, not a refugee crisis. These are obviously just conjectures and again, clarification of the reason why the terminology changed is beyond the scope of my research. Nevertheless, I decided to follow the newest terminology proposed by Frontex, without diving too much in the causes of nomenclatures’ changes.

I would like to close this subsection with a short remark about the political dimension of differentiation between migrants and refugees. As it was stated above, once the asylum seeker is

granted asylum, he or she is also given rights described in the UN 1951 Refugee Convention, which naturally imposes on hosting states some costs. After asylum is granted, such a person cannot be expelled from the country, which means that a country needs to bear this “burden,” regardless of consequences. In regard to a migrant’s situation, it is completely different. After discovering the lack of legal basis to stay in a given country, such a person may be deported. Thus, it is apparent why demarcation between those two terms may be political, especially in the context of solidarity and responsibility sharing as important dimensions of the EU policy, which will be discussed below.

CAUSES OF THE EUROPEAN MIGRATION CRISIS

The causes of the current crisis may be divided into direct and indirect reasons. Indirect causes have their roots outside the European Union. Obvious reasons, such as the Civil War in Syria and the Arab Spring, can be why there is an increase in the number of migrants and asylum seekers arriving in Europe. However, as Migration Policy Institute’s (hereafter MPI) experts point out, these events have been ongoing for some time before the crisis peaked in 2015 (Banulescu et al. 2015). Thus, as they rightly highlight, the migration crisis Europe is dealing with is an effect of “the combination of push factors,” such as “the ongoing violence and instability in origin countries,” the changing situation in previous hosting countries such as Jordan or Lebanon (for instance increased border control), and “geopolitical changes that have closed off alternative destinations, such as Libya” (Banulescu et al. 2015). Furthermore, Banulescu et al. mention huge costs of admitting refugees to these countries and problems that it may cause, such as natives’ objections to having their jobs taken away by immigrants. They provide the example of Lebanon, where Syrians constitute one-quarter of the population (Banulescu et al. 2015). Additionally, they also conclude that social media plays a crucial role in creating this destabilized situation. Many

migrants have seen on social media their relatives or friends who have a peaceful and prosperous life in Germany, Austria, or Sweden (these are destination countries for most of migrants or asylum seekers). These individuals inspire them to take a chance. Finally, MPI's analysts make this important statement: "In addition, the chaos at European borders means that even if individuals do not qualify for protection, there may be a long lag time before their claims are adjudicated, during which time many travel onward illegally through Europe" (Banulescu et al. 2015).

There are also theories explaining how the migration crisis was caused intentionally by an actor who favors destabilization of the European Union. One of such actors may be Russia (Biuletyn Migracyjny 2015). Torn by migration crisis, Europe could be too weak to definitely react to, for instance, the war in Ukraine or any other activities undertaken by Russia. Moreover, the rise of anti-immigrants' attitudes may increase the popularity of such parties as Freedom Party of Austria or French National Front, which are perceived as pro-Russian (Biuletyn Migracyjny 2015).

As I mentioned before, there are also direct causes of the immigration crisis. The inability of Greece and other EU countries to control their borders is one of them. Because of the EU characteristics, once there is a problem at the member states' borders, then it is also a problem of the EU as a whole. Greece, Hungary, and Croatia were not ready for such huge waves of immigrants. The increased irregular immigration has shown that many external borders of the EU are porous. As Apasia Papadopoulos states, Greek officials and Greek society perceive most of the migrants as driven by economic motives and as asylum law abusers (Papadopoulos 2004, 171). That could be one of the reasons why Greece has also failed in providing humanitarian aid for incoming asylum seekers and migrants. Before making Greece a scapegoat of the whole immigration crisis, one should recall the economic difficulties this country is facing and also the enormous number of people coming. Finally, although it has been emphasized that this is the EU

issue, most of the times Greece has been left to fend for itself in dealing with the problem. There was an improvement of irregular immigration detection once Frontex engaged in the region. In 2010, they established the first regional office in Greece (Frontex 2014a, 5). Taking this factor into consideration, we may see that it was not easy for Greece to deal with it, and it is not so puzzling that Greek authorities have failed. Finally, the crisis also revealed the weaknesses of Integrated Border Management and Frontex, but those two issues will be raised in the following subsections.

TENSIONS BETWEEN MEMBER STATES

The crisis has a variety of consequences, starting from those related to security of the EU citizens and migrants to those pertaining to the EU integrity. Indisputably, the issue caused some tensions between the EU members, and in this subsection, I analyze them briefly.

Needless to say, that frontline states are mostly affected by the crisis. According to some of the member states, Greece had troubles with managing European funds and personnel sent in order to mitigate migration problems, whereas in Greece's view the EU countries should follow Greek suit and show more humanitarianism and admit migrants to their countries (Tagaris 2016). However, in the view of some EU leaders, those frontline countries were responsible for its fate and consequently, they were eager to punish them. One of such ideas was to exclude Greece from the Schengen zone, which obviously was badly received by Greek authorities (Taylor and Macdonald 2015).

Before I will move to the details about those tensions, I need to briefly explain Schengen rules. The basic principle is free movement without internal border checks between countries that are part of the agreement. The membership in the Schengen agreement offers a huge prerogative of free movement, but it also requires crucial cooperation, according to Schengen's rules. Parts of those are described in the so-called Schengen Border Code. The document precisely describes how

to process travel documents of third-country nationals, in what circumstances internal border check may be reintroduced, as well as cooperation on the grounds of the Schengen Information System (European Parliament and Council 2006). The system was designed to ease information sharing between states; it indicates whether the screened person is wanted, missing, etc. (European Commission 2017a). Failure of upholding the Schengen agreement is a subject of criticism and may be troublesome for concerned countries, as in the case of Greece.

The Schengen agreement took its name from a city in Luxembourg where the deal was signed in 1985. Not all EU citizens may benefit from this free movement agreement, since Bulgaria, Romania, the UK, Croatia, and Cyprus are not part of the agreement, although Romania and Bulgaria are trying to get accepted (European Commission 2017b). However, Norway, Iceland, Switzerland, and Lichtenstein are part of the Schengen zone although they are not EU members.

Italy is the second concerned country, which is also vocal in regard to the crisis because it is, similarly to Greece, heavily affected by the crisis. Last October, the Italian Prime Minister threatened that Italy will block the EU budget if Central European countries will not accept “their share of refugees” (Scherer and Binnie 2016). Central European countries cooperating in the so-called Visegrad Group perceive an imposing share of refugees as a violation of states’ sovereignty and the right to control who can enter their territory. Slovakia has even filed a case in the Court of Justice of the European Union asking to judge whether such relocations are legal (Carrera, Blockmans, and Gros 2015). Moreover, Central European leaders indicate significant concerns that enable them to take part in migrants’ relocation system. According to the Polish Minister of Foreign Affairs, the EU has a serious problem in differentiation between migrants and refugees, which is challenging (Ministerstwo Spraw Zagranicznych 2016). In addition, what attracts many

refugees and migrants are high social benefits granted in such countries as Germany and Sweden; therefore, it may be difficult to find people who would like to move voluntarily to Poland, where such benefits are a few times lower. Finally, Poland has also two conditions – people who would be admitted to Poland have to have proof of their identity and do not pose threat to the Polish people (Ministerstwo Spraw Zagranicznych 2016). Apparently, those conditions seem to be too excessive for some EU decision-makers and they want to force other countries to admit migrants, even without fulfilling conditions, those countries propose (BBC 2016a).

At the same time, countries calling upon Central European countries for more solidarity, temporarily reintroduced border control at the internal borders of the EU. Although this is allowed by law, such a control significantly influences one of the most basic rights of the EU citizens – freedom of movement. I will discuss this issue in the context of hypothetical removal of the Schengen zone and its consequences in more detail in Chapter 3.

Although some of the ideas to punish frontline states may be unfair, there is evidence of their (Greece's or Italy's) irresponsible decisions that may encourage other states to take more determined moves. Italy was accused of violating the Dublin Convention, which was criticized by some member states, such as Poland or Slovakia. Let me now briefly discuss the importance and complexity of this Dublin Convention. Its main aim was to avoid a situation in which an asylum seeker would apply to different EU countries and then choose the one most suitable for him or her. The main rule coming from the Dublin Convention is that only one member state is responsible for asylum application of a given individual. What naturally became a problem was the establishment of criteria that would indicate which country should do it. According to the Dublin Convention III, an asylum seeker that irregularly crosses border needs to be fingerprinted in the first country of the EU territory he or she enters, and his or her application needs to be claimed

and processed over there (Tryfon 2012, 190). It is not surprising that some countries, because of their geographical location, will never happen to be in such positions; simultaneously, there are also countries that can be potentially overwhelmed by the number of applications, since they happen to be frontline states. In addition, Greek representatives underline that their country is merely a destination for people coming to Greek shores; hence, it is harming for those applicants to “artificially” keep them in Greece (Tryfon 2012, 190). The migration crisis has proved that this system is severely flawed and a change is needed. In May 2016, the European Commission proposed a reform of the Dublin Regulation, which will be briefly analyzed in a following subsection (“The EU response”).

Italian civil servants allowed migrants to move from Italy to the other EU countries without applying for asylum and letting them claim for it outside Italy, which is a violation of the Dublin Convention (Fargues and Bonfanti 2014, 13). Italy is naturally not the only criticized country in regard to migration issues. Greece was accused of so-called push-backs i.e. Greek coast guards used to push back boats with migrants without providing them with an opportunity to apply for asylum (Frontex 2014b). Greece, among such countries as Hungary, Croatia, Italy, and Malta, failed to adopt the EU asylum policy, which may result in financial sanctions (Carrera 2015, European Commission 2015a). Naturally, it is hard to expect a positive attitude toward the EU in those countries in the context of the prospect of being punished; hence, such a move indisputably causes tensions between member states.

Even though frontline countries are subjects of similar criticism, which should be a premise to greater integration between themselves, in fact, they tend to experience tensions in the bilateral relations as well. One of the most discussed problems was the Italian-Maltese blame shift. These two countries could not agree on the disembarkation issue. According to Italy, people rescued by

Maltese search and rescue operation should be taken to Malta, whereas Maltese leaders argued that they should be taken to the nearest safe port, which often meant Italy (Lutterbeck 2014, 37). In addition, Malta was also complaining that member states' engagement in helping frontline states is rather theoretical and that in fact they had not been given appropriate help (Lutterbeck 2008).

The European Union is an institution purported to be an example of successful regional cooperation, which indisputably makes Europeans proud and encourages them to work on this common project. It is, therefore, concerning that growing tensions between member states may have a devastating effect on integration. European leaders call for solidarity and responsibility-sharing, although it is not easy to bridge national interests of so many countries.

THE EU RESPONSE

To indicate a starting date of different events is sometimes a hard task. For some scholars, 2014 was the starting year of the migration crisis, whereas others say that 2015 was the beginning. I lean toward the latter view, since the 2015 was a record year in regard to the number of illegal border crossings. Nevertheless, some concerning patterns were observed in 2014 and they were addressed by the newly elected European Commissioners², and its President – Jean-Claude Juncker. Juncker's Commission from the beginning of its activity perceived migration as an important challenge. As Carrera (2015, 2) argues, for the first time in history the Commissioner of Home Affairs was also named as Commissioner of Migration. Interestingly, this post is held by a Greek national.

² It seems to be in order here to briefly discuss functions and competencies of three most important EU institutions. As the EU website reads the European Parliament has three main roles: legislative, supervisory and budgetary (European Union 2017a). The European Commission may initiate new laws, represents the EU internationally, has also budgetary and executive competencies ((European Union 2017b). The Council of the European Union resolves arguments between member states and coordinates their policies, runs foreign and security policy according to the European Commission's guidelines, adopts laws and the budget together with the European Parliament ((European Union 2017c).

In April 2015, the European Council had a special meeting on migration. They announced that the EU immediate response will be based on four pillars: “strengthening the presence at sea, fighting traffickers, preventing illegal migratory flows, reinforcing internal solidarity and responsibility” (European Council 2015a). The EU leaders declared that they would be working on the European Agenda on Migration.

The document was presented a month later (European Commission 2015b). It introduces a four-tier approach to migration based on: “reducing the incentives for irregular migration, a strong asylum policy, saving lives and securing the external borders, a new policy on legal migration.” Naturally, these are just declarations and outlines that show the direction the EU wants to go. Hence, in this short description of the EU response to the crisis, I focus on real actions, not issued documents or adopted regulations. Those are often just calls that are not followed by policy changes. Moreover, European leaders are often criticized for attitudes based on “expressed concerns” without real action.

Three important actions that were undertaken already in May 2015 involved an increase of funding for Frontex operations. Before I move to details, I want to mention how Frontex’s budget has changed over the years.

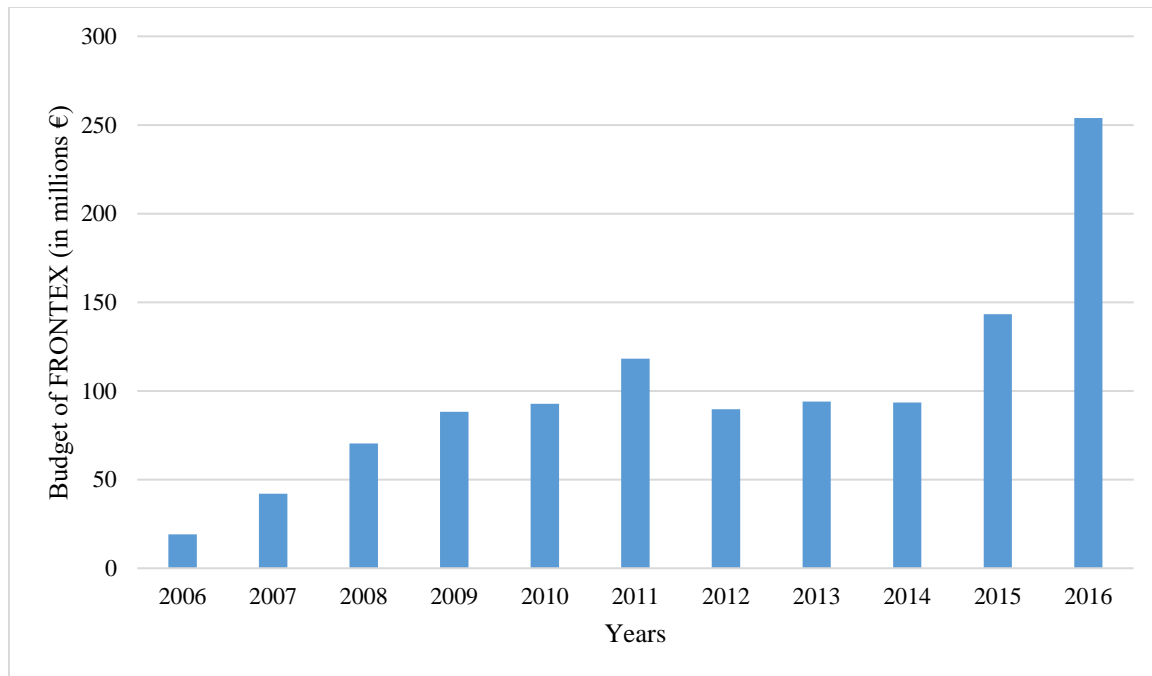


Figure 1.2: Budget of Frontex over the years.

Figure 1.2 shows the overall budget of the agency, the commission's decision from May 2015 refers only to a part of operational budget; which naturally also slightly increases the overall budget. The capacities and assets of the agency for Triton and Poseidon operations were to be tripled in 2015 and 2016. Triton is a maritime operation that was launched in 2014 at the Italian shores. The tasks of this operation are border control and surveillance and search and rescue. Triton is run under Italian command because Italy is a host state of this operation (Frontex 2017b). Poseidon is the name used in relation to two operations – Poseidon Land and Poseidon Sea, both of them have been taking place in Greece and additionally Bulgaria have been the host state for Poseidon Land (Frontex 2017c). The tasks of Poseidon operations are similar to Triton's, but they also cover technical assistance in registration and identification of migrants (European Commission 2016b).

Moreover, the frontline states received 60 million € “emergency funding,” whereas the EU Regional Development and Protection Programs to be increased by 30 million € (European Commission 2015c). Apparently, it is hard to accuse the EU of parsimony; however, the later developments showed that the “throwing money approach” did not guarantee success. Nevertheless, the EU decision-makers were consequent in their actions and in September 2015 they decided to send frontline states an additional 100 million € in the EU emergency funding. The same month, the Trust Fund for Africa was energized by 1.8 billion € and the Trust Fund for Syria by 500 million €.

Another important aspect of the EU response to the crisis was the so-called “hotspot approach.” It is based on the concentration of the EU’s help in “registration, identification, fingerprinting and debriefing of asylum seekers, as well as return operations” in a few designated places in Italy and Greece (European Commission 2015d). The mechanism was designed to assist in the relocation of most needy people in those particularly overwhelmed areas.

The idea of relocation deserves special attention since, as already stated, it causes some tensions between member states. Moreover, it should also be noted that it violates the Dublin Convention III. This is the reason why, in May 2016, the European Commission proposed a change in this regulation. The main feature of the new proposition is a “fairness mechanism” (European Commission 2016c). In a situation when a country faces a disproportionate number of applications (compared to other EU states), the surplus of the request will be divided among other EU states to the point when the number of application in an overwhelmed country will reach a number acceptable for the country of its size of population and GDP. Criteria that will be taken into account in the redistribution procedure of asylum applications will be population and GDP. The most controversial part of this proposition, which was severely criticized especially by Central European

countries, is a “punishment.” If a country refuses to take part in asylum seekers sharing, it shall pay 250,000 € for each application. According to Hungary, Slovakia, Poland, Romania, Czech Republic and Italy, this proposition violates the subsidiarity principle,³ an important EU rule (European Parliament 2016a). Thus, the legislative proposal is stuck in the deadlock.

Although the change has not been approved, in September 2015, the Council issued a decision about the relocation of 160,000 people, mainly from Italy and Greece (European Commission 2016d). This type of response to the migration crisis does not seem to be working although the number of needed relocations dropped to 98,255 but only about 13% of them were relocated. One of the problems with the implementation of this solution was already discussed: the issue of the European effectiveness in security measures. It is apparent that the EU still has problems with conditions of relocation, laid down by the Polish Minister of Foreign Affairs (proofs of identity and security screening) and this the reason why the percentage of relocated people is so low.

Besides measures undertaken to harmonize internal relations of the EU members and to provide help for EU frontline states and other third countries (countries that are not EU members), the European community started an operation targeting human smugglers and traffickers. In June 2015, the Council of the European Union established the “Eunafavor Med” operation, which is the EU military operation run at the Mediterranean Sea (European Council 2015b). In its first phase, the mission was based only on surveillance and information gathering about smugglers and their vessels and covered International Waters. In October 2015, the operation moved to phase two –

³ This rule helps to make a distinction between the EU’ and member states’ competences. According to the rule, when a given problems may be regulated by the member states, the EU should not undertake action in this filed. However, if member states are not capable to deal with particular problem or when an action at the EU level may be more effective and providing an “added value,” the EU is entitled to intervene. This rule applies only to non-exclusive powers of the EU (European Parliament 2016b).

seizure and diversion of smugglers' vessels (European Union External Action 2016). This part of the mission met with international criticism. Human rights activists were concerned that migrants' lives could be put in danger, for instance, during seizure operations (Faleg and Blockmans 2015). The operation leaders disputed those charges saying that they operate with respect to international and European law, especially non-refoulment principle, which forbids the return of a person to a country, where his or her life or freedom is threatened (European Union External Action 2016, UNHCR 1977). There are 24 member states engaged in this operation and they facilitate their own equipment in the mission. There is no data available about the operational success of the mission; however, indisputably, they have contributed to saving lives at sea. From September 2015, an operation was renamed to Sophia after a girl born on one of the vessels engaged in the operation. The newborns mother and 453 other people were rescued by this ship in August 2015 (European Union External Action 2016).

Steps described above are not the only undertaken by the EU in order to mitigate the analyzed problem; however, these are the most important highlights, since analysis of all of them lies beyond the scope of my thesis. Although criticized for the lack of response, the EU seems to be pretty active in the field of migration. Apparently, not the quantity but the quality of action, matters. An answer why the EU solidarity has failed in shall become an interest for other migration researchers. An example of other relevant measures that were undertaken is also the cooperation with third countries, which because of their uniqueness, will be analyzed separately in the following subsection.

COOPERATION WITH THIRD COUNTRIES

The cooperation that received the biggest publicity was an agreement reached with Turkey. According to the agreement, people irregularly crossing the Turkey-Greek border after 20 March

2016 will be sent back to Turkey, “For every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled to the EU”; Turkey committed itself to taking measures in order to stop the emergence of new irregular migration routes to Europe (European Commission 2016e). In exchange for it, Turkey was promised to have its visa liberalization process accelerated and the waiver of visa requirements for Turkish nationals. Moreover, the EU will provide up to 6 billion € for refugee facilities until 2018 (European Commission 2016e). This deal has been criticized by many. Human rights activists believe that the agreement is grounded on the false premise that Turkey is a “safe country of origin”; in their opinion, Turkey does not meet this condition (Human Rights Watch 2016). According to the EU and international law, a country is safe: “when there is a democratic system and generally and consistently: no persecution, no torture or inhuman or degrading treatment or punishment, no threat of violence, no armed conflict” (European Commission 2017c). Other opponents of the bill say that this is a simple blackmail, and it makes the EU vulnerable to the goodwill of Turkish leaders, and, in fact, it may lead to the similar situation as the one with Muammar Gaddafi who used to threaten the EU that he would “flood” the EU with migrants.

Since the issue of so-called “safe countries” was already raised, we should also discuss the cooperation between Balkan countries and the EU in the field of migration. As was mentioned, besides Syrians and Afghans, there is a significant number of Albanians and Kosovars coming to Europe and applying for asylum. Because there is no ongoing conflict in the Balkans right now, it became crucial to establish effective cooperation with Balkan states, which would enable and facilitate quick deportation processes. Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Serbia and the Former Yugoslav Republic of Macedonia are qualified by some of the EU countries as safe countries of origin, which expedites the process of sending migrants back to those countries.

The European Commission works to create a common list of such countries, which will accelerate the process of return operation in all member states. The cooperation with Balkan states extended beyond the establishment of “safe countries” list. Since October 2015, the EU started an intense collaboration with Balkan states based on such issues as exchange of information or border management. Leaders of Albania, Austria, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Germany, Greece, Hungary, Romania, Serbia and Slovenia agreed on a 17- point action plan that should improve cooperation between the EU and Balkan states (European Commission 2015e). Finally, one of the biggest successes of fruitful cooperation in the Balkans was the closure of so-called Balkan route that was also related to the EU-Turkey agreement, but involved also actions of such countries as the former Yugoslav Republic of Macedonia (Kingsley 2016).

The European Union also started co-operation with a few African countries: Mali, Nigeria, Niger, Senegal, and Ethiopia, on the grounds of Migration Partnership Network (European Commission 2016f). The program is designed to address root causes of migration by supporting the development and providing opportunities. The decision-makers indicate also short-term consequences: combating smugglers, easing return and opening legal ways of migration (European Commission 2016f). To achieve those goals, the EU prepares a tailored plan for each country, adjusted according to its need; it may involve different fields of policies: energy, trade, mobility etc. EU tasks include also sending liaison officers to those countries, supporting local nationals in operational activities (fighting smugglers, border management) and first and foremost, provision of funding.

Naturally, the relation with some of the third countries mentioned in this short description is far from easy. Poverty and prolonging conflicts are an everyday reality for citizens of some of

those countries; hence, what is needed is a long-term planning. Some scholars argue that what causes many EU problems is the lack of common and integrated foreign policy (Pascouau 2013). Hopefully, those undertaken activities will be helpful in developing external affairs policy.

The European Neighborhood Policy is also an important aspect of the cooperation with third countries. However, because of its importance as a unique policy tool I decided to discuss it in the Chapter 5, to show how the drawbacks of this program influence its effectiveness.

SECURITY

When there is chaos, it is very easy to experience a dangerous situation. Huge groups of people are definitely more difficult to manage than several individuals. Therefore, although migration itself does not pose threats to a community, the migration crisis does. Paris and Berlin have already experienced terrorist incidents. Two of the terrorists responsible for the attack in Paris in November 2015 arrived to Europe via Greece. They used fraudulent Syrian documents (Frontex 2015a). An attacker that killed a Polish truck driver and other 11 people in Berlin also arrived to Europe illegally. He left Tunisia in 2011 by boat and lived in Italy for a while, where he was imprisoned for 6 years for damaging a reception center for migrants and other crimes. He applied for asylum in Germany, but it was not granted (Smale, Piangiani, and Galdec 2016). The question that may be raised is why after he was refused asylum was he not sent back to Tunisia? Moreover, this situation is a real example confirming that Italian officers allowed people to move north without applying for asylum in Italy. The German central intelligence director Hans Georg Maassen said that the German national security is threatened. He admitted being wrong, thinking that the Islamic State of Iraq and Syria will not use migrants' routes to transfer terrorists because it is too dangerous; in fact, it did. He also informed that about 70% of migrants coming to Europe do not have any proof of identity, so they are registered on the grounds of their words. Finally, he

also raised some concerns about unaccompanied minors, who may be an easy target for ISIS. Often unskilled and not speaking German may be lured by the vision of easy money (Deutsche Welle 2016). Hence, there is a connection between the migration crisis and terrorism, which also adds an additional burden on European border guards and leaders – to effectively differentiate between people needing help and terrorists.

Another problem related to the migration crisis are sexual attacks, which have not happened on such a big scale before. The most famous incident was New Year's Eve in Cologne and in Hamburg, where just in the former 1,200 women were sexually assaulted by about 2,000 men of "North African or Middle East appearance" (BBC 2016b). A similar situation took place in Helsinki, although at the definitely smaller scale. The deputy chief of police in Helsinki described it as a "new phenomenon in Finnish sex crime history" (Orange 2016). The problem of sexual assault is not limited to such big events as New Year's Eve. In 2015 and 2016, the media have frequently reported incidents of sexual harassment and rapes perpetrated by non-EU nationals.⁴ Moreover, German police noted an increase in a number of crimes committed by migrants.⁵ In 2014, those crimes constituted 8% of all crimes committed in Germany (179,563 cases), while in 2015 the percentage was equal to 26% (463,889 cases). Hence, the immigrants' crime rates increased 3.25 times year to year. To fully comprehend these numbers, we need to analyze it in a broader context. Surely, before 2014 Germany had migrants coming from the same countries. What was changing dramatically was only the magnitude of migration. The number of migrants

⁴ "Asylum seekers arrested for 'sexually assaulting girls' at German swimming pool" (Independent 2016), "Пакистански мигранти нападнаха и опитаха да изнасят малолетно момиче в Сърбия" – Pakistani migrants attacked and attempted to rape a little girl in Serbia (Trud 2016), "Iraqi migrant detained on suspected rape charges in Bochum" (Deutsche Welle 2016), "Znów molestowanie seksualne w Niemczech. Ofiarą padło 30 kobiet, 3 imigrantów zatrzymanych" – Another Sexual Harassment in Germany. 30 Women Harmed, 3 Migrants Arrested (Dziennik 2016).

⁵ "Immigrants within the meaning of this brochure are suspects who are asylum applicants, on exceptional leave to stay, quota or civil war refugees or irregulars" (Police Crime Statistics. Federal Republic of Germany 2015).

that entered Germany between 2010 and 2014 (totaling to 434,264 people) is comparable to the number of migrants that came to that country in 2015 alone. Since earlier statistics on crimes committed by immigrants are not available, one has to utilize 2014 as a reference point. Surely, even more, migrants came to Germany prior to that (after the unification of Germany a total of 2,350,668 migrants entered Germany), though crimes committed by this group constituted 8% of all crimes. After the arrival of 464 thousand migrants in 2015, the group committed 26% of all crimes in Germany that year (Police Crime Statistics. Federal Republic of Germany 2015).

There are also a few minor issues, although they do not pose indirect threats to Europeans' security, they should be discussed. What I mean here are different types of law abuses. One of such is the problem of the use of the fraudulent document. Frontex raises awareness that this is especially problematic taking into consideration that there are no adequate checks nor punishments for people committing those crimes (Frontex 2016a). Since many of migrants irregularly crossing borders do not have any documents, border guards and other officers have to use the information they provide. It also leads to a malfunction – there are some migrants lying about their age, in order to expedite their asylum process (BBC 2016c). Such violations of the system can also negatively contribute to the image of migrants. Once the European public opinion learns about such system abuses, it may be reluctant to help “cheaters.” Moreover, according to the social construction of targeted populations, such a change of depiction of migrants may have on the impact of implemented public policies (Schneider and Ingram 1993). The negative image of migrants may facilitate the introduction of policies that, for instance, limit help provided to them. Thus – again, combating such behaviors is relevant from the perspective of European and “real” refugees needing help.

As the perspective of refugees on migration crisis was brought up, let me now discuss security threats that the current situation possesses for newcomers. First, and foremost, the journeys they undertake are related to the greatest danger – death. Between 1988 and 2011, 15,551 people died on their way to Europe (Carr 2012, 4). According to estimates done by IOM, 3,771 people have died in the Mediterranean Sea in 2015, once they were trying to reach Europe (IOM 2016). From time to time, the international public opinion is galvanized by repeated information about dead bodies found on European or Libyan beaches. It always provokes discussion about responsibility for those tragedies. Frontex targets smugglers, highlighting that those are the people that put migrants' lives in danger. On the other hand, many human rights advocates argue that the strict EU visa regime is the reason why people start precarious journeys. Statistics for 2016 are still not available, but in December 2016 the United Nations High Commissioner for Refugees reported that 5,000 people lost lives, making the last year the deadliest (UNHCR 2016).

The rough sea is not the only danger migrants are vulnerable to. As Mathew Carr points out between 1995 and 2009, 108 lost their lives and 187 were injured at the Greek-Turkish land border because of landmines (Carr 2012, 86). What also was not helping the case was an unwritten agreement of fishermen that were afraid to report about found dead bodies. They were concerned that police's questioning would preclude them from working and making a living (Albahari 2015, 100). Another huge obstacle was also an important consequence of what some scholars call "criminalization of migration." Namely, fishermen and other people sailing in the Mediterranean were afraid of helping migrants in distress, since they thought they will be charged for smuggling people (Basarban 2014). The situation meaningfully reminds the situation of the US human rights activities at the Mexican-American border. The group of volunteers faces criminal charges for

“transporting illegal aliens” while they were trying to take Mexicans to the hospital, who were illegally crossing the border and were in bad medical condition (Cook 2011). Others were accused of littering, while they were distributing jugs of water in the desert (Whitaker 2009). However, there are also significant differences between those parallel situations. The EU has fortunately understood the importance of providing help to those vulnerable people, announcing that “saving lives” is also one of the pillars of the EU migration policy.

Needless to say, neither before nor after those journeys are migrants safe. The situation of women making their way to Europe is similar to the situation of women illegally crossing the Mexican-American border, vulnerable to sexual assault by *coyotes* (Staudt, Payan and Kruszewski 2009). The UNHCR raises awareness of the problem called “transactional sex,” which women who want to get to Europe experience. Even before they start a journey, they are forced to sexual intercourse to obtain documents (UNHCR, UNFPA and Women’s Refugee Commission 2016). The situation sometimes does not get better even once they arrived onto their dreamed European land. In transit states’ facilitation centers, women are often lodged together with men and they even share bathrooms. Hence, some of the women experience sexual harassment in camps located in Europe (Amnesty International 2016). In addition, one of the women interviewed by the Amnesty International volunteer confessed that she was even given sexual propositions from European guards.

Abuses committed by European guards pose another threat for migrants, so-called “push-backs” epitomize such. Migrants are being beaten, and there were also cases when they were shot by Turkish guards (Guardian 2016). Turkey is not an exception, since according to migrants’ accusation they have also experienced violence in Hungary, Macedonia, and Greece. The human rights activists claim that fundamental rights of migrants are violated by European border guards.

Similarly, countries are being criticized for bad living conditions in reception centers, which sometimes lead to riots, as the one in Bulgaria in 2016 (Krasimirov and Tsoleva 2016). Finally, European citizens may also pose a threat for migrants. Neofascist movements and “hate crimes” are issues that the EU needs to definitely combat, if it wants to maintain peace and keep migrants safe. In 2016, there were 3,533 cases of attacks on migrants in Germany (Kresy 2017). It shows that security of migrants poses a challenge for the EU and it needs to be addressed.

Chapter 2: The Rise and Fall of Frontex

THE ESTABLISHMENT OF FRONTEX

Frontex is an important actor in the migration crisis; simultaneously it is also a crucial subject of my analysis. Hence, a few words about this agency are in order here. I need to highlight that these will be introductory remarks and the information about Frontex that I provide in this chapter pertains to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, i.e. Frontex, and covers the time period until the recent reform which started in October 2016. The 2016 reform changed the name of the agency to European Border and Coast Guard Agency. I will discuss the reform in more detail in Chapter 4; here I would like to “introduce” the agency, its origins, tasks, and its environment.

For a long time, Germany was a “gate-keeper” at the Eastern border of the European Union; the largest EU enlargement that took place in 2004 changed this situation. According to Sarah Leonard (2009, 376), this enlargement was one of the incentives of establishing Frontex, which seems to be reasonable once one spots the coincidence of these two events – 10 new members joined the EU in May 2004 and the Council Regulation establishing Frontex was approved in October 2004. However, it should be noted that the agency had to wait until 2005 to start its operational work. According to Leonard (2009, 376), “old” EU members were doubtful about the new members’ ability to protect the external border of the Union.

As highlighted multiple times in this thesis, the EU is a really complex unit and it often takes a lot of time for its officials to reach a final version of a particular project. And so it was also in the case of Frontex. Not all member states had the same vision of this agency. In October 2001, Germany, Belgium, France, Italy, and Spain were opting for the creation of European Border Police. However, their view was not shared by the United Kingdom, which as Neal (2009, 340)

highlights, was concerned about its sovereignty. The later developments have shown that the issue of sovereignty significantly influenced Frontex in terms of its capabilities and work; I will elaborate on this problem in the following paragraphs.

Apparently, the wording was a crucial issue in establishing the new border agency. As scholars underline, the UK consequently opposed the creation of centralized border agency that could take over the responsibilities of national border guards (Neal 2009; Leonard 2009). Simultaneously, there was a consensus among member states that an action toward integrated border management needed to be taken. Hence, in order to achieve these goals, the European Commission turned to less centralized solutions, proposing that the new agency's task would be based on coordination of border management and on operational tasks (Leonard 2009, 377). However, in the future, the agency could be given prerogatives to create European Corps of Border Guards that could support (never replace) national border guards' tasks (Leonard 2009, 378). Under the Greek Presidency in the EU in 2003 the European Commission intensified work on establishing Frontex.

Carrera (2007, 9) contends that the reserved attitude toward the competencies of the new agency and the respect for the national solidarity was also mirrored in the agency's name – the European Management of Operational Cooperation at the External Borders of the Member States of the European Union. In his view, the lawmakers deliberately added the phrase “of the Member States” to highlight states' authority over its borders. As I touched on the subject of name, it is also worthy to explain the origins of the working name of the agency – Frontex. It comes from the French phrase *frontières extérieures*, which means external borders (Leonard 2009, 372).

Frontex can be viewed from the perspective of Integrated Border Management (IBM). Some scholars argue that it is a hodge-podge concept without a precise definition. However, in the

document prepared by the Council of the European Union titled: “Integrated Border Management; Strategy deliberations,” the lawmakers presented the concrete aspects of this policy. These are, for example, border control understood according to Schengen code: detection, and investigation of cross-border crime, cooperation with neighboring countries, inter-agency cooperation and coordination and coherence of activities of member states (Council of the European Union 2006). Some scholars try to investigate whether the establishment of Frontex has positively contributed to the development of Integrated Border Management. Before I move to the analysis of their opinions, one important notice is in order here. The Treaty of Amsterdam signed in 1997 also had an important impact on border management because it implemented the Schengen agreement into the framework of the European Union (European Union 1997). Similarly, an important move towards common policy on border management was the Treaty of Lisbon signed in 2007 (Mungianu 2013, 362). The Treaty reads: The Union “shall frame a common policy on asylum, immigration, and external border control, based on solidarity between the member states, which is fair towards third-country nationals” (European Union 2007).

As mentioned, the question that is often raised in academia is whether the establishment of Frontex is a significant move in regard to the Integrated Border Management. Interestingly, most of the scholars agree that indeed Frontex is a noteworthy step in developing policy based on IBM. According to Rey Koslowski, Frontex simply embodies the IBM at the European level (Burrige 2012, 7). Hélène Jorry (2007, 24) shares his view arguing that the establishment of Frontex “seems to root the premises of an integrated border management.” Carrera also argues that Frontex helps to develop IBM; however, he points out limitations of the agency that significantly hinder this process, such as ambiguity in regard to the legal basis of Frontex operations (Carrera 2007, 27). Nevertheless, it is hard not to notice that many of the agency’ responsibilities or prerogatives

overlap with tiers of IBM outlined by the Council of European Union. Hence, doubtlessly Frontex may be presented as one of the most important aspects of developing IBM. As we speak about management and governance, it is also worthy to mention that in fact competencies that Frontex has received, were delegated neither from member states nor the Council. As Pollack and Slominski (2009, 905) argue any of these bodies did not have “the power of trans-governmental coordination.”

Let me now move to more detailed information about Frontex, namely, its tasks, responsibilities, and structure. The Council Regulation (2004) establishing the agency named its six main tasks: “(a) coordinate operational cooperation between Member States in the field of management of external borders; (b) assist Member States on training of national border guards, including the establishment of common training standards; (c) carry out risk analyses; (d) follow up on the development of research relevant for the control and surveillance of external borders; (e) assist Member States in circumstances requiring increased technical and operational assistance at external borders; (f) provide member states with the necessary support in organizing joint return operations.”

The risk analysis instrument deserves special attention. As the Frontex website reads risk analyses are “the starting point for all Frontex activities” (Frontex 2017d). Data that is used to develop analyses comes from member states, other EU agencies, such as Europol, third countries and international organizations. Moreover, the agency makes use of open sources (Frontex 2017d). Assisting states in the time of “need” is another important role of the agency. The risk analysis is used to decide whether technical assistance is indeed needed. If so, the agency can help the member state with an additional personnel and equipment. A similar support is given when a given country organizes return operation i.e. sending back home migrants who do not exercise a right to legal

stay in Europe or have committed an offense in the EU (Frontex 2017e). Moreover, the agency can also facilitate cooperation between member states and third countries in the field of border management.

The structure of the agency consists of two main bodies: Management Board and the Executive Director, who is appointed by the board and supported by the Deputy Executive Director. The Management Board consists of 28 representatives appointed by each member state (plus representatives appointed by Norway, Iceland, Switzerland, and Lichtenstein), and two representatives appointed by the European Commission. The Management Board needs to adopt the agency's working program and general report for each year, which is previously prepared by the Executive Director (Council of the European Union 2004). Moreover, it also prepares the Rule of Procedure and approves the Executive Director's staffing policies, as well as budget previously estimated by the Director. Finally, the Management Board "exercises power" over Executive Director and Deputy Executive Director (Council of the European Union 2004). The Executive Director needs to take all needed measures in order to ensure that the agency works according to the establishing regulation.

Since its establishment Frontex underwent several minor reforms, which will be analyzed in the following subsections. Although it seems that they were not as spectacular as the newest, they also altered the way the agency was working. Hence, I believe it is important to discuss them briefly.

In 2007, the European Parliament and the Council released a regulation pertaining to operational work of Frontex. Regulation 863/2007 established Rapid Border Intervention Teams (RABIT). These are specially trained by Frontex professionals who can be sent to a particular member state facing "a mass influx of third-country nationals attempting to enter its territory

illegally” (European Parliament and Council 2007, Carrera and Guild 2010). After receiving a call for such assistance, Frontex Executive Director has five days to deploy a team to the concerned member state. It should be noted that as during Rapid Border Intervention Teams deployment or any other Frontex operation, the host state always remains responsible for its borders. It means that while performing their duties workers deployed by Frontex need to operate accordingly to the law of the hosting country, as well as international and European regulations. Carrera and Guild (2010, 6) point out that it must be highly difficult to cooperate among such a diverse working environment. They contend that regulations pertaining to the work of border guards differ in all member states. Moreover, they also argue that one of the biggest flaws of RABIT is that it is used only in emergencies; thus, it cannot help to provide longstanding results. Although the RABIT instrument was created in 2007, it was used for the first (and the last) time in 2010 at the Greek-Turkish border (Frontex 2010). Even though the agency deemed this as successful, in its view, apparently, the operation could not carry out its function, since RABIT has not been ever deployed again. It would also be in order to mention that Rapid Border Intervention Teams were substituted by European Border Guard Teams in the later regulation from 2011. However, the term from that time until the recent reform referred to teams deployed in all Frontex operations, not just the so-called rapid interventions (European Parliament and Council 2011).

Besides rewording, one of the Frontex tools, the regulation from 2011 onward introduced a few new changes. One of most important modifications was to finally enable the agency to buy its own equipment (European Parliament and Council 2011). Before this novelty was implemented, the agency could use only equipment provided by member states and this significantly hindered its operational capacity. Nevertheless, this form of cooperation was not repealed. In order to facilitate exchange of equipment between the agency and members’ states,

the Technical Equipment Pool was established which is a register of equipment at the agency's disposal (European Parliament and Council 2011).

Another novelty that was often pointed out by scholars is the fundamental rights angle. The 2011 Regulation introduced the Frontex Consultative Forum on Fundamental Rights and the Fundamental Rights Officer. Moreover, the lawmaker highlighted that the agency will be more committed to the fundamental rights issues. The document also strengthens Frontex's tasks pertaining to training of national borders guards of all member states, duties connected to running risk analyses and the agency's involvement in return operations. Naturally, both – 2007 and 2011 introduced more changes than those signalized above. However, these reforms are not the subject of my research; hence, I have decided to point out the most significant and the most commented on changes in academia.

In 2007 Ilkka Laitinen, Frontex Executive Director at that time, said that the agency's key responsibility is to protect borders not to carry search and rescue operations (Lutterberk 2008, 5). This short remark tells us a lot about Frontex's priorities, needless to say that it was probably often used by the agency's critics. However, this ambiguous, not to say negligent, attitude towards search and rescue operation had to change in 2010 when the Council published its decision "as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by" Frontex (Council of the European Union 2010). The decision reads that in the case of distress, every ship should be given assistance regardless of its nationality. Although it was recommended that its resolutions *shall* be included in Frontex's operational plan, the regulation was not binding. The situation changed in 2014 when the European Parliament and the Council released a new regulation, this time binding for all member states. It requires Frontex to provide help for people in distress while the agency is performing its tasks.

As one can see, Frontex has gained the attention of decision-makers in Europe in recent years. Apparently, they try to improve the agency work as much as they can, introducing new regulations frequently. However, the question remains: are they effective? To be more precise: is the newest regulation, so far, the most revolutionary, addressing the drawbacks and problems that the agency faces? I am going to answer this question in Chapter 4.

CRITICISM OF FRONTEX

Pollack and Slominski (2009, 904) point out that in the 2000's the EU was in, "third wave of agenicification," which is based on "delegation of authority to non-majoritarian institutions." However, as it was already stated, delegation of authority does not pertain to Frontex, since the competencies the agency was given were completely new i.e. any European Union institution nor the member states were responsible for that. It obviously means that extraordinary measures had to be taken in such aspects as states' sovereignty and political accountability of Frontex.

As many scholars highlight, the history of Frontex is a search for a compromise between agency's autonomy and sovereignty of member states. This is also connected to the problem of politicization of the agency. Carrera (2007, 9) names three reasons why the agency that should be depoliticized; in fact, is not. First, the agency is reliant on the cooperation among member states and cannot take initiatives to deploy its workers without states' consent. This is naturally connected to the issue of sovereignty and integration of borders. Frontex's interventions without consent could be interpreted as a serious violation of sovereignty; thus, it is understandable that such measures were taken. In this context, it is highly interesting to analyze why the newest regulation, which will be discussed in Chapter 4, changed the status quo.

The second argument Carrera provides is the "emergency-driven approach" (Carrera 2007, 13). The agency is often deployed when there is an emergency. However, how does one define the

“emergency”? To qualify a situation as an emergency, there is often a political pressure needed in order to persuade that in fact there are extraordinary circumstances taking place. To justify such actions, states often use “blame shifting” (Pollack and Slominski 2009, 914). Countries try to convince the EU that they are not responsible for the problem with illegal migration and that there is a solution at the European level needed, since this is a problem of the whole EU community. It also allows the agency and member states to play a shedding responsibility game. In the light of, for instance, human rights accusations, Frontex often reminds host states that they remain responsible for “migration control practices” (Pallister-Wilkins 2015, 58). The “emergency-driven approach” is also a price that states that do not experience problems with external borders of the EU and do not want to lose their sovereignty have to pay for. This is a payoff between establishing a common border European guard and burden-sharing that Italy, Spain, Greece, and Malta are calling for.

In addition to that, this approach does not always work, as southern states of the EU would want it to. What I mean here is that from time to time we may hear their criticism of the EU, saying that they are not going to be given help, although they asked for it. Such a call was made by Malta which criticized member states that the assets they provide are available only on paper. The Maltese government was complaining about the inefficient number of aircraft and boats and as a result, the Maltese Navy was responsible for 90% coverage in its search and rescue operation area. This occurred despite the ongoing Frontex joint operation in place at that time (Lutterbeck 2009, 28). The lack of appropriate involvement in operations pertains also to joint return operations (Pollack and Slominski 2009, 912).

The influence of the European Commission is the third reason that Carrera names as an important obstacle to Frontex’s depoliticization. As an example of the political pressure that may

be imposed on the agency by the Commission, he offers the fact that the Frontex Management Board is represented by two Commission's appointees. He also argues that the Commission runs informal meetings with member states' representatives that are also part of the Management Board (Carrera 2007, 13).

Although the excessive political pressure from the European Commission's side may hinder the autonomy of the agency, on the other hand, it may guarantee some kind of monitoring of Frontex activities. Some scholars argue that it is not enough and what the agency lacks is independent monitoring (Pollack and Slominski 2009, 919). Rijpma (2010, 4) underscores that in the case of broadening Frontex jurisdiction, tools of reliable monitoring should also be implemented. Moreover, according to some scholars, it is also problematic that the European Parliament's influence on Frontex was significantly hindered. It can only control its budget but has no other competencies related to the subject of accountability. The Parliament may invite Frontex officials for a hearing, but they may refuse to do so and the Parliament has no enforcement capabilities (Perkowski 2012, 18).

The most popular framework to evaluate and criticize Frontex was human rights approach. For example, Keller et al. (2011, 12) suggest that during one of the operations in Greece, Frontex violated the non-refoulement principle. Moreover, the authors discuss the question of responsibility for human rights violations, asking if Frontex should be blamed for them or if the member states or third states are those who are guilty. Furthermore, they criticize Frontex for the lack of interest in the problem of human rights violations in countries which migrants are sent back to. Finally, Keller et al. accuse Frontex officers of using violence against migrants (Keller et al. 2011, 16). Aas and Gundhus (2015, 3) argue that Frontex was condemned not only by non-governmental and international organizations but also by the EU itself. They also contend that

there is a discrepancy between values preached by the EU and reality. In their opinion, humanitarian rights rhetoric is used by Frontex and the EU to legitimize their actions (Aas and Gundhus 2015, 13). This view is shared by Maurizio Albahari, who refers to this as “Military-humanitarian operations” (Albahari 2015). Campesi (2012, 131) points out to the trend observed in 2012 when migrants and refugees were often called by the agency “victims.” However, his opinion about this trend overlaps with Albahari’s view, and he thinks this is only as a cover used to justify for agency’s actions. On the other hand, Aas and Gundhus positively view the integration of human rights language into official documents of Frontex.

One of the strands of analyzing Frontex is the securitization perspective. Neal (2009) argues, however, that Frontex did not emerge because of securitization, but as a response to the lack of common and integrated migration and security policy in the EU. In his view, Frontex has a regulatory function, as opposed to securitization. Sarah Leonard also looks at this problem with securitization lenses, but she does not agree with Neal. She argues that there was a military element in Frontex operations, represented by the involvement of Spanish or Italian enforcement agencies with military equipment. Moreover, in her opinion, the way that Frontex joint operations were conducted is similar to military missions undertaken in order to fight with homeland security threats (Leonard 2010, 240-241). Frontex’s dependence on technological resources is for her also evidence of ongoing securitization. Campesi (2012, 131) agrees with Leonard’s opinion, underlining that Frontex’s rhetoric abounds in “military jargon.” However, it is difficult to assess the validity of his argument, because he does not provide any examples of this jargon. Moreover, it seems that Campesi does not fully grasp the agency’s role. One of its tasks it to combat human trafficking. Therefore, it may be too complicated for the agency’s spokesperson to talk about its work without using words that have military connotations.

There are also a few researchers that analyze organizational constraints that the agency was facing. Since my thesis takes the shape of public policy analysis, understanding the limitations of Frontex is crucial. The restriction that is discussed by the majority of scholars undertaking this topic is the dependence on the member states. Spiegel (2010, 19) citing one of the biggest German newspapers, argues that Frontex is heavily reliant on the member states and therefore its decision-making capabilities are significantly limited. Slominski and Pollack (2009, 910) state that one of the areas in which the agency's dependence on member states is easily palpable are issues related to staff policy. They point out that the fact that the agency relies on seconded national experts (SNE) limits their political autonomy. When it comes to the joint operation they constitute about 50% of total staff engaged in operations (Frontex 2015). Rijpma (2010, 2) also underlines that human resources provided for Frontex by the member states are crucial for its missions. Furthermore, even the European Commission is aware of limitations imposed on Frontex. In a draft document presenting ideas for the creation of the European Border and Coast Guard, authors highlight the biggest constraints that Frontex faces and urge change. Among these limitations, they name such problems as lack of operational staff, the inability to run operations without a member state mandate, and Frontex's lack of a capability to buy its own resources or equipment (European Commission 2015f).

Dependence on member states is connected to the other problem that Frontex struggles with, namely, unequal engagement of the member states. There are countries that are engaged in almost every operation like Italy or Germany and there are others that participate rarely, for instance, Denmark and Slovakia (Pollack and Slominski 2009, 915). Such reluctance to commitment is sometimes criticized by the press in the member states. For instance, in April 2016 one of the British newspapers strongly disapproved governmental decision to send just eight

people to support the EU in the realization of agreement with Turkey. The newspaper has highlighted that the EU has called for 2,500 people of different professions: interpreters, escort officers, and judicial officers, but still the UK decided to send just 8 judicial officers (Morris 2016). Hence, Frontex operational capabilities may be significantly hindered by the lack of commitment from the member states.

Another controversy pertaining to Frontex work is the lack of transparency (Papastavridis 2010, 110). Although Frontex is a Community agency required to share its documents, what is often problematic is to get information about ongoing operations (Pollack and Slominski 2009, 919). In addition, according to Regulation (EC) No. 1049/2001 of the European Parliament and of the Council: “In principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions. The institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks” (European Parliament and Council 2001). There are four areas excluded from this principle: “public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State” (European Parliament and Council 2001). Weinzierl (2008, 3) raises similar concerns, noticing that in its reports, the agency does not provide any information on intercepted people.

However, it should be noted that Weinzierl’s concerns are partly true or maybe that the situation, since 2008 has changed. Although such information is still not available in general reports, it can be found in other sources, for instance in the “Triton Factsheet” (European Commission 2017d). In the document, one reads that migrants, after they are rescued at sea, are taken to Italy, where they are provided with medical assistance and interviewed. Hence,

Weinzierl's argument does not fully hold anymore, although indeed, we may argue that provided information is incomplete and transparency concerns are justified.

For Marin (2011, 477), the problem with transparency is embodied as the lack of or very little information about operations Nautilus and Chronos on the Frontex website. What strikes her is that the agency does not admit that there were cases of push backs, although Human Rights Watch claims so. The issue of "the amount" of information is in fact really subjective; however, Marin is right that the information about Nautilus 2009 is, in fact, scarce. Although the agency talks about it in its 2009 general report, there is no information about intercepted migrants. Nevertheless, it should be also noted that this problem was addressed in the future, even before the recent reform.

In 2014 and 2015 general reports, Frontex provides information about the number of intercepted migrants illegally crossing borders. Similar concerns were raised by Carrera (2007, 14), who argues that the lack of transparency is evident when it comes to the risk analyses publications. He points out that it is not acceptable that documents, which are often used as justification to start an operation, are not publicly available. However, Carrera's argument is easily falsifiable, since at the agency's website there are available risk analyses starting from 2011. It was probably a policy change that enables those analyses to be declassified. I do not share Carrera's view and I am concerned about the availability of those documents, I will get back to this issues in the following sections of this chapter.

Finally, Carrera (2007, 18) mentions the problem with transparency and legal basis, as he puts it, "inter-institutional cooperation" i.e. Frontex collaboration with, for instance, Europol. He argues that although the agreement between those agencies was established, the "nature" of cooperation is not clear. Again, his argument may be dismissed, since the establishing regulation

reads that such cooperation has to be conducted without prejudice to the Treaty establishing the European Union. Hence, there should not be any concerns as far as transparency of this cooperation, because there is a rule applicable to it in the Treaty.

Discrepancy in the applied law is another point that is brought up by critics of Frontex. Marin (2001, 477) is highly hesitant about the legal basis of operation Nautilus. She states that the Schengen Border Code was not applied (although it should), because Malta, which was a host country for this operation, was not a part of the Schengen agreement at that time.

I believe that an important part in discussing the criticism that the agency has received is also to analyze the Evaluation Report of Frontex issued in 2015. The evaluation was run by two private companies Ramboll and Eurasyllum, which claim to be independent. According to the article 33 of the regulation establishing Frontex from 2004, within 3 years after having started its activity and after that every 5 years “the Management Board shall commission an independent external evaluation on the implementation of this Regulation” (Council of the European Union 2004). The evaluation covers the period from July 2008 to July 2014 (Ramboll and Eurasyllum 2015). There were four evaluation criteria: effectiveness - assessing if Frontex implements appropriate regulations; impact – showing if the agency achieved long-term goals; working practices – controlling if procedures are in line with agency’s missions and the last one – the EU Charter of Fundamental Rights, which helped to check if Frontex monitors and promotes those rights. Interestingly, the evaluation was also used to address the question if there is a need to create “the European System of Border Guards.” Having known that such reform was made, it will be challenging to see if proposed by the evaluation recommendations were implemented. However, it should be noted that the evaluation does not cover the year 2015 when the number of illegal crossings peaked and the crisis developed.

At first sight, one may spot the discrepancies between what the evaluation says and problems raised by the member states. According to the report, the efficient support was provided during joint operation, although as we already know Malta was complaining that it needed to use their own equipment in operation under Frontex aegis (Rambol and Eurasyllum 2015, 7).

However, in fact, there are more issues that the evaluators and Frontex's critics agree on. The evaluation shows that concerns raised by some researchers as far as the inefficient response of the member states in regard to the deployment of technical resources were right. Moreover, it also states that Frontex should improve in planning such needs and in being more precise about them. There is an important suggestion made: instead of just collecting data about states' resources, Frontex should explicitly state what the agency needs, in order to make this equipment available (Rambol and Eurasyllum 2015, 8). In addition, the report reveals that Frontex engagement in joint return operations is not sufficient and recommends greater involvement such as chartering flights or monitoring missions (Rambol and Eurasyllum 2015, 104).

Another important point made by the evaluators is that the agency did not completely fulfill its mandate to assess member states' operational readiness to protect its borders. Knowing how the situation developed in 2015 (overwhelming pressure on Greek border), those words seem to be highly relevant (Rambol and Eurasyllum 2015, 7). Moreover, the evaluation shows that some of the member states do not possess the appropriate equipment and that some of the equipment sent by member states could not be fully used, for instance, because it did not have "all-terrain drive capability" (Rambol and Eurasyllum 2015, 34). Finally, problems with inefficient personnel were also diagnosed. They pertained to operational activities and to the fundamental rights issues as well. The evaluators argue that there are not enough people working on an appropriate monitoring and implementing of fundamental rights.

Finally, the report calls for a redefinition of Frontex roles and responsibilities in the context of Integrated Border Management, especially in regard to sharing of prerogatives between Frontex, member states, and other EU agencies. The evaluators agreed that establishment of the European System of Border Guards could positively contribute to increasing the effectiveness of border coordination.

Other criticism made by the evaluators was related to the communication issues. They complained about inefficient language skills of member states' border guards (their problem with English). As far as operational activities, there is a problem with the "working in silos" approach. The report states that there is not enough communication and information sharing (Ramboll and Eurasyllum 2015, 8). Moreover, internal units of the agency are not properly integrated (Ramboll and Eurasyllum 2015, 9).

Leaning towards those critics that underscore the huge limitations that Frontex was facing, I argue is that the agency experienced "responsibility without authority" (Staudt 1985, 62). The monitoring mechanism was not working – countries were failing in compliance with Schengen rules and they were not helped, partly because the agency was equipped with any enforcement capabilities. Moreover, a significant dependence on member states in regard to staffing policy also often hindered agency's performance in fulfilling its duties. The agency was unsuccessful also in training activities, the Greek border guards failed to detect fake documents, letting in the terrorists who conducted a terrorist attack in Paris in 2015 (Frontex 2016a). Among the best examples of countries' inability to face the crisis were "fence epidemics." In their eyes, the only way to protect their security was to build fences, since they were left alone with the migration problem.

Chapter 3: Policy Alternatives

INTRODUCTION

The Schengen area covers 44,000 kilometers of sea borders and about 9,000 kilometers of lands borders (Frontex 2017f). According to different estimates, between 125 to 300 million people enter the EU every year, including both the EU and third-country citizens (Carrera and Guild 2013). Indisputably, it is a challenge to keep under control such extensive territory and so many individuals. Especially, it is worthy to mention again, that there are no internal border checks (if there is no exceptional situation) in the Schengen zone. Moreover, it should be also noted that such countries as Greece are particularly vulnerable to the problem of irregular migration because of its coastline characteristics. First of all, the Greek coastline is really long and consist of many rock islands. It is also located really close to the Turkish coastline. Finally, the maritime traffic near Greek coastline is very busy (Tryfon 2012). Hence, it is not puzzling that Greece became one of the centers for irregular migration in Europe.

The problem analyzed in the thesis was already described in Chapter 1. Here, I would like to focus on possible solutions. First, I am going to name the stakeholders and characterize their preferences. Then, I will move to the short description of available possibilities. Before the main part – assessing the alternatives – I present cost and benefit analysis.

STAKEHOLDERS

There are plenty of stakeholders in this situation. Each EU state may be treated as a separate stakeholder, but to make it easier I would differentiate two sides: authorities of frontline states (Italy, Greece, and Malta)⁶ and EU authorities. The latter wants the former to control its border, since especially Greek negligence causes problems for the whole EU. On the other hand, we have

⁶ Spain is also often counted as frontline state, but in the case of the current European crisis, this country is not overwhelmed so much. Routes via Spain are much less used nowadays that those through Italy, Malta, and Greece.

also the frontline states' governments, which aim at getting EU help and at cutting expenses on the crisis. The EU officials' interest lays in "regaining control of irregular flows and of our borders" (European Commission 2016g). Thus, they want all newcomers to be "properly registered and fingerprinted" (European Commission 2016g). Some of the European states, as for example Austria, have already closed their borders and are not willing to accept more migrants; others argue that they cannot afford to admit immigrants. Those decisions have met with a strong criticism of the Greek government. Therefore, frontline states' main interest is to get European help based on solidarity in managing this crisis. For frontline states, this help would be understood not only as providing material recourses but also as the relocation of many migrants who currently are in their country. Since, as it was already stated, many EU countries are not capable of admitting more migrants, they would rather send money, equipment, and resources to Greece, Italy, and Spain. Some of these EU countries blame Greece by saying that its irresponsible politics has driven Europe to the edge of crisis and they are not willing to share this burden.

Interestingly, some commentators underscore that Malta and Greece did not predict that once they joined the EU, they would become European buffer states and that they would be a migrant trap and consequently they were not prepared for such circumstances (Carr 2012, 105). Thus, they may feel somehow cheated by the EU and demand help. Such lack of preparedness was also mirrored in the lack of EU policies pertaining to the issue of asylum (Carr 2012, 69).

On the other hand, more experienced in the "migration issues" Italy, was even able to find an "ally" among other EU countries in the battle of the EU response to the problem. Joined by France, it called for revisiting the Schengen Agreement and the reintroduction of internal border checks in times of increased migration flows. Hence, it seems that interests of both sides might

partly overlap, at least sometimes; however, in the times of austerity the EU is not willing to spend much money (Lewin 2016).

POLICY ALTERNATIVES

All policy alternatives that the EU might implement in this case can be divided into two groups, which are somehow analogous to Anderson's model (Anderson 1977). In the first group, we could find alternatives corresponding with his free market approach. Member states decide not to take any action to help frontline states, so they leave things as they are. They close their borders in order to protect themselves and consequently Greece, Italy, and Malta need to deal with the problem on their own. The second category would be the more control-based approach. In this case, member states provide support, send help and undertake action in the region. Moreover, we may look at the possibilities from narrow and broad perspectives. The narrow perspective will pertain to the action that will target or apply to frontline states directly, whereas in regard to the broader perspective, one may take into consideration international agreements that would impact those countries indirectly.

The first possibility would be based on a tool, what Kraft and Furlong call – “regulation,” to exclude frontline states from the Schengen zone. This decision may be made on the grounds of Article 26 of the Schengen Borders Code. A risk for the functioning of the whole Schengen Zone may be a baseline for reintroducing borders control in one or more member states (European Parliament and Council 2006). This solution is quite different from what we have already seen in this year when many EU states decided to close their borders and to reintroduce border control. Those countries made a sovereign decision to reintroduce control, whereas in the case of the frontline states' situation, this solution would be forced by other EU countries, without asking

Greece, Italy, and Malta for an opinion. It would prohibit anybody to leave those countries without such border control checks as those enforced when a person enters the Schengen zone.

Another possibility, which is also based on the regulation tool, would be to restore all internal European border controls, in other words – completely eliminate the Schengen zone. This move would significantly differ from the one analyzed above, since it would pertain to all member states and it would not introduce the problem of any “double standards” in the European Union.

The next possibility is to create a new European agency called European Border and Coast Guard, which will be built on the existing European Agency for the Management of Operational Cooperation at the External Borders - Frontex. In lieu of the current crisis, many politicians and analysts bring up a need for changing the functioning of this agency. The European Commission has prepared a project of this reform in 2015, in which the legislators highlight the biggest limitations that Frontex faces and urge change. Among these limitations, they name such problems as the lack of operational staff, inability to run operations without a member state mandate, and Frontex’s inability to buy its own resources or equipment (European Commission 2015f). The European Commission proposes that the new agency would obtain all these rights.

In addition, another option is a policy tool that Kraft and Furlong call – “contracting out,” which also may be useful in this situation. The EU could ask for help from non-governmental organizations.

Moreover, the EU could also contract out individual workers from member states, which would not work under the aegis of Frontex. However, the current case of sending interpreters, judicial officers or asylum specialists from different member states in order to help Frontex with the implementation of the agreement between the EU and Turkey agreement shows that it is not always effective. The British media have heavily criticized their government, since the UK has

sent just eight workers, whereas the EU needs about 2,500 workers from all member states (Morris 2016).

The EU could also cooperate more tightly with non-member states, mainly so-called transit states in order to deal with irregular immigration. One of the possibilities would be to increase cooperation under the European Neighborhood Policy (ENP) and to adjust this instrument. This is a policy tool that definitely deserves some attention. Although according to the EU' declaration the main aim of the program is to achieve "the closest possible political association and the greatest possible degree of economic integration" (European Union External Action 2016), in fact, this mechanism is often used in order to decrease the migration flows coming to Europe. Countries that are part of the ENP mechanism are given money and resources that, for instance, improve their border control capabilities and decrease the possibility of illegal border crossing to Europe.

As Pinos (2014, 134) argues ENP transformed North African states into European "buffer zones" and is a perfect example of the externalization of the European borders. One of the most important aspects of such a cooperation in the context of the migration crisis would be readmission agreements, which as I will show below are not always easy to obtain. Finally, it should be noted that the ENP is not the only mechanism that is used to institutionalize cooperation with transit states. Such agreements were previously signed between, for example, Italy and Libya. Despite the criticism, they received for the lack of opportunity to apply for asylum by many people, they decreased the number of migrants crossing the Mediterranean (Triandafyllidou and Ambrosini 2011, 266). Thus, maybe the cooperation with other transit states would help to solve the problem by decreasing the number of people illegally crossing the EU borders.

COST AND BENEFIT ANALYSIS

A popular way to choose the best policy alternative is to employ cost/benefit analysis. It shows in a very precise and straightforward way what we may lose or gain once a particular alternative is employed. Here, I understand costs more broadly than just money or resource spending, since I include also intangible assets. Let me start with the first alternative – excluding frontline states from the Schengen zone. Just as an introductory comment, we may say that this option would be beneficial for almost all EU countries, but not for Greece, Italy, and Malta. Thus, we can see that this solution would introduce a huge imbalance and “multi-speed Europe,”⁷ because most of the member states, but Greece, Italy, and Malta would enjoy the benefits of the Schengen zone (Frontex 2016a). The EU states could rest assured that immigration is not their problem, since at their borders they would be able to prohibit any newcomers to get in. However, a huge amount of costs is related to this solution. First, the EU’s integrity and solidarity values would be severely threatened. This could disappoint frontline states and make them less willing to be EU’s gate-keepers. One of the possibilities would be that Greece, Italy, and Malta could not take measures to track illegal border crossing to the Northern part of Europe’s. The financial facts also speak for themselves; the Greek Migration Minister claimed that in 2015, Greece has spent 1 billion € to deal with migrants’ influxes (Taylor and Macdonald 2015). All the benefits and costs are expected to happen immediately, although some such as the increase of illegal border crossing may happen with some time lag. Overall, it seems that in this case, costs outweigh benefits.

Eliminating the Schengen zone is the next alternative. The greatest benefit of this possibility is the fact that the EU would regain full control of its border; however, to be more precise I should say that, in fact, member states would regain control over their borders.

⁷ “‘Multi-speed’ Europe is the term used to describe the idea of a method of differentiated integration whereby common objectives are pursued by a group of EU countries both able and willing to advance, it being implied that the others will follow later” (Eur-lex 2017).

Consequently, I may say that the security of all member states would be a benefit of this solution. Said benefits would be followed by examples of different costs – a huge loss of basic European values, great disappointment of many EU citizens, for which a right to free movement is a *sine qua non* of the European Union. Finally, all member states would have to pay an enormous financial cost of such decision. European analysts estimated that the expense of eliminating the Schengen zone would cost between 5 and 18 billion € annually, which would include, for instance, wages for border workers or new border infrastructure (European Commission 2016h). In this case, some of the costs are expected to happen immediately; for instance, workers would be hired and paid right away. In addition, there would be also many annual costs; again, workers would need to be paid and roads and facilities maintained. Here, again costs outweigh benefits.

Let me now look at costs and benefits of reforming Frontex by creating a new European Agency. Doubtlessly, this solution would be beneficial for Southern states, since they would get professional help. Moreover, the security of Europeans and migrants would increase as well due to more trained and professional guards as opposed to temporary workers. The costs of this alternative would be really high. The European Commission highlights these costs in one of its reports: some of the money that could be spent on this consistent and comprehensive agency are already spent on others, more divided actions (European Commission 2015f). In fact, integrating those actions under the aegis of one agency could be beneficial. The new agency would need about 334 million € for their missions and staff expenses for 2017. It seems to be a huge amount of money. However, we may compare it with the 2016 subsidy for Frontex, which equals about 238 million € and where effectiveness is smaller than the expected usefulness of this new institution. Thus, although the cost will be really high, the benefits will still outweigh the costs. Moreover, the

benefits are expected to be visible immediately and to last for years, but obviously the same pertains also to the costs.

The indisputable benefit from contracting out NGOs would be to have some of the problems fixed quickly and professionally. Yet, I have mentioned that many NGO workers are volunteers, so not all of them might be professional workers. Nevertheless, they are able to make up hypothetical disadvantages by their great sacrifice. Again, frontline states would benefit because they would get desired help. Other member states should be satisfied as well, since they would not have to contribute many resources because NGOs are often financed from donations. However, since the EU would be contracting NGOs out, then obviously, they would have to make some of those donations. To give an overview of the money spent by NGOs to help asylum seekers and migrants on their way to Europe, an example of the Migrant Offshore Aid Station (MOAS) is in order. They conduct missions at the Mediterranean Sea, the Aegean Sea and the Andaman Sea with one aim: to save people's lives. As depicted on the MOAS website: "The operational costs of MOAS are upwards of 500,000 € each month" (Migrant Offshore Aid Station 2017a). It is easily visible that this is still less than the EU pays for Frontex operations. In this case, there is no doubt that benefits definitely outweigh costs and both should be palpable immediately.

Surely, contracting out workers from particular EU states will not be as cost-efficient as outsourcing NGOs. Similar to the above-mentioned outsourcing, Southern states should be satisfied, since they will get help. Member states would not be content to such an extent as in the case of NGOs; nevertheless, they are still granted freedom as far as a number of expenses they wish to pay. It would give them the opportunity to just reassure their conscience because they could, for example, send just a symbolic number of experts. The costs would differ depending on how many experts would be sent. Nevertheless, we may argue that in this case costs and benefits

would be equal, and the latter is expected to be rather small. Both would be observable *ad hoc*. Without *a priori* discussions, agreement states would have too much freedom and would not participate on equal footing.

Finally, we may also discuss costs and benefits of the last analyzed possibility – cooperation with third countries and adjustment of the ENP. Benefits would be obvious – decreased influxes of immigrants, stopped in transit states. However, this solution causes moral concerns as in the case of a secret deal between Libya and Italy from 2012. The problem with such agreements is that they not only limit migration but also prohibit refugees to apply for asylum. For instance, Libya did not sign the 1951 Refugee Convention; hence, the legal protection of refugees in this country is highly limited, if not none. As discussed above, for many scholars or activists the European deal with Turkey is morally and legally unacceptable, because Turkey in their opinion is not a “safe country of origin.”

Moreover, such agreement demands also a huge amount of money. For instance, the newest EU-Turkey deal costs the EU about 6 billion € and taking into consideration a dynamic situation in Turkey, the EU does not have much certainty whether the agreement will be fulfilled. Although the scale of the funding is different, the ENP also involves a lot of money. In 2015, the EU provided Tunisia and Morocco in funding in order to run a migration reform. Even though Tunisia received 3 million € and Morocco 10 million € reforms were not implemented (Kaca 2015). Hence, it seems that costs outweigh benefits in this case.

ASSESSMENT OF THE ALTERNATIVES

As we already are equipped with extensive evaluative criteria (described in Chapter 1) and with cost/benefit analysis we may assess all the alternatives. The previous section showed that excluding frontline states from the Schengen zone does not seem to be a good possibility. The

costs that Greece, Italy, and Malta would have to pay will definitely outweigh the benefits, which means that efficiency condition is not met. Moreover, if we would like to test this solution for security rationale, it would probably fail. As I mentioned above, at the beginning the security of particular member states could increase; however, since the capacity of southern states is limited, sooner or later a huge wave of undocumented migrants would be expected in Northern Europe. Moreover, taking into consideration the social acceptability condition, this possibility does not look good either. Greek, Italian, and Maltese citizens should have the same right to free movement as all European citizens. Depriving them of this right would indisputably meet a huge resistance from Greek, Maltese, and Italian people. It seems that this solution does not fulfill any of the evaluative criteria.

The next solution – eliminating the Schengen zone – could be controversial, since it undermines the most basic and fundamental values of European integration. The free movement of people, goods, and capital underlie the existence of European Union and EU citizens take it for granted. I think we may compare it to unofficial rules, based – as Stone points out – on “social customs and traditions” (Stone 2012, 290). This free movement is what citizens of EU country candidates are longing for, and once they become a member of the EU it would be really difficult to take it away from them. Since those norms and laws based on them are so deeply rooted in their understanding of their rights as EU citizens, changing these regulations may encounter a huge citizens’ resistance. This means that this option is not consistent with the social acceptability rationale.

Zone elimination would resolve the problem of uncontrolled waves of immigration. If one state would fail to control its border, the hypothetical undocumented migrants would be stopped by the next one. Furthermore, this solution would be also beneficial for migrants. If this solution

would be implemented, after reviewing refugees' cases, they would be granted asylum and transported to the asylums centers or returned to "safe countries of origins." Moreover, that solution could also decrease the number of immigrants coming to Europe, since it would drastically limit options available for smugglers. Once they will experience more control within the EU boundaries, the incentives to engage in human trafficking would be minimized. Consequently, that could decrease the number of people coming to Greece or Italy and therefore it would be easier for authorities and border officers to control the borders. Thus, we can assume that although not indirect – since the elimination of Schengen zone will not force the Greek government to fulfill European regulations and control borders (and this is the main issue of this analysis) – nevertheless, it still may have an impact on Greek immigration problems. This solution is definitely consistent with the security rationale. However, although it seems that this solution meets the core criterion of my analysis, it is still not efficient. As the cost/benefit analysis has shown – costs would severely outweigh the benefits. Therefore, it is not the best option, because it is not congruent with two other requirements – efficiency and social acceptability.

The cost/benefit analysis has shown that a creation of new agency is a noteworthy alternative, since it definitely meets the efficiency requirement. In addition, as already mentioned, this possibility undoubtedly will increase Europeans' and migrants' security. Tenured professionals would indisputably be more capable of conducting this kind of operations than for instance workers temporarily delegated from the member states. Experience from previous missions would also be an invaluable asset. The agency would not have to lose time waiting for member states to appoint temporary workers, as it happens right now. Moreover, Frontex is currently facing the problem of an insufficient number of workers. Engaged in implementing the EU-Turkey deal, the agency is poorly equipped with personnel and it is calling for more support

(Novinite 2016). However, there is this one assumption that may not be welcomed by many EU citizens – the possibility of deployment without neither invitation nor mandate from host countries (European Commission 2015f). Some of the EU countries may be afraid that this solution may violate their sovereignty and are not eager to welcome workers of agency. Thus, although this improvement could accelerate the effectiveness of mission, it can also cloud the whole idea of creating this agency. Therefore, it seems that the best option would be to drop this one controversial point and create a new agency accordingly to the rest of promising ideas. The idea of creating new agency will indisputably be socially acceptable, efficient and beneficial in terms of security; however, the deployment without states' consent may scuttle this project. Thus, in order to reach this goal, it will be reasonable to resign from this one controversial point.

The possibility of contracting out NGOs does very well in regard to cost/benefit analysis, which means that it is consistent with efficiency rationale. Undoubtedly, this solution would also be socially acceptable, since NGOs enjoy public confidence. Moreover, most of them are non-partisan, which for many might be an additional advantage and a feature that makes that things move faster. Thus, the social acceptability criterion, is fulfilled as well. In regard to the security rationale, things may turn out to be a little vague. What many people admire is the volunteers' willingness to sacrifice. For example, the main aim of the Migrant Offshore Aid Station is to save people lives, which obviously should be the first unconditional reflex. However, once asylum seekers are already on the ground, there are many procedures that must be followed. For some people, the ability of NGOs to fulfill these procedures might be a concern. Maybe some volunteers driven by idealism and unlimited willingness to help or lack of knowledge would try to work outside legal procedures. Therefore, it is hard to assess if this possibility would meet the security condition, as far as a proper registration and control of asylum seekers. However, the other

advantage of this possibility may encourage policymakers to implement this solution as a complementary measure, together with other alternatives.

Sending workers from other member states to assist frontline states turned out to be efficient, but the effectiveness of this possibility is expected to be rather low. There are many member states not eager to engage in such a cooperation, one may again provide the UK as an example (Morris 2016). If states were bound by the agreement and all states would send an equal number of officers, this solution could work out. Moreover, another issue is the difference in regulations among member states. It would be challenging to coordinate cooperation of people with different legal backgrounds without aegis of Frontex. This solution should be socially acceptable, since once citizens would see that this an act of solidarity and financial expenses are divided by all states, they should not oppose to that solution. The alternative should also increase the security. According to the rule: “the more the merrier,” more hands to work and eyes to control could positively contribute to a security increase. Nevertheless, this solution does not seem to be worthy to employ, since it will not be effective.

Tighter cooperation with non-member states and adjustment of the ENP would increase the security of Europeans, assuming that governments of those countries would be able to stop people from coming to Europe. However, the security of asylum seekers could be endangered. Obviously, it would depend on the conditions of an agreement. Keeping in mind the controversial Italian-Libyan deal, such concerns might appear. Moreover, Libya, one of the biggest transit countries, is still torn by chaos, unable to stabilize its economic, social, and political situation; thus, it is hard to imagine a reliable deal with this state. Paradoxically, anti-smuggling policies may also destabilize the situation in some of the countries. There are many groups of people in Niger that indirectly benefit from smuggling, such as shop owners (Tinti 2017). The lack of migrants in their

country could result in them losing jobs. Such an unwillingness to some of the European ideas pertaining to the problem of migration may be also observed in regard to the European Neighborhood Policy.

Although the ENP was somehow effective when it comes to border management since, for example, the migration flows from Morocco and Tunisia (two countries mostly engaged in the cooperation under the ENP) are much lower than those from Libya, other aspects of the ENP are not so easily implemented. As mentioned above, in the context of the crisis, one of the most important aspects would be readmission agreements. The Canary Island case showed that migration dropped after Spain signed such agreements with Senegal and Mauretania (Carrera 2007, 21). However, one can be highly doubtful whether readmissions deals can be reached under the ENP. The Moroccan case shows that readmission agreements are not something transit states are willing to pledge, at least under the ENP (Pinos 2014). In addition, the effectiveness of even the adjusted ENP may be hindered by several factors. Starting from violation of human rights that happens frequently and now would partly be European responsibility. Many critics of the ENP talk also about its neo-colonial character because it imposes European way of thinking and defining problem on the engaged states (Pinos 2014). Finally, the Arab Spring has shown that the ENP is a tool that is vaguely adjustable to new circumstances. The EU was ready to increase the support through the ENP for countries experiencing the Arab Spring; however, analyses have proved that often there were just declarations, not followed by real actions (Bicchi 2014, Noutcheva 2014). Because all of these reasons one can be doubtful about the efficiency of adjustment of the ENP and tighter cooperation with transit states, particularly Libya and Turkey. Moreover, concerns related to human rights issues would obviously influence public opinion and have an impact on social acceptability. As already mentioned, there are people highly concerned whether Turkey may

be perceived as “safe country of origin” (Human Rights Watch 2016). Therefore, we may expect that this alternative would not fulfill the social acceptability requirement. This alternative seems to partly fulfill recruitments of security (European side, but not migrants’) with doubtful efficiency, it also may cause huge moral concerns followed by lack of social acceptability.

CONCLUSIONS AND RECOMMENDATIONS

Although the European Union has a decent set of options to choose from, not all of them seem equally notable, which is obviously natural and needed in the realm of public policy. There are two alternatives, which are absolutely unacceptable: excluding Greece from the Schengen zone and eliminating the Schengen zone. In both of them, the costs outweigh the benefits; they could succeed temporarily, but in the long run, they would indisputably turn out to be inefficient. They could meet the security condition, but the huge waves of social resistance would not let them to be socially acceptable. In sum, these possibilities should not be considered.

The alternative of the cooperation with non-member states and adjustment of the ENP could be worthy to think about, but with a number of restrictions. First, the security of asylum seekers and the possibility to apply for the asylum should be granted. However, once one looks at current destabilization in Libya, this possibility does not seem to be politically feasible. Therefore, although this possibility could increase Europeans’ security and would be efficient, the EU should not take measures to implement this alternative immediately.

The possibility of contracting out professionals from member states would be worthy to implement, however, as already mentioned with some adjustment, such as solidarity and equal contribution condition and an agreement between states. Nevertheless, in the face of better alternatives, I believe that this possibility is not effective enough. I suppose that it would more efficient to spend this money on the expenses of the new European Agency – European Border

and Coast Guard. An integrative and comprehensive agency would indisputably work more effectively than a group of individuals who have never worked together before.

I would recommend that the EU should create a new agency – the European Border and Coast Guard. As it has been noted above after implementing one adjustment, this alternative meets all the requirements. If the EU officials will not insist that this agency should have a right to intervene without an explicit call or mandate, this possibility has a really good chance to work. Moreover, I believe that contracting with NGOs would be a perfect addition to this alternative. Thus, I recommend that EU should cooperate with NGOs. They, working hand in hand with the new European agency, would be able to overcome hypothetical law based disadvantages and would be invaluable help for European agents.

Finally, I also think that these two alternatives have huge chances to meet political feasibility criterion. Once the controversial point of the new agency's creation will be dropped, host states should welcome so needed help. Therefore, this possibility should be acceptable for frontline states' authorities. Moreover, since the expenses would be covered from the common EU budget other member states should not oppose this alternative. I also think that the best example of the political feasibility of the complementary NGOs alternative is that just as this public policy analysis was accomplished, the EU decided to give 83 million € to humanitarian organizations - UNHCR and seven NGOs (European Commission 2016i). For all these reasons, these two alternatives deserve special attention and therefore they will be analyzed in more depth in the two following chapters.

Chapter 4: The Reform of Frontex

INTRODUCTION

The migration crisis is a serious test of the European Union's solidarity and effectiveness. Many non-governmental and governmental agencies have criticized the European Union for lack of response to the crisis at the institutional level. The reactions of particular member states significantly differ and this is not what I am discussing here. For example, Germany is definitely the outlier when it comes to the number of accepted migrants. The interpretation of German openness varies. As Kathleen Staudt (2017, 169) points out, some media called it "redemption," whereas others explained it with more pragmatic reasons like German demographic problems. However, it seems that accusations of the EU institutional ineffectiveness are no longer justified since it has finally decided to take serious actions in order to mitigate the crisis.

The European decision-makers are really proud that they reformed the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union within relatively short time, saying that this is a record and that it does not happen often for a project to be implemented in less than a year. On the grounds of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the European Border and Coast Guard agency was established in October 2016. It has wider jurisdiction than its predecessor and it is expected to be also more effective. The EU still refers to the new agency as Frontex. Therefore, to make a distinction between both agencies, before and after the reform, I refer to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union as the "old Frontex."

In my research, I discuss the changes that were made, analyzing the Regulation No. 2016/1624 of the European Parliament and of the Council that established the new agency. It is

obviously too early to assess the performance of the new agency, but at least the changes made on paper can be investigated. I also discuss if these changes are effective or not and how decision-makers should improve them in the future. In Chapter 2, I have analyzed the criticisms that the old Frontex received to acquire awareness of the particular issues I should pay attention to. I start this chapter by discussing the process of creating the new agency, then I move on to the analysis of the changes that the regulation has introduced.

CREATION OF THE EUROPEAN BORDER AND COAST GUARD AGENCY

As it was stated above, the European decision-makers are highly satisfied with the time it took to establish the new agency. Obviously, it should be noted that the agency is not a completely new body, since it was built on the grounds of the old Frontex. However, it is naturally time-consuming to reform such a complex body. In this subsection, I would like to briefly analyze the process of the creation of EBCG.

The legislative proposal of the new agency was published in December 2015 (European Parliament 2015). In the summary of this proposal, it is highlighted that the increased number of illegal crossings to Europe has a significantly negative influence on the functioning of the Schengen zone. The summary also shows that the vast majority of proposed changes were finally adopted. The final act of the new regulation was signed on September 14, 2016 and published in the Official Journal on September 16, 2016. During these nine months both the European Parliament and the Council of the European Union were working on the document. There were five committees of the European Union engaged in the creation of regulation establishing EBCG: Committee on Budgets, Committee on Transport and Tourism, Committee on Foreign Affairs, Committee on Fisheries, and Committee on Civil Liberties, Justice and Home Affairs. Although

all of them have presented their opinions and proposed amendments, the last one was engaged the most.

Analysis of the propositions of each committee is definitely beyond the scope of my thesis, since they have commented on almost every article of the regulation. However, I believe that a short analysis of the Committee on Civil Liberties, Justice and Home Affairs' opinion can shed some light on the subject. Hence, I have decided to look at the summary of the opinion that was prepared for the first reading of the legislative proposal in the European Parliament.

The committee has suggested that the SAR operations should be part of the European integrated border management, which indisputably shows that the safety of migrants is not neglected. Moreover, in this two-page summary phrase “fundamental rights” appeared 13 times, which suggests that this issue is treated with a high priority. The committee drew special attention to the problem of sovereignty of the member states. It acknowledges that the fact that the agency would be able to intervene without states' consent may cause concerns about territorial integrity of the member states. Therefore, the cooperation between the Agency, the European Commission, and the Council is needed in regard to such decisions. In addition, the committee has also highlighted the role of the European Parliament in preserving accountability of the agency. It states that EBCG should be accountable to the European Parliament and to the Council. Moreover, according to the committee the vulnerability tests which show member states' preparedness to the increased flows on the border should also be presented to the European Parliament. The European Parliament should be informed about “the number of technical equipment that each member state has committed to the technical equipment pool” (European Parliament. Committee on Civil Liberties, Justice and Home Affairs 2015). It is apparent that the three most important issues for the committee were: fundamental rights, sovereignty, and an increased role of the European

Parliament. In the analysis of the introduced changes presented in the following subsection, I investigate whether these suggestions were also mirrored in the final document that established the EBCG.

Another interesting aspect of the agency's establishment process was a debate that took place at the European Parliament's plenary session. After rapporteurs presented the project, other members of the European Parliament had a chance to present their views. The plenary sessions are important, since they are often video recorded, and those videos can be then tracked on YouTube and other social media. They are also often available on the EP's website. Members of the EP should be aware that their constituents may be watching them.

To analyze this debate, I will use information available on the EP website. However, although the EU hires hordes of translators, the transcript of this debate is not translated. Most MEPs used their mother tongue language. Therefore, I am only able to analyze statements made by British, Polish, Bulgarian, and a few more members that used English (one Hungarian, one Swedish, and one German). Out of 75 statements made during the debate, 18 were made in languages that I understand. Obviously, it is hard to acknowledge that this group is highly representative, but I still believe that it may show a pattern, especially that this part will be followed by the analysis of voting, with regard to MEPs' nationalities.

The debate was started by a rapporteur, who briefly discussed the most important parts of the regulation, including those addressing sovereignty, the huge pool of personnel that will be available for member states and equipment the agency will receive after the change. His speech was followed by two commissioners representing the European Commission. Both underscored that the agency was designed in a very short time. They have also highlighted that border

management is a responsibility of all member states, and that it should be based on the principle of solidarity.

Overall, vast majority of statements were very positive. Only one MEP (Ska Keller from Germany) was highly critical of the new project, arguing that it will not help to save people at sea, and that it will not improve the situation of migrants. Interestingly, that speech was the only one that received applause (European Parliament 2016c).

There were two crucial issues raised by MEPs: sovereignty and security. Bulgarian and Polish MEPs highlighted the importance of secure borders. They praised the new idea, as in their eyes it can help to increase the security of Europeans. This expectation was also shared by a Hungarian MEP, who added that the new agency will help protecting the fundamental rights. The Swedish MEP, after discussing the biggest merits of the EBCG, expressed satisfaction that sovereignty of member states will not be violated. One of the British MEPs definitely did not agree with her, saying that this regulation, in fact, compromises sovereignty. In his view, the problem lies in Schengen itself, since it gives migrants the possibility of moving from one state to another without border checkpoints. British MEPs were rather skeptical about the project, but their doubts were based on different premises than those presented by Keller. They highlighted the huge expenditure that will be needed for the new agency. In addition, one of the British MEPs expressed concern that the agency may be converted into a rescue system, which will encourage migrants to put their lives on risk, knowing they will be rescued. Yet partly critical, British MEPs were not denouncing the new idea the way MEP Keller had. Her voice was the only anti-reform voice in all 18 statements (European Parliament 2016c).

The overall optimism about the new regulation is reflected in the voting results: 68% voted for, 25% against, and 7% abstained (VoteWatchEurope 2016). Similarly, the British skepticism

was also embodied in voting. The UK was the only country with the majority of representatives voting against the reform (28 voted against, 19 for and 18 abstained).

Another interesting measure is cohesion, which denotes similarity in voting among members coming from the same country expressed in percentage. The lowest the percentage, the worse the cohesion. UK had one of the lowest cohesions between its representatives (15%) in that voting. Only Greece had worse cohesion (10%). On the other side of the spectrum, we find countries like Bulgaria, Estonia, Luxembourg, Malta, and Slovakia with 100% cohesion (all of them voted for the regulation). It is hard to find a pattern explaining differences in cohesion among countries with similar geopolitical situation. States that are affected by the crisis the most: Malta, Italy, Greece, and Spain have different cohesion indices. They represent the entire spectrum: Malta (100%), Greece (10%) Italy and Spain (about 50%). Similarly, there is no pattern when it comes to countries of the so-called former Communist Bloc. Although for most of those countries, cohesion index reached about 80% or more, for Lithuania it was about 70%, Hungary – 60%, and the Czech Republic – 50% (VoteWatchEurope 2016).

The analysis shows that not all representatives perceived the regulation as a matter of national interest. If that was the case it would encourage the 100% cohesion, as occurred in Bulgaria, Estonia, Luxembourg, Malta, and Slovakia. Apparently, the UK was the most skeptical about the reform country, followed by Greece (8 representatives voted for, 8 against, 4 abstained). In the rest of the countries, majority of their representatives approved this regulation (VoteWatchEurope 2016). Did this decision address problems of Frontex? I will answer this question in the following subsection.

FRONTEX REFORM

In all documents and reports pertaining to the creation of the new European agency, decision-makers highlight that the migration crisis was the motivation for the renovation of Frontex. Another issue that was underscored is that competences of the European Border and Coast Guard are broader than before, which should guarantee that the agency will be able to address problems related to the migration crisis.

Before I move to the analysis of changes affecting the work of the agency, I want to mention a few general alterations. The fact that the name of the agency was changed may make us more suspicious about the “real” change of the agency, since in public policy renaming is usually not followed by significant changes. I believe that here the situation is different. Leaving aside the issue that the competencies of the agency were significantly widened, budget and staff were also subjects of transformation. The budget of the agency will be gradually increasing. In 2017 it should be 281 million €, but in 2020 the agency’s budget will reach 322 million €. The staff of the agency will be increased as well while in 2016 it was hiring 417 people, over 1,000 people will be working there in 2020. The percentage of currently working staff that will remain at its post is unknown, but it should be noted that the agency does not offer permanent contracts, so one may assume that the employee turnover is rather high. Let me now describe and analyze the major changes in Frontex’s competencies, responsibilities, and tools, and I will assess what are the pros and cons for each one.

Vulnerability assessments

One of the new tasks of Frontex is to run so-called vulnerability assessments of all member states. At the beginning of its existence, Frontex was obliged to conduct only risk analyses showing all threats to the European external borders. Risk analysis is basically a report that involves intelligence gathering from all member states, European agencies, and other partners, for instance,

International Organizations or third countries (Frontex 2017d). As Stone (2012, 141) argues, risk assessment is a powerful mechanism and it may be used as a justification of a variety of political decisions. On the other hand, she highlights that such assessments are always guesses. Thus, one should be really attentive while making decisions based only on risk analysis. In 2011 Frontex's responsibilities in this field were extended and an assessment of member states' capacity to protect its borders was added (European Parliament and Council 2011). According to the 2011 amendment, countries were required to present all available information, including those pertaining to possible threats on the external borders to Frontex. However, in 2011 amendment, legislators were not precise as to what kind of information should be provided and what the consequences would be if a country does not provide the agency with this data.

The creation of the European Border and Coast Guard addressed these drawbacks. The new regulation exactly states what kind of information countries need to deliver: "equipment, infrastructure, staff, budget, and financial resources" (European Parliament and Council 2016). The process of gathering and processing this data is called vulnerability assessment. Frontex guarantees to help countries suffering difficulties in fields mentioned above. Moreover, the new regulation describes measures that need to be taken in the case of states' noncompliance. First, the Frontex Executive Director enables a period of time to mitigate problems. Second, if a country does not take any action, the European Commission and the Council of the European Union are informed. The final step is deployment of Frontex's people even without the state's consent if a serious threat to external borders of the EU is observed. I will analyze this tool in one of the following subsections.

An important aspect of vulnerability assessment is that countries are informed and may comment on the assessment. I believe that in the light of possible reaction from the agency or the

Commission, this possibility is important because it allows a state to secure its borders and may also expedite the process of eliminating flaws in that matter. I also positively assess the fact that the regulation precisely describes what areas are taken into consideration in creating vulnerability assessments and that all important elements are covered. Therefore, if the evaluation of vulnerability is done correctly, the agency has the whole picture of European Union's readiness for handling crises.

Criteria, methodology, and frequency of vulnerability assessments are to be established by the agency. So-called stress tests⁸ have to be conducted at least once a year, which seems to be reasonable, taking into consideration the time it takes to investigate the situation in all member states. Moreover, migration flows (at least at the Mediterranean Sea) are seasonal, increasing every spring and decreasing around fall, because of the weather conditions. Therefore, an annual "check" would be enough. There is one issue I see. The regulation does not mention the public availability of those reports. Frontex's risk analyses are publicly available on their website. This is obviously convenient for scholars, but also for criminals. In my opinion, vulnerability assessments should not be made public and it should be explicitly expressed in the regulation. As the name suggests, vulnerability should not be shared with the outside players, such as organized crime groups that could take advantage of them.

Liaison Officers

The cooperation between the agency and member states was also enforced by introducing the institution of liaison officers. Previously, liaison officers were sent only to third countries and played a role of Frontex's "ambassadors." Their tasks included contacting with authorities in those countries. After the change, they might also be sent to member states. In the new regulation

⁸ Vulnerability assessments are also called stress-tests.

responsibilities of liaison officers are precisely described and extensive, as opposed to the regulation constituting the old Frontex. Their role is not limited to communication between the agency and a member state. Liaison officers are also required to gather intelligence data on states' readiness to protect their borders and to monitor if states make progress in the case of difficulties at the border (which is then incorporated into vulnerability assessments). It seems that sending liaison officers to member states is a good idea positively contributing to the security of the EU external borders. It addresses the lack of monitoring states' performance in the field of border protection, which has led to violation of the Schengen rules. However, one may ask what a single person that may be assigned to up to four countries (in geographic proximity), in fact, can do. Although the idea of extending liaison officers' responsibilities and sending them to member states were good moves, there are some concerns about their effectiveness. Is one liaison officer per country or even four countries, enough to effectively fulfill all the tasks he or she is assigned? Moreover, the regulation does not say anything about liaison officers' nationality. Can a liaison officer to a country be a citizen of this country? I believe that the regulation should not allow this because of the possible conflict of interests. A citizen of a given country may not be willing to reveal a problem that his or her homeland faces. Another issue is that liaison officers should speak the language of the country they are sent to. It would be highly improbable to find a person that can speak four different languages of countries that are "geographically close." The lack of language skills can significantly hinder officers' ability to fulfill their tasks

Deployment without consent

As mentioned before, the new agency does not need a member country's consent to deploy its agents in that country. This is one of the most discussed changes in media, since it raises questions about violation of states' sovereignty. According to the Article 28 of the regulation, if a

state does not implement suggestions made by the agency or it simply faces a difficult situation at its border threatening the EU's security as a whole, and did not ask for Frontex's help, the European Commission and the Council of European Union are notified. The article mentions that in case of "disproportionate challenges" that a country experiences "unified, rapid and effective response should be delivered at the Union level" (European Parliament and Council 2016). It means that no country shall "suffer alone" and that statements like "Italy should be able to protect its border on its own" would not be voiced again. Such regulations obliged the EU to take responsibility in the case of increased and hard-to-manage migration flows. Again, I believe it is a huge step toward securing European external borders. If this regulation is enforced, situations like not taking fingerprints of migrants (as happened in Greece), will not occur in the future. Obviously, this can only occur if the EU is properly prepared for such actions, which will be analyzed in the following subsections.

As the lawmakers underscore, Frontex deployment in states without their agreement is a "last resort" decision (European Commission 2016j). They are also aware of the political consequences of such moves. Therefore, the Council, not Frontex, is a final decision-maker. After a state familiarizes itself with the Council's decision, the operation plan is created. The concerned country takes part in the development of the plan and has 30 days to enforce it. If it does not happen, the European Border and Coast Guard forces may be deployed.

Is it acceptable to violate sovereignty of a member state in case of threat to the whole Schengen zone? Can a country put others in danger without consequences? Keeping in mind that one of the criteria implemented in my analysis is security, the answer to the latter question is obviously "no." However, I do not think that forced deployment is a good solution either. What I would suggest is that the European Border and Coast Guard should be deployed in countries that

are neighbors to this “problematic” state upon their agreement. This solution would be inconsistent with the solidarity values preached by the EU, since the country would be left alone with its problems. However, this country did not pay special attention to the security of other member states and according to the reciprocity rule, it should not now expect others to cover their backs.

Another important issue in regard to the deployment without a state’s consent is the role of the European Commission. Although the new regulation broadened the prerogatives of the European Parliament (I elaborate on it below), such an important competence was left to the Commission. This solution does not seem to be reasonable, as some of the European Commission’s proposals polarized certain member states, causing tensions between the EU members. Many scholars and analysts highlight that excessive pressure from the European Commission politicize the agency. It might be puzzling why the decision that causes so many controversies was left to such a politicized body. I think that the European Parliament should decide whether Frontex may be deployed without a state’s consent. Voting on such issues should be a prelude to a debate, during which concerned states would have another chance to defend their opinions. Recent developments have shown that the Commission criticizes member states (even for their internal policies), without knowing the subject and the realities of a country. Judgments are often based on the political connections, not facts, which is a big problem. Hence, I strongly recommend that analyzed prerogatives should be given to the European Parliament, where members are chosen in the popular elections.

Nevertheless, all these are just hypothetical situations. It is hard to imagine that a country would not welcome the EU’s help during a difficult situation at its border, especially that the operation plan is discussed with a hosting country before deployment, which provides it with special prerogatives.

Staff

One of the biggest constraints of the old Frontex was the insufficient number of staff and lack of resources. Now, the European Border and Coast Guard will be able to deploy at least 1,500 officers from a rapid reaction pool (European Commission 2016k). The new law changes procedures regulating work of the so-called “pool.” The “pool” is a reserve of workers that are national border guards working for Frontex in case of emergency. The agency does not have any permanent border guards, but they come from member states’ border officers delegated to Frontex. Only “experts”: analysts, HR officers and so on are considered staff of the European Border and Coast Guard. Before I discuss if such solution is effective, let me analyze what measures were taken in order to improve the performance of the “pool.”

Lawmakers decided that the “pool” will be consisting of at least 1,500 “standing corps” officers. The appendix provides the declared number of officers that each member state needs to make available, should Frontex require them. This solution is much more transparent than the previous one, when Frontex had to wait until member states did finally send their officers. Moreover, the time countries have to make these employees available was shortened, which indisputably expedites the whole process. However, the regulation does not say what will happen if a state fails to do so. An effective policy should contain incentives and punishment measures. In this case, lawmakers did not include either. What if countries do not fulfill the obligation? The regulation does not provide such information, which is, in my opinion, its major flaw. There needs to be a form of punishment in case of noncompliance with employee quotas. According to the theory of incentives, incentive and punishment can have a real impact on actors’ decisions. For instance, a specter of economic sanctions can indisputably affect states’ decisions, and as Stone says, it may help to “change their minds” (2012, 272). Public policy experts underscore the importance of the “carrot-and-stick” mechanism. I believe that the EU should consider

implementing this mechanism in regard to the “pool” regulations. Another issue is that the regulation does not say anything about the competencies “pool” employees should have, except for that they will be trained by the agency. However, one may propose additional measures, such as qualification tests or language tests. The Frontex Evaluation analyzed in Chapter 2 has shown that one of the issues hindering efficiency of the agency was insufficient English proficiency of the guards. It is concerning that in the new regulation lawmakers did not take any measures to address this drawback. Naturally, language courses will be part of the training as they were, but in the past, it turned out to be inefficient, because the Frontex evaluators complained about command of English of some of the border guards (Ramboll and Eurasyllum 2015). I believe that qualification tests could address this problem, since before employing a person, the agency would know if he or she has sufficient language skills.

Let me now continue discussion on the permanent workers of the agency. Currently, there are 400 people working in Frontex (Frontex 2017g). The agency plans to increase that number to 600 in 2017 alone. We may compare this figure with the number of employees of Europol, agency with partly overlapping competencies, although focused more on an ordinary crime than on border control. Europol started off with 323 workers in 2001. In 2016, the agency employed 1,065 people. The projected number of 600 Frontex’s workers looks modest. Especially, that it includes the so-called Seconded National Workers, who are employed by national agencies and delegated to Frontex, and contracted workers (not employed by any agency), who are office workers focusing on management, evaluations, etc. I believe that the biggest constraint of Frontex is that it does not hire border guards directly. Obviously, we need to remember that each member state is responsible for the protection of its borders, which, to an extent, explains this practice. However, experiences of the agency have shown that dependency on member states’ guards is not working. Although the

new regulation aims at improving this dependency and decreases the agency's vulnerability in this aspect, without having its own border guard officers, this mission is impossible. In other words, the agency needs to have its own operational staff. My analysis shows that this is one of the biggest constraints of the agency and it was not addressed by the analyzed regulation. Hence, I recommend that the agency should be equipped with its own operational personnel. I will elaborate on this in Chapter 6.

Cooperation with other agencies

Cooperation with the European Maritime Safety Agency (EMSA) is another new capability of Frontex. The EMSA was established to present a holistic picture of a situation at the EU waters and coasts. It has extended jurisdictions from fishery monitoring (on this, it overlaps with the European Fisheries Control Agencies (EFCA), also cooperating with Frontex, to anti-drug operations, to search and rescue (European Maritime Safety Agency 2017). The EMSA monitors vessels on waters around Europe which is crucial information for Frontex.

In my opinion decision to institute this cooperation was really rational and may entail positive change for the security. Frontex needs to monitor migratory flows as a whole at the sea and on the land. Help from other agencies focusing mainly on seas is necessary, especially because the EMSA offers integrated maritime services. Their analyses cover many different aspects. According to the Regulation establishing the European Border and Coast Guard, all three agencies (EBCG, EMSA, and EFCA) can share information, resources, and assets, exchange staff, and conduct operations together. The collaboration among the above-mentioned agencies is, in fact, a result of extending Frontex's competencies to the coast guard function. What raises my concerns is the possible overlap of competences that often negatively affect the institutional efficiency. The

EU should pay special attention while designing competencies of all these agencies to make sure that they complement each other instead of performing redundant work.

Training

The importance of training responsibilities of the EBCG was among the changes highlighted in the Press Release Document (European Commission 2015f). Similarly to the old Frontex, the new agency needs to train workers deployed under the aegis of the EBCG, but also national guards in all member states. To do so, the agency has to create the appropriate curricula. The new regulation highlights that the Consultative Forum and Fundamental Rights Officer will be engaged in the process of developing curricula. Another novelty is special training pertaining to the protection of children and “other persons in vulnerable position” (European Parliament and Council 2016). This specific note proves that lawmakers were seriously concerned about the previous accusations that Frontex was violating law. With the new regulation, they are trying to avoid such problems in the future. Interestingly, this annotation shows that legislators listened to the recommendations made by the Frontex Consultative Forum. The forum recommended in 2015 that Frontex should pay special attention to children migration.

The new regulation is also more precise in regard to timeframes of training. It states that members of the EBCG should be trained on an annual basis and that their training needs to be related to “their tasks and powers” (European Parliament and Council 2016). It seems that lawmakers realized the importance of properly trained staff, who indisputably positively contribute to the EU border security. Finally, the EBCG, contrary to its predecessor, can co-organize training with third countries broadening the agency’s perspectives. The so-called transit states suffer more intense migratory flows and they are often accused of human rights violations. Such cooperation could enable the EU to promote fundamental rights awareness in those countries.

Cooperation with third countries

The co-organization of training is the element of much broader cooperation with third countries. First and foremost, the EBCG is now authorized to conduct operations on territories of the EU neighboring states in the case of increased and poorly managed migratory “pressure” (European Commission 2016k). Obviously, the EBCG needs a state’s consent to carry out such operations. International cooperation is always welcomed, since it is a proof of a dialogue between the nations, but there are some controversies. For example, the collaboration between Italy and Libya based on which migrants were kept in the latter without a chance to apply for asylum. We can expect that such problem will not occur if the EBCG officers comply with the EU regulations. Third countries will be observed by the EU officers, which should increase the respect for human rights. Nevertheless, it seems that the EU is already overwhelmed by what happens within its borders.

Is it then a good idea to extend the EU activities beyond its borders? I am rather skeptical about it, particularly in terms of efficiency. Such activities are naturally costly and do not guarantee the fulfillment of the EU interest. Let me discuss a hypothetical situation. The EBCG officers are deployed to the Serbian-Croatian border, because of the increased migratory flows. The EU aims is to stop irregular migration, and to have migrants properly identified and fingerprinted. Frontex forces are deployed to assist Serbian authorities. Frontex may offer its equipment, experience, and other resources. However, the EU cannot be sure that migrants in Serbia, even with Frontex’s involvement, will be identified accordingly to the EU procedures. The EU has no rights to impose any laws on the sovereign Serbian authorities. Therefore, such a cooperation is not beneficial for the EU, as it does neither meet efficiency nor security criteria. In my opinion such cooperation is not valuable unless the third country authorities adopt the EU regulations.

The new regulation says that this type of cooperation promotes “European border management and return standards” (European Parliament and Council 2016). I believe that before the EU starts such expansive policies, it should first make sure that these standards are kept by its workers. Moreover, as I have underscored in the previous paragraph, they are simply not cost- nor resource-effective. In my opinion, the liaison officers should promote such European standards (as it used to be, at least on paper). which is cheaper than deploying Frontex’s forces.

Return operations

Frontex competencies were also significantly extended in return operations. The new regulation scrupulously describes all responsibilities of the agency and precisely describes the cooperation between the agency and member states in the field of return missions. It also adds that steps undertaken by the agency should be followed by creation of the “integrated system of return management” (European Parliament and Council 2016). Moreover, the document underscores the importance of exchanging data and states that it should improve integrated system and also facilitate cooperation in the future. The legislators assure that member states will be supported in variety of ways, from translating, to compliance with the EU directives, to acquiring relevant information about countries that migrants are deported to if they do not have proper documents while entering the EU.

It also requires member states to inform the agency about planned returns and the number of returnees on a monthly basis. This seems to be particularly relevant as it significantly expedites return operations. Knowing when and how many people a country plans to return may help the agency to organize it in a more effective and efficient way. The agency may, for example, arrange that returnees from other neighboring member states can be sent back on that same operation, which would not be possible, if states tried to perform such operation on their own. According to

the new regulation, the agency can now organize or coordinate joint return operations from its own initiative. Frontex may now propose assistance without being called for it. I believe it should significantly expedite the process of return. If the agency notices that there are premises to conduct return operation and yet a state does not take any action, the agency does not have to wait until the state's decision. The agency can also resolve the problem if a country procrastinates the operation. I believe that the two tools analyzed in this subsection are necessary – taking into consideration the problem of secondary movements within the EU as it should help to better control the number of returnees and the process of return, limiting the danger of destabilization occurring when a country has little or no control over them.

The biggest novelty in the field of return operations is the creation of three different pools of workers engaged in return operations. The first pool consists of monitors - people trained in human rights and child protection that monitor those are not violated. The second pool includes forced-return escorts, which is self-explanatory. The third is a pool of return specialists. They are responsible for checking documents and the consular work. The process of the pools' creation is the same as in case of the EBCG officers: states inform the agency about their available resources and then, if needed, within 21 days, they have to make a declared number of workers available (within 5 days if rapid return intervention occurs).

The return process is part of migration policies, and is not that much an aspect of border control. Thus, it is beyond the scope of my research. Nevertheless, I analyze the whole Frontex reform and I believe that a few comments about the return operations should be made. Creating three separate pools does not seem rational nor efficient. In my view, the unified pool would allow it to be more integrated in its actions. Dividing tasks has some advantages like specialization in one field, but it also posits threats. I am afraid that such a division may diffuse responsibility.

Moreover, another huge drawback is that the regulation does not explicitly say how many people each pool should have nor does it mention about measures expediting the process of return and how fast the agency reacts if a country is in need. Instead, lawmakers focused on respecting human rights. Overall, it seems that besides human rights protection, this part of the reform is not particularly successful and it still needs improvement.

Fundamental rights

As I have described in the section on the criticism of Frontex, human rights violations seem to be scholars' major concern. Apparently, it was seriously treated by the EU decision-makers, who addressed it in a really thorough way. Fundamental and human rights are mentioned in many articles of the analyzed regulation. Besides the Consultative Forum and Fundamental Rights Officer, lawmakers introduced a complaint mechanism that should positively contribute to compliance with human rights. If a person feels that fundamental rights were violated, that person can now file a written complaint to the agency. The complaint is then reviewed by the Fundamental Rights Officer, and if justified, disciplinary measures are taken.

On the one hand, I believe that this solution can positively contribute to the security of migrants as possible punishment should deter the wrongful actions. On the other hand, such rules have to be followed by the appropriate training for officers, who have to understand that concept to properly fulfill their duties. Also, officers cannot be threatened by the possibility of somebody filing a claim.

Accountability

The criticism of Frontex has shown that lack of accountability was its serious problem. The new regulation mentions the accountability a few times. Article 7 of the regulation titled "Accountability" says that the agency "shall be accountable to the European Parliament and to the

Council” (European Parliament and Council 2016). This is a complete novelty. Previously the European Parliament had some prerogatives that could be used as a leverage over the agency (the EP could comment on the budget, or interview the Executive Director). However, before the importance of the parliament was not so explicitly stated. The European Parliament is the most “democratic” of all EU institutions with members chosen in popular elections. Giving more prerogatives to the parliament indirectly grants more power into peoples’ hands.

Article 7 is not the only one increasing the parliament’s control over the agency. The new regulation requires that the agency’s evaluation reports are prepared by an independent organization and presented to the parliament. Previously it was presented to the Council and the Commission. Both changes address the problem of politicization of the agency caused by the extensive influence of the European Commission (Carrera 2007, 9). Now, the role of the Commission is limited, whereas the parliament is strengthened.

The accountability measures were also changed in regards to the fundamental rights issue and the cooperation with third countries. The regulation says that all complaints on fundamental rights should be listed and described in the agency’s annual report. In addition, in the report, the agency needs to discuss its cooperation with third countries. Decision makers expect that such reporting should increase transparency and accountability.

This change, although important, seems to be rather symbolic. Lawmakers are not precise about the aspect of the cooperation that should be revealed in the report. Furthermore, many critiques of the agency complain that there is little “real time” information about its activities. For instance, activities from 2017 will be available in the 2018 report. Reporting requirement may improve the agency’s accountability and transparency, but probably not to the extent that is needed. Perhaps delivering more information in a timely manner is necessary.

The issue of transparency is also related to the problems of observation and evaluation. The independent evaluation of the agency was required from the beginning, but in the new regulation lawmakers specified fields that the evaluation needs to cover, which positively affects effectiveness of evaluation. The most striking problem is the frequency of evaluation. The most recent assessment took place between 2014 and 2015, and the new regulation indicates that the next has to be done before 2019 and then every four years (previously it was five years). It is really surprising that the frequency has increased so little despite many voices complaining about the control over the agency. It is also puzzling why the agency is given three years to adapt, before it is evaluated. I would suggest that the first evaluation after such a big change happens after a year of operational activity. It would help to assess, whether the changes are properly implemented, and it would also be easier to eliminate hypothetical errors.

IS THE REFORM SUCCESSFULLY DESIGNED?

It is too early to call the reform successful, but I have decided to analyze changes in the regulation to see, if it addresses drawbacks of the agency. Now I will confront scholarly expectations with legislative outcomes, explaining if the introduced changes addressed criticism that the agency was facing.

Let me start with human rights, as Frontex was heavily criticized for the violating them. The problem was addressed in the regulation mainly by implementing the complaint mechanism and requirement to discuss complaints in general reports. It shows that decision-makers are not tolerating violations of human rights. Once a complaint is reported, it will be hard to sweep it under the rug. The importance of human rights was also highlighted in regard to the training of national border guards and Frontex's workers.

Other concerns pertain to such problems as accountability, transparency, independent monitoring, and political pressure. Important changes were implemented in regard to accountability, because of the increased role of the European Parliament. Simultaneously, it also decreased the agency's vulnerability to political pressure. However, the most important political decision whether to intervene or not, was left to the highly politicized European Commission. Nevertheless, the problem of accountability was addressed at least on the books. A similar conclusion may be drawn when it comes to the transparency issue. The regulation increases the number of topics covered in general reports. Some critics pointed to the legal basis of Frontex's cooperation with other European agencies. This problem was fully addressed by precisely describing conditions of such cooperation. On the contrary, independent monitoring was not addressed in the new regulation. It is understandable, since the European Border and Coast Guard deals with criminal and security activities that may be often classified

Another problematic issue is the never-ending debate about compromise on states' sovereignty and the agency's competencies. It is partly settled by enabling deployment of Frontex's forces without states' consent. However, the regulation fails to precisely distribute responsibilities between states and agencies. Lawmakers still contend that "Member States retain the primary responsibility for the management of their external borders," but "European integrated border management should be implemented as a shared responsibility of the agency and the national authorities responsible for border management" (European Parliament and Council 2016). Such statements do not help in defining the role of the agency and open the door for blame-shifting.

The problem of the agency's dependence on member states was partly addressed by the introduction of the workers "pool." Regulations on that matter are strict and demand immediate reaction from member states without completely removing this dependence (national guards get

delegated to Frontex). Lawmakers hope that thanks to the vulnerability assessments (evaluating member states' border staff), they will be able to manage human resources. However, even if they will be perfectly prepared, they still will be just national guards delegated to Frontex, not their workers. Vulnerability assessments should definitely help to address another often pointed out drawback – absence of effective evaluation of states' border protection capabilities.

CONCLUSIONS

Indisputably, the Frontex reform was a huge and important step to better management of the EU external borders. Overall, it seems that extending Frontex's competencies was a good move. The biggest improvement of Frontex's capabilities is seen in the area of fundamental rights. Important measures were also taken in regard to the equipment and staff. However, these are not sufficient. As my analysis has shown, many adjustments are still needed, such as an increase in the number of employees. Moreover, lawmakers did not account for the problem of states' non-compliance. Therefore, one of the crucial recommendations is to employ incentives and penalties mechanism.

Special attention should be paid to the cooperation with third countries. Overall, extending cooperation between Frontex and other entities (European agencies, third countries) brings a positive change. Lawmakers have to be attentive to the proper division of responsibilities when between European agencies and to the importance of human rights while collaborating with third countries.

Finally, it seems that security was not the biggest concern of lawmakers. I do not see many steps improving security of European citizens. Doubtlessly there is still a lot to be done.

Chapter 5: The Cooperation between the EU and NGOs on Search and Rescue Operations

INTRODUCTION

“On 17 June 2016 we announced that MSF [Medecins sans Frontieres] will no longer take funds from the European Union and Member States, in opposition to their damaging deterrence policies...” – says the official statement on the “Medecins sans Frontieres” (Doctors without Borders, MSF) website. As one can see, MSF has a negative attitude toward the EU. The question I aim to answer in this chapter is: Is cooperation on search and rescue (SAR) operations between non-governmental organizations and the EU even possible?

There are several NGOs saving peoples’ lives working at the Mediterranean Sea. They are effective and experienced and it seems that they spend less financial resources than the EU. The EU is a really complex institution involving many countries with often conflicting interests. It is a huge challenge to work on and implement policies. The EU is also highly bureaucratic entity, where the decision-making process takes long time and a quick response to sudden and unexpected problems may be problematic. The EU is criticized for the absence of immediate and effective response to the migration crisis (Albahari 2015; Aas and Gundhus 2015). NGOs are less bureaucratic, often based on voluntary work of motivated people understanding the need for a prompt action. However, insufficient funding often hinders NGOs’ ability to work. A cooperation between NGOs and the EU may be beneficial for both of them, although it may be hindered by concerns related to security and the EU’s policy implementation, which will also be discussed in this chapter.

“Saving lives and securing external borders” is one of the four pillars of the EU policy areas on migration (European Commission 2015a) set as a part of the new European Agenda on Migration. If cooperation between NGOs and the EU is successful, it has to address both elements.

In 2012, Frontex established the Frontex Consultative Forum on Fundamental Rights, which was an attempt to address the accusation of human rights violations. The forum has an advisory role and consists of two other EU agencies, four international organizations (the United Nations High Commissioner for Refugees, the Council of Europe, the International Organization for Migration and the Organization for Security and Co-operation in Europe - Office for Democratic Institutions and Human Rights) and nine NGOs.⁹ This empirical example of the EU-NGO cooperation convinced me to analyze this institution to check if cooperation at the advisory level is fruitful and may foreshadow collaboration in other areas like joint missions. The forum was created before the migration crisis. Thus, another question is, how the cooperation within this body may change to address new challenges.

As I stated above, in my public policy analysis I employ three evaluative criteria: security, efficiency, and social acceptability. To check if the cooperation between the analyzed entities is possible, I investigate whether NGOs or Frontex is more efficient, and if cooperation between them meets security and social acceptability criteria. I expect that NGOs are more efficient than Frontex in SAR operations.

As highlighted above, I am going also to assess the current cooperation between NGOs and Frontex focusing on the Frontex Consultative Forum. According to my knowledge, the forum has not been studied in academia. I investigate performance of this institution. I will check if the forum's recommendations are implemented by Frontex analyzing forum's annual reports. To do so, I calculate the number of recommendations made, and the number of those implemented. I also scrutinize what is the most common Frontex's "excuse" for not implementing recommendations.

⁹ These are: European Council on Refugees and Exiles, Red Cross EU Office, Amnesty International European Institutions Office, International, Catholic Migration Commission, Caritas Europa, International Commission of Jurists, Jesuit Refugee Service Europe, Churches' Commission for Migrants in Europe, Platform for International Cooperation on Undocumented Migrants

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

Although one may find examples of successful cooperation between NGOs and the EU, some scholars are still hesitant about such a partnership, as for example Warleigh (2001). One of the most promising and analyzed fields of such partnership are actions promoting civil society and civic engagement. However, Alexander Warleigh (2001, 619) stipulates that a lot needs to be done before such collaboration may be fruitful. He investigates possibility of NGOs acting as the main catalysts limiting state power and increasing citizens' involvement in civil society. He contends that NGOs are not suited for this role, since their democratic performance is not satisfactory, and because they are too elitist. He also argues that they are simply not interested in such a role (Warleigh 2001, 635).

Although cooperation in reinforcing civil society still requires additional measures, there are other fields in which NGOs and the EU harmoniously work together. It seems that the biggest cooperation between the EU and NGOs was achieved regarding humanitarian aid and foreign assistance (Ungureanu, Florea and Negru 2010). The EU's generosity for NGOs was systematically increasing since the 1980s'. It peaked in 1995, when NGOs got about 1 billion dollars making up about 15-20 percent of whole EU's foreign aid (Reinmann 2006, 51). However, this cooperation went beyond financing. Programs related to the EU food aid and refugee support were almost completely implemented by NGOs (Reinmann 2006, 52) showing that the EU can successfully contract third sector actors out. Irrera and Attina (2009, 15) argue that this fruitful cooperation was facilitated by the Liaison Committee of Development NGOs to the European Union. They maintain that this entity provided NGOs and the EU with the opportunity to exchange ideas and tighten partnership in the most needed areas.

Emek M. Uçarer presents another example of effective cooperation between NGOs and the EU in fighting with women trafficking. One of the programs funded by the European Union called

the “Stop Program” was designed to exchange information, train personnel, and conduct research. As Uçarer argues, NGOs were contracted out by the EU member states to achieve these goals (2001, 9). The program was so successful that the EU co-sponsored two other programs – “Daphne” and “La Strada” later on. The latter was mainly based on measures taken in order to increase the public awareness of women trafficking. The former facilitated also NGOs’ cooperation with public authorities and private companies or funded research and training on women trafficking (Uçarer 2001, 10-14). As Uçarer highlights, the EU values not only NGOs’ abilities to support and assist victims of woman trafficking, but also how they spread awareness of their programs which helps to protect potential victims.

Gourlay (2015) analyzed NGOs’ involvement in the European Security and Defense Policy. She states that NGOs play an advisory role in the ESDP’s fact-finding and pre-planning missions, where representatives of the EU meet with NGOs working in humanitarian and human right fields. Gourlay criticizes this exclusionary approach noting that other types of organizations are not represented during those consultations (Gourlay 2015, 20). However, this cooperation went beyond consultation. NGOs were also engaged in training people deployed in the ESDP’s missions. Gourlay notes that in some countries, the pool of deployed experts includes also NGO workers (2015, 25).

As one can see, there are many examples of fruitful cooperation between the EU and NGOs that went beyond consultations shedding a light of optimism on the collaboration on SAR operations.

A relationship between NGOs and government may be really diverse. Jenifer Coston describes eight different stages of the relationship between NGOs and governments: repression, rivalry, competition, contracting, third-party government, cooperation, complementarity, and

collaboration (1998, 361-362). From all these types, cooperation is the most suitable for my research. Honadle and Cooper (1989, 1534) differentiate three ways of NGO-government cooperation: information sharing, resource sharing, and joint action. Coston provides a handful of examples of each form of cooperation. Information sharing may take a shape of co-organizing meetings, seminars, resource sharing is achieved by for example loans or grants, and joint action is based on activities that organizations conduct using their own resources (1998, 370). She contends that there are three conditions to call a relationship cooperative: information needs to flow, NGOs need to follow governmental rules, and government should be neutral toward NGOs (Coston 1998, 370). Therefore, the cooperation in this research is understood accordingly to Coston's criteria and Honadle and Cooper's types.

ANALYZED NGOS

Let me now briefly describe the NGOs analyzed in my research. The Migrant Offshore Aid Station (MOAS) was created in 2014 by an American-Maltese couple moved by “the lack of response to hundreds of drownings in October 2013 off the Italian island of Lampedusa” (Migrant Offshore Aid Station 2017b). The foundation is registered in Malta and runs missions at the Mediterranean Sea, the Aegean Sea, and the Andaman Sea. The organization defines its mission as “mitigating the loss of life at sea. We provide professional search and rescue assistance to refugees and migrants in distress at sea” (Migrant Offshore Aid Station 2017c). The next analyzed NGOs is the headquartered in Germany Sea Watch established in 2015. The goals of these organizations are to save lives, increase public awareness of the problem of migrants dying at sea, and to inspire their future followers (Sea Watch 2017). Both NGOs criticize the EU's migration policy.

Obviously, these are not the only NGOs involved in SAR operations. However, only they provide necessary data on their websites (or respond to emails asking for such), which enabled me to conduct my research. Other NGOs working at the Mediterranean Sea are Doctors without Borders and the Italian Red Cross - international NGOs that work in many different fields. Their annual reports describe all their activities in bulk, what does not allow to tell how much they spent for sea operations alone.

FUNDING OPPORTUNITIES FOR NGOS

In this subsection, I analyze the existing regulations that allow for EU-NGOs cooperation on SAR operations. As Honadle and Cooper (1989, 1534) argue, one way to cooperate is resource sharing. Obviously, there are many different resources that can be shared, for instance, equipment, personnel, or money. In this subsection, I focus on the latter to investigate the EU funding possibilities for NGOs.

The Asylum, Migration, and Integration Fund (AMIF), with the budget of 3.137 billion € planned for 2014-2020 is the first option I discuss. Its main goal is to stimulate an efficient management of migration flows (European Commission 2016l). It seems that it can be a good source of financial support for NGOs conducting SAR operations. The fund explicitly states that NGOs could be one of the beneficiaries of this project. Unfortunately as of right now some NGOs are only so-called “partial beneficiaries.” Different activities may be covered by this fund. The one that is the most relevant for SAR operations is emergency assistance. Out of the list of awarded emergency assistance projects in 2015, one may find 19 beneficiaries, none of them being NGO (European Commission 2015g). However, this does not mean that NGOs were completely excluded from this part of AMIF. There are three NGOs listed, but they are “only” co-beneficiaries (the Italian Red Cross, Save the Children Italia, La Vie Active) providing accommodation or help

for asylum seekers that are already on the European soil and none of them is engaged in SAR operations.

It seems that the coverage of AMIF is not sufficient. Although it aims at efficient management of migration flows, it does not take into consideration migrants' journeys, but aims at helping migrants that are already in Europe. Thus, the first recommendation pertaining to funding opportunities is to extend the coverage of AMIF. The underrepresentation of NGOs as beneficiaries of this fund may have two reasons. First, NGOs may not be aware of such opportunities because, the European Commission has not advertised the calls for proposals enough. Second, the EU may simply prefer to support governmental agencies over NGOs. The fact that NGOs appear as co-beneficiaries may be a proof of the European Commission's preferences. On the other hand, the ongoing cooperation between NGOs and member states' governments in the field of migration is really promising in the context of my research. The investigation of the causes of NGOs' underrepresentation in this fund is beyond the scope of my research. Nevertheless, I recommend that the calls for proposals are advertised more widely.

ECHO (Directorate-General for European Civil Protection and Humanitarian Aid Operations) and EuropeAid are other programs that also deserve attention in the context of SAR operations. ECHO is the agency focusing on providing help to regions affected by war, poverty, and environmental disasters. One of their newest points of interest is also the migration crisis. The agency cooperates with several NGOs (European Commission. European Civil Protection and Humanitarian Aid Operations. 2016). The ECHO provides migrants and refugees with basic needs and legal assistance (for instance in the family reunification process), but does not cover SAR operations, what is, in my opinion, a serious negligence. I would argue that although SAR missions are not explicitly stated as ECHO goals, they are related to humanitarian missions and I believe

that NGOs conducting SAR missions should be able to apply for the ECHO partnership. Therefore, ECHO regulations on NGO-EU's partnerships may be used as a framework for cooperation in SAR operations.

The conditions of NGO-EU's cooperation under the ECHO auspices are described in "Framework Partnership Agreement with Humanitarian Organizations." The agreement underscores transparency and accountability of the partnership between NGOs and the EU. The cooperation meets resources sharing criterion, but also information sharing condition, as parties to agreement are obliged to a "regular, comprehensive, and transparent exchange of information" (European Commission 2014). In Article 2.1 the agreement responds to NGOs' concerns about losing their independence. The article reads that humanitarian organizations assume all responsibility for actions they take and that they may execute them freely and independently. Obviously, NGOs may obtain grants to implement those actions.

EuropeAid is a program supervised by the Commission's Directorate-General for International Cooperation and Development (DG DEVCO) established to fight poverty, promote democracy, peace, stability, and work on sustainable development (European Commission. International Cooperation and Development. Building partnerships for change in developing countries 2016). The agency works in broad variety of sectors including migration and asylum. Similarly to ECHO, EuropeAid is also opened to cooperation with NGOs. It offers grants for actions and operating grants, both requiring co-financing from the partner's side. Management of these grants varies depending on the volume of a given task. According to the direct management, the European Commission remains an authority overseeing the implementation of budgets (European Commission. International Cooperation and Development. Building partnerships for change in developing countries 2016b). In the indirect management, the responsibility for budget

implementation lays on partners. In addition to grants, EuropeAid offers other types of cooperation such as contracting, which includes service, supply, and work contracts (European Commission. International Cooperation and Development. Building partnerships for change in developing countries 2016b).

Finally, I would like to provide another reason why I believe that the two analyzed NGOs (the Sea Watch and Migrant Offshore Aid Station) should be eligible to apply for grants from EuropeAid. In June 2016, the European Commission announced the “New Partnership Framework” for better migration management (European Commission 2016m). To “save lives at sea” appears among many different goals in that document. Both MOAS and Sea Watch claim that they save lives at sea, which is a perfect example of how EuropeAid funds may be offered to such NGOs for SAR operations. However, NGOs are not enumerated as the EU partners in the “New Partnership Framework,” although according to the “Procurement and Grants for the European Union external actions - A Practical Guide, 2016” they are eligible for grants (European Commission 2016n). In this particular case, the EU concentrated on the cooperation with third countries, leaving NGOs underrepresented.

As I have shown in the paragraphs above, the EU designed a mechanism that may allow NGOs to apply for funding. However, in programs like AMIF, some adjustments broadening the coverage or opening to NGOs are needed. Other programs are available, but ultimately, the underrepresentation of NGOs is still visible. Interestingly, the analyzed programs, besides resource sharing, highlight information sharing which enables extension of the cooperation between NGOs and the EU to different levels.

ANALYSIS OF FRONTEX CONSULTATIVE FORUM

Article 26 of the old Frontex regulation describes the role of the Consultative Forum as assistive in fundamental rights (Frontex Consultative Forum on Fundamental Rights 2014). To fulfill this obligation, the forum has access to all Frontex's information on human rights. The forum has three meetings annually: two official and one unofficial. It provides Frontex with recommendations and opinions and prepares annual reports. The reports are publicly available, whereas recommendations and opinions are presented to the Frontex Management Board and the Executive Director only (Frontex Consultative Forum on Fundamental Rights 2013, 12). The forum can also, with a consent from a member state hosting operation, visit Frontex's joint missions and monitor Frontex's activities (Frontex Consultative Forum on Fundamental Rights 2013, 13). I investigate if the forum addresses such visits in any of the reports. The forum has prepared three reports so far and I studied all of them, paying special attention to recommendations.

In the 2013 Annual Report, the Consultative Forum made 35 recommendations divided into four categories, according to working groups: Border and Joint Operations, Return Operations, Risk Analysis, and Training. The analysis of implementation of those recommendations proves the forum's performance positive. From the 35 recommendations, only 5 were completely rejected by Frontex. Motivation to refuse 3 recommendations was that they were outside of Frontex's responsibilities, but depended on member states. Only 2 were rejected on the grounds of Frontex's opinion. In one case Frontex argued that recommendation is unrealistic. The second rejected recommendation pertained to terminology. The forum suggested to stop using the term "illegal" in migration, but Frontex responded that this term is used in the EU terminology and it cannot be changed. The agency approved 10 recommendations completely and 5 partly. Thirteen recommendations are still discussed, while implementation of some is impossible, since they

pertain to issues that are still ongoing, such as development of training programs for the European Border Guard Teams.

The report mentions monitoring visits of the forum during Frontex's joint operations in Bulgaria and Greece. The variety of places visited by the forum is really impressive: detention centers, border crossing points, and Frontex operational offices in Greece, just to name a few. The visit consisted of several meetings with Frontex workers and NGOs representatives working nearby. The forum took part in a debriefing interview.¹⁰ A picture of Frontex's joint missions was provided to Frotum, which enabled evaluation at many different levels. Nevertheless, the 2013 Annual Report has a major flaw – it does not evaluate the forum's visit. Luckily, this drawback was addressed in the 2014 Annual Report.

The 2014 Frontex Annual Report starts with recommendations based on the 2013 agency's joint operations visits. The forum was concerned that interviews with migrants were fragmented, although they could be joined¹¹ and that the investigation about smugglers would take a lead over providing migrants with humanitarian help. Another recommendation was to offer better information about procedures of application to asylum seekers. Frontex expressed willingness to work on implementing these suggestions. Some recommendations were really vague and, in fact, it is hard to check if they were implemented. An example of such suggestion might be the one saying that Frontex should prioritize fundamental rights without explanation on how to understand the "priority." In response to this recommendation, Frontex assured that fundamental rights are important in workers training. The forum also paid attention to the non-refoulement principle.

¹⁰ During debriefing interviews experts collect data about smuggling activities (Frontex 2015a).

¹¹ Interviews of migrants and refugees consist of three parts: registration and identification (focused on migrants' identity), screening (focused on migrants' countries of origin) and discussed above debriefing. The Forum recommended that all three parts should be joined and realized at the same time, without a need to bother migrants a couple of times.

Although Frontex guarantees that appropriate measures were taken, it has neglected a recommendation saying that every incident of violating this principle should be recorded and made publicly available.

Out of 9 recommendations pertaining to the control visit in 2013, 3 were implemented, 1 was implemented partly, and 1 is still being discussed. The Frontex Management Board “expressed the willingness to further discuss those 4 remaining issues.” Interestingly, the forum called for a better assistance in basic migrants’ needs and suggested help from NGOs in most of the remaining recommendations. Keeping in mind that the visit took place in 2013 and that the recommendations were presented to the Management Board and the Executive Director the same year, the Frontex’s performance in implementing those recommendations is not satisfactory. Only 33 percent of suggestions were implemented. However, the good news is that no recommendations were rejected. It seems that time is the only reason for not implementing these recommendations, not the agency’s unwillingness to improve its performance.

The forum made a follow-up visit (the recommendation from this visit is presented in the 2015 Annual Report). It should be noted that the forum visited only Bulgaria because Greece refused the second forum’s visit. Indisputably, this refusal deserves attention. The forum plays just an advisory role, does not have any enforcement capabilities, and has to respect countries’ sovereignty. On the other hand, one may ask what Greek authorities had to hide and whether the forum or Frontex should be equipped with any kind of leverage that could encourage countries to cooperate. It should be also noted that the forum does not provide any information about why Greece did not accept its visit. Maybe the problem lays in the forum itself, as its workers could be perceived too “pushy” during the previous visit. Mathew Carr in his book “Fortress Europe. Dispatches from a Gated Continent” argues that Greek authorities are concerned about “espionage,

whether real or imagined” (2012, 87), so maybe this can be a reason for their unwillingness to accept the forum. I believe that to ensure the cooperation between NGOs and the EU, the forum should have paid more attention to this refusal, and should investigate the reasons behind it. Among the 14 remaining recommendations that did not pertain to the visit, only 1 was rejected, 3 were completely implemented, 3 were implemented partly, and 7 are still discussed.

The 2015 Annual Report is definitely more general than the two previous reports allowing only a less precise investigation on implemented recommendations. In the previous reports recommendations and implementation were explicitly stated, whereas in the 2015 report only fulfilled recommendations are named. This made it impossible to see if there were any suggestions that were left unanswered. The report does not say much about recommendations but focuses on general forum activities, such as participation in conferences, training of Frontex’s personnel, and consultation with the agency’s workers. One of the reasons for the lower activity and performance of the forum in 2015 was due to the fact that 2015 was the last year of the forum’s mandate. It took a while for the forum and Frontex to reestablish the forum again.¹²

Thus, my analysis is much more limited. The report refers to a few recommendations that pertain to the 2014 forum’s visit in Greece and Bulgaria. Comparing 2014 and 2015 reports, I investigate whether Frontex’s “expressed willingness” to work on recommendations from 2014 was honest and if they were implemented in 2015. As it was discussed above, in regard to the 3 remaining recommendations Frontex “expressed the willingness” to discuss them in 2015.

Let me now analyze if the agency had fulfilled this “promise.” The first “problematic” recommendation pertained to the way of conducting interviews with migrants and called to focus on their needs instead of putting too much attention to obtaining information about smugglers.

¹² There was also a change in NGOs working for the Forum. The AIRE Centre — Advice on Individual Rights in Europe — took place of International Catholic Migration Commission (ICMC).

Although the precise feedback is not presented in the 2015 report– the forum does not say if Frontex focused more on migrants needs. However, the forum states that “Frontex debriefing guidelines have been reviewed and amended with the support of the Fundamental Rights Officer and the Consultative Forum” (2015 Annual Report, 20). Hence, one may assume that the forum’s expectations were met at least partly. The second recommendation proposed that Frontex coordinates information sharing between local NGOs and local authorities, which would expedite and improve a basic assistance for migrants (food, clothing, etc) and was not implemented. The third recommendation refers to the problem of interviews again. Although the report does not provide explicit feedback, one may assume that this concern is addressed by altering debriefing strategies. The last recommendation called for a better, tailored for specific groups (for instance minors, pregnant women) referral mechanism, which was implemented, since the forum lauds Frontex for preparing “better guidance on referral mechanisms” (Frontex Consultative Forum on Fundamental Rights 2015, 20). Overall it looks like the previously neglected recommendations were implemented.

Table 5.1: Analysis of Consultative Forum’s recommendations

Year \ Implementation	Yes	No	Partly	Still discussed	Willingness expressed	Total
2013	10 (29%)	5 (14%)	6 (17%)	13 (37%)	1 (3%)	35 (100%)
2014	6 (26%)	1 (5%)	4 (17%)	8 (35%)	4 (17%)	23 (100%)
2015	3 (75%)	1 (25%)	-	-	-	4 (100%)

Source: Frontex Consultative Forum of Fundamental Rights. 2013. *Annual Report 2013*, Frontex Consultative Forum of Fundamental Rights. 2014. *Annual Report 2014*, Frontex Consultative Forum of Fundamental Rights. 2014. *Annual Report 2015*.

Comparing the overall percentage of rejected, accepted, and discussed recommendations for the years of 2013 and 2014 (it is hard to include 2015 because of the limited data) one can see a pattern there. As Table 5.1 shows, in 2013 approximately 46% recommendations were approved

(partly or completely), in 2014 the number dropped to about 43%. The percentage of “discussed” suggestions is also comparable with 37% in 2013, and 35% in 2014. What changed is the percentage of refused recommendations and those to which Frontex “expressed willingness” to work on (a drop from 14% to 5% and an increase from 3% to 17%, respectively). I believe that implementation of roughly 40% of recommendations and a decrease in the percentage of rejected suggestions show that the forum works and is able to influence Frontex’s decisions. Although some adjustments are still needed, the cooperation in terms of information sharing is fruitful and allows to be optimistic about other levels of possible cooperation. Some may say that 40% of implemented recommendations cannot be seen as a success, but it does not mean that the remaining 60% is rejected, but that the rest is being discussed, or that simply more time is needed to implement them. The vast majority of suggestions to which Frontex “expressed the willingness” to work on were in fact implemented in the following year. Therefore, I believe that the performance of the forum is satisfactory and it may be used as a platform for wider cooperation between NGOs and Frontex.

ARE NGOS MORE EFFICIENT THAN FRONTEX?

Table 5.2: Comparison of the EU and NGO's efficiency in SAR operations

Organization	Number of rescued people	Money spent (€)	Per capita spending (€)	Time	Persons /month
Sea Watch Mission 1	2000	N/A	-	June 2015 – September 2015	500
Sea Watch Mission 2	19 665	412,500	21	April 27, 2016 – October 8, 2016	3,575
MOAS Operation in 2014	3104	1,500,000	483	August 2014 – October 2014	1,034
MOAS Operation in 2015	6979	N/A	-	May 2015 – September 2015	1,396
Frontex 2014	173 543	35,183,700	203	2014	14,462
Frontex 2015	254 693	72,400,129	284	2015	21,220

Source: Frontex General Report 2014, Frontex General Report 2015, Migrant Offshore Aid Station Annual Report 2014, Sea Watch Jahresbericht 2015-2016.

The logic behind my recommendation of cooperation between the EU and NGOs on SAR operations was that the latter are more efficient than the EU. The agency is a bureaucratic giant that “wastes” a lot of money on formalities. NGOs are less formalized and can spend a larger portion of their resources on activities. Moreover, many NGOs rely on volunteers, which significantly decreases their costs. Basically, NGOs are seen as a more efficient “delivery mechanism” (Sollis 1992).

With the data that I gathered or received from NGOs, I can neither reject nor confirm my expectation. Although Table 5.2 indicates that MOAS is 2 times less efficient than Frontex, Sea Watch is 10 times more efficient than Frontex. It should be noted that the money spent by Frontex pertains to the whole budget for all sea operations that are not only search and rescue, but also border control, surveillance, and countering illegal activities (for instance drugs or cigarettes trafficking). Frontex does not break the budget down into different types of activities. Thus, my

calculation is just an estimate. Nevertheless, even if the Frontex's budget for operations (over 70 million € in 2014) covers other activities than SAR operations, its efficiency is still good.

The reason for a stunning difference between the Sea Watch and the two other analyzed entities lies in the difference in conducting missions. The vessel that is used by the Sea Watch is too small to take migrants on board and they just find boats in distress, bring migrants water and life vests, and wait until "a bigger ship" appears (Sea Watch 2017b). Thus, SAR operations are understood differently among these organizations. Another interesting fact is also who the "bigger ship" belongs to. The Sea Watch website does not specify it, but according to the Italian NGO working with migrants in Italy, the Sea Watch is supported by MOAS, Doctors without Borders, Italian authorities, and allegedly Frontex which would mean that there is some kind of cooperation between the EU and NGOs on SAR operations (Cuttitta 2015). However, it is not confirmed in any official Frontex's document. I believe that the difference in ways that operations are conducted gives an interesting perspective and an additional reason why the EU-NGOs cooperation should be taken into account. I elaborate on this in the following subsections.

HOW CAN THE EU COOPERATE WITH NGOS?

NGOs already share information and resources with Frontex through the Consultative Forum. Judging from Frontex's performance, the EU seems to be satisfied with this cooperation, which is beneficial for the EU. It is hard to assess NGOs' satisfaction, since they do not publish any reports addressing it. However, the forum gives them a chance to promote their agenda (human rights) and to influence the way Frontex operates (for instance via personnel training). Thus, it is possible that they also appreciate such cooperation.

If the EU undertakes cooperation with NGOs on SAR operations, the character of the forum should change, or the new entity should be created. Resources and information sharing should go

beyond the human rights realm. Frontex ought to invite NGOs currently working at sea to the forum (or the new body), in order to hear about their experiences and information.

Resource sharing can take many different shapes. Since the idea of NGOs organizing training for Frontex seems to work, this type of cooperation should be extended. Practical training in SAR operations run by NGOs can give Frontex's workers a new perspective on their work, enables them to think "outside the box," and influence the EU policies in the long run. Providing NGOs with financial help is another example of sharing resources. As I have demonstrated above, the EU created several funds that NGOs can take advantage of. Therefore, if the EU would implement recommendations suggested above, a level of cooperation can even increase.

Finally, joint actions, where Frontex and NGOs conduct SAR operations together are not performed as of right now, yet seem to be the best for both. Frontex's workers would be present on NGOs' ships and vice versa. Frontex could also contract NGOs' ships, if it turns out to be more efficient than Frontex's vessels. If the EU and NGOs cooperate in information and resources sharing, the time that "a big ship" needs to come to support Sea Watch would be shortened. Moreover, Frontex could focus on other actions (like fighting illegal activities) and would engage in SAR missions only when it would be alarmed by NGOs. In other words, non-profits would be Frontex's "eyes and ears."

Obviously, the EU as a lawmaker would probably lead such actions and NGOs would be obliged to follow the EU rules. However, in such an intense cooperation there is a possibility that suggestions made by NGOs are considered by the EU, which would make it easier for NGOs to comply. During mixed crews' actions (the EU and NGOs) on the same ship, NGOs could watch Frontex's actions as they happen and more frequently than during an organized control visit. Human rights would probably be respected, since NGOs would be on Frontex's ships. This might

also be beneficial for the agency as the presence of its workers guarantees that all migrants are properly identified and screened.

The 2014 general report proves that joint actions of the EU and NGOs are possible. In 2013 the Consultative Forum helped Frontex to develop a “Vega Children Handbook,” containing a design of a policy helpful in “detection and protection of children at risk on the move at air border” (Frontex 2014a, 60). NGOs took part in the implementation of the handbook at certain European airports, and also observed, helped, and guided Frontex and other border agents. Frontex’s opinion about this cooperation and exchange of experiences was really positive.

THE EU-NGOS COOPERATION ON SAR OPERATIONS FROM EVALUATIVE CRITERIA PERSPECTIVE

Let me now look at the cooperation on SAR operations from the perspective of evaluative criteria. Although I was not able to confirm my expectation regarding efficiency, I think that such collaboration meets this criterion. I believe that the EU should seriously consider starting an official and formally regulated cooperation on SAR operations with NGOs, since at least one of the analyzed examples shows that NGOs can be really effective and efficient in this type of activities. In terms of efficiency, cooperation with NGOs has another advantage – the EU would gain more workers at a lower cost (many NGOs are based on volunteers’ work). Obviously, there is one important question if volunteers would want to work under the direct aegis of the EU and to be trained by Frontex. I assume that it is possible, if the cooperation is generally attractive for NGOs.

The cooperation meets also the security condition and should positively contribute to the security of both European citizens and migrants by reciprocal control and surveillance. The EU would have better control of NGOs’ actions in identifying and screening migrants. On the other hand, NGOs would inspect Frontex’s activities in relation to human rights. The agency precisely

describes that rescued migrants are taken to Italy (in Triton operation conducted near the Italian shores), where they are provided with medical assistance, fingerprinted, and identified. Migrants may also submit an asylum application. NGOs are silent about activities following SAR missions. It is not known where are the migrants taken to, and if they are identified. The EU-NGOs cooperation could ensure that all legal obligations are fulfilled, and the presence of Frontex's agent on rescuing boats may act a deterrent. The Islamic State of Iraq and Syria used the Greek channel to transfer terrorists to Europe (Faiola and Mekhennet 2016). Knowing that they might be intercepted at the sea may significantly decrease the number of terrorists starting such journeys.

Last, but not least– social acceptability criterion should be also discussed. In theory, the European Union is a democratic institution and politicians know that citizens can verify their performance at a time of election. Thus, actions undertaken by the EU need to be acceptable to Europeans. European society is polarized over the migration crisis, but many agree that the EU is not working properly. One group thinks that the EU failed, since the European border is porous. Others say that the European response to people dying at the sea is not sufficient. It might be hard to develop a policy that pleases both views, so I focus just on the elements related to cooperation with NGOs. To see if Europeans accept the cooperation between the EU and NGOs one should probably look at their opinion about NGOs. In a 2013 EU-wide survey 59% of respondents said they share NGOs' values and "trust them to act in the right way to influence political decision-making" (Eurobarometer 373). The Trust Barometer conducted by a German private corporation shows corresponding results (Edelman Trust Barometer, 2014) with 60% of Europeans trusting in NGOs. Based on these barometers, Europeans are likely to accept the EU-NGOs cooperation.

CONSTRAINTS OF THE EU-NGOS COOPERATION

Dependence on governments is one of the NGOs' main concerns, while working with them. NGOs are afraid of governments agenda's domination over their values. Interestingly, policymakers try to convince NGOs that they should not be concerned in the document issued by the European Parliament. The EU decision-makers contend that depriving NGOs of their independence would contradict the EU's interest in an outside and neutral consultant to develop policies (European Parliament 2010, 26). The report discusses ways in which non-profits try to minimize the EU's influence, by for instance limiting financing by the EU and ensuring diversification of financing at the same time

Difference in the EU and non-profits' agendas can be another difficulty. Some NGOs are really critical of the EU's activities and they refuse to cooperate with European institutions. In such a polarized situation cooperation is hard to imagine. Luckily, not all members of non-profits think that way, even if they are hesitant about some EU policies. The best way to bridge agendas of the EU and NGOs is to let the latter take part in creation of policies, as it happens in the Consultative Forum, where NGO representatives are given a chance to speak leading to better understanding of the EU policies. The EU could increase NGOs' awareness about legal obligations and other constraints that institutions are facing, such as national security measures.

Although Frontex has been criticized for the lack of transparency (Papastavridis 2010), I cannot confirm that constraint. On the contrary, the biggest problem I had was with finding data concerning NGOs. Frontex reports are publicly available and consist of all the necessary data. NGOs often do not publish their budget reports. Moreover, they do not even say if migrants are identified and screened. Therefore, the EU may be concerned about such cooperation. One of the reports states that the increased activity of NGOs in the Mediterranean encourages smugglers, as NGOs operate closer to the Libyan shore than government or Frontex vessels. The report claims

that such steps damage the “deterrence effect” that the EU was trying to obtain by operating on high seas (Statewatch 2016). According to Duncan Robison (2016), the EU officials complain that NGOs are not willing to cooperate with Frontex’s debriefing officers. The agency states that before departure migrants are given instructions about the directions they should follow in order to be spotted and rescued by NGOs (Robinson 2016).

Conclusions

My research shows that cooperation between the EU and NGOs on SAR missions is possible and that with appropriate measures, it should be beneficial for both sides. The analysis proves that there are examples of fruitful partnership on information and resources sharing between non-profits and the EU in migration area. Frontex is satisfied with the Consultative Forum advisory role. Although there are some constraints of moving the cooperation to the level of joint actions in SAR operations, they may be easily overcome. Obviously, some adjustments have to be made. The EU funds have to be more available to NGOs. Another necessary change is to establish a new institution or reform the Consultative Forum, extending its prerogatives beyond human rights so that it may serve as a platform of exchanging experiences about SAR operations. Although my expectation about NGOs’ efficiency could neither be rejected nor confirmed, with appropriate adjustments, the cooperation meets the efficiency condition, as well as security and social acceptability criteria.

Chapter 6: Conclusions and Recommendations

My thesis shows that the European migration crisis is a huge and multidimensional problem. However, there are reasonable solutions that can address, at least, some parts of the problem such as the EU-NGOs cooperation on SAR operations and a further reform of Frontex.

My analysis proves that the EU has resources that can be used to finance the EU-NGOs cooperation on SAR operations. In addition, my thesis shows that the Frontex Consultative Forum is a successful institution and can serve as a platform for such a cooperation. The analysis of the forum's recommendations suggests that Frontex is open to cooperation with NGOs. Although comparing to the EU NGOs' efficiency in SAR operations is not spectacular, the collaboration of those bodies may be fruitful. It can better the management of resources. Moreover, security of migrants and the EU citizens would increase because of joint actions. Security would be based on a reciprocal control and surveillance. Frontex would make sure that all rescued migrants are properly registered and fingerprinted, whereas NGOs could observe whether the agency violates human rights. Obviously, the intrinsic feature of NGOs is their independence from government's influence, any attempt of governmental control should be criticized. Similarly, the EU does also not allow for any independent monitoring of Frontex's activities (at least from legal perspective). If cooperation between those two is established, such limitations can be overcome. The cooperation meets also social acceptability criterion, since Europeans trust NGOs. It also seems that it should be beneficial for both sides. The EU would gain NGOs' experience and knowledge in SAR operations, the latter would have a possibility to promote its agenda while collaborating with the EU.

As I have demonstrated in Chapter 5, there are many constraints to such cooperation, for example, human rights. However, the EU has demonstrated willingness to improve fundamental rights standards in its recent regulation.

The biggest novelty I would like to propose is a cooperation between the agency and NGOs on SAR operations. It meets all the evaluative criteria that I have developed. The cooperation with NGOs, contrary to the cooperation with third countries, does not cause moral concerns pertaining to human rights violation. NGOs are more stable and reliable than many transit countries, and driven by democratic values. If my recommendation is fulfilled, the EU and NGOs would not waste time for recrimination, but they could unify their resources in order to bring help and security for all people involved in the crisis.

When I was developing my policy alternatives, the EU was still debating about the reform of Frontex and it seemed that it is the best solution to the crisis. I hoped to design it in my thesis. However, the European Commission surprised me with the pace of designing and implementing the reform and I decided to investigate whether the proposed changes are sufficient.

My analysis shows, that although the reform introduces important and valuable novelties, there is still a lot to be done. The reform addresses several challenges to Frontex. First, thanks to the introduction of the complaint mechanism the awareness regarding human rights has increased. The accountability of Frontex was also increased by strengthening the role of the European Parliament. The problems of transparency and dependence on member states were partly addressed. Although the reform introduces vulnerability tests that should help monitoring the situation at the external borders, the agency is still dependent on member states in regard to operational staff. The reform tries to respond to that by a properly designed “pool” of workers and a much shorter reaction time. The rule of deployment without states’ consent is very controversial

also does not seem to be a good compromise between states' sovereignty and the agency's competencies.

I would like to propose a few recommendations improving effectiveness of the agency. First and foremost, the agency needs to hire its own border guards. It is *sine qua non* condition and without it, the agency will not be able to accomplish its tasks. Obviously, border protection would remain within responsibilities of the member states. The agency needs its own officers to be effective, as it always takes time to deploy officers delegated by member countries and even if the national guards are trained accordingly to the EU principles, they work under different legal regimes on the regular basis hindering international cooperation. Naturally, funds are limited and constrain this solution. In 2015, the staff expenditures reached about 20 million € for less than 400 workers (Frontex 2015b). Increasing the number of workers to, for instance, 1,500 (which is the current number of rapid pool workers delegated when needed from member states) would require additional sky-high assets of 75 million €. However, delegated workers are not volunteering for the agency. States are given grants for their engagement in operations. Although the information on such expenses is not available, one may assume that some kind of reimbursement for the workers is guaranteed. For instance, in 2014 such grants for only one of the Frontex operations, Poseidon Sea, reached about 8 million € (Frontex 2014a). Probably not all of it was spent on “renting” national guards, but it shows that there are fields, in which assets could be transferred to wages of the permanent Frontex's border guards. It should be mentioned that although very important, economic aspect it is not the only dimension. In my opinion benefits of such solution (security, time, etc.), are higher than its cost.

My next recommendation pertains to ambiguity of division of competences between Frontex and member states and the absence of mechanisms incentivizing member states'

cooperation. Some scholars highlight that vagueness of tasks and responsibilities of member states complicates operational activities of Frontex. Although the agency's duties are enumerated in the regulation, one of the article introduced in the new regulation obscures the distinction between Frontex and member states' responsibilities stating that European integrated management is a shared responsibility of the agency and member states, although the latter remain primarily responsible for its borders (European Parliament and Council 2016). The concept of shared responsibility it is not defined in the regulation and may; thus, cause interpretation problems. The previous regulation did not contain description of member states being responsible for its borders. Despite that, some states tried to blame the EU for their problems with border control. Such a vague article may enable states to make blame-shifting even more frequent. Hence, I strongly recommend that there should be a precise distinction between the agency and states' responsibilities. It would be helpful in cases like the Schengen Border Code violated by Greek border guards. Are Greek authorities responsibly for it or maybe Frontex's training was not sufficient? I suggest that such ambiguity is removed from the regulation.

Responsibility is indirectly related to my next recommendation. To ensure members' sovereignty, Frontex is not equipped with any enforcement capabilities toward member states, which is a good decision. However, I think that a complete vulnerability of Frontex is unacceptable. If a state fails to make equipment or staff available after Frontex's call, the European Parliament should be able to impose some kind of punishment on that country. Especially, that engagement of each state is discussed beforehand giving them a chance to declare what they can afford without imposing much pressure. Without a mechanism of punishment, states are not obligated to follow their declarations, which hinders the agency's work. Obviously, the European

Parliament should take into consideration different unexpected circumstances, but it is hard to imagine a working policy without the mechanism of “carrots and sticks.”

Finally, let me wrap up my recommendations with the most general suggestions. I agree with Yves Pascouau, who argues that the main reason of the EU failures in addressing the migration crisis is the lack of the “real” EU foreign policy (Pascouau 2013, 2). I recommend that the EU should construct foreign policy, particularly in regard to the problematic regions. Recently the EU is busy debating on the free trade agreement with Canada, and it seems to forget about Libya that caused many problems in the meantime. It definitely shows that the EU should think over and rearrange its priorities.

Although while assessing alternatives I have rejected the cooperation with the transit states, it does not mean that such solution is wrong *per se*. Circumstances during the time I analyzed, made me skeptical about its effectiveness mainly, because of the complicated situation in Libya. However, looking at more general and long term strategies, such cooperation should be a priority for the EU. Nevertheless, I want to highlight again that the current *modus operandi* makes such collaboration impossible. The EU should first support Libya in stabilizing its internal situation. Especially, that some European leaders are indirectly responsible for this situation. Italian leaders used to support Libyan dictator, when it was profitable for Italy. A part of the sustainable foreign policy in the region is the future development of Mediterranean partnership. The Italian-Albanian agreement from the 90s’ shows that economic cooperation tends to decrease irregular migration (Albahari 2015).

The EU interests should also focus on Syria. The dramatic situation in this Middle Eastern country should provide an impulse to developing the European Common Security and Defense Policy setting “the framework for the EU political and military structures and for military and

civilian missions and operations abroad” (European Parliament 2017), which was established in 2009, but is still not properly working policy. Deterioration in global security observed in 2015 and 2016, forced the EU decision-makers to rethink this project again and now it is in early phase of construction (European Parliament 2017). I recommended that the EU should finally make a use of the policy and start civilian missions in Libya and Syria.

It seems that actions undertaken in sending states will be important step to mitigate the European migration crisis. Increasing security, economical prospects and strengthening democratic values in societies affected by war, poverty and any other difficulties should be a priority for the EU decision-makers. Therefore, instead of creating new buffer zones with the ENP tool, these funds should be transferred to so-called sending states to address the root causes of migration.

Finally, it should be also highlighted that the European Union is in a very difficult position. There are even some analysts arguing that Brexit is the beginning of the end of the European Union. Upcoming French elections will show if we should expect so-called Frexit, which may confirm the decline of the EU. French and British societies are not the only dissatisfied with the current shape of the EU. There some voices calling for revision of the European project coming also from other states, such as countries of the Visegrad Group. Obviously, it is hard to predict the future of the EU, not to mention policy directions it will undertake. Thus, I want to underscore that proposed recommendations hold for the current point of time.

Let me finish with a few directions for future research. First, it would be highly recommended to investigate the implementation of the Frontex’s reform. I analyzed how the introduced changes look “on paper,” but it is crucial to assess their effectiveness in reality.

In addition, the future research could also address one of the major drawbacks of my thesis, which is a low number of analyzed NGOs working at the Mediterranean Sea. As mentioned, there are several organizations involved in SAR operations, but not all of them make their data available. I believe that comparing more NGOs with the EU can positively contribute to the analysis of the possible cooperation between those bodies. The future research can also address the situation in transit states. What the EU can do to help Libya to stabilize politically? How to make sure that the deal with Turkey is executed positively for the EU? And probably the most important question: How to achieve peace in Syria? These questions have to be answered. And finally, the European migration policy definitely deserves more research in the future.

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Appendix

List of contributors, to be provided by each member state, to the minimum total number of 1,500 guards and other relevant staff, in accordance with article 20(5):

Belgium	30
Bulgaria	40
Czech Republic	20
Denmark	29
Germany	225
Estonia	18
Greece	50
Spain	111
France	170
Croatia	65
Italy	125
Cyprus	8
Latvia	30
Lithuania	39
Luxembourg	8
Hungary	65
Malta	6
Netherlands	50
Austria	34
Poland	100
Portugal	47
Romania	75
Slovenia	35
Slovakia	35
Finland	30
Sweden	17
Switzerland	16
Iceland	2
Liechtenstein	(*)
Norway	20
TOTAL	1,500

(*)Liechtenstein will contribute through proportional financial support.

Source: 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, p. 63.

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