

A NEOFUNCTIONALIST APPROACH TO THE EU'S EXTERNAL BORDER  
MANAGEMENT: THE CASE OF FRONTEX

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BORDER MANAGEMENT: THE CASE OF FRONTEX**

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## **ABSTRACT**

### **A NEOFUNCTIONALIST APPROACH TO THE EU'S EXTERNAL BORDER MANAGEMENT: THE CASE OF FRONTEX**

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This thesis examines the integration of the external border management in the European Union (EU) through the theoretical lens of neofunctionalism with the case study of Frontex. Although the external border management area is under shared competence, the establishment of Frontex as an Area of Freedom, Security and Justice (AFSJ) agency in 2004 and its upgrading to the European Border and Coast Guard (EBCG) in 2016 to ameliorate the efficiency of management at the external borders of the Union represented an important step in the communitarization of the external border management of the EU member states (MS) compared to the previous intergovernmental attempts of Schengen and Common Unit (CU). In this sense, this study elaborates the institutional and empirical developments in the establishment of Frontex and EBCG, and focuses on the actors and events influential in the process of external border management integration. The neofunctionalist tool of spillover is the mechanism used to explain integration in this context. Besides classical neofunctionalism and the theoretical tool of spillover, revised neofunctionalism is also taken into consideration in explaining the integration. While providing a case study on one of the AFSJ agencies Frontex, this study also aims to contribute to the literature

with the use of one of the main and most criticized integration theories applied to one of the controversial areas of the EU integration.

**Keywords:** EU, Frontex, neofunctionalism, external border management, integration

## ÖZ

### AB’NİN DIŞ SINIR YÖNETİMİNE YENİ İŞLEVSELÇİ BİR YAKLAŞIM: FRONTEX ÖRNEĞİ

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Bu tez, Avrupa Birliği (AB)’nin dış sınır yönetiminin bütünleşmesini yeni işlevselcilik teorik merceğinden Frontex vaka çalışması ile incelemektedir. Dış sınır yönetimi alanı ortak yetki kapsamında olmasına karşın, Frontex'in 2004 yılında Özgürlük, Güvenlik ve Adalet Alanı (ÖGAA) ajansı olarak kurulması ve 2016 yılında Birlik’in dış sınır yönetimindeki etkinliği iyileştirmek için Avrupa Sınır ve Sahil Güvenlik Birimi (ASSGB)’ne yükseltilmesi daha öncesindeki hükümetler arası girişimler olan Schengen ve Ortak Birim (OB)'ye kıyasla AB üye devletlerinin dış sınır yönetiminin ortaklaştırılmasında önemli bir adımı temsil etmiştir. Bu anlamda, bu çalışma Frontex ve ASSGB'nin kuruluşundaki kurumsal ve ampirik gelişmeleri incelemekte ve dış sınır yönetimi bütünleşmesi sürecinde etkili olan aktörler ve olaylara odaklanmaktadır. Yeni işlevselci yayılma aracı bu bağlamda bütünleşmeyi açıklamak için kullanılan mekanizmadır. Bütünleşmenin açıklanmasında klasik yeni işlevselcilik ve yayılma aracının yanı sıra revize edilmiş yeni işlevselcilik de dikkate alınmaktadır. Bu çalışma, ÖGAA ajanslarından biri olan Frontex hakkında bir vaka çalışması sunarken, aynı zamanda AB bütünleşmesinin tartışmalı alanlarından birine uygulanan temel ve en çok

eleştirilen bütünleşme teorilerinden birinin kullanımı ile literatüre katkıda bulunmayı amaçlamaktadır.

**Anahtar Kelimeler:** AB, Frontex, yeni işlevselcilik, dış sınır yönetimi, bütünleşme

*In the loving memory of Suzi*

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## LIST OF ABBREVIATIONS

AFSJ	Area of Freedom, Security and Justice
CEPOL	European Union Agency for Law Enforcement Training
CFSP	Common Foreign and Security Policy
CJEU/ ECJ	Court of Justice of the European Union
Commission	European Commission
COREPER	Committee of Permanent Representatives of the Governments of the Member States to the European Union
Council	The Council of the European Union / The Council of Ministers
Council Presidency	The Presidency of the Council of the European Union Governments of the Member States to the European Union
CU	Common Unit
DG	Directorate General
EBCG	European Border and Coast Guard
EBGTs	European Border Guard Teams
EBCGA	European Border and Coast Guard Agency
EC/ the Community	European Community
ECSC	European Coal and Steel Community
EEC	European Economic Community
EESC	European Economic and Social Committee
EMU	Economic and Monetary Union
EP / the Parliament	European Parliament
EPC	European Political Cooperation
EU/ the Union	European Union
Eurojust	The European Union Agency for Criminal Justice Cooperation

Europol	The European Police Office
EUROSUR	The European Border Surveillance System
EURATOM/EAEC	European Atomic Energy Community
FRONTEX/ the Agency	European Agency for the Management of Operational Cooperation at the External Borders
FRS	Fundamental Rights Strategy
GSC / Council Secretariat	General Secretariat of the Council of the European Union
IBM	Integrated Border Management
IGC	Intergovernmental Conference
ISS	Internal Security Strategy
JHA	Justice and Home Affairs
LI	Liberal Intergovernmentalism
LIBE	Civil Liberties, Justice and Home Affairs Committee
MB	The Frontex Management Board
MEP	Member of the European Parliament
MS	European Union Member State/s
MLG	Multi-level Governance
NGO	Non-governmental Organization
OLP	Ordinary Legislative Procedure
QMV	Qualified Majority Voting
RABITs	Rapid Border Intervention Teams
SBC	Schengen Borders Code
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
SEA	Single European Act
SIS	Schengen Information System
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TREVI	Terrorisme, Radicalisme, Extrémisme et Violence Internationale
US	United States
VIS	Visa Information System

## CHAPTER 1

### INTRODUCTION

As the European Union (EU, the Union) is internally borderless, internal security and external security spheres became intertwined policy areas to tackle in common by the Member States (MS). In this regard, external border management as a sub-policy area represents a critical component in European internal security in terms of securing the safety of the EU citizens. Although the MS have strong claims on national sovereignty when it comes to security and defense issues, they “harmonized their approaches to police, intelligence, and border protection, that is to say, everything from European evidence and arrest warrants to common procedures on immigration and asylum” (Cross, 2011, p.2). However, it is a fact that security integration in the EU is not easy to fully implement as the area is under the shared competence between the MS and the EU. On the other side, nevertheless, the efforts towards establishing a common regime on internal security can not be overlooked since the area today represents one of the well harmonized policy-making areas of the EU. The change towards a more harmonized institutional formation by various legal developments in the Justice and Home Affairs (JHA), and later taking the form of Area of Freedom, Security, and Justice (AFSJ), the internal security area is addressed as one of the fast-developing policy-making areas in the EU by various scholars (Monar, 2006 ; Léonard & Kaunert, 2012). In this policy-making area, external border management holds a special place. The establishment of the JHA was a response to the increasing internal security concerns attached to the lifting of the internal borders of the Union by reaching an agreement with Schengen, in order to realize the Single Market. With the increasing concerns on internal security, the early MS efforts to tackle cross-border crime and terrorism via intergovernmental cooperations such as Terrorisme, Radicalisme, Extrémisme et Violence Internationale (TREVI) was needed to be upgraded into a

more institutionalized structure to provide internal security to the EU citizens as well as for the flowing of economic activities within the EU territory. Especially the objective of freedom of movement of persons alongside the freedom of movement of goods, services, and capital brought about the need for commonly managed external borders for a functioning Single Market. This new understanding of freedom of movement in the EU's internal security laid the foundations of the Schengen Convention, and later the Union border security agency which is the Union agency of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). Frontex's latest form which is the European Border and Coast Guard (EBCG) in the external border management became an important agency in the equation of providing internal security in the EU via providing more effective border management and a shared responsibility approach on external borders. The Agency today plays an important role among the EU AFSJ agencies and is important in examining the EU integration due to its intertwined nature with migration and security issues which are at the very core concerns of the MS. Therefore, examining the establishment of a Union border Agency is an important component in understanding the external border management and the nature and trajectory of integration in the EU.

### **1.1. Literature Review**

Frontex has been one of the focal agencies in the EU examined in the literature in various aspects. The Agency holds a special place in the EU security studies with its implications on the EU internal security especially on the policy areas of asylum, migration and counter-terrorism, external border management, and its operational activities. With the starting of its operational activities, that is to say from 2005, especially justice and human rights concerns regarding the Agency's operational aspect also raised due to its activities' implication on the migration area. The media and pro-human rights groups paid considerable attention to this side of the Agency (Aas & Gundhus, 2015, p.2). The scholarly literature has also cherished with the Agency's becoming operational and the Agency was examined regarding the legitimacy of its operational cooperation at the external borders (Carrera, 2007; Fink, 2012), its securitization effect on the border management (Neal, 2009; Moreno-Lax, 2017;

Baker-Beal, 2019), and its accountability and transparency (Pollak & Slominski, 2009; Rijpma, 2012; Wolff & Schout, 2013). Moreover, some other studies examining the operational aspect of Frontex focused on which extent the the Agency's being a contributing actor to the EU's common policy on external borders, that is to say that they focused on the Agency's autonomy in the external border management area. Jorry (2007) examined this through how the concept of integrated border management (IBM) is implemented, and assessed the Agency's establishment as "a decisive step towards integrated border management" by emphasizing possible extensions in Agency's tasks (Jorry, 2007 p.25). On the other hand, Mungianu (2013) examined the concept of operational cooperation firstly by taking attention to the Frontex's joint operations in terms of its place in the legislation, and emphasized that the Agency's role "is not limited with providing technical and operational assistance", and concluded that the Agency is representing more than mere cooperation for the external border management (Mungianu, 2013, p.384). Secondly, Mungianu (2013) assessed the impact of the operational cooperation on the development of an EU common external border policy (p.365) which is concluded as a shift towards supranationalization in the area. The descriptive nature of the analyses in these articles could provide examples without theoretical background, however they are taking our attention to the moving trend towards more integration in the EU external border management, a sovereign sensitive sub-policy field in the EU security.

Although the studies focusing on Frontex provides fruitful literature regarding its legitimacy, its impact on securitization of borders, and accountability issues within the EU security it is stated that there is the lack in the literature regarding studying the institutional arrangements governing the European internal security (Léonard 2009, p.372 ; Kaunert et al., 2014, p.40) as well as in studying the AFSJ agencies. Studying AFSJ agencies is important due to the significant growth in "EU *acquis* on the AFSJ over the last years" which confirms the choice made by the MS to involve these EU agencies increasingly in this area (European Commission, 2017, p.3). Looking from this context, studying Frontex, therefore, responds to the intersection of the lacks in the literature as well as stands as an opportunity to bring a coherent theoretical study regarding the development of the external border management of the EU which is born as a sub-policy area of internal security within the EU's AFSJ. Moreover, using a

coherent theoretical aspect is also lacking in examining the development of the integration regarding the external border management in the EU internal security.

Theoretical studies in the EU internal security area are focused on the changing decision-making trend in the AFSJ (Kaunert 2007, 2010b ; Kaunert & Léonard, 2012; Kaunert et al. 2014), or the agencification aspect (Horii, 2016 ; Meissner 2017, 2020). For instance, Kaunert et al. (2012) put emphasis on the new ways of examining the EU internal security area by focusing on counter-terrorism area and contributed to the literature by using supranational governance approach and institutional entrepreneurship to assess the supranationalization in the AFSJ (p.425). The theorizations developed by Sweet and Sandholtz (1997, 2001) of supranational governance and institutional entrepreneurship are used to emphasize the importance of cross-border transactions, and the supranational institutions “in channelling the policy process towards providing European solutions with the impact of the policy shocks in the policy areas where traditionally intergovernmental solutions preferred” (Kaunert et al., 2012, p.422). The move towards integration in the EU internal security area thus, emphasized including the influence of supranational actors and institutionalism in decision-making. Howorth (2012) contributes analysing the decision-making in the EU security, although in the area of foreign and security policy, by emphasizing the importance of informal rules and socialization processes in contributing more integration with the example of influence of small-groups constituted of “well-socialized officials in key committees” in a sovereign sensitive area (p.436). The raising attention towards the supranationalization in the AFSJ and governing the EU security (Monar, 2006 ; Kaunert & Léonard 2012, Kaunert et al. 2014) examined via different policy areas, therefore, making the case of establishment of Frontex more important to examine considering its intertwined nature with internal and external security and its being of an AFSJ agency.

Another theoretical strand used in examining the EU internal security and more specifically establishment of Frontex is new-institutionalism (Ekelund, 2014), which is also an approach -like supranational governance and institutionalism- rather than a theory. This strand is mostly engaged with the aspect of especially choosing the “agency” model rather than establishing another form of cooperation in dealing with

the external border management, and its implications. The establishment of Frontex as an agency is explained with a mix of rational choice, historical, and sociological institutionalism as a result of different aspects found influential in its establishment such as the impact of 9/11, enlargement and timing. By emphasizing only one strand among institutionalism types is not sufficient alone, this approach differs from classical institutionalist approaches and brings a different perspective. Analyses on the new-institutionalist perspective also goes further to imply the Agency's empowerment via emphasizing its increasing political roles through risk analyses (Horii, 2016), its evolving "to be an influential actor in its own right" (Meissner, 2017), and impact of external crises and path dependent process in its reform (Meissner, 2020), therefore contributes in understanding its place in the EU.

These theoretical analyses mentioned above are influential in studying the external border management and particularly establishment of Frontex since the studies considering the governance of the EU security -particularly of AFSJ where the Frontex agency established- emphasized the shift to supranational institutions and importance of socialization in decision-making. On the other hand, new-institutionalists emphasized events and actors in establishing an agency. Considering these all, in order to realize the external border management, establishment of Frontex as a Union border agency makes an important case for looking at the EU integration. Although influential, these studies use approaches and not fully developed theories in explaining the integration in the internal security, establishment of Frontex and its autonomy. Moreover, the Agency cannot be thought of outside of the MS influence and becoming all independent, not at least at this point in time, therefore, turning back to the classical theory of EU integration of neofunctionalism provides us with a more comprehensive understanding of the EU's incremental integration in the area of external border management. The neofunctionalist theory allows to trace establishing a Union border Agency via considering the institutional and empirical developments as well as with the interplay of various actors and events altogether within one theoretical perspective.

The aim of this thesis, therefore, is to contribute to the use of theory, particularly classical theory of neofunctionalism, in examining the EU's integration in the sub-policy area of external border management in order to provide a wholesome approach

to integration in the external borders rather than focusing on scattered approaches cutting the integration into small pieces. It is concerned with the integration aspect of the establishment of Frontex and its upgrading to the EBCG. It benefits from the previous works of the application of the neofunctionalist theory by Tranholm-Mikkelsen (1991) which encouraged neofunctionalism to revive, and a more recent work of Niemann & Speyer (2018) which applied neofunctionalism to the establishment negotiations of the EBCG and examined the influence of supranational actors, governmental and non-governmental actors to the integration within the context of the refugee crisis and migration policy. This thesis also contributes revised neofunctionalism by including exogenous spillover of Schmitter (1970) and Niemann (2006, 2016) in the analysis.

## **1.2. The Case of Frontex and the EBCG**

Today EBCG as the successor of Frontex represents the latest point the MS reached in their harmonization with regard to the managing the external borders in the EU. The case study in this thesis is constituted of the establishment of Frontex and its upgrading to EBCG. Therefore, this subsection will briefly introduce the reforms that Frontex went through via regulations<sup>1</sup> and will show the increased tasks and responsibilities of the Agency. As a result, the Agency's implication and importance in creating a common external border management in the EU with its increased tasks and responsibilities will be discussed.

Frontex is seated in Warsaw, Poland, and is attributed a European Community (EC, Community) agency that is to say a distinct body from the EU institutions such as the European Commission (the Commission), the European Parliament (the EP, the Parliament), and the Council of the European Union (the Council). It is a decentralised agency that has granted with its own legal entity distinct from the EU institutions and it contributes to the implementation of EU policies (European Union a, n.d.). The Agency was established in 2004 with the aim of facilitating “coordination of

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<sup>1</sup>“Regulation” is a binding legislative act of the EU, and is directly applicable in all EU MS, therefore, is important in terms of harmonization of the rules. “It is similar to national legislation in terms of the impact and direct effect it generates. As such the regulation is the most pervasive of all the legal instruments of the EU” (EU Monitor, n.d.).

operational cooperation between the MS” in managing the external borders of the Union (European Commission, 2007). The establishment of such an Agency in the field of external border management is referred to as “a significant milestone in the development of European governance” since the agency’s field of work covers a contentious policy area which is “not only strongly associated with the nation-state but also politically very sensitive” (Ekelund, 2010, p.161). Moreover, Ekelund (2010) notes of the speedy legislative process in the establishment of the agency which lasted less than a year despite its touching onto very core nation-state prerogatives (p.161). The speed in the establishment phase continued also in the adoption of the legislative revisions regarding the operational mandate of the agency (Fernandez-Rojo, 2020, p.291).

Frontex was established on 26 October 2004 with its establishing Regulation 2007/2004 “with a view to improving the integrated management of the external borders<sup>2</sup> of the Member States of the European Union” (Regulation 2007/2004, Article 1). It is a fact that the MS are responsible to control and surveillance of their external borders, however, due to the some internal and external developments which will be mentioned below and also examined in the latter parts of this thesis, the MS came to terms with the need for a common action in managing the external borders. This need embodied in the form of Frontex to “render more effective the implementation of Community policy” regarding to the external border management via “better coordinating the operational cooperation” (European Commission a, 2003). In this regard, Frontex mostly upholds the role of providing coordination among the MS to provide “a high and uniform level” (Frontex a, 2021) of external border management alongside other tasks. This has gradually changed as throughout time the MS and the

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<sup>2</sup> The idea of establishing an integrated management for the EU’s external borders is embodied with the concept of integrated border management (IBM) that introduced in 2005. It has its foundations back in the Laeken European Council Conclusions in 2001. It is decided in the JHA Council conclusions in 2006 that IBM is “consists of coordination and coherence among MS (harmonisation of standards on border surveillance, border checks, and risk analysis), inter-agency cooperation (better combat cross-border crime and irregular migration, and facilitate the movement of legitimate traffic) and international cooperation, which entails cooperation with both neighbouring and third countries” (European Commission IBM Guidelines, 2010, p.14).

Union adopted the shared responsibility approach on external borders. Frontex's main tasks are listed in Article 2 of the establishing regulation of EC 2007/2004 follows as:

(a) coordinate operational cooperation between the Member States in the field of management of external borders; (b) assist the 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 the Member States in circumstances requiring increased technical and operational assistance at external borders; (f) provide the Member States with the necessary support in organizing joint return operations (Regulation 2007/2004, p.4).

Following its establishment, the Agency went through four legislative revisions resulting in an important amount of expansion in its tasks and responsibilities. These revisions respectively took place in 2007, 2011, 2016, and 2019. The Regulation (EC) No 863/2007 as the first legislative revision after the establishment of Frontex introduced the Rapid Border Intervention Teams (RABITs). These teams were designed "to bring immediate assistance to a MS that is under urgent and exceptional pressure at its external border" especially by the arrival of large numbers of third-country nationals trying to cross the external borders without authorization (Frontex b, 2021). The composition of the Teams consists of "pre-selected national border guards" from the MS, that is from the rapid border intervention team pool, at the disposal of the Agency (Rijpma, 2016, p.11). The guards' competences were defined with regard to their deployment in joint operational activity outside their own MS, and they endowed with "powers necessary to perform the tasks under the Schengen Borders Code (SBC), but do so under instructions from the host Member State" (Rijpma, 2016, p.11). Moreover, the same regulation (Regulation 863/2007) created the Central Record of Available Technical Equipment (CRATE) which allows MS to temporarily use the resources that the other MS put at its disposal. In 2011, the Schengen zone stressed and the MS concerns regarding their external borders increased due to the rise in the uncontrolled migration from Tunisia to the Italy's island of Lampedusa and to Puglia as a result of the Arab spring (Brady, 2012, 275). France closed its border with Italy in response to the arrival of Tunisian migrants who had been given an Italian temporary residence. This incident made the MS rethink about the Schengen system and strengthening it, however, they stayed "hugely reluctant to cede control over their own borders to a higher authority that would implement such a

regime” (Brady, 2012, p.277). On the other hand, EU’s control and containment policy in the Southern Mediterranean towards migrants (including asylum-seekers and refugees) as an immediate response through Frontex actively involved the Agency to the external dimension of migration policy via third country arrangements (Carrera et al., 2012, p.4).

The next Regulation further consolidated the external relations role of the agency alongside other amendments. The second revision came with the Regulation (EU) No 1168/2011 is considered as one of the most vital amendments reflecting the supranationalization of external border management (Mungianu, 2013, p.362). The regulation strengthened Frontex’s operational powers and RABITs were renamed European Border Guard Teams (EBGTs). The regulation included:

(I) the obligation for Frontex to draw up a Code of Conduct applicable to all operations; (II) detailed provisions on the organizational aspects of joint operations and pilot projects and, in particular, on the drawing up and content of an 'operational plan' for each operation; (III) the setting-up of EBGTs; (IV) the possibility for Frontex to acquire, lease, own or co-own technical equipment with a Member State; (V) the improvement of risk analysis and training of border guards; (VI) the improvement of return cooperation; (VII) several new provisions on information exchange and data protection; (VIII) extended provisions on Frontex's cooperation with EU agencies, international organizations, and third countries; and (IX) the obligation for Frontex to develop a Fundamental Rights Strategy (Mungianu, 2013, p.362-363).

In 2013, with Regulation (EU) No 1052/2013 The European Border Surveillance System (EUROSUR) was established with a vision of constituting “a decisive step in the further gradual establishment of a common European integrated border management system” (Commission Communication, 2008). It was deemed necessary to establish EUROSUR to facilitate “information exchange and cooperation between MS and Frontex” (European Commission 3, n.d.). Moreover, in the Article 1 of the Regulation 1052/2013, EUROSUR tasked with:

Providing the infrastructure and tools needed to improve the MS government’s and Frontex’s situational awareness and reaction capability at the external borders of the Union for the purpose of detecting, preventing, and combating irregular immigration and cross-border crime, and contributing to ensuring the protection and saving the lives of migrants (Regulation 1052/2013, 2013).

In this scheme, Frontex was given a central role by being the “central hub in a system of information exchange between national border guard authorities” (Rijpma, 2016, p.12).

In 2015, the Syrian refugee crisis put the external borders of the EU under pressure with the unauthorized movement of persons, estimatedly 1,5 million, between January and November in the same year (European Commission, 2015, p.2). The mixed migratory flows (includes refugees, asylum-seekers, economic migrants and other types of migrants) and secondary movements were pointed out as the causes of several MS, namely Austria, Germany, Slovenia, and Hungary, reintroducing border control at their internal borders (European Commission, 2015), and this became the first time “that migration had been mentioned as a reason for reintroducing border controls” (Deutsche Welle, 2019). Denmark, Sweden and Norway addressed migration also as a reason to reintroduce controls. Moreover, France introduced its border checks with citing terrorist threats due to the terrorist attacks in Paris on November 2015 (Deutsche Welle, 2019). Criticisms were raised regarding how introducing internal controls puts “considerable strain on the functioning and coherence of the Schengen area” (European Commission, 2015, p.77) and at the same time on one of the very core achievement of freedom of movement in the EU (European Commission, 2015; Deutsche Welle, 2019; Guild et al., 2015; De Somer et al., 2020). All in all, this example demonstrated that the EU and MS structures were not adequate to address the challenges arising from the migratory crisis. The idea of shared management of external borders gained much more importance since it became clear that the external borders of one MS has an impact on all other MS within the Schengen area, and a European structure with strategic implementation is needed to provide effective management of the external borders instead of an uncoordinated MS effort (European Commission, 2015, p.78). With regard to these developments in the document “A European Agenda on Migration” (2015), the Commission addressed “the need to move to a *shared management* of the external borders, in line with the objective of the ‘gradual introduction of an integrated management system for external borders’ set out in Article 77 TFEU” as an objective for its proposal for establishing fully operational EBCG (European Commission, 2015, p.2, emphasis added).

Therefore, the Commission “proposed to make the management of the external borders into *shared responsibility*” between the MS and the EU (European Commission, 2015, p.2-3, emphasis added). The Agenda also introduced a “hotspot” approach which is concerned with providing “operational solutions for emergency situations” to the EU MS that are facing disproportionate migratory pressures at the EU’s external borders (EUR-Lex a, n.d.). The reinforcement of Frontex and strengthening its role and capacity on return operations via amending its legal basis was also mentioned as a key point in the Agenda. With all due concern, Commission’s draft Regulation (European Commission, 2015) “lays down the general principles of European integrated border management; it establishes a EBCG and a European Border and Coast Guard Agency (EBCGA) built from Frontex” (p.2). which is designed to have “more competences in the fields of external border management and return than Frontex” has had (p.3).

The Regulation (EU) No 2016/1624 officially establishing the EBCG as the successor of Frontex happened to be the third revision. Article 1 in the Regulation defines the aim for establishing EBCG as “to ensure European integrated border management at the external borders with a view to managing the crossing of the external borders efficiently” as well as “to ensure a high level of internal security within the Union” (Regulation 2016/1624). In its new formation, “the European Border and Coast Guard Agency and the national authorities of Member States which are responsible for border management, including coast guards to the extent that they carry out border control tasks, constitute the European Border and Coast Guard” (Regulation 2016/1624, Article 3(1)). In this regard, Ferraro & Capitani (2016) emphasizes that:

The new Regulation is widening the scope of the existing EU measures, announcing a fully-fledged integrated border policy, a multilevel national-European Border Guard, amending the Schengen Borders Code (SBC), and strengthening the Frontex coordinating role towards the national authorities dealing with border protection that operate in the so-called “hotspots” in search and rescue operations and in return of irregular migrants (p.3).

The Regulation (EC) No 2019/1896 as the latest revision proposed by the Commission further aimed to strengthen EBCG to better protect external borders. It was introduced by the Commission in 2018 and it entered into force in December 2019. The Regulation (2019/1896) includes deployment of an additional 10,000 EBCG standing corps by 2027 which will be directly recruited by the Agency. With the new regulation

(Regulation, 2019/1896), the total budget for the Agency's existing and future mandate will be up to €11 billion for the 2021-2027 period (European Court of Auditors, 2020, p.10). With its yearly budget of €6 million in 2005, when looking at the 2021 data the Agency has €543 million (Frontex c, 2021) that is representing a significant increase in its resources throughout the years. According to Bossong (2019, p.2-7), the reform "extends the Agency's remit and competences" via its role in integrated border management and return operations. The Article 7 *Shared responsibility* states that the MS "shall ensure the management of their external borders and the enforcement of return decisions, in close cooperation with the Agency, in their own interests and in the common interest of all MS in full compliance with Union law" (Regulation 2019/1896, Article 7, para.3). This objective creates a "greater obligation" for the MS to comply with the implementation of the IBM "in close consultation" with the Agency (Bossong, 2019, p.2). In the case of return operations, Article 7 states that:

The Agency is responsible for providing technical and operational assistance in the implementation of measures relating to return upon request of the MS concerned or on its own initiative and with the agreement of the MS concerned. The MS has the primary responsibility for the management of their sections of the external borders and for issuing return decisions, and for adopting the measures pertaining to the detention of returnees (Regulation 2019/1896, Article 7, para.2).

A similar case applies to the cross border operations; the regulation (Regulation 2019/1896) extends the remit of operations to the third countries and "makes it possible for EBCG to conduct missions in North Africa or other transit countries and countries of origin for migration to Europe" (Bossong, 2019, p.7). However, these missions also depend on an invitation from the third country where the mission is planned to take part such as in the case of the MS (Bossong, 2019). The MS holding their sovereign prerogatives in implementing the Union's external border management is on the one hand interpreted in the literature as the EBCG playing only a supervisory and assisting role in the external border management (Fernandez-Rojo, 2020) and on the other the EBCG is called "Frontex+" (Carrera & Den Hertog, 2016) or as a "reloaded-Frontex" (Rosenfeldt, 2016) regarding its upgrading in 2016 that is to say that offering not much of a different structure than its predecessor. However, looking at a wider perspective, Bossong (2019) suggests that with the developments took place, the Agency is "becoming a key reference point for EU decision-makers and will

stimulate further reforms at all political levels as it is already the EU's largest internal security agency in terms of personnel and funding and will continue to expand on a considerable scale" (p.3). Moreover, Bossong (2019) emphasizes the benefits for the future function of the Agency as:

The concentration of funds to create an independent EU border force and to acquire extensive technical means for border control could serve European integration in the long term, similar to the logic of the European Defence Fund (EDF) and the Common Security and Defence Policy (CSDP). The Agency could, thus, serve as a pioneer on the way to a genuinely operational "security union" which focuses on European internal security in a broad sense (p.3).

### **1.3. Scope and Objective**

The aim of this thesis is to answer the question of how the Union agency of Frontex, and the EBCG afterwards, was established. In other words, this study is interested in uncovering factors that moved the EU towards more harmonization in the external border management and influenced as well as pooled interest in the establishment of a Union agency in the field. In order to provide an answer to that question, which actors and events influenced the move of the Union towards more harmonization before coming to the point of establishing a Union agency? is another question to ask in examining the process of integration. While seeking to answer these questions this thesis use the theoretical lens of neofunctionalism in tracing the integration of the external border management in the EU and argues that the establishment of Frontex, and later on taking its latest form of the EBCG via amendments, is exemplifying a neofunctionalist course of integration in the external border management area. It is doing so via tracing the process of establishment by using the neofunctionalist tool i.e. spillovers in the process of making the European external border management and particularly with a case study analysis focusing on the establishment of Frontex and later the EBCG.

The analysis focuses on the actors and events influential in the process of the establishment of the Agency and its upgrading to the EBCG, that is to say that the periods of 2004 and 2016. The analysis will show that harmonization efforts of the external border management at the EU level and the establishment of Frontex and its further development is a process and is not only controlled by the MS. It will show

that the functionality between the Single Market and the JHA as a result of the interdependent character of border controls under Schengen with the objective of free movement of persons, and the role of supranational institutions such as the Commission and the Parliament, business interest groups, non-governmental organizations (NGOs) as well as the impact of external pressures are the factors contributing to the incremental integration in the area of external border management. These actors and events are influential in setting the course of the EU towards more integration and pooling of the MS interests in the EU also shows that especially the EU institutions alongside the MS are responsible for the establishment and development of a Union border agency. The presence of the actors in each step of making the external border management is different due to the different dynamics at play during the integration process of external border management. “Spillover” mechanism of neofunctionalist theory helps us to make sense of different dynamics and actors involved in the making of the external border management integration yet allows us to see the process as a whole by considering them together. The mechanism, therefore, proves useful for the analysis.

In this study, four types of spillover will be used to analyze the actors and events contributing to the course of integration in the external border management. These are namely; functional spillover, political spillover, cultivated spillover and, exogenous spillover. While presenting a case study on one of the most important agencies of today’s EU, this study aims to contribute to uncovering the integration phenomenon of the EU by applying one of the basic and most criticized integration theories of neofunctionalist theory to one of the dynamic and most controversial areas of integration.

#### **1.4. Methodology**

The method applied in this thesis to examine the external border integration in the EU is the process-tracing method. “It is a research method for tracing causal mechanisms using detailed, within-case empirical analysis of how a causal process plays out in an actual case” (Beach, 2017), and it can be used “as a method for evaluating hypotheses about the causes of a specific outcome in a particular case” (Mahoney, 2012, p.571). It is also argued that the process-tracing method “is arguably the most important tool

of causal inference in qualitative and case study research” (Collier 2011; George & Bennett 2005). The benefits of using process-tracing method is in its emphasis on the “evidence on processes, sequences, and conjunctures of events within a case for the purposes of either developing or testing hypotheses about causal mechanisms that might causally explain the case” (Bennett & Checkel, 2014, p.7). Therefore, tracing the external border management development process of the EU through a sequence of events is important and useful in terms of making sense of the context leading to more harmonization in the area and to make inferences for the theoretical analysis.

The specific importance of the process-tracing method in the EU studies is highlighted by Schimmelfennig (2014) for its benefit for the theory-testing analyses of European integration. These analyses “require process tracing for both theoretical and methodological reasons” (Schimmelfennig, 2014, p.100). Schimmelfennig (2014) suggests that the standard methods of quantitative or comparative analysis are commonly used in the areas of EU politics and policies which deal with elections, legislation, compliance, and other topics that can be focused on also in the analysis of other political systems (p.98). However, when considering the *sui generis* character of the EU, a different approach is needed for the EU integration cases that are dealing with the development and expansion of competences and tasks within the EU itself (Schimmelfennig, 2014, p.98). This is done so within-case analyses. As it is presented as a within-case analysis in this thesis, the establishment of Frontex and the EBCG as a part of the EU’s external border management represented a harmonization in the area compared to the previous intergovernmental efforts. Understanding how a more supranational outcome is reached in the highly sensitive sub-policy area of external border management, therefore, requires tracing the causal mechanisms in the process and then combining them with the theoretical analysis.

In order to present the process of development of the external border management in the EU and collect evidence, analysing primary sources such as communications among different EU institutions, official reports as well as legal documents such as treaties and regulations were used. Secondary sources such as journal articles, news, dictionaries and commentary reports from different think-tanks were also beneficial in order to create a meaningful sequence and spot the influential actors and events in the

analysing of the establishment of Frontex and the EBCG afterwards, and not get lost in the huge historical institutional context. As for secondary sources it is observed that most of the time interviews were used in them to provide better insight into the actions of the actors during the negotiations. Considering also the interviews conducted in secondary sources, therefore, important for this analysis for understanding the actor's positions better. This research is conducted as a desk research, and I personally have not had a chance to conduct interviews with EU officials, therefore, interviews although mostly anonymous in the secondary sources, such as in Niemann & Speyer, (2018), were also cited in this work when they are evidential.

### **1.5. Organization of the Study**

The first chapter of this thesis starts with the literature review, introducing the background information on the Union border agency, presenting the scope and objective of the thesis with methodology. The second chapter explains the theoretical ground of the work, details the spillover mechanism and types of spillovers that will be used in the analysis part of this thesis. Moreover, debates between theoretical lenses are also introduced to provide a general structure why neofunctionalism sheds a better light to explain the integration in the external border management. Third chapter of this thesis covers the external border management with an institutional perspective, and lays down the institutional legal developments made in the way towards more harmonization in the JHA/AFSJ contributing the establishment of a Union border agency. The fourth chapter is the analysis chapter and it merges the historical and institutional developments elaborated in the previous chapters with a theoretical approach. Through tracing the establishment negotiations, the analysis examines the presence of the spillovers igniting the integration in the external border management area via the case study of establishment of Frontex and developing into the EBCG.

## CHAPTER 2

### THEORETICAL FRAMEWORK

#### 2.1. Introduction

The phenomenon of European integration has become a center for theoretical studies in the EU to understand the Union's past, today, and future. In order to theorize this phenomenon, its nature, and how integration is likely to proceed, the factors underlying European integration have been examined by various scholars (Lindberg, 1963; Hoffmann, 1966; Haas, 1968; Lindberg & Scheingold, 1970; Moravcsik, 1990; Tranholm-Mikkelsen, 1991; Wiener & Diez, 2009). The Union's *sui generis* character adds dimension to theoretical studies. Definition of integration itself is subject to different meanings as the European Union represents a multifaceted organization composed of many institutions and actors. A narrow definition of European integration, for instance, put forth by Rittberger & Schimmelfennig (2005) argue that in order to speak of political integration, the political competencies must be transferred from the national to the supranational level and are thus removed from the exclusive competence of the state, highlighting the constraining political choice in the process of integration (in Conzelmann, 2015). On the other hand, Risse (2009) touches upon the issue in a different sense by approaching integration over European identity and he focuses on the integration via the aspect of redefining states' and societies' interests and their understanding of identity (p.155). In this sense, "European integration theory is thus the field of systematic reflection on the process of intensifying political cooperation in Europe and the development of common political institutions, as well

as on its outcome” (Wiener & Diez, 2009, p.4). European integration theories are examined in two sets. First, there is “grand theory” consisting of the foundational theories of neofunctionalism and intergovernmentalism, trying to explain “main features of the integration process as a whole” (Nugent, 2017, p.448). These theories which I will be discussing in the following parts, however, did not drop from the sky. The early concepts of international integration, or the pre-theories as Saurugger (2014) puts, that developed in the post-First World War period namely functionalism, transactionalism and federalism influenced the development of the mainstream theories of European integration by providing vivid discussions on the nature of international society, the dangers of nationalism, and economic protectionism (Rosamond, 2000, p.20-23). Secondly, there occurred other theoretical approaches focusing on the policy and decision-making side of the EU namely middle-range theories (Nugent, 2017, p.447). Within this stream, there is an abundance of approaches benefiting from political science especially from comparative politics. While theories of European integration of neofunctionalism and intergovernmentalism hold their place as cornerstones and are mostly concerned with the general nature of the integration process, middle-range theories, or approaches, such as multi-level governance and institutionalism differ from the classical theories of integration with their focus on the EU as an independent variable and mostly concerned with the current nature of the integration and particular aspects of the functioning of the EU including the outcome of the integration process.

As a common point, all of these theories and approaches mentioned above try to reach a description of what European integration looks like. Puchala (1972) once likened the theoretical pluralism in European integration to the situation in the classical story of many blind men touching different parts of the elephant. Each integration theory and approach focuses on different parts of the elephant, therefore, has created its own conceptions and understanding of European integration. It can be said that the blind men concluded that integration looked like the part he had touched (Tranholm-Mikkelsen, 1991, p.1). Differing theories and approaches of the integration phenomenon, hence, became a source for mind-opening debates in understanding both the EU and its integration. In this chapter, the grand, or classical, theories of European integration namely neofunctionalism and intergovernmentalism will be introduced.

Apart from grand theories, for enriching this thesis and introducing new perspectives in understanding the journey of EU integration for further studies, I will also touch upon some of the middle-range theories with their main concepts and contributions that are at some point related to my research area. The main focus of this chapter is to explain why neofunctionalism sheds a better light on the phenomenon of European integration and contributes to the study of the development of external border management in the EU after all.

## **2.2. Theories of European Integration**

### **2.2.1. Neofunctionalism**

Neofunctionalism is one of the main European integration theories. This cornerstone theory was developed in the late 1950s and early 1960s by academics from United States (US), of whom the most prominent were Ernst B. Haas and Leon N. Lindberg, to understand the phenomena of the regional cooperation environment in Europe after the Second World War and was “a direct response to the emergence of the European Community (EC)” (Tranholm-Mikkelsen, 1991, p.2). Before explaining the main tenets of neofunctionalism, it is useful to mention the concept of “functionalism” as it attributes importance by being an “intellectual ancestor” of neofunctionalism (Taylor, 1994 in Rosamond, 2000, p.31). Neofunctionalism takes its roots from one of the interwar period concepts of functionalism and it is mostly mentioned in Mitrany’s works of “The Progress of International Government” in 1933 and “A Working Peace System” in 1943. Functionalism was developed in the 1940s and has been central to the study of international integration as well as “a central component of the study of international and non-governmental organizations” (Rosamond, 2000, p.31-32). It was developed to “theorize the conditions for ending the human conflict” since the world was in a tough political air at the time (Rosamond, 2000). Therefore, functionalism challenged the state-centric power politics to create and sustain a peaceful international system. In order to achieve that, functionalism favors loyalty transfer to the supranational institutions and expects those institutions to exercise the functions attributed to the state. These institutions can be international or transnational agencies and will be free of the constraints of territory and ideological differences of individual states, therefore, thought to be more flexible and be able to realize the function of the

state better in such an environment. Functionalist's expectation of a functionalist action is "to produce the conditions for the expansion and reproduction" of such institutions or agencies which will help to sustain the peace through growing interdependence among states and societies in a way that is unlikely to produce conflict (Rosamond, 2000, p.35-36). Although functionalism is not anticipated with an idea of European integration and was criticized for its underestimation of the continuing importance of politics (Rosamond, 2000, p.39-40), this concept has cast its influence on neofunctionalism. "The adoption of functionalist theses by political and administrative actors, such as Robert Schuman and Jean Monnet" (Saurugger, 2014, p.35), begot a state cooperation in the form of the European Coal and Steel Community (ECSC) in 1951 and European Economic Community (EEC) in 1957 as an attempt to bring peace to the continent. The neofunctionalist theory, in this regard, became concerned with these empirical developments and aimed to lay down an analytical framework for studying the European regional integration by revising the functionalist theses with the influence of the rising behaviorist academic environment of the time (Rosamond, 2000, p.186). "Understanding the reasons for, processes leading to, and consequences of, regional integration" therefore can be summarized as neofunctionalists' aim (Saurugger, 2014, p.34). The neofunctionalist logic is focused on the role of societal groups (Jensen, 2010, p.75) such as interest groups, political parties as well as employers' associations and trade unions (Saurugger, 2014, p.35) for explaining "whether and how economic integration leads to political integration" (Jensen, 2010, p.74). Pluralist political science can be said to have influenced neofunctionalism in terms of focusing on multiple, diverse, and changing actors in the integration process (Niemann & Schmitter, 2009). The emphasis on societal groups in providing impetus for more integration is explained by these group's relation with the supranational institutions. Therefore, another important aspect of neofunctionalist theory to be mentioned is its emphasis on the development of supranational institutions and organizations in the integration process (Jensen, 2010, p.75). The MS' need to create efficient decision-making and effective enforcement in a Union with multiple national governments and their interests in various policy areas pressures the MS granting authority to the supranational institutions, and this makes supranational institutions more than passive tools of the MS (Pierson, 1996, p. 132). The reason for

supranational institutions' casting influence in the integration is because of that "once established, supranational institutions tend to take on a life of their own and are difficult to control by those who created them" (Pierson, 1996 in Niemann, 2008, p.561). Hence, in contrast with the functionalist approach, neofunctionalists reinstate political agency into the integration process. The supranational institutions are important in the sense that they also, in a sense, serve other groups to exert their influence in the decision-making process. That is to say, for instance, "[the Commission] is centrally located within a web of policy networks and relationships, which often results in the Commission functioning as a bourse where problems and interests are traded..." (Mazey and Richardson, 1997 in Niemann, 2008, p.562). On the other hand, as another supranational institution, the EP provides a forum for discussions of political importance during the EU legislative process (Bouwen, 2002, p.380). The trait of the supranational institutions being a venue for the societal groups which are seeking to influence the decision-making process is, therefore, a crucial component in the neofunctionalist logic in moving the integration process further. The inability of the "interest-driven national and supranational elites' influencing the policy outcomes because of the limitations of national solutions provide the key impetus" to address their concerns in the supranational arena (Niemann & Schmitter, 2009, p.48), therefore, this motive moves the integration process forward as well. How these groups' actions contribute to integration is explained via creation of a pattern of behaviour. As Rosamond states that:

Neofunctionalists argue that the aggregation of the actions of these societal groups creates patterns of behaviour that would come to continue a system and these patterns would become apparent in changed behaviour on the part of groups because integrative processes would alter the attitudes and strategies of interest groups seeking to influence policy outcomes. The patterns of behaviour of societal groups would follow by loyalty transfer i.e. shift of loyalty from the national governments to the supranational institutions as the case that the groups may change their political organization and tactics in order to gain access to and to influence, the new central decision-making center (2000, p.56).

That is to say that under neofunctionalist logic these rational and self-interested actors have the capacity to learn and change their preferences (Haas, 1958). Governments' preference formation, thus lies with the transformation of domestic interests through learning and European cooperation, as well as the emergence of EU-level interests (Conzelmann, 2015). Elite socialization is another aspect of neofunctionalism adding

the learning process of the officials and politicians in the decision-making process as well as of societal groups which are seeking to formulate their interests in supranational level via supranational interest group formation (Jensen, 2010, p.78), therefore, contributing to supranational decision-making and integration. The logic behind this assumption is that “over time, people involved on a regular basis in the supranational policy process will tend to develop European loyalties and preferences” (Pentland, 1973) because of the intense decision-making process that may require long time to work on it. Eventually, this situation creates an environment in which the actors involved into the process with “frequent and close personal contact” (Jensen, 2010, p.77). Moreover, neofunctionalists also predicted that integration would be “driven by more technocratic and functional needs” as the “international negotiations would become less politicized” (Jensen, 2010, p.75-77). In Haas’s (1958) words it is because that:

In inter-governmental ECSC negotiations, the long familiarity of the negotiators with each other's habits and viewpoints enables them to differentiate almost immediately between argument based on bargaining points and positions defended because of technically sound information and relevant conditions. As a result, discussion for the sake of bargaining diminishes in importance and attention is paid more and more to the technical needs in question (Haas, 1958, p.291).

That is to say that the agenda is expected to move “towards more technical problems upon which it was possible to forge agreement” (Jensen, 2010, p.77). The mechanism triggering the process moving to integration, which is also to trace the elements mentioned above of involvement and influence of supranational institutions and societal groups in the integration process, is addressed with the concept of spillover in neofunctionalist theorization. There is functional spillover and political spillover, and these are the products of the earlier versions of neofunctionalism. Cultivated spillover (Tranholm-Mikkelsen, 1991) and exogenous spillover (Niemann, 2006) were termed later with the revising and development of neofunctionalist theory. In my analysis of the development of external border management, I will use each of the spillover types mentioned above, which means that the revised neofunctionalist theory is included in the theoretical lens I will use in looking into the developments in the external border management of the EU for a comprehensive analysis. Before explaining the spillover concept and its sorts, I would like to cover the whole neofunctionalist story as the

developments in between have had their impact on revising the explanatory power of the theory and the spillover concepts as well as revising the theory.

#### **2.2.1.1. Neofunctionalism Revised**

The “Empty Chair Crisis” of 1965/66 which arose due to the refusal of French President Charles de Gaulle to attend any intergovernmental meetings in Brussels, and, again, France’s veto on British candidature to the EU both in 1963 and 1967 put doubts in the integration process, decelerated the optimism that has started with the speedy developments of the EEC and the European Atomic Energy Community (EURATOM, the EAEC) (Tranholm-Mikkelsen, 1991, p.7). These empirical developments stressed neofunctionalism as its fate almost became dependent on that of the EC (Tranholm-Mikkelsen, 1991). Neofunctionalism “was trying to explain something that did not exist yet (the complete integration) and whose existence could only be postulated” (Rosamond, 2000, p.87). The dependent variable problem with neofunctionalism regarding the completion of integration urged the neofunctionalist scholars to rescue the theory. Haas proposed the identification of multiple dependent variables as a solution which would bring more fluid theorizing about the EU integration (Rosamond, 2000). This brought about the solution that the EC was accepted as a complex political system due to a large number of actors in it so that the complexity of the EC policy process was expressed as “turbulence” by Haas (1976). As a response to the critic of lack of consideration of real-world events in neofunctionalism, the EC was placed within the changing global order via Schmitter’s (1970) revision that pays attention to the geopolitical shocks which might prompt actors into creating regional economic and political institutions (Rosamond, 2000, p.93). As stated in Rosamond (2000, p.90-91), Lindberg & Scheingold (1970) contributed to the examination of the EC and integration by including the concept of “environment” in their analysis of the EC’s political system and the concept represents the context provided by the MS with all other external factors. With the emphasis on external context, Haas (1975, 1976) states that why other regional integration schemes evolved differently from the European model could be explained (in Rosamond, 2000, p.93). A more recent refinement of neofunctionalism came from Niemann (2006, 2016) with his contribution to the external context and its impact on functional spillover that will be

discussed below under the exogenous spillover section proves relevant in examining the EU's external border management. Although by the mid-1970s Haas had declared the theory as "obsolescent" (1975, 1976), Tranholm-Mikkelsen (1991) shows in his article why it was an early abandonment of neofunctionalism and not the end of it. Tranholm-Mikkelsen (1991) argued that there is evidence of functional, political, and cultivated spillover in European integration since the mid-1980s. Developments that came into the EC scene in the 1980s especially with the "White Paper" (Commission of the European Communities, 1985) on completing the internal market showed there is a way to go for neofunctionalism.

### **2.2.1.2. Concept of Spillover**

For neofunctionalists, the concept of spillover represents the mechanism and dynamism of integration and it is the non-state actors, including supranational institutions, rather than sovereign states who trigger spillover effects in the integration process. The member states, in this sense, "remain important actors in the process, however, they do not exclusively determine the direction and extent of subsequent change" (Schmitter, 2002, p.2-3). Haas (1958)'s definition of spillover assumes that the "creation and deepening of integration in one economic sector would create pressures for further economic sectors and greater authoritative capacity at the European level". However, according to Lindberg (1963) the concept of spillover refers to a process "where political cooperation conducted with a specific goal in mind leads to the formulation of new goals in order to assure the achievement of the original goal", which can be said to have a more broad understanding of spillover which is considered in this thesis. All in all, all of these definitions commonly suggest that "political cooperation, once initiated, is extended over time in a way that was not necessarily intended at the outset" (Jensen, 2010, p.75). Considering the revival of EU integration in the 80s and the creation of the objective of a Single Market, the tool of spillover proves to be a useful tool to analyze the further integration process that has spreaded over to the case of external border management in the EU.

### **2.2.1.3. Functional Spillover**

Functional spillover definition of Nugent (2017) highlights the difficulty of limiting the integration to particular economic sectors due to the “interconnected nature of modern economies” (p.448), and, therefore, defines functional spillover as the “integration in one sector producing pressures for integration in adjoining and related sectors” (Nugent, 2017). Regarding this definition, the direction of spillover is not necessarily only from and to economic sectors, but allows including other sectors than particular economic sectors, and offers a more broad definition. In functional spillover, “cooperation in one sector/issue area ‘functionally’ creates pressures for cooperation in another related area” (Jensen, 2010, p.76). That means, in order to achieve integration in one area, another political goal should be achieved as well for the fully functioning of the initial area. In this regard, Jensen (2010) suggests that the generation of a new political goal is at the core of the neofunctionalist concept of spillover (p.76). One of the biggest examples of functional spillover in the EU is the Single Market as it will be analyzed in the next chapter. The Single Market in economic area generated a new policy goal of common border management due to the interdependent character of abolishing of borders with the Single Market’s need for free movement of persons alongside free movement of goods, services and capital. Therefore, taking common measures on external borders to provide free movement within the Union became functionally interlinked.

Following the functional need of internal security for a securely working internal market, the JHA started as a “flanking measure” (Kaunert, 2005, p.466) of the Single Market, then developed into a more integrated AFSJ including the agencies of Frontex and later on the EBCG making a case relevant to examine the integration process in neofunctionalist sense. In addition, Niemann (2006, 2016) further contributed to the functional spillover concept by suggesting a linkage for functional spillover through exogenous events which named as endogenous functional spillover. This type of spillover helps us to understand pressures emerging within the same sector (endogenous to it) as a result of the impact of the exogenous factors, and is useful in analyzing the external developments affecting the development of the external border management in the analysis part.

#### **2.2.1.4. Political Spillover**

“Political spillover occurs in situations characterized by a more deliberate political process, where national elites (governmental elites) or interest groups (non-governmental elites) argue that supranational cooperation is needed in order to solve specific problems” (Jensen, 2010, p.76). Nugent (2017) suggests that the reason for those groups to demand a supranational cooperation and shifting their loyalty toward supranational institutions is because they see the European arena more beneficial in order to promote and advocate their interests, therefore, their interests to be heard and to reach an increasing success in the policy outcomes (p.448). Hence, European solutions become useful to follow for those groups, therefore, this situation also serves for the upgrading of European integration. Another aspect of political spillover is that supranational institutions and non-governmental actors become important actors in the process since integration gains increasing importance by generating “pressures and demands for political control and accountability at the supranational level” (Nugent, 2017, p.448).

Political spillover is closely associated with the “elite socialization” thesis of neofunctionalism in furthering the integration. According to the elite socialization thesis, the EU officials and politicians (governmental elites) involved in the supranational decision-making process in the EU generate European loyalties over their nation-state (Pentland, 1973). It is because that these groups learn to “refocus their activities, expectations and even loyalties to the new center” (Tranholm-Mikkelsen, 1991, p.4), therefore, the elite socialization refers to a “learning process” that leads to mutual trust among officials and creates “esprit de corps” between governmental elites (Lindberg, 1963). Elite socialization is observed during the process of establishment of EBCG with the involvement of Council preparatory bodies such as Working Party on Frontiers, Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), and JHA Counsellors (De Capitani, 2016; Niemann & Speyer, 2018). These bodies created a space for discussion and socialization for governmental elites for modifying the Commission proposal of establishing an EBCG and understanding each other’s recommendations on the further strengthening of the common external border management (Niemann & Speyer, 2018). On the other hand,

Haas (1958) suggests that non-governmental elites also push the European integration by exerting pressure. The border security industry and the Commission's relationship can be an example emphasizing the importance of integration in the external border management for the industry, although more research is needed in this area. Interest groups, namely, the business interest groups and NGOs in the process of establishing Frontex and the EBCG are examples examined in this category as well and their presence is detected in different stages.

#### **2.2.1.5. Cultivated Spillover**

For this type of spillover, supranational institutions such as the European Commission and the European Parliament play a crucial role to uphold the integration process. Becoming of an "agent of integration" during the integration process benefits these institutions because as the integration furthers, the authority these institutions receive increases, hence serving them in a positive way (Bergmann & Niemann, 2015, p.6). The various means that supranational institutions may promote the integration process are via giving initiatives, acting as mediators, policy entrepreneurs, "or through promotional brokerage lifting agreements beyond the lowest common denominator" (Haas 1961, 1964 in Bergmann & Niemann, 2015, p.6). A big part of the task of cultivating the integration process is especially associated with the European Commission due to its special place in the EU decision-making system (Nugent, 2017, p.129). It is in the center of the decision-making system as it has the power of initiating legislation, and "is present in virtually all decision-making forums and at all decision-making stages" (Nugent, 2017, p.147). Another feature making it a central institution is that the Commission is "well-informed state about the positions of other actors" and its advice is needed by the other actors (Nugent, 2017, p.147). Moreover, the Court of Justice of the European Union (CJEU/ECJ) (Mattli & Slaughter, 1998), the European Parliament (Westlake, 1994), and the Presidency of the Council of the European Union Governments of the Member States to the European Union (the Council Presidency) (Elgström, 2003) are also found to be influential in the policy and decision-making processes of the Union. The CJEU has long been adhered as an "independent motor of European integration and its constitutionalised jurisprudence impacts heavily on European and MS policy-making" (Blauberger & Schmidt, 2017). The EP on the other

hand, gained considerable power throughout the legislative development of the Union to influence in the EU system through the legislative process (i.e. through consultation, ordinary legislative procedure (OLP), and consent), budgetary process, and control and supervision of the executive (Nugent, 2017, p.201). Moreover, it is also argued in the literature that the Council presidency provides the MS who is holding it<sup>3</sup> with an opportunity to influence legislative decision-making. The MS holding the Council presidency enjoys an advantageous position in terms of information and procedure during its six months in the office (Tallberg, 2006). This makes it an “alternative architect of coalition” (Elgström, 2003, p.40). How the Council presidency experience can cultivate spillover is that with this experience national officials go under a “rapid learning process about the various national dimensions which induce a more ‘European thinking’ and facilitate ‘European compromises’” (Wurzel 1996: 272, 288 in Niemann, 2008, p.562). The effect of the Council presidency to the integration is similar to the elite socialization thesis mentioned in the previous subtitle in terms of its upgrading potential of the integration via socialization and learning processes. The Commission’s effort to advocate the need for a more integrated external border regime and its guidance on MS to ignite the establishment of a border agency are visible examples of cultivated spillover that are examined in the analysis part of this thesis. The Parliament’s alliance with the Commission in establishing Frontex as well as the interaction between the Council presidency and the Commission in upgrading the border regime to the EBCG are examples of cultivated spillover in this area.

#### **2.2.1.6. Exogenous Spillover**

Neofunctionalism has been criticized for not taking the outside world into consideration in its theorization and is mostly concerned with internal dynamics in examining EU integration. Although Haas “implied global interdependence and also pointed out the relevance of some exogenous factors”, the necessary attribution was

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<sup>3</sup>Since the Lisbon Treaty, the Council presidency has been rotating among the EU MS every 6 months which is called “rotating presidency”. “The MS holding the Council presidency work together in groups of three, called ‘trios’” for an 18 months period (European Council a, n.d.).

not made to external events (Niemann, 2006, p.32). In this sense, exogenous spillover concept interpreted by Niemann (2006) can be said to be a response to the critic of neofunctionalism and it encourages theoretical study to consider “tensions and contradictions” taking place outside the EU in looking at the integration process (p.5). How this term was engaged as a dynamic of the integration process is via threat and/or shock discourse. The rationale behind this is that there is an integrative impact of external threats and shocks leading to close cooperation of partners or MS in such instances to find common solutions (Niemann, 2006, p.33). The second rationale of exogenous spillover to ignite integration is that it is being about the perception of regional integration which is seen as a “buffer against disadvantageous or uncertain external developments” (Niemann, 2006, p.33). For instance, this can be against globalization, migration, environmental destruction, or international terrorism. It is argued by Niemann (2006) that in order to tackle those issues successfully a common approach is needed, and exogenous spillover is igniting further integration in this sense. Moreover, another mechanism igniting further integration is related to the exogenous spillover is that the endogenous functional spillover. For instance, although external, the issues of enlargement and migration have become so intertwined with the endogenous concerns of EU policy areas and functioning of the EU that they also serve as triggers for functional spillover as a result of exogenous event’s stimulating the endogenous concerns within the Union (Niemann, 2016). I will be discussing these examples and endogenous functional spillover mechanism in the analysis chapter of this thesis as they contribute to the development of the external border management.

### **2.2.2. Intergovernmentalism**

“Until the mid-1960s theory of integration had been a domain for the functionalist perspectives on international restructuring” (Rosamond, 2000, p.80). However, the integration process came into a crisis during the mid-1960s with the rising national sentiments in the EC/EU, as explained in the previous section, and these developments became a source for harsh criticisms on neofunctionalism’s usefulness in explaining the integration as the integration process was put into danger. Rosamond (2000) states that the empirical developments that took place in the EC/EU actually “represented something more profound about the nature of nationalism and the enduring qualities

of statehood” (p.75). Intergovernmentalism emerged in the mid-1960s, and became a rival to neofunctionalism. Intergovernmentalism took its roots from realism and neo-realism. Realists have criticized the “inter-war idealist emphasis on the perfectibility of humanity, post-national systems for peace, and the advocacy of international organizations” (Rosamond, 2000, p.131). In realist understanding, states are interpreted as rational and unitary actors which are pursuing their self-interest in an anarchic environment, and their self-interest is shaped by their “evaluation of their position in the system of states” (Rosamond, 2000). The policy-making of a rational state, thus, involves minimizing risk and maximizing benefits for survival in its international affairs. Later on, neorealists which added the systemic level into account updated realism and described the post-second world war environment as a change from a multipolar to a bipolar one (Waltz, 1979, p.71). The EU is placed into a wider structural context, and within the bipolar world order states are considered as playing “fairly traditional interstate games” (Rosamond, 2000, p.133). In this system, the EU is interpreted as a “mechanism for interstate cooperation that fulfills the survival imperatives” (Rosamond, 2000). Influencing from this background, intergovernmentalism put emphasis on the nation-state as a rational and unitary actor in examining the integration and does not consider the impact of supranational institutions or transnational actors. For intergovernmentalism, in moving of the European integration “states’ interests and the outcomes of EU bargaining” is important (Bergmann & Niemann, 2015, p.9). Although little attention is paid to the non-governmental actors within the state, these do not exert a crucial influence to the integration for the intergovernmentalists (Nugent, 2017, p.450). The reference point to examine the pace of integration for intergovernmentalists, hence, is the MS and their actions which means that the integration is depended on the “decisions and actions taken by the MS governments” (Nugent, 2017). The basic point of intergovernmentalism criticizing neofunctionalism and that wants to provide with the theoretical studies field is the importance of national interests in a “continued centrality of the nation-state” in the “post-war European experiment with integration” (Rosamond, 2000, p.76). For intergovernmentalism, the result of intergovernmental bargaining on the EU table does not lead an automatic integration in new policy areas as neofunctionalists suggests (Saurugger, 2014, p.55). Stanley Hoffman (1966), who

represents classical intergovernmentalism, explains the emphasis given to the nation-state and the national interest with the term ‘the logic of diversity’ in contrast to ‘the logic of integration’ which favoured by neofunctionalism. The international system produces more diversity than a homogenous system in which governmental influence is exerted because states face a diversity of concerns and problems (Saurugger, 2014, p.58). As well, cultural differences are playing a role in establishing those concerns and interests of states (Cini, 2010, p.91). The diverse external geopolitical situations of the states and where they locate themselves in the global political economy put the EU MS in different relations with powerful external actors, therefore, the emergence of uncertainty would lead to conflict between governments (Rosamond, 2000, p.76-77). In his formulation, Hoffmann (1966) put a deeper understanding to the “interests” by not taking it as a derivative of the structural balance of power calculus (Rosamond, 2000). Rather, “national interests, and the national preference formation, are arising in the context of the states’ perception of its relative position in the state’s system” (Bergmann & Niemann, 2015, p.9). This is what brings diversity to the system in determining the national interest of the MS in intergovernmentalist logic.

There is also a distinction made by Hoffmann (1966) between ‘high’ and ‘low’ politics issues in understanding how European integration takes place, i.e. how the national interests lead (or not) the integration. According to the high and low politics distinction, while the European integration is possible and not particularly controversial in certain technical domains i.e. economy, it is sensitive and complex in the issue areas of high politics such as foreign policy, security, and defence. The reason that integration is possible in low politics issues can be explained as these areas do not pose a threat to the “position of the national elites” and to the ‘vital national interests’(Rosamond, 2000, p.77). In contrast, high politics issues represent core sovereign state prerogatives, and in the areas of high politics the importance of national definitions of interest and of sovereignty concerns lead the MS to retain the power for vetoing unwanted developments, hence integration in these areas become unlikely to proceed. In relation to this, Hoffmann (1966) states that “nations prefer the certainty, or the self-controlled certainty, of national self-reliance, to the uncontrolled uncertainty of the untested blender” (p.882). In addition, intergovernmentalist logic interprets the existence of the “purposeful supranational institutions with their own

agendas” as a threat to the national policy actors to the extent of advancing uncertainties externally, as in the case of the rise of the EC caused fears in the US as its becoming of a rival hegemon (Rosamond, 2000, p.78). Considering these factors, intergovernmentalism brings autonomy to the high politics area and, therefore, to the integration process, and wither away the neofunctionalist logic of automaticity of integration. This is an important contribution in intergovernmentalism indicating that integration is prone to be halted or even reverted, and is not an automatically continued process once started as neofunctionalists claim. In other words, because of the “centrality of state actors and the persistence of national sentiments” as countervailing forces, functional integration is not necessarily move within a “prescribed” direction (Rosamond, 2000, p.78). Neofunctionalists accepted this side of the integration later on and developed their view in identifying the integration with adding new concepts to their theory such as ‘spill-back’ (Lindberg & Scheingold, 1970 in Rosamond, p.93). Spill-back can be explained as a “retreat on both dimensions, possibly returning to the status quo ante initiation” (Schmitter, 1970, p.846).

All of these factors considered by intergovernmentalists stand for that integration has no ideological or ideal side and it is not a process as neofunctionalists claim, rather it is a cooperation based on cost-benefit analysis of the nation-states. This cooperation is “essentially conservative and pragmatic” which means that for the MS governments to solve their problems, cooperation is a rational way in the modern world to come to terms with common solutions via common problem solving (Cini, 2010, p.89). For intergovernmentalism, effective cooperation depends on the “convergence” of the national interests i.e. preferences of the MS at the bargaining table (Cini, 2010, p.91), but in the areas of high politics, such convergence is unlikely to happen. This shows that there is no room for a supranational dynamic under this logic of examination (Conzelmann, 2015). States manage to involve themselves in EU integration without giving up on their sovereign rights; they prefer pooling or sharing of their sovereignty instead of transfer it directly to the supranational level. They only “transfer sovereignty to the institutions where potential joint gains are large” (Moravcsik, 1999, p.9).

Although intergovernmentalists accept that European integration can involve delegation of sovereignty to so-called supranational institutions i.e. the European

Commission and the European Parliament, these institutions are far from playing an independent role and delegation lies within the limits of states' interests (Cini, 2010, p.90). For instance, in his work in examining the Single European Act (SEA) bargains, Moravcsik (1991) gives emphasis on supranational institutions, however, in a sense that they are acting as facilitators of positive-sum bargains and states that "the primary source of integration lies in the interests of the states themselves and the relative power each brings to Brussels" (p.56). In this regard, supranational institutions do not exert any influence in the sensitive policy domains within the EU integration process and may perform "a more important role" in less sensitive policy areas (Cini, 2010, p.90). The Council of the European Union (The Council of Ministers, shortly the Council) and the European Council are the EU institutions favoured by intergovernmentalists in this sense.

Several criticisms were raised for intergovernmentalism as well. Firstly, Hoffmann's distinction between high and low politics and namely autonomy in the high politics was subjected to criticism with the intensification of European integration in the 1980s and 1990s namely by empirical developments of the establishment of the European Political Cooperation (EPC) which later on turned into the Common Foreign and Security Policy (CFSP) via the Maastricht Treaty enshrining political and security cooperation in a treaty for the first time (Cross, 2011, p. 45), as well as coordination of economic and fiscal policies and acceptance of the single currency by 19 MS (Cini, 2010, p.92). In this regard, "the EC/EU system is meant to be read as clearly something more complex than a straight intergovernmental system that rejects further integration" (Rosamond, 2000, p.79). Secondly, intergovernmentalism was criticized that in an increasingly interdependent environment the bargains at the European level could not simply be reduced to a set of national interests (Cini, 2010, p.92-93). It is suggested by Webb (1983, p.23) that the MS preference formation is not simply determined but depended on "a set of domestic bargains and trade-offs" which makes hard for the MS to form a "consistently highly orchestrated national front" (in Rosamond, 2000, p.79). That means, the sensitive policy areas such as foreign policy and security, therefore, does not necessarily represent a "no-go area" for the EC and the integration can be possible in these areas too (Tranholm-Mikkelsen, 1991, p.17).

Neoliberals' view on the origin of state interests and preferences gave a different emphasis to the significance of domestic politics and built the ground for a more sophisticated understanding of state preferences influenced by Putnam's (1988) 'two-level game' (Rosamond, 2000, p.135). Those criticisms opened up the way for the development and adaptation of intergovernmentalism in many forms in which the most prominent is Moravcsik's Liberal-Intergovernmentalism (LI).

### **2.2.2.1. Liberal-Intergovernmentalism (LI)**

LI pick up from where intergovernmentalism left the questions of why states accept to give up on their sovereignty and how they negotiate the proper form of integration amongst each other. In his interpretation of Putnam's 'two-level game', Moravcsik combines "the liberal theory of national preference formation" and the "intergovernmentalist account of strategic bargaining between states" (Rosamond, 2000, p.136). Under this view, national preferences are built upon the consequences of the state-society interaction, rather than the sovereign state's relative position in the international system as classical intergovernmentalism claims (Rosamond, 2000, p.137). When the interests are formulated, they are "bargained in an intergovernmental fashion" and those bargains restrict the range of possible integration outcomes (Rosamond, 2000). In LI, states are rational actors still as "the primary interest of governments is to maintain themselves in office" (Moravcsik, 1993). Supranational institutions in this sense are facilitators of intergovernmental bargains as it was also claimed by classical intergovernmentalism. Integration, thus, strengthens the states and this is why MS agrees with decisions that would make them less autonomous. Alan Milward further interpreted this point through his contribution with the term "rescue of the nation-state" (1992) by which he claims that states meet with the societal demands for their long-run survival in the post-world war environment (in Cini, 2010, p.89, box 6.2). However, as a response to this idea Wessels (1997) highlighted the evolution of the welfare-state directing the government in the direction of servicing human needs and seems to factor in the old functionalist arguments about the key task of government (in Rosamond, 2000, p.140). Moreover, Lindberg (1994) argues that the same analysis of Moravcsik can be applied to an understanding of the European Commission in the process of national interest formation which can bolster

neofunctionalist claims. Regarding to this aspect for instance, Lindberg (1994) draws attention to the European Commission's "entrepreneurial advantage" stemming from its ability to exploit the differences among the MS, hence their diverse preferences, and also via exploiting "MS government's abilities to play off divided domestic interests" (Rosamond, 2000, p.83) which are at the end strengthening supranational institutions' hand. Lastly, I would like to touch upon the point that in LI the emphasis given to the big events of integration i.e. summits where international bargaining happens is resembling taking snapshots of a film and only focusing that part to understand the integration is undermining the effect of day to day politics and gestation of policies (Conzelmann, 2015).

### **2.2.3. Middle-Range Theory**

The middle-range theory emerged as a response to the increased scholarly attention from different strands directed in the European integration research area (Nugent, 2017, p.454) and for the purpose of capturing the current phase of the EU as an independent variable (Rosamond, 2010, p.105). While the grand theory is concerned with the general integration process and the form that integration would take, the middle-range theory looks at politics and policies of the EU i.e. how the EU functions, how it delivers authoritative outputs, and what the EU today is (Conzelmann, 2015; Nugent, 2017). Middle-range theory studied European integration benefiting from subdisciplines of political science. Comparative politics, governance, and public policy are used as approaches to study EU integration. The new theories/approaches of integration can be used in an eclectic manner to understand the EU integration. Titles that will be introduced under this section do not represent fully developed theories rather approaches looking at particular sides of the EU integration.

#### **2.2.3.1. Governance Approaches**

"Governance is a means to achieve collective benefits by coordinating human activity" (Hooghe & Marks, 2009, p. 2), and it represents the total of rules, procedures, and norms at the achievement of common interests in a specific issue area (Conzelmann, 2015). Governance approaches are concerned with the "capacity of the EU to govern effectively" (Peters & Pierre, 2009, p.91) and "how the type of polity impacts on the

policy adopted” (Jachtenfuchs, 2001, p.252). For instance, according to Peter & Pierre’s (2009) interpretation, the approach is important to understand the capacity and implications of the EU governance “to fulfill the goals and dreams of its leaders, and of its citizens” (Peters & Pierre, 2009). In this regard, “the capacity to govern” is also important in the sense that it “directly influences the ability of this system to maintain its progress toward greater economic and political integration” (Peters & Pierre, 2009, p.91). Regarding the increasing complexity of the EU’s organization in today’s world, governance approaches capture the nature of the EU as “being more than an international organization but less than a federal state” (Börzel, 2018, p.6), and nor a political system comparable to the member states. That is to say that the EU has a *sui generis* character, yet it governs European societies (Conzelmann, 2015). In order to utilize the governance concept, types of governance developed in this study area are as such; democratic governance, network governance, multi-level governance, and supranational governance.

#### **2.2.3.1.1. Multi-level Governance (MLG)**

MLG was developed by Marks, Hooghe, and Blank (1996) and it suggests that “the EU policy process is not something simply happening at the European level” anymore as authoritative decision making is happening at multiple territorial levels (Rosamond in Cini, 2010, p.115). These are namely regional, national, and local levels (Börzel, 2018, p.12). Nugent (2017) notes on MLG so that

Rather than national political activity being confined to the national arena and national inputs into EU decision-making being channeled via state-level actors, a variety of channels and interconnections between different levels of government exist and are important. States are an integral and powerful part of the EU, but they no longer provide the sole interface between supranational and subnational arenas, and they share, rather than monopolize, control over many activities that take place in their respective territories (p.445).

Therefore, it can be understood as a criticism of liberal-intergovernmentalism’s state-centric approach. However, MLG neglects public and private non-state actors i.e. the role of business and civil society actors as EU policy actors in the EU policy process (Börzel, 2018, p.6-7), thus delimits examination of different actors’ involvement in the EU policy process.

### **2.2.3.1.2. Supranational Governance**

Supranational governance is a theoretical approach developed from neofunctionalist theory by Sweet and Sandholtz (1997) and in contrast to MLG, this governance approach privileges “the role of transnational exchange (e.g. trade, the development of Euro-groups, networks, and associations in short non-state actors i.e. NSA’s) in pushing the EC’s organizations to construct new policy and new arenas for policy-relevant behaviour” (Sweet and Sandholtz, 1997, p.298). Sweet and Sandholtz (1997) argues that;

Supranational governance serves the interests of (1) those individuals, groups, firms who transact across borders, and (2) those who are advantaged by European rules and disadvantaged by national rules, in specific policy domains. The expansion of transnational exchange, and the associated push to substitute supranational for national rules, generate pressure on the EC’s organizations to act. As a result, the density of supranational rules grows....and these processes gradually, but inevitably, reduce the capacity of the member states to control outcomes (p.299-300).

“Once EC rules are in place, a process of institutionalization occurs and this process provokes further integration” (Sweet and Sandholtz, 1997, p.297). In the beginning, this approach encouraged me to conduct my theoretical research based on its assumptions in explaining the external border management area as the area is under a treaty-based policy domain and exemplifies a movement from intergovernmental to supranational politics, however, explaining the integration only through focusing on transactional actors in the establishment of Frontex and the EBCG proved limited due to the limited transactional factors i.e. business actors I encountered in examining the process. Therefore, this transaction-based approach would only help me partly explain the story of the EU's external border management.

### **2.2.3.2. Institutionalism & New-Institutionalism**

The EU is constituted of various supranational institutions as well as intergovernmental bodies that is to say that it is a highly institutionalized entity. Institutions matter for institutionalists because “institutional configurations have an impact upon political outcomes” (Rosamond, 2000, p.114). New institutionalists, which have emerged as a reaction to rationalism and behaviouralism, state that

“institutions matter in shaping the actions of political actors and in determining decisional outcomes” beyond their formal powers and structures (Nugent, 2017, p.454). It is noted by scholars that there are various informal interactions in the formal structure of the EU that are constituted of informal procedures, practices, relationships, customs, and norms, and these are affecting the policy outcomes (Rosamond, 2010, p.109). Hall and Taylor (1996) suggest that the existence of analytical approaches within new institutionalism is at least in three types (p.936), and these are the approaches of historical institutionalism which explains decision-taking as “path-dependent”; rational choice institutionalism which examines the extent to which institutions affect rational actions of political actors; and finally sociological institutionalism which is focusing on the cultural aspect of institutional practices. Institutionalism and new-institutionalisms does not fit in my research framework as I do not problematize the institutionalisation and agencification aspect of the EU integration, i.e. establishment of Frontex, later on, the EBCG, per se as a Community agency. Rather, I examine the process which ended up with the establishment of an agency as a part of the European project.

### **2.3. Conclusion**

In this chapter, the aim was to give space to the main theories of EU integration and their main concepts in grasping the nature of the EU integration and how it can be explained as well as to some of the middle-range theories of integration which are focused on the governance and institutional side of the EU in explaining the integration. Since in this thesis the main concern is to explain the process of integration in the external border management area via the example of the establishment of Frontex, and later on the EBCG, it is found useful to benefit from the neofunctionalist theory to explain the incremental integration in this area especially due to its pluralistic nature fitting in the multidimensional feature of the EU. Moreover, observing the trend of more communitarization in the internal security area of the MS which is a ‘high’ politics area is another important aspect to take account of neofunctionalism rather intergovernmentalism in examining the integration in the sub-policy area of external border management. The external border management area in the EU is an example where harmonization of the rules are taking place despite of the sensitivity of the MS.

The area is not fully integrated yet and the surveillance of their borders and ensure its management is in the hands of the MS but the area exemplifies an important harmonization trend as well. In particular, the mechanism of spillover is a valid analyzing tool in the external border management research area due to the abundance of actors included in the integration process. Considering the inevitable link between the economic desire of creating a Single Market and realizing the necessity for providing internal security to the EU for the functioning of the market indicates the spillover trend in the language of neofunctionalist theory between policy areas, in this case, of economy and security which will be shown in the next chapters. The spillover concept and the types of spillover introduced in this chapter will be applied to the case study of Frontex, the EBCG, for providing the analysis of the integration in the EU's external border management area. How the concept of spillover is relevant and important in explaining the integration is that it represents dynamism and deepening between and/or within policy areas. MS are not the only actors who are leading the process of integration, otherwise, steps towards communitarization in the security area would not be expected as it represents one of the high politics areas as intergovernmentalists claim. Middle-range theories prove limited within this research scope due to their specific focus on what kind of political system the EU is turning to. Therefore, their job is not to explain the integration as a whole and as a process but provide different perspectives in particular analyses on policy-making and decision-making in the EU integration.

Neofunctionalism emerged as the first European integration theory yet became the most criticized one. However, through time it was tested and refined into a more comprehensive version with the contributions of its early writers as well as more recent scholars, therefore it cannot be counted as outdated. The dynamism in the EC in the second part of the 1980s has upheld the integration with the initiative of Single Market and spread on JHA/AFSJ, even begot to an agency i.e. Frontex to coordinate external border management. Each theory and approach is contributing to the EU integration from a different perspective by touching the different parts of the elephant. Neofunctionalism in this sense “may still only be dealing with some parts of the elephant, but it appears that those parts are among the ones that make the animal move” (Tanholm-Mikkelsen, 1991 p.19).

## CHAPTER 3

### JHA AND TOWARDS A COMMON POLICY ON THE EU'S EXTERNAL BORDERS

#### 3.1. Introduction

The *sui generis* character of the EU in the world arena and multidimensional nature of its integration process has introduced the EU studies field with one of a kind political system by being not of any type of a state or intergovernmental organization. One can say by looking at the key characteristics of the state namely territory, sovereignty, legitimacy, and monopoly of governance (Nugent, 2017), the EU could be considered as a state with the existence of them all, but these characteristics are present in partial ways (p.439). For instance, considering the concept of the territory shows how hard it is to fit the EU in specific geography due to its enlargement phenomenon. Therefore, changes in its borders either by accepting members like Croatia that is representing the latest accession to the Union with its joining in 2013 or withdrawal of the United Kingdom as the result of the Brexit process in 2020 shows that the land is not owned by the EU itself but MS are seizing their power of being the owner and having the monopoly of governance of their own territory. In such a complex system legislative actions are divided by competence areas. For instance, in most of the public policy areas such as “defence, foreign affairs, fiscal policy, education, and criminal law” decisions are still taken on a national level instead of creating a Union-level policy (Nugent, 2017, p.437). In other words, MS competences still prevail over the Union competences in some of the policy areas due to the national prerogatives, and decisions

and policies continue to be made on a national level in these areas. However, there are also policy-making areas that are subjected to shared competence which means that “both the EU and MS are able to pass laws” (European Commission 1, n.d.). Today the Union is taking common steps to develop the area of freedom, security, and justice and also taking actions in managing the external borders, which is a sensitive phenomenon due to the national clauses of the MS. In this sense, cooperation in the JHA appears to be one of the endeavours of the EU in creating these common steps. The rapid development of the JHA took place since the end of the 1990s and now under the name of AFSJ, the EU’s responsibilities for internal security issues such as combating irregular migration, cross-border crime and terrorism have grown under this area (Monar, 2006, p.507). In order to discuss the policy developments on the EU's common external borders and the establishment of Frontex in the next chapters, this chapter will discuss the introduction and development of the area of JHA and the current AFSJ. Moreover, examining the historical context together with the institutional developments which bore the first steps to legalize the internal security area and transformed it into an internal security project requires special attention in understanding Frontex which is established as an AFSJ agency. Regarding the historical context, under the part 3.2. the Single European Act (SEA) as the first achievement of the EC in the 1990s in creating the Single Market and then the developments regarding Schengen Agreement which is the precursor of today’s Schengen acquis will be examined to understand changes in borders and the meaning attributed to borders. As O’Dowd (2010, p.14) states, it is crucial to understand how borders are changing in order to assess the factors and developments facilitating cross-border cooperation. Then, under part 3.3., the transformation process of the JHA and the emergence of the AFSJ will be discussed. This part will especially examine the institutional developments from the establishment of Schengen to Lisbon Treaty for tracing the supranationalization of the area under the lights of the Treaty changes. As the last part before conclusion, in part 3.4. the EU policy programmes on AFSJ and their relationship with the common external border management will provide an insight about the further agenda of the AFSJ before focusing on border management with Frontex in the next chapter.

## **3.2. Historical Background**

### **3.2.1. Single European Act (SEA)**

In the EU's history, the Single European Act (SEA) represents an important step not only in moving the EU integration forward with the aim of creating a Single Market but also in terms of introducing abolishing of internal borders and reaching the standards necessary for providing the four freedoms of “free movement of goods, services, capital and persons” (European Union b, n.d.). This aim has to have a relation with the Union’s external border management with the linking of external and internal borders under an internal security project (Huysmans, 2000, p.752). In 1957, the EEC was created with the signing of the Treaty of Rome and the EU MS of Belgium, Netherlands, Luxembourg, Germany, France and Italy established a commitment to work towards integration and economic growth, through trade. By signing of the Treaty, the MS agreed to jointly eliminate trade barriers and other barriers between them to “ensure the economic and social progress of their countries”, “improve living and working conditions of their citizens”, create a common trade policy, abolish quotas and customs duties, have a common external tariff and supporting the integration of the EU (Treaty of Rome, 1957). Besides these specific goals, the Treaty (1957) has also envisaged a common market in which free movement of not only the goods but also people, services and capital in the territory of these six MS would be performed. Followingly, “the intra-tariff and quota barriers within the EU were abolished in 1968” to ease market activities across internal borders (European Parliament, 2018, p.1-2). However, thereafter the lack of supranational and intergovernmental decision making structures, partly the recession in the 80s, and partly the “lack of confidence and vision” between MS (Commission of the European Communities, 1985, p.5, para.5-6), including the protectionist attitudes among them due to the oil crises of 1973 (European single market, n.d.), hindered the momentum to move forward with the integration process. This situation has changed in 1982 with the increased commitment of the MS in the European Council meeting in Copenhagen (Commission of the European Communities, 1985, p.5, para.7). Following further discussions, in 1984 in Fountainebleau and in 1985 in Dublin Summits and Brussels Summit finally the Commission’s Single Market programme of 1985 and the White Paper set 31

December 1992 as the date for completion of the common internal market for the aim of transferring it to a Single Market. The Commission's "White Paper" presents a detailed timetable and program on the objective of completing the internal market and makes emphasis on the requirement of removal of "physical, technical and fiscal barriers" (Commission of the European Communities, 1985). Focusing on the removal of the physical barriers i.e. borders proves that for the development of the economic and the political integration elimination of internal borders of the MS gained vital importance. It has been stated in Article 12 of the Commission's "White Paper" (1985) that:

The reason for getting rid entirely of physical and other controls between member states is not one of theology or appearance, but the hard practical fact that the maintenance of any internal frontier controls will perpetuate the costs and disadvantages of a divided market (Commission of the European Communities, p.6).

This means that borders started to represent a different meaning for the EC that is to say that as a *barrier* between the MS causing obstacles in the the creation of an integrated market as well as an economic space, as they could also represent administrative, legal, political, cultural and even psychological barriers (O'Dowd, 2010, p.21, emphasis added). In this new meaning of borders we can also see the impact of globalization and competition in the revival of neo-liberal economy in the 80s as the borders were thought to hamper free market activities. Therefore, with the SEA, intergovernmental cooperation among MS has started to be shifted towards the community institutions (Kaunert et al., 2012, p.7). In terms of institutional development, signing of the SEA in 1986 introduced qualified majority voting (QMV) in the Council, expanded the powers of the EC in a number of policy areas and also opened the way to further political integration. As Huysmans (2000) argued that the link between the external and internal borders marked the shift of the SEA from a "socio-economic project of the internal market into an internal security project" (p.760).

The SEA cleared the way for removing of the economic and legal barriers within the Union's internal market for the sake of free movement of persons, goods, services and capital within the market for the functioning of the economic activities, therefore

contributing to the integration. The security concerns coming along with the abolishing of internal borders of the Union has brought about new consequences for the need of strengthening the barrier functions of the external borders which also required different kinds of regulations (O'Dowd, 2010, p.21). In this sense, it is important to note that getting rid of the borders to reach a Single Market neither meant the end of regulation nor the end of borders. The relation with the desire to abolish the internal borders and realizing the need for creating external border barriers shows us that abolishing internal borders as a consequence comes alongside with different forms of regulation and re-regulation in the EU regarding external border management. In other words, the signing of the SEA also implied different ways of managing borders. Hence, the other important factor to mention in terms of facilitating the way towards the institutionalization of border management is the Schengen *acquis*.

### **3.2.2. Schengen *acquis***

Today's Schengen *acquis* might be seen as a total of a mechanism which allows EU citizens to move freely across Schengen member states in Europe. However, it has been developed through various stages over time and cooperation with the MS. It has also brought about a broader meaning for the EU and the developments in the internal and external border management. The Schengen area "aims to allow EU residents to travel across the internal borders of its member countries without being checked or having to show their passports" (EUR-Lex b, 2020). In its original sense, the concept of free movement was introduced "to enable the European working population to freely travel and settle in any EU State", therefore the concept was considering only the working population when addressing to the free movement of 'persons' (European Commission 2, n.d.). The 1980's witnessed debates over ensuring the free movement of people within the EU. The idea of free movement of persons could not be applied effectively at the first attempt since no consensus could be reached within the Council regarding the concept of free movement of persons, and the decision making stayed subject to unanimous voting (Bertozzi, 2008, p.3). In the first years due to the MS concerns accompanied to the lifting of the internal controls, the EU could not realized abolishing of its internal border controls. Following this situation, on 14 June 1985 five member states namely Belgium, the Netherlands and Luxembourg, Germany, and

France signed the the Schengen Agreement (1985) as an intergovernmental agreement in the village of Schengen in Luxembourg with the common aim of gradually abolishing their internal border controls. Bertozzi (2008) highlights that this decision was aiming more than a further “closer practical cooperation at European level” since free movement of goods, and people, event hough within the context of working population, was a necessary condition for a Single Market (p.3). In this sense, the economic impact of the lifting of internal borders as they were seen as barriers to trade, and their hampering of the economic growth was an important element for the initiative of the five MS. Another important factor to consider here is that these five MS constituting of the ‘Schengen group’ took the advantage of the intergovernmental cooperation in the external border management field which has accepted as a ‘practical cooperation philosophy’ by the other MS in the following years too (Bertozzi, 2008, p.4). Following these developments, the “Convention Implementing the Schengen Agreement” (2000) laid down the measures and safeguards in 142 Articles, as a supplement to the Schengen Agreement, to put the policy into effect and was signed by the same five countries on 19 June 1990. Followingly, in 1992 countries of Italy, Spain, Portugal, and Greece signed the Convention, and later in 1995 Denmark, Sweden, Finland, and Norway joined as well (Hix & Høyland, 2011, p.278). The Agreement (1985) and the Convention (2000) all together constitutes the common set of Schengen rules namely the Schengen *acquis*. The Convention (2000) came into effect in March 1995. The Schengen *acquis* was integrated in the framework of the EU in 1999 and has become a part of the EU legislation. As new countries signed the Convention and these countries’ legislation incorporated into it, the Schengen *acquis* has been amended (EUR-Lex b, 2020). Starting with five founding MS, the Schengen area expanded throughout the years and now includes 27 European countries except from Ireland. Among Schengen countries there are Bulgaria, Croatia, Cyprus and Romania however they do not apply the whole Schengen *acquis*, yet (European Commission 2, n.d.). Although non-EU countries, Iceland, Norway, Switzerland and Liechtenstein are also part of the Schengen area (European Commission 2, n.d.). According to today’s Schengen provisions, anyone regardless of their nationality can cross an internal border within the Schengen area without being checked since the checks at the Union's internal borders are lifted as a result of the implementation of

Schengen *acquis*. However, for enjoying the freedom of movement within the Union individuals require to hold travel documents special to their situations corresponding to the EU nationals, non-EU family members or non-EU citizens (EUR-Lex b, 2020). Individuals can still be subjected “to police spot-checks by the national authorities either at the border or in border areas”, however, such checks are not in the form of systematic passport controls (EUR-Lex b, 2020). For the EU, abolishing internal checks between signing MS is constituting only one side of the Schengen area. “The other is to ensure the safety of its citizens” (EUR-Lex b, 2020), and this is not only limited with the internal security but is also related to the external border controls.

### **3.2.2.1. External Borders and Schengen**

External border control became an important component of the EU internal security as a result of “relaxation of the EU’s internal border controls” with the Schengen Agreement (Mungianu, 2013, p.360). Since the checks within the Union are abolished, establishing a common external border regime gained importance as the external borders will be the only places where checks are to be carried. In this regard, setting up a joint agreed set of rules appears as the main purpose of the Schengen Convention. For instance, Article 6 of the Schengen Convention indicates that:

Cross border movement at external borders shall be subject to checks by the competent authorities. Checks shall be carried out for the Contracting Parties' territories, in accordance with uniform principles, within the scope of national powers and national law and taking account of the interests of all Contracting Parties (“Convention Implementing the Schengen Agreement”, 2000).

Setting up common rules in the external border management includes “common requirements for granting visas and closer cooperation between the authorities responsible for performing border controls” (Bertozzi, 2008, p.4). Gradually, the border controls on the external borders of the Schengen area were tightened and the border controls became subjected to a “single set of rules” (EUR-Lex b, 2020). For instance, with the introduction of Schengen Borders Code (SBC) the rules involve “crossing the external borders of the EU” and “absence of internal border controls” are determined (EUR-Lex c, 2020). These rules are closely related to the common visa policy which is providing common rules for the legal entries in the EU up to 90 days (EUR-Lex b, 2020). The introduction of some information systems, namely Schengen

Information System (SIS) and Visa Information System (VIS) (EUR-Lex b, 2020) by the EU further enhanced the cooperation on data sharing regarding certain situations among the MS, and all in all contributed to the emergence of “a new ‘cross-border community’ which abide by common rules and apply checks only at its external borders” (Bertozzi, 2008, p.4-5). Sharing information and data constituted an important part of these networks. The SIS was created in 1995 as “a large-scale database to support external border control and law enforcement cooperation between member states signing the Schengen Agreement” (EUR-Lex d, 2020). It helps MS to gather information on “suspected criminals; individuals who may not have the right to enter or stay in the EU; missing persons; stolen, misappropriated or lost property” (EUR-Lex b, 2020). The SIS consists of a central system accompanied by “a uniform national interface in each country which members use to enter, update, delete and search SIS data” and “a national system in each country to communicate with Central SIS” so that the data is shared and the efficiency of controls to be maintained (EUR-Lex d, 2020). This database system is reached and “used by national authorities responsible for border controls; police and customs checks; public prosecutions in criminal proceedings and judicial inquiries prior to charge; and for visas and residence permits” (EUR-Lex b, 2020). Irregular immigration and human trafficking has become linked with the external border management of the EU (JHA Council, 2002) in a way that as the new security and migration challenges arose the Union started to take other “important measures for these measures, such as on asylum, legal migration and integration and closer cooperation with third countries, to accompany the Union’s management of external border controls” (Bertozzi, 2008, p.7). In this sense, also the EU agencies of the European Union’s law enforcement agency (Europol), the European Union Agency for Criminal Justice Cooperation (Eurojust), and the European Border and Coast Guard Agency (Frontex, or EBCG in its new name) became relevant EU establishments that has access the data in order to conduct their responsibilities (EUR-Lex d, 2020). VIS is a system that was introduced in 2004, and like SIS it has to do with data sharing which specifically “allows the Schengen members to share visa data, especially on short-term visa applications” (EUR-Lex b, 2020). Since these systems mentioned above are part of the common rules regulating the Schengen area, the EU states willingly to join the Schengen area should meet

certain conditions. These are listed as “to be able to control their external borders and issue uniform Schengen visas; cooperate with other national law enforcement agencies to operate a high level of security; apply the the Schengen acquis; issue visas; supporting police cooperation and protect personal data; and use the SIS” (EUR-Lex b, 2020).

Schengen is an important element of the internal and external border management of the Union due to its positive impact on the cooperation efforts of the MS and future border cooperation. Hence, it is used in this section as a link that leads us to the emergence and development of the JHA and the AFSJ and the institutional developments that will be discussed in the following sections. Monar (2001) refers to the Schengen as the most important *laboratory* since it has been a product of the European co-operation that emerged outside the EC framework and helped to shape JHA with its ongoing impacts (p.748, emphasis added). Schengen’ being the most important element is also because it has performed as a basis for shaping today’s AFSJ and external border policy. It has been a *testing ground* for the MS for their potential and the limits of finding a common ground that they can reach throughout the negotiations phases, therefore, it has “had a major impact” on the development of various EU policy areas such as area of asylum, visa policy, police and judicial cooperation, and facilitated a “culture of cooperation” among the MS (Monar, 2001, p.751-752, emphasis added). It should be also noted in Monar’s words that “...this culture of cooperation has made an essential contribution to the emergence of the wide range of administrative and policy networks which have been crucial to the rapid growth of the EU justice and home affairs in the 1990s” (2001, p.752).

### **3.3. JHA and Institutional Developments**

#### **3.3.1. Towards an Intergovernmental Third Pillar**

Prior to the establishment of the third pillar of the EU, the JHA, some intergovernmental formations “outside of the EC legal and institutional framework” have contributed to the creation of cooperation and development in the JHA area (Monar 2001, den Boer 1996, Kammel 2006). These were namely TREVI (Terrorisme, Radicalisme, Extrémisme et Violence Internationale), intergovernmental conferences

(IGCs), forums and working groups. TREVI framework was established in 1976 based on the agreement reached on 1 December 1975 at the European Council in Rome between the EC interior ministers to combat terrorism due to the increased international terrorism threats at the time (Monar, 2012, p.718). Kammel (2006) notes on this intergovernmental formation as such:

While the main objective was exchanging information on the terrorist threat and working on complementary strategies together with home affairs and/or justice ministers, also senior officials and experts in regular meetings, the TREVI Group constituted the base of the JHA policy by including objectives of counter terrorism, police cooperation, fight against international crime and abolition of borders to its area of concern throughout the years (p.73).

While the completion of the Single Market and the customs union was continuing and there were also policy issues to be dealt outside of TREVI framework such as asylum, immigration and external border controls (Monar, 2012, p.720). However, the EC was not granted with explicit powers to deal with these JHA issues, therefore, considering the risks accompanied to the completion of the Single Market in the aforementioned policy issues the MS took the initiative to form intergovernmental groups to coordinate themselves. These groups were the “Ad Hoc Group on Immigration, the Mutual Assistance Group and the Rhodes Coordinators’ Group on Free Movement” (Monar, 2012, p.720), and they considered as important intergovernmental groups playing a role in the IGCs leading the way to the Maastricht Treaty in identifying the JHA challenges, although with limited impact (Monar, 2012). The mid-1980s brought about a new impetus to the EU integration process as a result of the important domestic political changes and the resolution on the British rebate claim<sup>4</sup> at the Fontainebleau European Council Meeting (Nugent, 2010, p.148). Two committees, namely the Dooge and the Adonnino Committee were set up at the Fontainebleau European Council in 1985 had submitted proposals respectively with regard to JHA implications on completion of the internal market and the importance of free movement of persons. Hence, the objective of free movement which was uncompleted yet “made its way to the forefront of European politics” (Monar, 2012, p. 719). As a result of the end of

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<sup>4</sup>Britain demanded a reduction in the British contribution to the EU’s Common Agricultural Policy (CAP) at this meeting in June 1984 at Fontainebleau as compensation for the structural inequalities in the EU budgetary system which Britain benefited less (Vernasca, 2016).

Cold War the revolutions took place in Central and Eastern Europe “which culminated in the fall of the Berlin Wall in November 1989” affected the political air of the Strasbourg European Council which took place in December same year (Blair, 2018, p.1). The decision to establish an intergovernmental conference on Economic and Monetary Union (EMU) before the end of 1990 was also affected from this political environment (European Commission, 1991). Blair (2018) notes that:

These developments created a heady climate where there was a tension between those countries that wished to pursue deeper European integration and those that wanted to retain more national control and the political air paved the way for planning of another IGC to discuss the European political union influenced by the views of French president François Mitterrand and German chancellor Helmut Kohl (p.1).

Asylum and immigration issues brought into the agenda of the two parallel IGCs of 1990 and 1991 due to the pressure coming with the increasing asylum applications as well as the irregular immigration pressure at the end of the 1980s (Monar, 2001, p.753). At the Rome European Council on December 1990 “the work of both IGCs started and concluded at the December 1991 Maastricht European Council” (Blair, 2018, p.1). 1991 Maastricht Council gave its name to today’s Maastricht Treaty. During the Maastricht Treaty negotiations, the German chancellor Helmut Kohl emphasized “the need to control the movement of persons more effectively” as a particular concern since Germany was receiving many immigrants from Eastern Europe as a result of the revolutions took place in Central and Eastern Europe (CVCE 1, n.d.). Therefore, the IGCs opened up the way for the introduction of the JHA pillar especially under the strong pressure of Germany and the German-French partnership (CVCE 2, n.d.). It is also highlighted by Den Boer (1996) that the working groups and forums which dealt with the issues such as irregular migration, drug trafficking, terrorism, and customs cooperation contributed to the organizational and institutional aspect of developing a JHA before the creation of the third pillar (p.2).

### **3.3.2. The Maastricht Treaty and the JHA**

Justice and Home Affairs (JHA) emerged in the form of “cooperation in the fields of justice and home affairs” as the third pillar of the European Union in the Treaty on European Union or as commonly known as the Maastricht Treaty (Maastricht Treaty,

1992). The Treaty formally established the European Union with its signing on 7 February 1992 in the city of Maastricht in the Netherlands, and it entered into force on 1 November 1993 following its ratification by Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italy, Luxembourg, Netherlands, Portugal, United Kingdom (Treaty on European Union, 1992). The first and second pillars created were the EC and the CFSP. It is an important treaty as it has officially established the EU, and it includes “very precise rules governing the decision-making of the EU institutions, together with specific policy objectives and practices” (General Secretariat of the Council, 2018, p.9). The powers given to the Union by the Maastricht Treaty were classified into these three pillars or in other words, into three policy making areas (European Parliament Fact Sheet a, 2021, Article B). The pillared structure “clarified where, and to what extent, the Union has exclusive legislative competence, where it shares its competence with the MS”, and where the competence lies with the MS, therefore, with national rules (General Secretariat of the Council, 2018, p.11). Under the first pillar, the amended articles of the Treaties establishing the European Communities namely the European Economic Community (EEC), European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM, EAEC) are grouped, and this pillar represented a framework for the policy areas in which the Union has competence over the MS through transfer of sovereignty. Although the area of the internal market is under the shared competence, the Maastricht Treaty formalizes the fact that “the Community had adopted an objective that went beyond the economic field alone” particularly with its signing of the SEA (CVCE 3, n.d.). The second pillar of CFSP objectified “systematic cooperation between MS on foreign and security policy issues” which enabled coordination of the EU diplomacy on the global level (General Secretariat of the Council, 2018). The Union’s objective for the third pillar “was to develop common action to provide citizens with a high level of safety within an area of freedom, security, and justice, through intergovernmental methods” (European Parliament Fact Sheet a, 2021). The third pillar contained issue areas of “judicial cooperation in criminal and civil matters; combating terrorism, controls at the Union’s external borders; the creation of Europol; the establishment of a common asylum policy; and combating irregular migration” (General Secretariat of the Council, 2018, p.16). The

Council became the main forum for developing common policies and cooperation in the area (European Council b, n.d) as well as for the consultation and decision making on JHA issues (CVCE 4, n.d.).

The JHA did not exist as a policy-making area at the beginning of the 1990s within the scope of the treaties yet it has developed rapidly and moved to the center of the treaties and EU's political agenda (Monar, 2006 ; 2012). The coordination of the MS' "national legislative and regulatory provisions" in some areas deemed necessary to be coordinated as a result of the lifting of internal borders and establishing of the free movement area within the Union (General Secretariat of the Council, 2018, p.16). Since those areas were held differently in each MS it was hard to create a cooperation in all matters rapidly (General Secretariat of the Council, 2018). However, under the "Convention Implementing the Schengen Agreement" (2000) of 1990 some of those areas had already been subject to intergovernmental cooperation which created a level of cooperation among the MS, and "although the level of cooperation was inadequate and needed to be extended, the competence for preservation of law and order and for safeguarding internal security remained with the MS" (General Secretariat of the Council, 2018, p.16). As the formalization of the JHA took place with the Maastricht Treaty, MS acknowledged the need for an intergovernmental formation and cooperation under the third pillar to solve their common issues that can no longer only be tackled by themselves at the national level. The abolishing of the internal borders linked the Union external border controls and MS concerns related to the free movement of persons together, thus the MS have "shown a long-term commitment to cooperation in this field by outlining policy strategies and proposals" (Den Boer, 1996). Monar (2012) and Christiansen et al. (2012) refer to the importance of the Maastricht Treaty due to its continuous effect on the justice and home affairs policy domain. According to Monar (2012), it is important to see the "enabling role" of the treaty reforms in the EU in the sense that their impact on the further development of the EU (p.718), and this can be especially seen in the case of JHA which was introduced as a whole new policy field. Monar (2012) also acknowledges the positive impact of the Maastricht Treaty for the expansion of the JHA into the AFSJ with its facilitating the "initial acceptance and experience with the JHA domain" (p.724). That is to say that the Treaty has laid the foundations of a consolidated cooperation and

harmonization with the MS regarding the policy issues dealt by the EC and opened up space for developments to be built upon with the upcoming treaty reforms.

### **3.3.2.1. Decision-making in the JHA**

The first pillar in the Maastricht Treaty has reorganised the Community decision-making process by introducing the co-decision procedure. On the other hand, the number of decisions to be taken through QMV, which is also a Community mechanism, in the Council were increased in the policy areas falling under the first pillar (General Secretariat of the Council, 2018, p.10). Moreover, the power of the European Parliament was increased with the Maastricht Treaty as the Treaty introduced the co-decision procedure which initially covered a limited number of legislative areas, gave the European Parliament the power to adopt legal acts jointly with the Council (Nugent, 2017, p.203). It is pointed out by Rasmussen (2012) that the co-decision procedure allowing the EP and the Council jointly working on the legislation has diminished the power of the Commission and the Commission has become “the loser since its formal powers are reduced in this procedure compared to previous legislative procedures” (p.742). However, Monar (2012) argues that:

Maastricht Treaty gave the Commission a new role in the JHA area as the Article K.4(2) TEU (Treaty on European Union) stands for the full association of the Commission with the new treaty based cooperation framework and the K.3(2) TEU gave the Commission a formal right of initiative in the area for the first time, although excluding the areas of judicial cooperation in criminal matters, customs cooperation and police cooperation as a limitation within the intergovernmental context (p.728).

In this sense the role of the Commission was regarded as a “tolerated partner” (de Lobkowitz 2002, p.49 in Monar 2012, p.728), and instead of the post-Maastricht period the post-Amsterdam period marked the “real breakthrough of the Commission” in the JHA domain (Monar, 2012, p.729). The second and the third pillars were laid down respectively in the Title V and VI of the Maastricht Treaty. These pillars although reflected an intergovernmental cooperation, involved also the Commission and the Parliament as EU institutions that are exerting their “certain supranational features” (European Parliament Fact Sheet a, 2021). Within the third pillar, the decision-making was subjected to the unanimity principle and communitarization of the third pillar was unlikely at the time. The use of unanimity in the third pillar was

seen as “a clear reflection of its intergovernmental background from TREVI” and as a “founding rationale” which has shown its effect even in the post-Lisbon era in the AFSJ (Monar, 2012, p.729). In other words, the Maastricht Treaty provided the former cooperation efforts of the MS in JHA policy areas a legal basis which had been dealt before on a national basis, or managed via “loose and informal MS cooperation” (Nugent, 2017, p.85). In addition, with the expansion of QMV “on certain aspects of policy implementation” in the JHA, a small element of supranationalism was entered in the area even though the Treaty is mostly seen as representing the continuation of the intergovernmental trend (Nugent, 2017, p.85). As a Community institution, the Parliament received its first formal recognition in the JHA domain with the consultation rights although to what extent it will be considered by the MS and the Presidency was not specified. The assent and cooperation procedures which were introduced with the SEA were extended to new areas. It took until 1999 for the Parliament to obtain “formal consultation rights on all legislative AFSJ acts” (Monar, 2012, p.730).

In the JHA, MS preferred using “non-binding texts” such as Council “Resolutions”, “Conclusions”, and “Recommendations” (Monar, 2012, p.725-727). The fact that MS were still protective of their national prerogatives and that most decisions needed to be taken in the Council by unanimity caused a slow policy developments in JHA during the 1990’s (Kaunert, 2015: Kaunert et al, 2014). Moreover, “the lack of clearly defined objectives” and “lack of consensus” among the MS (Monar, 2012, p.725) on what to be achieved caused difficulty in the area. The MS desire to be not binded with treaty objectives hampered elevating the EU policy output in the JHA domain (Monar, 2012). Followingly, the treaty changes coming with the Amsterdam, Nice and Lisbon added further reform efforts in the institutional development and “modifications to key aspects of the institutional architecture” (Christiansen et al., 2012; p.696).

### **3.3.3. JHA in the post-Maastricht era**

The Treaty of Amsterdam, or the Amsterdam Treaty, amended the Treaty on European Union, the Treaties establishing the European Communities and certain related acts with its signing in Amsterdam on 2 October 1997 (Amsterdam Treaty, 1997).

Amsterdam Treaty entered into force on 1 May 1999 after being ratified by all the MS.

With the Amsterdam Treaty:

The Community method now applied to some major areas which had until now come under the third pillar, such as asylum, immigration, crossing external borders, combating fraud, customs cooperation and judicial cooperation in civil matters, in addition to some of the cooperation under the Schengen Agreement, which the EU and Communities endorsed in full” (European Parliament Fact Sheet a, 2021, p.3).

However, the issue area of police and judicial cooperation in criminal matters remained within the EU’s third pillar that is to say that it remained under intergovernmental decision-making. Considering the intergovernmental tradition within cooperation mechanisms in the JHA, Trauner & Ripoll Servent (2016) argued that the Treaty of Amsterdam “introduced a first major shift” towards communitarization (p.1418). That is to say that these policy areas were transferred to the EC, the first pillar, “with the purpose of facilitating the adoption of measures that would result in the progressive establishment of ‘an area of freedom, security and justice’ in which there would be free movement of persons behind a common external border” (Nugent, 2017, p.87). The Treaty (1997) formally established the AFSJ that includes “policing, judicial cooperation in criminal and civil matters, border controls, immigration, asylum and related fields” (Carrera et. al, 2010). With the Amsterdam Treaty, the Schengen *acquis* was also incorporated into the EC framework through a protocol (Den Boer, 1997, p.8).

Kaunert (2005;2012) argues that the legislative changes in the JHA could be considered as an “evolution” which has started from the SEA. The JHA which was described as a “flanking measure” of the Single Market for the sake of free movement now became freestanding AFSJ with the Amsterdam Treaty. This evolution also highlights the increase in the supranational elements in the management of the area. In institutional terms, the cooperation procedure was virtually abandoned and use of the co-decision procedure was extended to new areas. Moreover, the EP’s position under the co-decision procedure was strengthened and there was increased provision for the use of QMV in the Council as well (Nugent, 2017, p.87). According to Kaunert (2012):

The main normative change with the Amsterdam Treaty is that there occurred a shift from full preservation of national sovereignty towards a partial pooling of

national sovereignty with limited mandates and weak institutional instruments and structures and this indicates some normative movement, although it is limited (p.9).

Mawdsley (2017) also notes that until the Treaty of Amsterdam, cooperation in the field of JHA was intergovernmental “with little involvement of the other EU institutions”(p.1).

The Amsterdam Treaty also represented increased institutionalization of the third pillar issues by transferring them to the first pillar, except police and judicial cooperation in criminal matters, and making them subject to the co-decision procedure. The Treaty created “closer cooperation” with the incorporation of provisions in the first and third pillars of the TEU. This mechanism allows MS to establish “closer cooperation”<sup>5</sup> (renamed as “enhanced cooperation” under the Nice Treaty) between themselves (at least nine MS regarding to current legislation), and for this purpose to make use of the EU’s institutions, procedures and mechanisms (Nugent, 2017, p.87). Therefore, the mechanism increased the possibility of the development of policy activities without full participation of the MS. In institutional terms, transforming of the JHA area to an AFSJ and incorporating Schengen *acquis* into the EC framework represented the Treaty’s “modernizing and consolidating nature” containing significant changes for the governance of the EU (Nugent, 2017, p.87-88).

The Nice Treaty, signed in 2001, interpreted as being “limited in scope” (Best, 2001) which made some rule changes, but did not change the overall architecture of the EU. The Nice Treaty was intended to “streamline the EU institutions for further enlargement” (Wallace, 2005, p.51, Table 3.1). Regarding to the function of the Nice Treaty in the European Union, Nugent (2017) puts that:

Its main task was to make changes in the composition of the EU’s institutions and in the voting strengths and voting procedures in the Council so as to enable the EU to absorb applicant states, whilst at the same time not undermining the capacity of the EU to function in a tolerably efficient manner (p.48).

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<sup>5</sup> The mechanism does not, however, allow for an extension of powers outside those permitted by the EU Treaties (EUR-Lex e, n.d.); it must be used only as a last resort, activated by the Commission following the request of the MS willing to cooperate and adopted by the Council via unanimity (Article 20 TEU, Articles 326-334 TFEU). Article 333 TFEU enshrines a specific passerelle clause that allows the MS participating in a specific enhanced cooperation to decide to move to QMV and/or the ordinary legislative procedure (OLP).

The threshold for reaching a qualified majority in the Council was raised with the Treaty of Nice. Moreover, with the Nice Treaty enhanced cooperation mechanism became easier to apply. The EP's powers were extended with the enhanced scope of the co-decision procedure "including to certain anti-discrimination measures, judicial cooperation in civil matters (except family law), and specific industrial policy support measures" (Nugent, 2017, p.90). "The assent procedure (under which decisions require the assent of the EP)" was extended too (Nugent, 2017). In terms of EU's policy competences, "new forms of cooperation in the fight against organised crime" were identified following on from the 1999 Tampere summit which focused on JHA matters (Nugent, 2017, p.90). The means for operationalising such cooperation were strengthened by giving treaty recognition and support to Eurojust which decided in the Tampere Council (Presidency Conclusions, 1999) in order to facilitate coordination "between national prosecuting authorities in respect to serious cross border crime" (Nugent, 2017, p.91).

Due to the limited scope of the Nice Treaty, and in order to comprehensively debate on the future of the EU, in December 2001 European Council meeting issued the "Laeken Declaration on the Future of the European Union" (2001) which provided for the establishment of a "Convention on the Future of Europe" (Presidency Conclusions, 2001). However, in May 2005 the efforts to create a constitution for the EU through the "Constitutional Treaty" was rejected in referendums in France and Netherlands and the plans for a more integrated EU were downsized. Instead, the European Council decided that "after two years of uncertainty over the Union's treaty reform process, the time has come to resolve the issue and for the Union to move on" (Presidency Conclusions, 2007). The Reform Treaty, most commonly known as the Lisbon Treaty which was signed on 13 December 2007 and entered into force on 1 December 2009 emerged from a combination of the provisions presented to amend the existing Treaties of Treaty on European Union (TEU), and Treaty establishing the European Community (TEC) which renamed as Treaty on the Functioning of the European Union (TFEU). The Lisbon Treaty recognized the EU as a single legal entity and the pillared structure of the EU was formally abolished. With the abolishing of the third pillar, which was based on intergovernmental cooperation, the Community method expanded through all AFSJ. That means the ordinary legislative procedure (OLP, or

the previous co-decision) became the standard decision-making procedure on legislative proposals with the Commission's right of initiative in the AFSJ and use of QMV in the Council in all AFSJ matters. The European Parliament's role was enhanced by extending the remit of the assent procedure, renaming it as consent procedure and the Parliament also became co-legislator delivering its opinion via the OLP procedure (European Parliament Fact Sheet b, 2021). The Lisbon Treaty included strengthening of the involvement of national parliaments in the evaluation mechanisms for the implementation of the Union's AFSJ policies and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities (European Parliament Fact Sheet b, 2021). Moreover, the Treaty is granting the CJEU "general jurisdiction to interpret and review the validity of the acts adopted within any field of the AFSJ which overall will ensure a higher level of judicial control in principle" (Carrera & Geyer, 2007, p.3). The Treaty also set up a "standing committee" within the Council for ensuring that internal security operational cooperation is strengthened within the Union (Carrera & Geyer, 2007, p.2-4). The Treaty provides the possibility for at least one third of the member states wishing to establish *enhanced cooperation* to move forward together, and the mechanism of *emergency break* in the specific areas which are including some of the AFSJ issues (EUR-Lex f, 2016, emphasis added). These mechanisms allow individual MS to stay away from the legislative procedures in the policy areas that are sensitive for the MS, and is paving the way for small groups of MS to go forward without the participation of other MS or the EU as a whole. However, Kaunert (2010a) states that "this results in the advanced, but incomplete, communitarisation of the areas of criminal justice, policing and terrorism in the AFSJ" (p.172). In terms of border controls, as a result of continuing national sovereignty on "provisions concerning passports, identification documents, residence permits and other related identification documents" this area stay subject to unanimity and mere consultation of the European Parliament (Carrera & Geyer, 2017, p.6). The Lisbon Treaty, as the latest step of treaty reforms, brought about an important degree of supranational elements in the EU internal security policy area and contributed to the gradual communitarization of the area (Kaunert et al., 2014, p.41). Moreover, the European Commission played a significant part in the construction of a role for the EU with regard to internal security matters through being

a “supranational policy entrepreneur” (Kaunert, 2007; 2009; 2010a; 2010b). For instance, the Commission has had an influence in the reshaping of the inter-institutional balance and contributed to a shift in norms in the AFSJ from 1999 onwards through “alliances with other institutional actors, such as the European Parliament, and civil society groups”(Kaunert, 2010a, p.185). The Commission casted its influence especially “during the negotiations of the Constitutional Treaty and the re-negotiation of the Lisbon Treaty”, and the Commission contributed to shifting of the political norms “towards acceptance of pooling of national sovereignty” and hence, communitarisation of the AFSJ (Kaunert, 2010a, p.169-189). Another influential supranational actor in the AFSJ’s supranationalisation is regarded as the European Parliament by Carrera, Hernanz and Parkin (2013). Especially after gaining accountability rights with the Lisbon Treaty through extended co-decision and “having a binding say in the conclusion of international agreements on JHA”, the European Parliament’s role and activities have experienced a progressive evolution by being the “watchdog of fundamental rights and democratic scrutiny” (Carrera et. al, 2013, p.15-22). The Parliament has become an active “co-owner” of the EU AFSJ in the post-Lisbon era with its Committee on Civil Liberties, Justice and Home Affairs (LIBE) (Carrera et. al, 2013, p.6). Despite not having a right to initiate legislation, LIBE has been increasingly involved in AFSJ policy policy-setting since the end of 2009 through the “adoption of its own initiative reports and resolutions on important AFSJ-related subjects” (Carrera et al., 2013, p.26). It is also important to mention that the Lisbon Treaty formally recognises the European Council’s pre-eminent role of defining the “strategic guidelines for legislative and operational planning within the area of freedom, security and justice with the Article 68 of the TFEU” (European Parliament Fact Sheet b, 2021). Policy priority-setting and legislative planning has traditionally laid in the hands of the Council and this constituted a direct expression of the predominance of intergovernmentalism in EU’s JHA decision-making and the lack of a proper European institutional pluralism before the Lisbon Treaty (Carrera et al.,2010). However, the highly intergovernmental institutional balance at the beginning of creating the JHA has gradually changed as the Lisbon Treaty brought about important changes with a substantial number of reforms to the EU’s AFSJ policy landscape. Kaunert & Léonard (2010, Figure 1.) show the JHA underwent a change

alongside the Treaty changes and as the institutional structure established with these changes there occurred a gradual change in the JHA/AFSJ towards supranationalism as well.

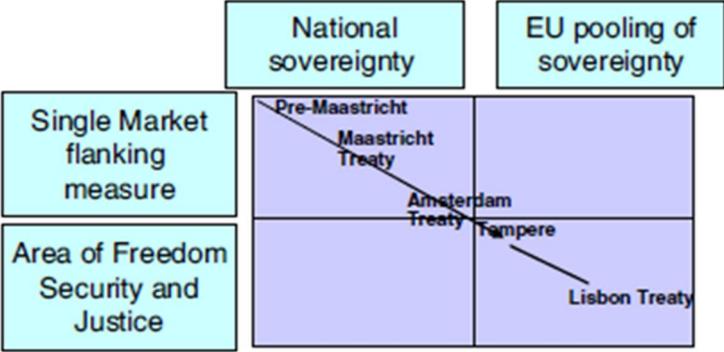


Figure 1. The evolution from the JHA to an AFSJ

Source: Kaunert & Léonard, 2010, p. 146.

While it was a single market flanking measure in the pre-Maastricht era, which was highly intergovernmental, with the gradual change introduced by Treaties the AFSJ now stands as a policy area on its own. With the Lisbon Treaty the AFSJ represented a plural inter-institutional decision-making process (Carrera et. al, 2013 p.1; Engström & Heikkilä, 2014, p.1) that no longer solely represents the national prerogatives of the MS through the Council, but also including the supranational institutions namely the Commission with its consolidated and reinforced competences; the Parliament as “co-legislator”; and the Court of Justice of the European Union (CJEU/ECJ) “to review and interpret the AFSJ law and actions” with its extended jurisdiction (Carrera & Guild, 2012, p.14).

**3.4. Policy Programmes for the AFSJ: Tampere, the Hague, Stockholm**

Besides the institutional reforms in the AFSJ discussed above, since the transfer of a number of AFSJ policies to shared competence with the Amsterdam Treaty in 1999, the multiannual policy programmes were adopted by the European Council to implement new legislation, mechanisms and institutions in the area and set out the priorities, hence giving a direction to the EU’S AFSJ (Kaunert et al. 2014). According to Carrera and Guild (2012) conferral of power on the European Council to “define

the strategic guidelines for legislative and operational planning” in the AFSJ with the new Article 68 of the TFEU marked emergence of substantial discord regarding the actual scope and mandatory nature of this provision. The European Council as being one of the EU’s core intergovernmental bodies (Puetter, 2012) now has a significant Treaty-based role to play in the area of justice and home affairs. However, it is highlighted that the general role of the European Council in most policy areas is to set the wider strategic framework while the operational and legislative details are left to the other relevant EU institutions, and the European Council has acted only when there is a crisis (Drachenberg, 2018, p.6).

Regarding the broad objective of the Amsterdam Treaty of creating an AFSJ, EU heads of state and government agreed in the European Council Meeting in 1999 to set out multiannual policy programmes to determine the agenda for developing the AFSJ corresponding to every five years. The Tampere European Council “marked the beginning of increasingly in-depth debates on the exact aims and purposes of European cooperation in internal security” (Kaunert & Leonard, 2010, p.145). The Council meeting bore fruit to the first of these programmes of the Tampere Programme. This programme planned to take place for the years 1999-2004. There was progress in many areas including “adoption of European Arrest Warrant, harmonization of substantive criminal law for some crimes, the creation of Eurojust”, European Union Agency for Law Enforcement Training (CEPOL), and Frontex (Kaunert et al., 2014, p.41). “...The Tampere Programme stressed that the integration of the Schengen acquis into the Union required an enhanced cooperation and mutual technical assistance between the MS and the candidate countries to effectively control the external borders” (Fernandez-Rojo, 2020, p.291). The next multiannual programme approved by the EU in 2004 was the Hague Programme and it set priorities for the period of 2004-2009. During this era progress was made in the areas of common asylum systems, VIS to support the Schengen zone, information-sharing for law enforcement and “incorporation of EU’s AFSJ objectives in its neighbourhood policy” (Kaunert et al. 2014, p.42). On 10 and 11 December 2009, the European Council adopted the Stockholm Programme for the 2010-2014 years and emphasized six priorities for the EU (Presidency Conclusions, 2009), and focused on the interests and “needs of citizens and other people” to whom the EU has a responsibility (European Parliament

Fact Sheet b, 2021). However, the new perceptions of security threats and priorities played an important role in determining the agenda for these Programmes and not only the institutional development aims (Kaunert, 2012). The Internal Security Strategy (ISS) for the 2010-2014 period, endorsed by the European Council, highlights that “many of today's security challenges are cross-border and cross-sectoral in nature and that no single Member State is able to respond effectively to these threats on its own” (Commission Communication, 2014). The security challenges to the EU were summarized by the General Secretariat of the Council (2010) as “terrorism in any form, serious and organized crime, cybercrime, cross-border crime, violence itself, natural and man-made disasters, and others including road traffic accidents” (p.13-15). The European Council defined the strategic guidelines over the coming years to build on the progress achieved by the Stockholm Programme.

The EU ISS for the period 2015-2020, also called renewed internal security strategy, was defined on 16 June 2015 (Presidency Conclusion, 2015) in line with the priorities set in the strategic agenda for the EU that was adopted on 26-27 June 2014 Council Conclusion (European Parliament Fact Sheet b, 2021). These priorities were identified as the “main common threats and challenges for the coming years in the field of internal security” of the EU and named as; “serious and organized crime, terrorism, radicalization, recruitment, and financing related to terrorism, cybercrime, and the need for cyber security, threats and challenges stemming from the use of new technologies, new and emerging threats, crises and natural and man-made disasters” (Item Note, 2014, p.7-8). The above examples shows that due to the various terrorist attacks across the EU in the past years, internal security and the fight against terrorism have become major concerns for EU citizens, and shaped political discussions at EU and MS level. The Eurobarometers from the years 2018, 2019 and 2020 presents that terrorism which ranked the second place in 2018 is still among the highest ten concerns for European citizens with the leading concern being immigration which showed up always in the first three places (Standard Eurobarometer 90, 2018; 92, 2019; 93, 2020). This means that these issues kept their places in terms of importance in the eyes of the EU citizens as they have been listed continuously as the main concerns. However, the definition of internal security contained in the ISS 2010-2014 does not make any reference to migration, whereas in the renewed EU ISS 2015-2020 the word migration

is used only once when referring to the “A European Agenda on Migration” (Drachenberg, 2018, p.9). The “Rome Declaration” (2017) adopted on 25 March 2017 addressed to migration and internal security areas as parts of a common priority. It is observed that although migration and internal security policy areas are tackled separately in the JHA, they started to intersect, as shown in Figure 2, through the area of EU external border protection in the EU (Drachenberg, 2018, p.9-10).

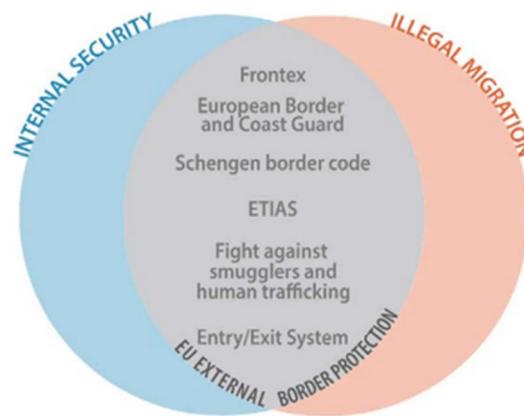


Figure 2. Intersection of internal security and irregular migration

Source: Drachenberg, 2018, p. 9.

Monar (2012:1), through reminding the Article 3(2) TEU, interprets the rationale behind the AFSJ as an *internal political project* with the objective of providing the citizens with the “fundamental public goods of “freedom, security and justice” in an internal area” (p.11, emphasis added). In achieving this objective, however, “purely internal EU measures” are not enough due to the “transnational nature of the primary challenges of asylum, migration and crime” (Monar, 2012:1, p.11). In this regard, Frontex as the European Agency for the Management of Operational Cooperation at the external borders of the Member States of the European Union, appears to have an important place in this intersection as one of the EU agencies tasked to tackle irregular migration and also internal security due to interconnected nature of external and internal security in the Union.

### 3.5. Conclusion

Starting to grow outside of the EC framework, the cooperation among MS on the Single Market has grown into a cooperation on justice and home affairs under the Community structure through its gaining of a legal base with the Maastricht Treaty in 1993 as the JHA pillar. Yet, the JHA pillar also underwent a change and it has developed into one of the “fastest-growing domains of EU action” (Monar, 2006, p.495), and it became a free standing AFSJ dealing with different policy domains which includes areas from asylum to justice and police cooperation. The formalization of today's AFSJ has been closely related with the creation of the Single Market, enforcement of the concepts of freedom of movement of people, capital, services and goods as well as with the developments outside of the EC framework such as the Schengen Agreement, TREVI, IGCs, and working groups. The establishment of the Single Market alongside the lifting of the internal borders and providing the free movement of persons with the Schengen Agreement contributed to the intergovernmental character of the AFSJ in its earlier years. Developments regarding the free market and lifting of internal borders, however, also gave rise to the concerns between MS regarding unwanted activities of illegal trafficking from one MS to another or from a non-member country. Until SEA, the EU integration was largely occupied by the logic of “removing economic and legal barriers” to free trade and free movement (Mawdsley, 2017, p.3). Removal of the internal borders, however, raised security concerns which now became dependent on the external border controls. Huysmans (2000) argues that this linkage between the external and internal borders created the shift of the SEA “from a socio-economic project to an internal security project” (p.760). Following the dynamism that came into the scene in the 1980s with the global political developments of the end of the Cold War, reunification of Germany and revolutions in Central and Eastern Europe, the political air was channeled into further political integration with the Maastricht Treaty in 1992. Before the Maastricht Treaty the level of cooperation in the area was inadequate and needed to be extended to coordinate the national legislative and regulatory provisions. Hence, the Treaty acted as an “intergovernmental gate opener” as it merged the different set of different intergovernmental groups and various internal market related coordination mechanisms within a single treaty based form and also had a facilitating or “enabling

role” for the rapid expansion of the area in the form of AFSJ (Monar, 2012). The Amsterdam Treaty introduced supranational dynamics to the area with the first major shift towards communitarization (Trauner & Ripoll Servent, 2016, p.1418) via the co-decision procedure which was extended to new areas through transfer of third pillar issues to the first pillar, except police and judicial cooperation in criminal matters. As being the last of the legal documentations the Lisbon Treaty entailed a significant move from intergovernmentalism and Council dominance to institutional pluralism and democratic accountability for the AFSJ (Engström & Heikkilä, 2014). While for some the SEA marked the beginning of the communitarization of the JHA, for others it was the Treaty of Maastricht or Amsterdam. It is not logical to see the treaties as abolishers of intergovernmentalism since the area is still highly covering the issues that are under the national prerogatives of the MS. However, there occurred an increase in the supranational elements in the area gradually within the legal developments. Abolishing the pillared structure of the Union with the Treaty of Lisbon has expanded the Community procedure to all areas in the AFSJ, which means that the role of the Commission and the Parliament and the scope of the ECJ’s areas of jurisdiction are enhanced. The “supranational policy entrepreneurship” of the Commission (Kaunert, 2007; 2009; 2010a; 2010b) and the “co-ownership” of the Parliament in the EU AFSJ in the post-Lisbon era (Carrera et. al, 2013) contributed to the change in the balance in the AFSJ towards supranationalism. Meanwhile, the presence of the European Council as an intergovernmental actor in the area has increased with its task under the Article 68 of TFEU. However, it is the European Council setting the wider strategic framework and the operational and legislative details are left to the other relevant EU institutions. The policy programmes of Tampere, the Hague, and Stockholm represented the continuous development in the AFSJ each for the period of five years. The new perceptions of security threats and priorities had an influence in determining the agenda in the changing world and affected the creation of ISS in 2010 and the renewed ISS in 2015. With the terrorist attacks in the past years, terrorism became one of the most referred concerns of Europeans following migration which is a European concern since 2015. Especially migration and internal security represent the common priority in European Council documents. Although the policy fields of internal security and migration were “usually clearly separated in European Council

discussions”(Drachenberg, 2018), it is became apparent that these two areas are now increasingly interlinked. The place of the EU’s external border management in this intersection marks further concerns on the EU’s external border control. The border agency Frontex, later the EBCG agency, thus became a crucial component in the EU’s external border management policy. In this regard, the establishment and development of Frontex as an AFSJ agency requires closer attention for the further analysis of the EU integration in external border management.

## CHAPTER 4

### NEOFUNCTIONALIST ANALYSIS: THE CASE OF FRONTEX

#### 4.1. Introduction

The third chapter of this thesis elaborated the institutional integration in the JHA/AFSJ with regard to external border management through a historical overview to better understand the developments the EU has undergone so far. In this chapter I want to underpin the developments in the EU regarding to harmonization in external border management leading to the establishment of Frontex with a theoretical explanation to answer the question of how harmonization was reached in a highly sensitive policy area and embodied in the form of Frontex in 2004, and the EBCG in 2016 afterwards. In doing so I will be using the neofunctionalist tool of spillover in tracing the “spill overs” in the establishment of the Union border agency Frontex, and of the EBCG as Frontex’s successor. This analysis benefits from four types of spillover namely functional, political, cultivated and exogenous spillover. The spillover types used in the analysis are determined by the evidence found in the chronological development of events. This analysis, therefore, follows a chronological order in presenting the spillover findings as well. The analysis starts with examining the Single Market and its impact on the EU’s integration in the internal security area. “Spilling over” of the economic interests into the political realm of internal security will be explained by

functional spillover. Afterwards, the analysis continues with focusing on the international terrorism and the 2004 enlargement as these developments are highlighted by the scholars as important external events leading to the establishment of Frontex. Those events will be integrated into the analysis within the context of exogenous spillover. Moreover, in the establishment of Frontex, presence of the supranational actors such as the European Commission and the European Parliament exemplifies cultivated spillover traits in the integration of the external border management. Regarding the political spillover, the “Opinion” of the European Economic and Social Committee (EESC) on the Commission proposal for the establishment of Frontex (Opinion of the European Economic and Social Committee, 2004) as well as for the EBCG (Opinion of the European Economic and Social Committee, 2016) can be considered as an evidence for the support for the establishment of the Union border agency Frontex and its development into the EBCG. Regarding the establishment of Frontex, the Committee supports the proposal for establishing an “effective management of the external borders” for the external borders to be not exploited by the criminal networks, and advocates that the human rights aspect to be respected in Agency’s functioning (Opinion of the European Economic and Social Committee, 2004, section 2.5). On the other hand, regarding the establishment of the EBCG, the Committee also reflects its support. The concern of the Committee lied with the border closures which hampered the Schengen area which also exerted negative effect on the right of free movement. Therefore, a more coherent border management between the EU and the MS was supported (Opinion of the European Economic and Social Committee, 2016, section 1.2). However, due to the lack of empirical data there is the inability to measure the possible impact of the positive approaches discussed in the Committee. Therefore, it is not included in the analysis as a political spillover mechanism ignited the integration.

After presenting the Commission’s and the EP’s effect, upgrading of Frontex into the EBCG will be traced. The refugee crisis of 2015 will be considered as the external event creating a dynamic in the internal issue of development of the external border management of the EU within the context of exogenous spillover. The event is addressed as the biggest humanitarian crisis the EU faced as it touches upon the issue of external border management due to the MS concerns of irregular migration as well

as the dysfunctionalities in the previous achievements regarding managing migration in the EU, and hence, it is considered as another important development leading to the establishment of the EBCG. In the establishment of the EBCG, alongside the Commission and the Parliament, presence of governmental and non-governmental elites were found as influential actors, and will contribute respectively to the cultivated spillover and political spillover dynamics of integration. Political spillover, in this regard, will present actions of the governmental and non-governmental elites becoming influential in the development of the EU's external border management. All in all, this analysis will present that not only the MS but supranational, governmental, and non-governmental actors as well as the external events are influential in the establishment of both Frontex and the EBCG, and are contributing to the making of a common external border regime.

## **4.2. Neofunctionalist Dynamics in the EU towards External Border Integration**

### **4.2.1. Functional Spillover between the Single Market and the JHA/AFSJ**

In order to examine the presence of functional spillover in the EU's external border management some indicators need to be followed. These indicators are suggested by Niemann (2016) for tracing the neofunctionalist concept of functional spillover. For the purpose of this thesis's topic I will be applying them in the external border management policy area of the AFSJ. The first indicator is the "salience of the original integrative objective", that is according to Niemann (2016) determining "the strength of the functional pressure for further action" (p.138). In the third chapter of this thesis under the parts of 3.2.1., 3.2.2. and 3.2.2.1., it is addressed that after the conundrum of the 70s, the Union was able to move forward with its integration journey with the Commission's "White Paper" (Commission of the European Communities, 1985) presented in 1985 aiming to establish a Single Market. Initiation of the Schengen cooperation by the MS to open up the way for a free movement area for the sake of economic interests shows the strength of the functional pressure coming from the Single Market which was the original objective. The Commission's initiative of "White Paper" functionally pressured the security concerns of the Union due to the lifting of the internal borders and shifted these concerns to the EU's external borders. Hence, the Schengen Agreement constituted the point where the economic and

security area are interlinked. The integration spilled over to the JHA/AFSJ for the further action in the external border management is addressed by the second indicator. Second indicator suggested by Niemann (2016) is “the degree of functional interdependence between issue A (original objective) and issue B (requiring further action)” (p.138). This indicator is interested in “the extent to which changes/tensions in issue area A affect issue area B” (Niemann, 2016, p.138). Under this indicator, to what extent the Single Market’s pressure on external border management creates an interdependency, thus push to take more collective action in the area of external border management is considered. The Schengen’s constituting of an interdependency between policy areas of economy and security is explained with the “objective of free movement of persons” (Niemann, 2016, p.139). In the Treaty of Rome, the free movement of persons was established as “a fundamental objective of the European Economic Community (EEC)”, and this provision did not apply to persons at the beginning but only to “cross-border economic activity” (Hix & Høyland, 2011, p.277). This meant that the objective of free movement of persons was firstly addressed with the logic of economic activity and encompassed the MS nationals’ right to “seek work, reside, and provide or receive a service in another MS” (Hix & Høyland, 2011, p.277). In this regard, abolishing of “all physical barriers to the movement of services and labour” (Hix & Høyland, 2011, p.276) laid down by the Single European Act (SEA), therefore, was for the sake of a functioning Single Market. For the completion of the 1992 Programme for the Single Market, “removing of the controls on the free movement of goods across internal borders” was tied to a date. However, regarding to the abolishing of internal border controls for providing the free movement of persons was not agreed at the beginning (Hix & Høyland, 2011, p.277). Because, “most of the MS were reluctant to remove the internal controls without harmonized rules on the crossing of the EU’s external borders, including common visa requirements and asylum policies” (Hix & Høyland, 2011, p.277-278) which engage the issue of internal security now with the management of the external borders. Schengen, in this sense, contributed to the emergence of the JHA/AFSJ in order to dealing with these issues. The third and the last indicator for tracing a functional spillover according to Niemann (2016) is the “availability of functional solutions” (p.138). “The functional connection is likely to be a strong one” (Niemann, 2016, p.138) if there is no other way to secure

the operationalization of the first objective. Because of the freedom of movement aspect of the Single Market explained above, there occurred the need for a more determinant harmonization in the JHA regarding also the other internal policy areas such as asylum and migration which constituting the MS concerns. The free movement of persons interpreted as the free movement of irregular migrants and rejected asylum seekers by the MS (Niemann, 2016, p.139). The MS saw a risk in their different management of these policy areas in the sense that the differences would affect the other MS when the internal border controls no more applied. Therefore, the MS needed more harmonization in the internal policy areas of asylum and migration in order to accomodate their differences related to management of the policy areas (Niemann, 2016, p.139).

Due to such concerns, the Union officially established a JHA to address internal security issues coming alongside the Single Market. Niemann (2016) notes on the institutional developments regarding of achieving the free movement of persons by indicating its relation with the concerns on free movement of irregular migrants or rejected asylum seekers as such:

To achieve this objective (harmonizing policies on asylum-seekers, refugees and irregular migrants), and to enact further flanking measures, a greater use of the Community Method was deemed necessary both to expedite cooperation and to enable outcomes above the lowest common denominator (Niemann, 2016, p.139).

Considering the Treaty revisions, this was achieved particularly with the Amsterdam Treaty, transferring the Third Pillar issues to the First Pillar except the police and judicial cooperation in criminal matters. In addition, in the Treaty of Lisbon “this rationale bolstered the case for greater use of QMV in order to overcome decision-making deadlocks in the legislative process” (Niemann, 2016, p.139).

The functional spillover indicators applied to the case of external border management shows that the strength of the functional pressure for action in the JHA regarding to the external border management was high since the success of the Single Market was closely related with the operationalization of the four freedoms enclosed in the Treaty of Rome. Especially the interdependency between the freedom of movement and policy areas of asylum, immigration and visas ignited the integration to expand

towards the external border management in the JHA, which later becoming the AFSJ, since the internal security is reinterpreted with the security in the external borders. However, after reaching the point of establishing the JHA, how did the integration itinerate towards the creation of a border agency? In this sense, it is important to address the EU's external pressures for going further with the neofunctionalist analysis and to explain the establishment of Frontex.

#### **4.2.2. Exogenous Spillovers: International Terrorism and the 2004 Enlargement**

As the JHA was developed and turned into an AFSJ with the Amsterdam Treaty, the MS concerns related to the interdependent character of internal border security touched upon in the above part continued to influence the external border management integration with external developments affecting the Union. The hot topics of increased terrorism activities in the 2000s, and the 2004 enlargement to take place constituted MS concerns in this regard and became influential in the way leading the establishment of the Frontex agency. In this part, with the use of exogenous spillover we can make sense of these developments for a neofunctionalist analysis. Exogenous spillover put forth by Niemann (2006) and also explained in the section 2.2.1.6. in this thesis is a concept that extending the original functional spillover to the point of including “those factors that originate outside the integration process itself i.e. that are exogenous to it” (Niemann, 2006, p.32) as indicated in its name. In this regard, exogenous spillover takes into account of the changes in the external political and economic environment, and pressures coming from it which eventually adds context to the behaviour of national and supranational actors in the examining of the European integration. It is, thus an important revision added to the neofunctionalist theorization in response to its neglecting external events. External events can add integrative pressure in two logics. Either they act as external threat/shock which in turn triggering close cooperation partners of MS to find common solutions (Niemann, 2006, p.33), or exogenous event may be the “phenomena and processes such as globalization, migration, environmental destruction, or international terrorism” (Niemann, 2006, p.33) which, again, require “a common approach” in a sense that regional integration could provide a “more effective buffer against such developments” (Niemann, 2006, p.33). Therefore, by clustering international terrorism and the enlargement as

exogenous events, since they addressed by threat and shock discourse in the literature, I will be showing that the exogenous spillover provides a useful point of view in which we can engage the EU and its development with the global context in a neofunctionalist analysis, and explain the developments towards more communitarization in the external border management. The new-institutionalist analysis made by Ekelund (2014) in tracing the establishment of Frontex put forth the importance of considering the political environment and specific events in establishing Frontex (p.110). Although this thesis uses neofunctionalist theory, the emphasis given to context by the new-institutionalist approach is a contributial and influential aspect. However, the political environment and specific events to be mentioned are better be included within the logic of exogenous spillover of revised neofunctionalism for providing a wholesome approach to the integration since this thesis considers examining the process which ended up with the establishment of an agency as a part of the European project.

#### **4.2.2.1. International Terrorism**

The years from the 1990s to the early 2000s witnessed the intensification of cooperation on border management in the EU as much as “a rise in international organized crime” including terrorism (Anderson et al.,1995 in Hix & Høyland, 2011, p.291). The terrorist attacks of 9/11 in the US, the terrorist attacks in Madrid in 2004 and in London in 2005, and the “global war on terrorism” found its repercussion in the EU as the need for developing “common external as well as internal policies to tackle the new global terrorist threats” (Hix & Høyland, 2011, p.291). Especially the 9/11 is mentioned as a “shock” (Hix & Høyland, 2011, p.291) and a “major exogenous shock” (Kaunert & Léonard, 2012, p.421) which is triggering the pressure on MS to tackle the issue commonly. It is argued that “9/11 led to the identification of a wide range of measures aiming to reinforce homeland security, including the tightening up of external border controls” (Monar 2005, p. 147; Mitsilegas, 2007, p.362 in Léonard, 2012, p.150). In this sense, 9/11 could be placed under the category of external event such that international terrorism reflects the trait of an exogenous spillover within the neofunctionalist frame due to its triggering the MS to take a more harmonized approach to solve the issue. The concerns over the fight against terrorism which was

ignited by 9/11 become a “cornerstone” toward EU level cooperation (Horii, 2015, p.58), especially regarding the external border management, contributing to the establishment of Frontex (Meissner, 2019, p.144 ; Léonard, 2009). 9/11 and the global conjuncture have influenced the MS to upgrade their intergovernmental cooperation to a Community agency (Léonard, 2009) and strengthened the notion of the role of the EU institutions in shaping the development of the JHA/AFSJ. It is detected that after the 9/11, in the EU there were the situations where the Commission, the Council Secretariat, and the CJEU exerted policy entrepreneurship, and most of the policy entrepreneurship role performed by the Commission (Kaunert & Léonard, 2012, p.426). For instance, the European Commission and the Council Secretariat influenced the counter-terrorism area by “acting as supranational policy entrepreneurs” (Kaunert & Léonard, 2012, p.422). They exerted their influence especially on the “European arrest warrant” issue which is related to high politics area (Kaunert, 2007) and on the “EU cooperation on counter-terrorist financing measures” (Kaunert & Della Giovanna, 2010) which became an area of concern related to the border controls by the MS due to the increased terrorism activities in Europe in the aftermath of 9/11 (Léonard, 2015, p.311). In addition, the the terrorist attacks in Madrid in 2004 and in London in 2005 interlinked the area of “border management and control over criminal activities”, including irregular migration, and border controls became an important part of counter-terrorism policy (Leonard, 2015 ; Trevisanut, 2015, p.216). Migration policy practices have been exploited for counter-terrorism purposes after those attacks as well (Boswell, 2007, p.590), and the linking of the migration and asylum policy with counter-terrorism and external border management has increased. “The Hague Programme Strengthening Freedom, Security and Justice in the European Union” (2005) adopted in 2004 states that:

The management of migration flows (...) should be strengthened by establishing a continuum of security measures that effectively links visa application procedures and entry and exit procedures at external border crossings. Such measures are also of importance for the prevention and control of crime, in particular terrorism (2005/C, p.7).

In this sense, international terrorism brought about a dynamic in the area of external border management and had repercussions on the EU’s counter-terrorism policy as well as asylum and migration, and external border policy. 9/11 created a shock and the

increased international terrorism in its aftermath together contributed to exogenous spillover that pushed MS to take common steps in counter-terrorism issues as well as ignited strengthening the external border controls and the establishment of Frontex.

#### **4.2.2.2. The 2004 Enlargement**

Another event causing an exogenous spillover in the AFSJ is the big bang enlargement of the EU in 2004 and its accompanying Schengen incorporation (Horii, 2015). However, this event creates an “endogenous-functional spillover” (Niemann, 2006, p.30) since it is closely associated with the endogenous concerns of the MS regarding to the European integration. The expected enlargement with Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, the Czech Republic, Bulgaria, Romania, and Slovenia was assumed to be the largest one with a prediction to change the EU’s shape significantly due to the shift of the EU’s external borders to these new country’s national borders (Horii, 2015, p.59). How this enlargement created an endogenous functional spillover in this area has a relation with the irregular migration. In the late 1990s and early 2000s, irregular migration became an EU-level hot topic that was addressed in the 1999 Tampere Council and 2002 Seville Council. Irregular migration, especially from the Mediterranean Sea, raised attention to implement EU-level cooperation (Geddes et al., 2008). The countries such as Malta and Italy experienced hardships with the increased number of irregular migrants (Ekelund, 2008, p.3) and tragic incidents involving irregular migrants in 2002 such as The Monica raised public awareness and also contributed to the vulnerability of the external borders (Ekelund, 2010, p.192). Within this context, enlargement with ten new MS is viewed as an additional challenge given the dimension of the new external borders (Gogou, 2006, p.95), i.e. the vulnerability of the external borders. All these factors in relation have raised concerns on “accession states’ capabilities to control their external borders” (Niemann & Speyer, 2018, p.26). Enlargement phenomenon in its own right has generated greater demand for EU legislation on increased cooperation on external border controls and the establishment of Frontex has accelerated (Ekelund, 2010, p.192). The enlargement phenomenon of the European Union has so internalized as a part of the Union that it was gradually became “a settled policy goal” (Niemann, 2016, p.139). Thus, even though enlargement is an external event it requires reforming

of the EU decision-making rules and creates an endogenous pressure. The pressure in the EU increased as enlargement approached. In the Seville European Council in 2002, the accession process of ten new MS entered in its final phase (Presidency Conclusions, 2002) which gave certainty to the further enlargement and also created pressure “on issue areas that were subject to unanimity, such as migration” (Niemann, 2016, p.138). “Enlargement was to be cited frequently at the Convention as a rationale to substantiate the need for reforming the decision rules of Title IV, i.e. of asylum and immigration policy” (cf. Commission, 2002a; EP, 2003b in Niemann, 2016, p.138). As an endogenous pressure with an exogenous origin, enlargement phenomenon, particularly the 2004 enlargement, thus, led to endogenous functional spillover in the area of external border management with its addressing to the internal issue of the Union.

It should be also mentioned that the abolishing internal borders within the Union has “not necessarily facilitated the rise in migration, organized crime, and terrorist activities” (Hix & Høyland, 2011, p.292) as these types of activities have not newly emerged with the lifting of the borders. What is highlighted for the aim of this thesis is hence, the aspect of interdependency between the policy areas. Lifting of the internal controls on the movement of goods, services, and persons on the one hand facilitated the Single Market and on the other hand, it created interdependency between the policy areas of migration, international crime and terrorism of MS since the borderless internal area of the EU necessitated the MS to have a more common approach since “one government’s immigration policy has a potential impact on the number of migrants entering to the other EU states” (Hix & Høyland, 2011, p.292). The analysis of functional spillovers mentioned in sections 4.2.1. and 4.2.2. brought by those interdependencies mentioned above led to more European solutions instead solutions based on unilateral actions of the MS especially in the area of external border management. The development in the JHA/AFSJ did not prove the same dynamism towards harmonization for each sub-policy field. For instance, in the area of immigration and asylum there was a rapid development in the “supranational policy-making and binding legal instruments” while much slow progress was seen in the area of police and judicial cooperation (Hix & Høyland, 2011, p.286). The link between the Single Market and the JHA proved strong functional pressure to take further actions

particularly in the external border management, therefore, created its own dynamism for further integration. Concerns of the MS regarding irregular migration and terrorism that have emerged in combination with the right to freedom of movement, the Schengen as well as with the external pressures deemed to require more collective action. Frontex emerged in the form of an agency as a functional solution that would bring a more effective and integrated stance to the management of the EU external borders. The establishment of the Agency as a centralised body was considered the best possible solution by the Commission and was embraced also by MS as the perfect solution for coordination (Ekelund, 2008). The external border management in the EU became interdependent with migration, asylum, and visa policy fields and also with many actors due to its nature. These actors cast their preferences and influences in the policy and decision making processes. In the following part, I will focus on the actors in the establishment of Frontex i.e. the MS and supranational actors and how they contributed to the further integration on the external border management through spillover.

### **4.3. Neofunctionalist Dynamics in Establishing Frontex**

#### **4.3.1. Cultivated Spillover: Commission's Policy Entrepreneurship and the European Parliament**

Alongside the MS preferences, supranational institutions i.e. the European Commission and the European Parliament casted their influence in the process of establishing Frontex and later the EBCG, as supranational actors representing cultivated spillover dynamics in the area. In order to speak of cultivated spillover mechanism what needed to be traced is the existence and influence of the supranational actors who “were considered to push (or 'cultivate') integration because they had an interest in integration” (Wiener & Diez, 2009, p.8), and of becoming of an agent of integration (Niemann, 2008, p.561). Supranational institutions are important in neofunctionalist logic in the sense that once they are “once established they tend to take on a life of their own and are difficult to control by those who created them” (Pierson, 1996 in Niemann, 2008, p.561). Since supranational institutions are concerned with their own agenda and “increasing their own powers”, they tend to become “agents of integration”, because they benefit from further integration

(Niemann, 2008, p.561). By this logic, it would not be wrong to expect the Commission to exert supranational expectations in the making of the external border management area since the policy area is a sensitive one, and the Commission is by nature expected to promote the general interest of the Union (Nugent, 2017, p.129). The European Parliament (EP), on the other hand, has increased its powers throughout the institutional developments in the EU and reached an influential point in the EU system, sharing a role with the Council in the secondary legislation process (Nugent, 2017, p.201). The EP has a traditional interest in pushing the integration forward, and a part of this is related to its interest in increasing its own powers (Westlake, 1994 in Niemann, 2008, p.562). The EP also plays a critical role in “the Union’s legitimization” (Niemann, 2008, p.562). In the process of establishment of a border Agency, the EP wanted to propose its own suggestion, preferred a more supranational model of Agency in the management of external borders, however, its influence in decision-making stayed limited due to institutional constraints of the rapidity of the process (Ekelund, 2008, p.14). Although the Commission and the EP have had different agendas both wanted to influence the external border management in the EU in the case of establishing Frontex.

#### **4.3.1.1. Commission’s Policy Entrepreneurship**

In the Laeken European Council in 2001 the MS “acknowledged the close link between security and strengthened border control cooperation” (Meissner, 2018, p.144) as a result of 9/11 and the upcoming enlargement. Based on this background, the mandate of the Commission was expanded by the European Council and it was tasked with “arranging cooperation in the realm of external border control and proposing the creation of common structures for the control of the EU external borders” (Meissner, 2018, p.136). In the light of these developments, the European Council asked the Council and the Commission to work on the “mechanism or common services” to better control the external borders of the Union (Presidency Conclusions, 2001). The Commission’s proposal in the document “Towards Integrated Management of the External Borders of the MS of the European Union” (Commission Communication, 2002) in May 2002 introduced two instruments to better management and control of the EU’s external borders. One of them was the External Borders

Practitioners Unit (i.e. Common Unit). It was designed for “a permanent process of exchange and processing of data and information” and to be established gradually between the MS in the medium term (Commission Communication, 2002). The other was the European Corps of Border Guards (i.e. European Corps) which designed for the long term as an ultimate objective in controlling operational projects (Commission Communication, 2002). This proposal raised constitutional questions and reservations among the MS, and obtaining political consensus was difficult in the case of whether MS would transfer their public authority to the European Corps (Horii, 2015, p.63). While Italy, Spain, Belgium, Germany, and France reacted positively to the potential of regional cooperation on border management, several others such as the UK, Finland, Denmark, Sweden were critical. The European Corps among the two alternatives represented a more integrated form of cooperation and gained support also by the DG for JHA of the European Commission and LIBE Committee of the European Parliament (Horii, 2015, p.67). Creation of a Common Unit in the first place was agreed by the MS, representing MS reluctance to transfer further authority to the EU in the field of external borders. The Common Unit (CU) held a more intergovernmental composition by being a part of the Council’s Working Party of “Strategic Committee on Immigration, Frontier and Asylum (SCIFA)” and started as a Council Working Party in the SCIFA+ formation (Meissner, 2019, p.145). In this new formation whereas MS represented by high ranking officials in the SCIFA meetings, in the SCIFA+ formation the MS represented by their heads of border agencies and the formation dealt with operational issues (Horii, 2015, p.67). However, some time later, the Common Unit was criticized in terms of its effectiveness due to the low level of commitment of the participating MS. The Presidency report identified these reasons as:

The lack of planning and preparation; lack of central operational coordination; lack of adequate handling of difficulties during the implementation period; lack of legal basis for carrying out common operations and lack of the participating MS not fully meeting their obligations under the programme” (European Council, 2003).

Besides, reliance on project funding created hardships in the planning of the projects as well as competition between the projects that need funding, and these kinds of problems shows that the MS still could not meet at a common point regarding to the

outlook of this cooperation (Ekelund, 2008, p.4). Therefore, the Council Presidency advocated the reinforcement of the Common Unit in June 2003 (Ekelund, 2010, p.169), and asked the Commission to examine the necessity of creating new institutional structure and mechanisms including the “possible creation of a Community operational structure” (Presidency Conclusions, 2003, p.5). The Commission presented the alternative solution that will replace the Common Unit in its “Proposal for a Council Regulation establishing a European agency for the Management of Operational Co-operation at the External Borders (Frontex)” in November 2003 (European Commission b, 2003). In this document, the Commission indicated the necessity of the creation of an integrated border management and the common rules as the standards and procedures to be followed by MS as an essential “prerequisite for an area of freedom, security and justice” as well as “necessary corollary to the free movement of persons within the European Union” (European Commission b, 2003, p.15). The Commission, as an entrepreneur, build its strategy to push the EU level cooperation by taking the MS’ attention to the already existent common rules on the external border control and surveillance with the integration of the Schengen acquis into the framework of the EU (European Commission b, 2003, p.4). In this regard, the operational level of cooperation was presented by the Commission as a complementary mechanism for implementing the Community policy on the external border management effectively. Referring to the previous experience with regard to the Common Unit, it is stated by the Commission that:

(...) it is not sufficient that national authorities simply apply common rules, rather it is imperative that they apply those common rules in a harmonised way (...) For this reason, it has been increasingly recognised that Community policy on control and surveillance of the external borders would benefit from an increased co-operation between the competent national authorities. (European Commission b, 2003, p.4)

Therefore, it is addressed that “the mission of the Agency would be to facilitate the application of existing and future Community measures relating to the management of the external borders by ensuring the coordination of MS actions in the implementation of those measures” (European Commission b, 2003, p.4). In addition, based on the previous experience of Common Unit, the Commission grounded the need for “a properly funded and equipped body instituted by the EU” in order to solve the

coordination problems as well as the need of “follow-up and evaluation of the projects and operations” (Horii, 2015, p.70 ; European Commission b, 2003). The Commission’s preference for an agency model, which is representing a centralised structure (Ekelund, 2008, p.7), had previously been advocated especially in the 1990s (Majone, 1997). The agency model was found beneficial due to its “European level coordination and co-operation” function (Horii, 2015, p.71) and due to its “improved ability to assist tackling the critical situations at the external borders” (European Commission b, 2003, p.6). The Commission stated that creating an agency was “a better and more cost-effective choice for achieving the objective” of an enhanced operational cooperation between MS at the EU external borders, compared to empowering the Commission or the Common Unit (COM(2003) 687 final/2, 38 in Meissner, 2019, p.155). The Commission’s emphasis on the “transforming existing informal structures into a Community level structure” (European Commission b, 2003, p.6), in this regard, represented that it had an integrationist agenda in the process (Ekelund, 2008, p.8). The JHA Council welcomed the Commission’s proposal and acknowledged the establishment of the agency structure to better organize and develop the coordination of operational cooperation at the external borders, although stating that the MS have the primary responsibility in the management of their parts of the EU’s external borders (Ekelund, 2008, p.9). There were issues to be considered before adopting the proposal. The organizational structure of Frontex was strongly opposed by the MS although it was less supranational than the proposal of European Corps (Horii, 2015, p.72). The MS’ concerns regarding to their sovereign prerogatives over the management of operational cooperation at the external borders of the EU was high. “Several MS i.e. France, Germany, Netherlands and Spain have had scrutiny reservations regarding return cooperation that Frontex would foster and the financial means available for that purpose” (Meissner, 2019, p.147). Moreover, there were reservations regarding to the composition of the Management Board of Frontex. The MS kept their control over the Agency’s Management Board in which each MS has a seat in it with a veto power in decision making. However, the composition also included two Commission representatives. Finally, a compromise between the Commission and the MS was reached in the midst of the Commission’s aim of “creating a strong regulatory body with almost exclusive competence in border

management” and the MS’ concerns on their sovereignty clauses (Meissner, 2019, p.148). “In Luxembourg on 25th and 26th of October 2004 the establishment of Frontex listed as an A item and adopted without debate” (Ekelund, 2008, p.11). Compared to the former Common Unit, Frontex was given the “additional task of coordinating and organising return operations of MS” (European Commission b, 2003, p.3). The formation of the Union border agency, Frontex, represented a less intergovernmental structure compared to the Common Unit since Frontex was established as a separate entity from the MS and the EU institutions and also with “its own staff and office” (Horii, 2015, p.82). Institutionally speaking, the Agency was established within the first pillar and under the Treaty of Amsterdam which makes it belong to the communitarized area.

The Commission's proposal for a European Corps in 2001 was far beyond its time with its proposing for a more supranational structure. The Commission advocated its preference for the creation of a more integrated model in the long run because of the minimal cooperation between MS which hampering the EU borders’ security, and thus emphasized the need for common policy on the management of external borders (Horii, 2015, p.61). The Commission also stated that “the creation of Frontex constitutes a concrete and important step towards achieving solidarity between the MS” and in this regard already think ahead for the extension of the Agency’s tasks to other areas which related to border control (Ekelund, 2008, p.7). Moreover, the Commission used its right of initiative which is an important trait to consider for its will to influence decision and policy-making as an entrepreneur including its opening up for a room for its proposal by highlighting the “MS’ inability to secure the external borders” (Meissner, 2019, p.156). In this regard, according to the Commission “the principle of subsidiarity was respected” as the MS failed to form an “integrated Community-wide cooperation in the field” (Ekelund, 2008, p.9). The cooperation among the MS were not successful in implementing a common action in external border management prior to this stage, therefore, a Union hand was needed for better coordination. In fact, Frontex established to coordinate the work that MS are responsible for where its tasks used to be Council work (Ekelund, 2008, p.25). Although the initial idea of creating a European Corps as a supranational formation was set aside and a more moderate solution in the form of Frontex was preferred by

the time, this was an important step taken towards the future of the external border management in the EU. The time was “not ripe for such a body” (European Parliament, 2003, p.13) and it became feasible only years later with the realization of the EBCG (Meissner, 2019, p.154). The Agency was established where rule and controls of border management have passed to the EU level whereas implementation stayed within the prerogatives of the MS (Ekelund, 2010, p.180). The Commission set the bar high towards integration of the area with its proposal which included “the European Corps” and although the idea was rejected, the proposal opened up an important integrative step for harmonization of a formal cooperation and coordination structure.

#### **4.3.1.2. The European Parliament**

The EP supported the Commission's proposal for the establishment of Frontex, and also paid special attention to the Commission's proposal for the creation of the European Corps which envisaged to be an independent agency composed of special units and financed by the Community (European Parliament, 2003, p.13). The Parliament adopted a more “human rights-oriented” vision in approaching to the establishment of Frontex by addressing the tragedies in the Mediterranean with the aspect of prevention of human trafficking (Meissner, 2019, p.156). During the EP discussions regarding the establishment of Frontex some MEPs (Member of the European Parliament) expressed their support for the idea of establishing an agency and gave a motion suggesting the “setting up of a multinational European body to assist police forces at national level to combat irregular migration” (Ekelund, 2008, p.12). The EP rapporteur von Boetticher also expressed its opinion with regard to the composition of the Management Board (MB) that the MB should be composed of one representative from each MS in contrast to the Council's wish of having more national representatives (Ekelund, 2008, p.14). However, the European Parliament's role during this stage was rather limited due to the institutional constraints. Until the year 2009, the EP was not a co-legislator with the Council. Under the consultation procedure in decision making with the Council for the establishment of Frontex, therefore, the EP had been only involved “marginally” in the establishment of the Agency since it was not a co-legislator yet (Meissner, 2019, p.156). In the next stages, however, the EP's influence in the further integration of the external border

management has increased. Frontex became operational in 2006 and its mandate was amended respectively in 2007, 2011, 2016 and in 2019. The amended regulation of Frontex in 2011 (Regulation 1168/2011) was a result of the human rights strategy put forth by the EP (Meissner, 2019, p.150), in which Frontex was obliged to develop a Fundamental Rights Strategy (FRS). While the MS expressed their will and concerns in the Council regarding the formation of a common external border management, the EP and the Commission were not passive actors in the process of making and developing the external border management.

#### **4.4. Neofunctionalist Dynamics in Establishing EBCG**

##### **4.4.1. Exogenous Spillover: Refugee Crisis**

The refugee crisis's becoming one of the neofunctional dynamics in the further development in the external border management in the EU is explained in this thesis by the crisis's serving as an exogenous event as well as its generation of an endogenous pressure that is to say that endogenous functional spillover within the logic of exogenous spillover in neofunctionalist sense. As it is referred to in the previous part in this thesis (4.2.2.2.), the exogenous spillover has also an impact to create an endogenous pressure, therefore, endogenous functional spillover in the Union because of its bearing on the related policy areas as it was exemplified in the case of the 2004 enlargement. This subtitle considers again the endogenous impact of the external event which is the 2015 refugee crisis in its association with creating endogenous functional spillover in the further development of the external border management. The external event's (refugee crisis) stressing the EU migration regime (endogenous impact) created a trigger for taking more steps in the Union regarding external border controls. Because, as it is explained in part 3.2.2.1. the external borders are now the key in preventing unauthorized entries and providing free movement of people and security within the Union, and as well as explained in part 3.4., the external borders are representing an intersection for the migration and external border issue areas.

While Frontex was established in 2004, reflecting “an uneasy compromise between the Commission's preference for an EU border guard and the MS' reluctance” (Mawdsley, 2017, p.7), the year 2015 became a real challenge for the EU because of

the high number of influx of people to the European continent. The influx found its implication (Scipioni, 2018) in the EU as such:

In the aggregate, it is true that migrants and refugees have remained relatively stable as a percentage of world population in the last decades. However, narrowing down the focus to the EU, asylum applications reached a record high in 2015, individuals who attempted entering one of member states' territories remained at historically high levels (e.g., Italy) or skyrocketed (Greece). Tragically, the number of deaths reached an historic height in 2015 (footnote1, p.1370).

Therefore, how to deal with the high number of asylum applications and unauthorized entries to the continent created problem in the Union especially due to the disagreements between MS over the asylum system i.e. The Dublin regime. The external pressure coming with the refugee crisis touching onto the very core internal issue of the EU of migration management thus created an endogenous impact for the further actions the EU took on its external border management. Refugee crisis is even highlighted as “Schengen crisis” in Meissner’s work (2019) as this crisis implied the “systemic weaknesses” of the EU’s common policy on migration. That is to say that the endogenous impact of the crisis stems from the “weaknesses of an asymmetric system of sub-policies” of the EU and from the “rules falling under the common migration policy and touching upon the core of the Schengen area” (Meissner, 2019, p.238). Another reason for the refugee crisis is being historic for the EU is that the dysfunctionalities of the previous border regime came to the surface with a strong pressure of the exogenous event of the refugee crisis (Niemann & Speyer, 2018). Therefore, the refugee crisis is put in a different place proving a different case from the previous problems on unauthorized border crossings to the EU, moving the external border management of the Union to another phase. A more substantial change to Frontex, namely its upgrading to the EBCG, hence ignited from this event (Niemann & Speyer, 2018 ; Meissner, 2019). The exogenous spillover of the refugee crisis with its endogenous impact casted an integrative dynamism in the external border management regarding an upgrade in the Agency, however, not alone. The other types of spillovers namely cultivated and political spillovers are found to be also influential in the moving forward of the process of establishing the EBCG. These spillovers were undertaken by the actors such as supranational institutions, political elites, NGOs and

business groups (Niemann & Speyer, 2018) in the negotiations for the establishment of the EBCG.

#### **4.4.2. Cultivated Spillover: The Commission and the Parliament**

Due to the lack of common solutions among the MS to tackle the refugee crisis stressing the external borders, some MS introduced internal border controls. This unilateral action harmed the integrity of Schengen as well as the aim of common external border management of the Union. The fact that Frontex has undergone significant reforms to strengthen the cooperation between the MS, and contributing to the implementation of the shared competence between the MS and the Union in the external border management, holds supranational institutions as important actors alongside the MS in creating the further steps of the external border management (Meissner, 2019, p.152). In this regard, the Commission and the EP were observed to be supranational entrepreneurs in the creation of the EBCG (Niemann & Speyer, 2018), and their actions will be introduced within the cultivated spillover mechanism explained in 2.2.1.5. and applied to the part 4.3.1. for the establishment phase of Frontex.

##### **4.4.2.1. The Commission**

Although the MS did not want to give up on their sovereign prerogatives they soon acknowledged the priority of strengthening the external border protection in the EU since introducing unilateral border controls represented only a short-term solution. However, they have not envisaged establishment of a new border agency (Meissner, 2019, p.152). In this regard, the Commission's role in negotiating the EBCG regulation (Regulation 2016/1624) was noteworthy as a supranational entrepreneur. With the external event of the refugee crisis and the mentioned dysfunctionalities that has come to the surface in managing the external borders including Frontex's limitations, a revision to the Frontex became possible. "A revision was not foreseen to be tabled before spring/summer 2016", and it is suggested that "a year earlier this sort of ambitious proposal would not have passed so successfully" (Anonymous interview 06/10/2016 in Niemann & Speyer, 2018, p.32). The Commission's proposing of the "A European Agenda on Migration" in 2015 was seen as a strategic step in expanding

Frontex's mandate and turning it into a new EBCG (Meissner, 2019, p.166). The Commission took the advantage of the political air and it was the right time to launch the EBCG proposal in December 2015 (Niemann & Speyer, 2018, p.32). The Commission's proposal of "A European Border and Coast Guard to protect Europe's External Borders" included "the right to intervene" which is mentioned by the Commission for the situations where the MS measures do not prevent seriousness of the crisis situations faced by the Union regarding to the migration management and internal security issues (European Commission, 2015). When the situation stays at a critical level urgent action should be taken at Union level for direct intervention as proposed by the Commission (European Commission, 2015, p.6). This, of course, raised concerns of the MS regarding their sovereign rights and the proposal was not directly approved in its initial form. The Commission tried to depoliticize some issues by making them issues of technical or functional requirements through emphasizing the need to effectively protecting external borders and the deficiencies of Frontex in dealing with the challenges (European Commission, 2015, pp. 2–8). The Commission's expertise in this regard is a cultivating element allowing the Commission to reframe the issues on its own behalf. The DG Migration and Home Affairs, for instance, gradually expanded its resources has more than 300 staff working, and "the Commission developed substantial know-how on migration issues over the years" (Kaunert, 2010, pp. 134–135; Nilsson and Siegel, 2010 in Niemann & Speyer, 2018). Regarding to the establishing the EBCG this meant that:

The Commission was able to 'bring considerable substantive and legal expertise to the table' and managed to 'provide much technical detail' to explain functional necessities, for instance as to why and under which circumstances rapid border interventions may need to take place (Niemann & Speyer, 2018, p.33).

As it was touched upon in the part 2.2.1.5., the Presidency is also considered as an influential supranational actor, and the interaction of the Presidency and the Commission put forth by Niemann & Speyer (2018) exemplifies cultivated spillover since this cooperation enabled and ignited furthering integration (p.33). The Presidency was considered as a broker during the EBCG negotiations since it cooperated with other delegations, built good networking as well as exerted leadership features (Niemann & Speyer, 2018, p.34). In this regard, the Commission's relationship with the Presidency as put forth by Niemann & Speyer (2018) was

beneficial in the sense that the “Commission was closely involved in the agenda setting and negotiation process led by the Presidency”, and was given “enough time to explain the proposal in the various Council fora” (Anonymous interview 31/10/2016 in Niemann & Speyer, 2018, p.34). Moreover, building a good communication with the Presidency allowed the Commission “to act as a promotional broker between the Council and EP in the trilogue” (Niemann & Speyer, 2018, p.32).

#### **4.4.2.2. The European Parliament**

The EP acted as another supranational entrepreneur with its interest in further policy integration in the negotiations of establishing the EBCG. The EP approached to the intergovernmental cooperation on migration and security issues with a criticism due to the “secretive nature of the intergovernmental cooperation” since the establishment of TREVI and Schengen groups (Hix & Høyland, 2011, p. 296). With regard to EBCG negotiations, the EP pushed for further integration and supported the Commission. However, it had its own concerns, too. The EP’s concerns for the further integration were followingly on the issues of:

- (a) reinforcing the provisions on fundamental rights; (b) the deployment of liaison officers to all Member States, while granting them more tasks (which allows for more effective vulnerability assessments); (c) strengthening the provisions on the Agency’s equipment for operations; (d) enhancing its influence on the appointment of the Agency’s director (Niemann & Speyer, 2018, p.35).

Although the EP showed its support to the Commission’s proposal for the establishment of the EBCG, it amended the parts regarding the new Agency’s right to intervene (the Council also amended this part due to sovereignty clauses) and its impact on fundamental rights with a demand for more accountability and transparency from the border Agency. The other reason was that the EP wanted MS holding the right to decide when the border Agency intervenes through QMV and not the Commission (Meissner, 2019, p.171). On the other hand, the Parliament was supported by the Commission while the Council had difficulties with some of the EP’s demands. “In the trilogue , this seems to have tilted the balance in the direction of more integrative outcomes, such as the greater influence of the EP concerning the appointment of the Agency’s director” (Anonymous interview 31/10/2016 in Niemann & Speyer, 2018, p.36). Although motives behind their agendas were different, the EP’s

supporting the Commission proposal contributed to the Commission's aim of enhancing the supranational management of external borders, therefore, as a common point also supported the cultivation of the "more Union" and showed that the interest of both institutions in more integration. This interaction also exemplifies the interest of supranational institutions in enhancing their own powers in line with the neofunctionalist assumption of institution's taking the path and agendas of their own in the integration process.

#### **4.4.3. Political Spillover: Governmental and Non-governmental Elites**

In the negotiations of establishing the EBCG, the involvement and influence of governmental and non-governmental actors on the process was also noteworthy. When drawing up new laws, the Commission consults committees representing stakeholders, private sector or national government experts. These groups ensure that the ones who will get affected by the new laws are heard by the Commission. Also, the Council is supported by the Committee of Permanent Representatives of the Governments of the Member States to the European Union (COREPER), Committees and Working parties known as the Council preparatory bodies, in preparing its decisions. These preparatory bodies are constituted of MS representatives and one member of the Commission (EUR-Lex g, n.d.). As governmental elites, various Council working parties such as "Working Party on Frontiers, JHA Counsellors, and SCIFA" were involved in the process of modifying the Commission proposal and casting their own views and recommendations on the further strengthening of the external border governance (De Capitani, 2016 ; Niemann & Speyer, 2018, p.36). On the other hand, involvement of the non-governmental elites such as business interest groups and pro-migrant NGOs in negotiating the establishment of the new Agency added also integrative pressure to the process, however with minor influence (Niemann & Speyer, 2018, p.38). Political spillover tool here is helpful in looking at how the process was influenced by these actors. While the effort of business interest groups and NGOs trying to open up a space for themselves in the negotiations shows the interest in integration is upgraded, particularly the elite-socialization thesis of neofunctionalism gives us an understanding of the day-to-day policy making of governmental officials influential in the integration.

#### 4.4.3.1. Governmental elites

As an important part of the political spillover, there was the existence and impact of governmental elites during the EBCG negotiations in the Council framework, and those actors were found to have undergone a process of socialization, deliberation and learning (Niemann & Speyer, 2018, p.36). Elite socialization thesis of neofunctionalism puts the benefit of socialization in its facilitating role in consensus building and promoting integrative outcomes (Lindberg, 1963). Against this backdrop, the frequency of the meetings held between the Working Party on Frontiers, the JHA Counsellors and SCIFA opened up the way for informal discussions. Another important aspect regarding to the contributive impact of the interactions among the officials was found in the “quality of interaction” and not only the quantity of meetings in providing socialization and learning process (Niemann, 2008, p.563). The power of socialization through formal meetings between working groups and informal meetings (SCIFA meeting in mid-February) national delegations found a chance to access peer motives to understand each other's positions regarding the regulation of 2016/1624 (Niemann & Speyer, 2018, p.36). For instance, the informal SCIFA meeting enabled working on the concerns on “the mandatory national contributions to the agency”, and the new Agency’s mandate in “the fight against cross-border crime and terrorism”(European Council, 2016). Moreover, regarding to the JHA Counsellors it is noted that:

The regular involvement of the JHA Counsellors was conducive to integrative problem-solving beyond the lowest common denominator. The JHA Counsellors have been referred to as a ‘favourable venue for reaching compromise’ (Nilsson and Siegel, 2010, p. 64), given the informality of the setting, frequency of interaction and mutual socialization... (in Niemann & Speyer, 2018, p.36).

National positions were rather fluid at the time of negotiating the regulation since “little time had passed since the Commission proposal that had barely been aired with Member governments beforehand” (Niemann & Speyer, 2018, p.36). Fluidity of national positions with adequate amounts of time consisting of socialization and learning helped the delegations to work out provisions (Niemann & Speyer, 2018, p.36-37). After repeated discussions as suggested in an anonymous interview

05/10/2016 in Niemann & Speyer (2018) national officials addressed that they “had to give up some sovereignty in order to tackle the situation” (p.36-37).

#### **4.4.3.2. Non-governmental elites**

Within the concept of political spillover the neofunctionalist hypothesizes that “non-governmental elites add an integrative stimulus to the European project” (Haas, 1958). During the EBCG negotiations, two non-governmental groups of actors namely the “pro-migrant NGOs” and “business interest groups” were found to be exerting moderate integrative pressure (Niemann & Speyer, 2018, p.37-38). With the refugee crisis broke out in 2015, several NGOs engaged in media advocacy exercises, aiming at convincing European countries to do more on the issue (Spindler, 2015). Besides the border authorities, NGOs became closely associated with the issue of EU external border management. They engaged with search and rescue operations in the Southern Mediterranean and attempted to compensate the “absence of large-scale humanitarian operations”, however, criticized by the MS (Radjenovic, 2021). During the EBCG regulation (2016/1624) negotiations, NGOs advocated for “strengthening of fundamental rights safeguards and respect of the principle of non-refoulement” to protect the individual migrant (Gatto & Carmona, 2016, p.6). A more systematic cooperation of the EU responding to the crisis (Caritas, 2016), and strengthening of the EU's ability to respond to mass migrations (Cusumano, 2016) were among the concerns of these groups emphasizing more decisive steps in integration. Alongside the EP, NGOs “also have been credited for ensuring the explicit references to fundamental rights protection in the regulation” (Anonymous interview 07/10/2016 in Niemann & Speyer, 2018, p.37). However, it is stated that the general influence of NGOs in the negotiations on the establishment of EBCG was limited since the legislative process moved speedily, and this situation created difficulties for those groups to make their voice heard “at an earlier stage” (Niemann & Speyer, 2018, p.37). Since in order to influence the eventual policy outputs it is important to engage in decision-making “at the relatively early stages of the EU policy process” (Peterson, 1995, p.75-76), it can be said that these groups could not considerably benefited from the chance to influence the negotiations and the decision making. On the other hand, European business interest groups had concerns regarding the introduction of internal

border controls due to their hampering impact on the sectors such as transportation and travel (Zalan, 2016). “The Schengen Area guarantees free movement to more than 400 million EU citizens, as well as many non-EU nationals, businessmen, tourists or other persons legally present on the EU territory” (European Parliament, 2016a), therefore, introducing internal border controls brings negative implications on the EU’s economy. For instance, with the introduction of internal border controls the need for “checking the IDs at internal Schengen area borders entails a negative impact” to the economy since checks at the each border causes loss of time (European Parliament, 2016a, p.4). This brings about a “complex economic chain of effects” which is likely to come accompanying increased costs especially “for road freight transporters, cross-border workers and public administration” (European Parliament, 2016b, p.69). Compared to the NGOs, business association’s interests were heard much earlier as it has been suggested by Niemann and Speyer (2018), and concerns of the business interest groups “were certainly noticed by politicians’ (p.38). That is to say that in contrast to the NGOs, business interest groups had more visibility during the EBCG regulation. Since measuring the influence of non-governmental elites in the negotiations is hard due to limited empirical data, a supranational governance approach (Sweet & Sandholtz, 1997) based on the assumption that the transnational groups igniting the further integration is not applicable in the external border management of the EU within the case of Frontex and the EBCG, as it is touched on in the theory part. The non-governmental elites alone are not the main influential actors in influencing the negotiations and the establishment process, rather exerted moderate influence. In neofunctionalist analysis, however, they are considered as a part of the dynamism towards harmonization with their moderate influence.

Border security industry is another sector that has vested its interest in the integration of the border management in the EU (Baird, 2018). It is argued by various scholars that “multiple business actors are engaged in designing, marketing, and profiting from the selling of security technologies, and actively craft markets through strategically framing social contexts i.e. borders as in need of urgent technological solutions” (Hayes, 2006; Hayes, 2009; Guittet & Jeandesboz, 2010 in Baird, 2018). “The EU institutions, especially the Council and the Commission have prioritized the growth of a market in technologies for civil security” (Hoijtink, 2014 in Baird, p.5). The

Commission framed external border security as a “technological problem” rather than a political one and the funds spared to “the research and development of the surveillance technologies” were increased (Mawdsley, 2017, p.7). These funds are benefited from the security industry associations to conduct research and development on surveillance, then the border management technologies are sold to EU agencies such as Frontex (Akkerman, 2018). The border security industry is not determining the policy development in this area, however “the industry does set the scene for what is possible, gains political legitimacy through its identity, and strategically communicates its preferences and interests in order to co-construct policy norms alongside the EU institutions” (Baird, 2018, p.130). For instance it is stated by Akkerman (2021) that:

The agency does have room to decide for itself about which equipment and services it needs... and in that sense is of interest for lobbyists, trying to steer them to purchasing equipment and services that are provided by specific companies” (Corporate Europe Observatory Interview with Mark Akkerman in Douo et al. 2021).

There is a relation between the industry, associations and the border agency, therefore, these actors can be considered as a non-governmental actors that might influence the reform of the Frontex in a neofunctionalist sense. However, analysing the impact of this interest group to the establishing negotiations of the Frontex or of the EBCG, however, is not applicable due to the lack of empirical data. Elaborating empirical and theoretical work on how security interest groups use their influence in the border management area can be developed with further studies in examining the future of the border management policy area, since it is known that the security industry and the EU already interact with each other.

#### **4.5. Conclusion**

Although the negotiations establishing Frontex and the EBCG took place in a highly sensitive policy area including the MS’ reluctance of transferring their sovereignty to the EU institutions, various spillovers are observed throughout the both processes, therefore, contributing to the neofunctionalist analysis of the external border management in the EU. Prior to the stage of establishing a Union border agency the Single Market and its interdependency with Schengen due to the interconnected nature

of the objective of freedom of movement to both to the economic and security areas created the necessary functional pressure, that is the functional spillover, which led to a Union action to tackle the issue of internal security by establishing the JHA. The external border sub-policy area in the JHA took the attention of the MS and the EU leaders with the emergence of the external events of international terrorism in the 2000s and the 2004 enlargement. Both events affected the context the MS found themselves in. The international terrorism and especially the 9/11 created a shock effect for the EU MS and triggered the need for further cooperation to develop common external as well as internal policies which is represented an exogenous spillover in the way of developing the JHA and creating a border Agency. Due to the rise in the terrorist events, migration policy practices have been exploited for counter-terrorism issues, increased the emphasis on the external border controls and its management. The 2004 enlargement, on the other hand, created another pressure in the Union regarding the need for a common approach on the external border management due to its being the biggest enlargement accompanying a new Schengen incorporation. The Schengen incorporation increased the concerns of the existing MS regarding the border control capacities of the prospective MS, therefore irregular migration. Although it was an external event, enlargement internalized gradually as a settled policy goal in the EU, and particularly the 2004 enlargement became an endogenous source of pressure with an exogenous origin substantiating the reform of EU decision-making rules on asylum and immigration policy. The link between security and strengthened border control cooperation, hence, became visible to influence the MS and the Union to take action. The Commission in this sense benefited from the external context as a supranational entrepreneur to propose the Common Unit in the medium-term and the European Corps in the long-term. The MS inability to coordinate a successful external border management under the Common Unit which was a more intergovernmental formation opened up an opportunity for the Commission to fill the gap and propose Frontex as a Union border Agency positioning between the intergovernmental Common Unit and a supranational European Corps. The Commission took attention to the already existent Schengen rules applying to the external border controls and management, and emphasized “effective implementation” of the Community policy on the external border management through “coordination

and co-operation” by an Agency thus, represented a cultivated spillover impact in the establishment of Frontex. The EP as another supranational actor supported the Commission's proposal, even had its own motion suggesting establishment of a more communitarian design contributing to the cultivated spillover dynamic in the policy area. The EP’s influence and involvement in the establishing process was, however, marginal due to its not being a co-legislator back then. During the establishment negotiations of the EBCG, the EP was more involved in the process. It supported the Commission’s proposal and also sought to exert its own influence in the proposal. Refugee crisis became the exogenous spillover dynamic for the MS to take more coordinated action regarding common external border management. Introduction of internal border controls unilaterally by some MS damaged the EU and its being a short-term solution only did not add anything to solve the common dysfunctions in the EU regarding the migration and the external border regime. The Commission, again, benefited from the situation and with its proposal of “A European Agenda on Migration” in 2015 opened up the way for further strengthening of the border Agency. In this regard, its supranational entrepreneurship, framing of the issue as technical rather than political by emphasizing the necessity to overcome the dysfunctions, and engaging good relationship with the Council Presidency added to the cultivated spillover dynamics in the area. Spillover dynamics were also reinforced by support from interest groups (non-governmental elites), and actors in the Council framework with their socialization and learning processes (governmental elites). NGOs exerted moderate influence on the EBCG regulation negotiations since they had no proper amount of time to get involved in the negotiation process. Governmental elites of Council Working parties, however, experienced important elite socialization during their time working on the proposal, and found more time to understand MS delegation’s concerns. As a result Frontex was upgraded to the EBCG.

## CHAPTER 5

### CONCLUSION

Today, EBCG, formerly Frontex, is the most funded agency among other AFSJ agencies and made its way to the center of the internal and external security in the EU's implementing of external border management yet operating in a sovereign and politically sensitive area. The Agency's increasing tasks and responsibilities in the external border management via regulations indicates a harmonization in the common external border management of the MS. Through the amendments took place respectively in 2007, 2011, 2016 and 2019 the Agency undertook a reform, moved from the point of providing coordination among MS and its assisting role to the point of acquiring its own border guards. The changes to the Agency's remit and competences raised with the amendments. The Regulation 863/2007 introduced RABITs, as the first step of creating a team at the disposal of the Agency; Regulation 1168/2011 which seen as one of the most vital amendments reflecting the supranationalization of framing the common policy on external border management (Mungianu, 2013, p.362) further consolidated the external relations role of the agency, upgraded the RABITs to EBGTs, laid down detailed provisions on the organizational aspects of joint operations and pilot projects, improved return cooperation as well as consolidated the external relations role of the agency and extended provisions on its cooperation with the third countries; The Regulation 2016/1624 officially established the EBCG as the successor of Frontex to provide integrated border management to the EU's external borders via making the management of the external borders a *shared*

*responsibility* between the MS and the EU, widening the scope of the existing EU measures, announcing a “fully-fledged integrated border policy”, and “strengthening the coordinating role of Frontex towards the national authorities dealing with border protection which operate in the so-called hotspots in search and rescue operations and in return of irregular migrants” (Ferraro & Capitani, 2016, p.3). Lastly, with the Regulation 2019/1896 the MS were put under a *greater obligation* to implement the concept of integrated border management in close consultation with the Agency regarding the increase in the Agency’s competences in return operations, although the MS still hold the primary responsibility “for issuing return decisions, and for adopting the measures pertaining to the detention of returnees” (Bossong, 2019, p.2). Moreover, the MS are holding a seat in the Management Board with a veto power in decision making which, however, also includes two Commission representatives. Considering the increased tasks and responsibilities of the Agency throughout the years with an incremental trend in its budget, this thesis aimed to uncover the creation of the Union border agency of Frontex and the EBCG afterwards in order to understand how a Union border agency is established and further developed in such a sovereign sensitive area, that is also to say how the MS pooled their interest in the more harmonization in the external border management. This thesis, therefore, explained the integration in the EU’s external border management and answered these questions via neofunctionalist theory. The neofunctionalist tool of spillover in the types of functional, political, cultivated and exogenous were found to be important mechanisms in the establishment of the Union border agency Frontex and the EBCG, and are explained. By tracing the negotiation processes of the establishment of Frontex and the EBCG respectively in the years 2004 and 2016 specific actors and events were found to be influential in igniting the integration in the external border management sub-policy area of the EU, and are matched with spillover dynamics of neofunctionalist integration theory suggests. In the establishment of Frontex, functional spillover, exogenous functional spillover and cultivated spillover is found, whereas in the establishment of EBCG exogenous functional spillover, cultivated spillover and political spillover is found.

In this study, functional spillover is discussed within the context of the Single Market and Schengen as a neofunctionalist mechanism emphasizing the further integration

due to interconnectedness of policy areas of economy and security. Functional spillover also observed as a mechanism in the JHA/AFSJ which created its own dynamics towards a common policy on the external border management with the increasing concerns of the MS regarding enlargement and irregular migration, contributed to the establishment of a more supranational governance in the area. The sub-policy area of external border management continued to further integrate with the impact of actors and external events and came to the point of establishing a Union border Agency.

The actors such as supranational institutions of the Commission and the European Parliament are exemplified cultivated spillovers in the establishment process of both Frontex and the EBCG. Actors such as NGOs and business interest groups exemplified the political spillover, although with moderate impact on the process of establishment of the EBCG. No political spillover detected during the establishment of Frontex in the research, and this aspect may be investigated more in future research. Events such as international terrorism, 2004 enlargement and the refugee crisis of 2015 exemplified exogenous spillover for more harmonization in external border management. The findings were presented chronologically in order to provide a meaningful sequence for the neofunctional analysis in the analysis chapter of this thesis.

In order to find evidence and provide an analysis, this thesis aimed to apply a process-tracing method to the establishment of the border Agency which values “evidence on processes, sequences, and conjunctures of events” (Bennett & Checkel, 2014) in researching causal mechanisms, therefore, helps grounding a historical background in addition to a theoretical background to provide a meaningful sequence to the developments regarding the external border management in tracing spillover dynamics. The historical background starts with looking at the previous institutional as well as empirical developments in the external border management area including establishment of a Single Market, JHA and AFSJ afterwards, and Schengen regime. It also includes the legal developments coming with the Treaties that changed the decision-making procedure in the AFSJ opening up the way for communitarization of the area in which various EU internal sub-policy areas dealt with. The impact of the decision-making structures coming with the Treaty changes especially on the

supranational institutions which are closely examined in the establishment of Frontex and the EBCG as a part of cultivated spillover is, therefore, detailed. The link between policy making areas of economy and security, the establishment of a free standing AFSJ, incorporation of Schengen acquis all found their implications on the EU's equation of providing internal security and managing the external borders via the establishment of a Union border agency.

In this respect, the first chapter of this thesis introduced the Agency's reform in more detail, putting down the scope and objective of the study alongside the methodology used in examining the case study. The importance of the process-tracing method for the EU studies especially addressed for studying the EU integration as the EU's holding a *sui generis* character in the international system requiring a different approach than quantitative or comparative analyses.

In the second chapter, choosing a neofunctionalist point of view in examining the external border management integration is grounded and the spillover concept which is the neofunctionalist mechanism to trace the dynamism in integration and its types are detailed. Moreover, the benefit of using neofunctionalism in this thesis compared to the approaches of supranational governance and institutionalism which are used in other studies in studying the EU integration in EU internal security area is also mentioned with the theory's ability to look to the whole rather than parts of integration. Neofunctionalism holds an important place in studying the EU integration with its rival intergovernmentalism by providing a wholesome framework in understanding the EU integration and named together as "grand theory". Intergovernmentalism is concerned with putting the member states' will in the center of integration and limiting integration in high politics issues by encapsulating the integration with low politics issues such as economy. On the other hand, neofunctionalism focuses on the actor's impact in furthering the integration and the learning capacity of actors. Supranational institutions and societal groups play an important role in moving the integration. The supranational institution's involvement in the integration is linked with the MS tension emerging from the need to create efficient decision-making and effective enforcement in a Union where multiple national governments holding their own interests in various policy areas (Pierson, 1996, p. 132). The MS put under pressure to grant authority to

supranational institutions and as a result, supranational institutions became more than passive tools of the MS. Furthermore, these institutions pursue their own agenda and support integration since they benefit from it. Integration, hence, is a dynamic process in the eyes of neofunctionalists with various actors at interplay.

The application of neofunctionalism with regard to the establishment of Frontex and the EBCG in examining the external border management integration is done via spillover concept. Spillover concept is a mechanism to reflect the dynamism in the integration process in neofunctionalist sense. The concept emphasizes that the starting of political cooperation in one area is expanding to other policy areas “in a way that was not necessarily intended at the outset” (Jensen, 2010, p.75). Therefore, this thesis considers broad definition of the spillover concept rather than its narrow definition limiting the integration to particular economic sectors. Moreover, in this thesis spillover is evaluated within the context of revised neofunctionalism which included cultivated spillover (Tranholm-Mikkelsen, 1991) and exogenous spillover (Niemann, 2006, 2016) in addition to the functional spillover and political spillover of earlier version of the theory. The revised neofunctionalism added the external dimension to the theory and accepted that the process of integration can be halted or even reverted. The study by Tranholm-Mikkelsen (1991) helped revive neofunctionalism after the stagnation in integration during the 70s and became influential in further application of neofunctionalism to EU integration. The functional spillover highlights generation of a new political goal in order to achieve integration in one area (Jensen, 2010). Political spillover is upheld by national elites (governmental elites) or interest groups (non-governmental elites) when these groups realize that supranational cooperation is necessary in order to solve specific problems (Jensen, 2010, p.76), and even use socialization to find common ground. Cultivated spillover is performed by supranational institutions via giving initiatives, “acting as mediators”, “policy entrepreneurs”, or via “promotional brokerage” which is defined by “lifting agreements beyond the lowest common denominator” (Haas 1961, 1964 in Bergmann & Niemann, 2015, p.6). The Commission, the EP are influential supranational actors in this mechanism. Lastly, exogenous spillover brings context to the cooperation of MS in the integration process by considering exogenous events of “globalization, migration, environmental destruction, or international terrorism”, which some of the

events also might create an endogenous impact, therefore, an endogenous functional spillover for the further integration (Niemann, 2016).

In the third chapter, the institutional developments in the external border management area of the EU are detailed in order to link the developments in EU security to the case study of establishment of Frontex and the EBCG via neofunctionalist mechanism of spillover. This section is especially important in understanding the functional spillover between the policy areas (economy and internal security), and also the functional developments within the new policy area (internal security) itself which is examined in chapter 4.2.1. as a functional spillover. This chapter, therefore, contributes to the analysis chapter, the fourth chapter of this thesis, by considering the institutional and empirical developments together. In neofunctionalist logic, functional spillover between economic and political areas is a narrow definition, however, observed in this case of external border management. Moreover, the JHA area created its own dynamic as well for managing it commonly with the MS, turned into an AFSJ and the decision-making procedures changed for more secure solutions in the area since the internal security became intertwined with asylum, migration, irregular migration sub-policy areas and the MS concerns increased with regard to this issues with abolishing of internal borders. The security concerns coming along with the abolishing of internal borders of the Union brought about new consequences for the need of strengthening the barrier functions of the external borders which also required different kinds of regulations (O'Dowd, 2010). The developments within the new policy area (internal security) itself is related to this need.

This chapter highlights the creation of a new policy making area of JHA as a result of the need for better tackling the internal security issues and even extending the Union cooperation on external border management as a result of the abolishing of internal borders in the Union. Abolishing internal borders for economic activity in line with the Single Market objective of the Union opened up a new phase in EU's integration history with the introduction of the Schengen Agreement which emerged as an intergovernmental cooperation among the MS. In order to realize a working Single Market, the free movement of goods and persons was necessary. Since the MS concerns on freedom of movement of persons has increased with the abolishing of

internal borders, the EU could not succeed in abolishing border controls within the Union at the beginning, and the issue tackled among five MS' with the Schengen initiative. The initiation of Schengen by five MS grew as more MS joined the Agreement and it became the Schengen *acquis*, incorporated into the EU framework. Therefore, the Schengen Agreement made external border control an important part of the EU internal security (Mungianu, 2013). The JHA area established with the Maastricht Treaty and the Treaty became an “enabler” (Monar, 2012) in the construction treaty reforms in the EU for its further development. The Treaty gave “full association of the Commission with the new treaty based cooperation framework” and a formal right of initiative in the area for the first time, although excluding the areas of judicial cooperation in criminal matters, customs cooperation and police cooperation as a limitation within the intergovernmental context (Monar, 2012, p.728). Considering the intergovernmental tradition within cooperation mechanisms in the JHA, the Treaty of Amsterdam introduced “a first major shift towards communitarization” (Trauner & Ripoll Servent, 2016, p.1418). That is to say that third pillar policy areas except the police and judicial cooperation in criminal matters were transferred to the EC, the first pillar, with the purpose of smooth transition to the AFSJ (Nugent, 2017, p.87). With these changes AFSJ eventually became a separate entity rather than a flanking measure of the Single Market (Kaunert 2005, 2012). In institutional terms, the Amsterdam Treaty extended the use of the co-decision procedure to new areas, the EP’s role under the co-decision procedure was increased, and the use of QMV in the Council increased in the AFSJ issues (Nugent, 2017, p.87). The Lisbon Treaty recognized the EU as a single legal entity, and the pillared structure of the EU was formally abolished. With the abolishing of the third pillar the Community method expanded through all AFSJ which means that the ordinary legislative procedure (OLP, or the previous co-decision) became the standard decision-making procedure on legislative proposals with the Commission's right of initiative in the AFSJ, and use of QMV in the Council in all AFSJ matters also became a standard. The European Parliament’s role was enhanced by extending the remit of the assent procedure, renaming it as consent procedure and the Parliament also became co-legislator delivering its opinion via the co-decision procedure (European Parliament Fact Sheet b, 2021). The EP, despite not having a right to initiate legislation, it has

been involved in AFSJ policy-setting via its LIBE Committee and with its own documentation which consist of “initiative reports and resolutions on important AFSJ-related subjects” (Carrera et al., 2013, p.26). Change in the decision-making procedures in the EU’s internal security area also affected the extent which the Commission and the EP can be involved in decision-making in the AFSJ policy issues which is important in examining the establishment of Frontex and the EBCG in the fourth chapter in this thesis since the Commission and the EP are considered as main supranational institutions in the cultivated spillover mechanism. For instance, increase in the role of the European Parliament throughout the years in the legislative process now making it an important supranational institution to consider in decision-making via OLP.

Frontex’s coming into the scene is influenced by the institutional developments the EU undertook with regard to the AFSJ. Moreover, the multiannual policy programmes which were adopted by the European Council to implement new legislation, mechanisms and institutions in the area also set out the priorities, hence giving a direction to the EU’S AFSJ (Kaunert et al. 2014). Among these documents, in the “Rome Declaration” migration and internal security were linked via the external border management. Although migration policy and security policy dealt separately in the AFSJ, the areas started to intersect due to increasing concerns regarding migration in the last years. The EU policy programmes connecting the irregular migration and internal security, therefore, emphasized external border management and Frontex agency as a key actor in the intersection of these policy areas.

In the fourth and last chapter of this thesis the neofunctionalist analysis of the establishment negotiations of the Frontex and the EBCG presented by merging the institutional developments and theoretical elements introduced in the previous chapters. The analysis started with examining the spillover between the Single Market and the JHA/AFSJ. Single Market and its impact in the integration of the EU’s external border management is representing a functional spillover dynamic towards more integration in the external border management in the EU. “Spilling over” of the economic integration via the Single Market into the political realm of the internal security area happened with the Schengen Agreement. Schengen became the link

between the economic and political sphere, creating an interdependence with the objective of free movement of persons as a result of abolishing internal borders. Therefore, with regard to Niemann's indicators in assessing the functional spillover (2016) it can be said that the the original integrative objective of Single Market is salient, has a functional interdependence with the new area, cannot be secured by other means, therefore, provides a strong functional pressure to take further measures. The JHA was established to uphold these further measures; to tackle concerns that arose due to the internal-external border nexus, and external border management gained much more importance.

Afterwards, the analysis continues with other spillovers affecting the external border management of the EU and igniting the establishment of Frontex. The external developments of international terrorism and the 2004 enlargement became important events leading the establishment of Frontex. These events are integrated into the analysis within the context of exogenous spillover. 9/11 and the global conjuncture have influenced the MS to upgrade their intergovernmental cooperation to a Community agency (Léonard, 2009). The increased international terrorism, especially 9/11 as an exogenous spillover, created a "shock" (Hix & Høyland, 2011 ; Kaunert & Léonard, 2012), increased the MS concerns on strengthening external border controls which facilitated the MS to find common solution, therefore, contributed to the establishment of Frontex. The 2004 enlargement exerted its influence as another exogenous event, and provided an endogenous functional spillover in the establishment of Frontex due to its being a settled policy goal of the Union. The vulnerability of the external border of the Union with the upcoming enlargement generated a pressure for the MS to take a coordinated action in securing their external borders as irregular migration was hot topic addressed in 1999 Tampere Council and 2002 Seville Council.

The supranational institutions were also influential in the establishment of Frontex alongside the pressures generated by the external events. The Commission and the EP's involvement in the establishment negotiations with their agendas generated cultivated spillover in the establishment. The Commission exerted policy entrepreneurship in the process with its proposal of a Common Unit in the medium

term and European Corps in the long term. Although the idea of a strong commitment in external border management via the European Corps was rejected and the Common Unit established, the need for more coherent cooperation became clear with the failing of CU. Frontex, with an intergovernmental Management Board with two Commission representatives found the best solution to pool the MS interest in coordinating the external borders. The EP expressed its support for the idea of establishing an agency and MEPs gave a motion suggesting the “setting up of a multinational European body to assist police forces at national level to combat irregular migration” (Ekelund, 2008), therefore, supported more commitment in the area, however was not very influential in the process as it has not had its co-legislator position until 2009.

The refugee crisis of 2015 became an external event creating a dynamic in the further development of the external border management with the establishment of the EBCG. The event is addressed as the biggest humanitarian crisis the EU faced as it touches upon the issue of external border management due to the MS concerns of irregular migration as well as its touching the dysfunctionalities in the previous achievements regarding managing migration. In the establishment of the EBCG, alongside the Commission and the Parliament, presence of governmental (business interest groups) and non-governmental elites (NGOs) was detected, although their pressure was moderate.

The Commission and the EP since the Frontex negotiations opted for a more supranational design and finally with the EBCG their aim can be said to be realized. The Commission cultivated a spillover by proposing of the “A European Agenda on Migration” in 2015 which was seen as a strategic step in expanding Frontex’s mandate and turning it into a new EBCG (Meissner, 2019, p.166), because the MS did not envisaged such a new establishment. The Commission’s timing in proposing a further strengthened border agency was right due to the increased concerns on the EU's migration regime which showed its dysfunctionality with the refugee crisis (Niemann & Speyer, 2018). Moreover, the Commission’s effort to depoliticize some issues by presenting them as technical or functional requirements through emphasizing the dysfunctionalities in the system with its years of know-how on the topic is another cultivated spillover element. It is observed (Niemann & Speyer, 2018) that the

Commission built good relationships with the the Council Presidency which in turn brought about the opportunity to the Commission to get involved in the agenda setting and negotiation process led by the Presidency. The EP, on the other hand acted as another supranational entrepreneur with its long-term interest in further policy integration in the EU, and showed its integration interest in the establishment negotiations of the EBCG. The EP backed up the Commission's proposal, however, had its own concerns, too. It amended the parts regarding the new Agency's right to intervene and its impact on fundamental rights with a demand for more accountability and transparency from the border Agency. The EP wanted to see the right to intervene in the hand of the MS rather than the Commission getting upper hand in this issue.

Various Council working parties such as "Working Party on Frontiers, JHA Counsellors, and SCIFA" (De Capitani 2016 ; Niemann & Speyer, 2018) were also involved in the process of modifying the Commission proposal as governmental elites, and casting their own views and recommendations on the further strengthening of the external border governance. These group's influence in the process was related with the socialization of the officials. The governmental officials socialized during the formal and informal meetings in these groups have had a chance to work on the proposal better, therefore had a chance to come to terms to further strengthen the border agency.

The non-governmental groups of actors, namely the pro-migrant NGOs and business interest groups were found to be exerting moderate integrative pressure by making their concerns heard. NGOs engaged in the human rights-side of the strengthening of the border agency and for a more systematic cooperation of the EU responding to the crisis emphasized more decisive steps in integration. The business interest groups concerned with the Schengen regime, especially on reintroduction of border controls, due to its relation with business sectors such as transportation and travel (Zalan, 2016), therefore also engaged in the process. Compared to the NGOs, business associations's interests were heard earlier and it has been suggested by Niemann and Speyer (2018), that "their concerns about Schengen were certainly noticed by politicians" (p.38).

In conclusion, this thesis showed that the arguments put forward by the neofunctionalist theory in explaining the EU integration are valid in explaining the

EU's integration in external border management. Within the framework of neofunctionalist mechanisms used in examining the establishment of Frontex and the EBCG, this thesis showed that the integration of the external border management in the EU is in accordance with the neofunctionalist arguments. This thesis found out that the integration of the external border management is a process shaped by the events in the global conjuncture that the EU is in, the impact of various actors such as the European Commission, the European Parliament, governmental elites as well as non-governmental elites (business interest groups, non-governmental organizations), and not only by the Member State's control. Moreover, while this thesis presented a case study on one of the AFSJ agencies, Frontex, it also contributed to the literature by applying one of the basic and most criticized integration theories to one of the most controversial areas of integration. However, there is not enough empirical work to understand the impact of political spillover dynamics on the establishment of Frontex and the EBCG; the lack of access to the position reports of business interest groups, moreover the inability to measure the possible impact of the positive approaches of the NGOs to the establishment of Frontex and the EBCG as stated in the opinions (2004 ; 2016) of the European Economic and Social Committee (EESC) were identified as the deficiencies of the study. In addition, the inability to conduct interviews with these actors in order to analyze the interaction of the government elites and non-governmental elites with the negotiation processes of Frontex and the EBCG caused the political spillover and socialization effect to not be adequately measured.

Reading the establishment of the EU's border Agency with a theoretical perspective provides us with a more comprehensive approach to the EU integration regarding the external border management. Neofunctionalism is especially important in looking at and evaluating the context both institutionally and externally in which the border Agency occurred, and is also beneficial to see the attitude the Union undertook as a response to these developments as well as the actors involved and the positions of these actors. Neofunctionalist theory, therefore, is still valid in understanding the Union and integration. However, another important point to be mentioned in the framework of evaluating the neofunctionalist theory and the field of external border management is that the field of external border management has not yet been fully integrated, since it is a sensitive area in terms of the sovereignty and internal security

of the Member States. Although the positions of the Member States outweighs the supranational institutions, the fact that the field is also open to harmonization efforts is an indication that a “new” integration approach is developing in the field of the Union's external border management. Therefore, monitoring the position and the development of the Agency closely and trying to understand its relationship with other actors and/or EU agencies can contribute to EU integration theories as well as creating new theories or improving existing theories.

In addition, policy-making processes and integration are not a one-sided development, on the contrary, they involve various Union, government and civil society structures and actors. Therefore, it is also important to examine the integration with which actors and how these actors involved in the process establish relations. Examining emerging actors such as the security sector and their relationships with other actors and the Agency is another factor that can contribute to further understanding of external border management integration.

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## APPENDICES

### A. TURKISH SUMMARY / TÜRKE ÖZET

#### AB'NİN DIŞ SINIR YÖNETİMİNE YENİ İŞLEVSELÇİ BİR YAKLAŞIM: FRONTEX ÖRNEĞİ

Bu tez, Avrupa Birliđi (AB, Birlik)'nin dış sınır yönetiminin bütünleşmesini yeni işlevselcilik teorik merceğinden Frontex vaka çalışması ile incelemiştir. Vaka çalışması içerisinde 2004 yılında Avrupa Birliđi üye ülkelerinin dış sınırlarının yönetimi için operasyonel işbirliđi Ajansı (Frontex, Ajans)'nın kuruluşu ve 2016 yılında Avrupa Sınır ve Sahil Güvenlik Birimi (ASSGB)'ne yükseltilmesi incelemiştir. Bugün Birlik'in dış sınır yönetiminin ortaklaştırmasına dair güncel çabaları daha önceki hükümetlerarası girişimler olan Schengen ve Ortak Birim (OB)'ye kıyasla daha fazla uyumlaşmaya doğru gitmiş ve Birlik, Üye Devletlerin dış sınır yönetimlerinin ortaklaştırılmasında önemli bir konuma gelmiştir. Üye Devletler dış sınır yönetiminde Frontex'in (şuanki haliyle ASSGB) Yönetim Kurulu'nda temsil edilmekle beraber veto hakkına sahiptirler. Bunun yanı sıra, Yönetim Kurulu iki de Avrupa Komisyonu temsilcisini içerir. Dış sınır yönetimi, dolayısıyla, tamamen Birlik yetki alanı altında olmasa da ortak yetki alanı kapsamında faaliyet göstererek Üye Devletlerin hassas olduđu bir politika alanında hem Birlik hem de Üye Devletlerin birlikte çalışmasına örnek teşkil etmektedir. Dolayısıyla, hassas bir politika alanında dış sınır yönetimine dair bir Birlik Ajansı kurulması konusu bütünleşme açısından önemli bir gelişmedir

ve bu tezde AB'nin dış sınır yönetimini incelemeye bir vaka çalışması olarak sunulmuştur.

Bu tez beş bölümden oluşmaktadır. İlk bölüm giriş kısmı olup Frontex ve ASSGB hakkında arka plan bilgisi sunmuş olup konunun literatürdeki yerine, bu çalışmada ele alınış biçimi ve amacına ve bu çalışmada kullanılan metodolojik yaklaşıma yer vermektedir. İkinci bölüm teorik arka planı oluşturmayı amaçlamakta ve bu bölümde yeni işlevselciğin ortaya çıkışı, gelişimi ve bu çalışmada kullanılmasının önemine vurgu yapılmaktadır. Ayrıca diğer ana bütünleşme teorisi olan hükümetlerarasıcılık ve onun revize edilmiş hali olan liberal-hükümetlerarasıcılık, ve entegrasyona farklı yaklaşımlar sunan ve AB bütünleşmesi çalışmalarında literatürde kullanımı arttığı gözlenen kurumsalcılık, yeni-kurumsalcılık ve supranasyonel yönetim yaklaşımlarına da bu tezde kullanılan teorik çerçevenin çalışılan konuya olan uygunluğunun anlaşılması açısından kısa da olsa yer verilmiştir. Üçüncü bölümde Birlik'in dış sınır yönetiminde bir Birlik sınır ajansının oluşturulmasına giden yolda anlaşmalarla beraber Birlik yapısı içerisinde bir iç güvenlik politika alanının oluşturulmasının önemine değinilerek bütünleşmenin ekonomik bir alandan siyasal bir alana yayılmasında Birlik'in Avrupa Tek Pazar'ı oluşturması hedefi ve Schengen Anlaşması özellikle kişilerin ve malların serbest dolaşımı açısından ele alınmış ve iç güvenlik-dış sınır denklemine bir Adalet ve İçişleri alanının kurulması ve bu alan içerisindeki gelişmelerin dış sınır yönetiminin ortaklaştırılmasına giden yoldaki önemine yer verilmiştir. Dördüncü bölüm tezin analiz kısmıdır. Bu kısım ikinci bölümde açıklanan yeni işlevselci tezinin öngördüğü entegrasyon mekanizması olan yayılma araçlarından yararlanarak önce Frontex sonra ise ASSGB'nin kuruluş müzakerelerindeki olay ve aktörlere odaklanarak dış sınır yönetiminde ortaklaşmaya doğru giden yolu teorik mekanizmalar ile açıklamaktadır. Ayrıca üçüncü bölümde değinilen iç güvenlik-dış sınır denklemini de teorik olarak analize katmaktadır. Beşinci bölüm ise son bölüm olup sonuç kısmıdır.

AB dış sınır yönetimi ajansı Frontex, kurulduğundan beri sırasıyla 2007, 2011, 2016 ve son olarak 2019 yılındaki yönetmelik değişiklikleriyle beraber Üye Devletler için dış sınır yönetiminde destek ve koordinasyon sağlamanın yanı sıra operasyonel anlamda da kapasitesini geliştirmiş, kendi sınır muhafızlarını edinme noktasına gelmiş, Üye

Devlet ve üçüncü ülkelerle ortak dönüş operasyonları gerçekleştirilmesinde önemli bir aktör haline gelmiştir. İlk olarak 863/2007 sayılı Yönetmelik, Ajansın komutasında bir ekip oluşturmanın ilk adımı olarak Hızlı Sınır Müdahale Timleri (HSMT)'ni kurdu. Dış sınır yönetimine ilişkin ortak politika çerçevesinin ulusüstüleştirilmesini yansıtan en önemli değişikliklerden biri olarak görülen 1168/2011 sayılı Yönetmelik, Ajansın dış ilişkilerdeki rolünü daha da pekiştirmiş, HSMT'leri Avrupa Sınır Muhafız Timi (ASMT)'ne yükseltmiş ve ortak operasyonların ve pilot projelerin organizasyonu hakkında ayrıntılı hükümler ortaya koymuştur. Bunun yanı sıra, geri dönüş konusunda işbirliğini geliştirip Ajansın üçüncü ülkelerle işbirliğine ilişkin yetkilerini de genişletmiştir. 2016/1624 sayılı Yönetmelik, dış sınırların yönetiminin Üye Devletler ile AB arasında *ortak bir sorumluluk* haline getirilmesi amacıyla, özellikle Avrupa Komisyonu (Komisyon)'nun da buna yönelik çalışmalarıyla, mevcut dış sınır yönetimi kapsamını genişleterek dış sınırlarda tam teşekküllü bir Avrupa entegre sınır yönetimini sağlamak için Frontex'in yerini alan ASSGB'ni resmi olarak kurmuştur. Son olarak, 2019/1896 sayılı Yönetmelik ile Üye Ülkeler, geri dönüş operasyonlarında Ajansın yetkilerinin artırılması konusunda Ajans ile yakın istişare içinde “bütünleşik sınır yönetimi” kavramını uygulamak için daha büyük bir yükümlülük altına girmiştir, ancak yukarıda bahsedildiği üzere karar vermede birincil yetki Üye Devletlere aittir.

Ajansın bütçesindeki artış ile yıllar içinde artan görev ve sorumlulukları göz önüne alındığında bu tez Birlik'in hem iç güvenlik hem de göç politikası ile yakından alakalı hale gelen ayrıca Üye Devletler bakımından hassas bir politika alanı özelliği gösteren dış sınır yönetimi politika alanında daha fazla uyumlaştırmaya ve bir Birlik ajansı (Frontex'in, daha sonra ASSGB) kurulması noktasına nasıl geldiğini, diğer bir deyişle Üye Devletler'in ilgilerini hassas bir alan olarak nitelendirilen dış sınır yönetimi politika alanında neden daha fazla uyumlaştırmaya ve sonunda bir Birlik ajansı kurulmasına çevirdiği sorularını sormuştur ve bu soruları neo-fonksiyonalizm teorik çerçevesinden cevaplamıştır. Bu sorulara cevap vermek için tezde metodolojik olarak literatürdeki süreç izleme yönteminden faydalanılarak AB'nin dış sınır yönetimindeki bütünleşme süreci içerisindeki nedensel mekanizmaların saptanabilmesi için bir olay bütünü haline getirilmiştir. Süreç izleme yöntemi sosyal bilimlerde nitel araştırma yöntemlerinden olup tek bir vaka çalışmasının incelenip nedensel çıkarım yapılmasına olanak sağlar. Bunu yapabilmek için ele alınan vaka ile ilgili izlenecek süreç hakkında

olabildiğince bilgi toplanması gerekir. Bu bağlamda, bu tez süreç izlemede dış sınır yönetimi bütünleşmesi süreci içerisindeki kurumsal ve ampirik gelişmeleri birincil kaynak olarak AB anlaşmaları, yönetmelikleri, raporları ve ikincil kaynaklar olarak makaleler, haberler, sözlükler aracılığıyla araştırarak Birlik dış sınır yönetimi bütünleşmesinin ortaya çıkmasında ve Frontex ve daha sonra ASSGB'nin kuruluşunda etkili olan aktörler ve olayları açığa çıkarmıştır. Tezde Birlik'i dış sınır yönetimi bütünleşmesine götüren gelişmeler, aktörler ve olaylar teorik çerçeve içerisinde nedensel çıkarım yapabilmek adına yeni işlevselci yayılma aracı (spillover) mekanizması ile entegre edilmiştir. Bu anlamda analiz, klasik yeni işlevselcilik'e ait olan işlevsel yayılma (functional spillover) ve siyasal yayılma (political spillover), ve revize edilmiş yeni işlevselcilik'e ait olan geliştirilmiş yayılma (cultivated spillover) ve dışsal yayılma (exogenous spillover) olmak üzere toplamda dört çeşit yayılma mekanizması kullanarak sorulara cevap vermiştir. Böylelikle bütünleşmenin açıklanmasında klasik yeni işlevselcilik'in yanı sıra revize edilmiş yeni işlevselcilik de teorik olarak dikkate alınmıştır.

Yapılan yeni işlevselci teorik analiz sonucunda Frontex'in kuruluşunda fonksiyonel yayılma, geliştirilmiş yayılma ve dışsal yayılmanın varlığı ve bütünleşmesindeki ilerletici etkileri saptanmıştır. ASSBG'nin kuruluşunda ise geliştirilmiş yayılma, dışsal yayılma ve siyasal yayılma mekanizmalarının varlığı ve dış sınır yönetiminin ortaklaştırılmasındaki itici mekanizmalar olduğu saptanmıştır. Üye Devletlerin ve Birlik'in dış sınır yönetimi alanında adımlarını daha entegre hale getirmeye çalışması ve dış sınır yönetiminin bir parçası olarak Birlik Ajansı kurması yeni işlevselci teori ile açıklanmıştır.

Tezin ilk bölümünde tezin amaç ve kapsamı literatürde AB Ajansları ve AB'de güvenlik konusuna teorik yaklaşan çalışmaların daha az oluşu ayrıca spesifik olarak AB dış sınır yönetimi entegrasyonuna dair çalışma eksikliği çerçevesinde çizilerek dış sınır yönetimi politika alanı içerisinde Frontex ve ASSGB'nin kuruluşunu açıklamak olarak belirtilmiştir. Yeni işlevselci teori ile Frontex ve ASSGB'nin kuruluşunun açıklanabileceği ileri sürülmüştür. İzlenen metodoloji ve tezin organizasyonu anlatılmıştır.

İkinci bölüm teorik çerçevenin çizilmesi için yeni işlevselci teorinin ortaya çıkışı ve gelişimini ortaya koyup teorinin vaka çalışmasının aydınlatılmasına yardımcı olacak yayılma mekanizması hakkında detaylara yer vermiştir. Yayılma kavramı, genel itibariyle bütünleşmenin bir sektörde/alanda bir kez başlatıldığında, başlangıçta öngörülmeyen onunla alakalı başka bir alana doğru zaman içinde genişlediğini ortaya koyan ve bütünleşme sürecindeki dinamizmi gösteren bir mekanizmadır (Jensen, 2010, s.75). Bu tez entegrasyonu ekonomik sektörden başlatan veya ekonomik sektörler arasında sınırlayan tanımlar yerine revize edilmiş yeni işlevselcilik kapsamında yayılma kavramının yukarıda belirtilen geniş tanımını ele almaktadır. Bu tezde kullanılan yayılma aracı çeşitleri şöyledir: İşlevsel yayılma, bir alanda bütünleşmeyi sağlamak için yeni bir alanda da bütünleşmeye yönelik adımların uygulanması arasındaki ilişkiyi vurgular (Jensen, 2010). Siyasi yayılma, ulusal seçkinler (hükümet seçkinleri) veya çıkar grupları (hükümet dışı seçkinler) tarafından, bu grupların belirli sorunları çözmek için uluslararası işbirliğinin gerekli olduğunu fark ettiklerinde ortak bir çıkar için bütünleşmeye yönelik baskı yaratmalarını vurgular (Jensen, 2010, s.76) ve hatta bu elitlerin bütünleşmeye yönelik katkıda bulunmasında sosyalleşme sürecinden faydalandıklarını söyler ve aktörlerin öğrenme kabiliyetlerini, buna bağlı olarak politika yapım sürecinde tercihlerinde değişikliğe gidebildiklerini vurgular. Geliştirilmiş yayılma, ulusüstü aktörlerin bütünleşme araçları olarak hareket ederek, politika girişimcileri olarak veya en düşük ortak paydanın ötesinde bir karara varmaya yönelik yapıcı hareketleri sayesinde bütünleşmeyi ilerlettiğini gösterir (Bergmann & Niemann, 2015, s.6). Bu bağlamda Avrupa Komisyonu ve Avrupa Parlamentosu (Parlamento) ve Avrupa Birliği Adalet Divanı bu mekanizmada etkili olması beklenen ulusüstü aktörlerdir ve bu aktörler bütünleşme sürecinde pasif değildirler. Son olarak, Schmitter (2004) tarafından ortaya atılan ve Niemann (2006, 2016) tarafından geliştirilerek içsel etkisinin de olduğu gösterilen dışsal yayılma mekanizması, küreselleşme, göç veya uluslararası terörizm gibi Birlik'in dışında gerçekleşen olayların bütünleşme sürecinde etkili olduğunu öngörür ve Üye Devletlerin işbirliğine yönelmelerine dair dışsal baskıyı yaratan mekanizmayı temsil eder. Bu mekanizma ayrıca, dış olay/lardan kaynaklanan baskının aktörlerin kendi iç bağlamlarında da baskılanmasına yol açarak onları bütünleşmeye yönlendiren işlevsel

bir yayılma etkisinden bahseder ve bunu dışsal fonksiyonel yayılma olarak adlandırır (Niemann, 2006).

Üçüncü bölümde Frontex'in kurulmasında AB'nin Özgürlük, Güvenlik ve Adalet alanı (ÖGAA) ile ilgili olarak gerçekleştirdiği kurumsal gelişmelere yer verilmiştir. Bu gelişmeler incelenirken Birlik'in göç politikası ve iç güvenlik politikasının son yıllarda göç hareketleriyle ilgili artan endişeler nedeniyle kesişmeye başlayarak iç güvenlik ve dış sınır yönetimi alanlarını daha yakın hale getirmesi ve bu iki alanın kesişiminde Frontex'in önemli bir rol üstlenme noktasına geldiği vurgulanmıştır. Önce ekonomi ve iç güvenlik alanları arasında, daha sonra dış sınır yönetimi politika alanına yönelik gelişmelerin ortaya çıkmasında ve politika alanlarının birbirine bağlantılı hale gelmesinde Avrupa Tek Pazar'ı oluşturma hedefi ve bunun için özellikle kişilerin serbest dolaşımı ilkesinin uygulanmasının şart haline gelmesiyle beraber iç sınırların yavaş yavaş ortadan kaldırılıp iç güvenliğin dış sınır yönetimi ile sağlanması mecburiyetinin doğması yatmaktadır. Şöyle ki, Birlik'in Tek Pazar hedefi doğrultusunda ekonomik faaliyet için gerekli dört serbestinin (kişilerin, malların, hizmetlerin ve sermayenin serbest dolaşımı) gerçekleştirilmesi amacıyla iç sınırların kaldırılmasının bir zorunluluk haline gelmesi, Üye Devletler arasında hükümetler arası bir işbirliği olarak ortaya çıkan Schengen Anlaşması'nın yürürlüğe girmesiyle AB'nin entegrasyon tarihinde önemli bir yer teşkil etmiştir. Üye Devletlerin iç sınırların kaldırılması konusuna eşlik eden kişilerin serbest dolaşımı serbestisi hakkındaki endişeleri sebebiyle AB, başlangıçta Birlik içindeki sınır kontrollerini tamamen kaldırmakta başarılı olamamış ve konu Schengen girişimi ile beş Üye Ülke arasında ele alınmıştır. Fakat bu girişim daha sonra genişleyerek AB müktesebatında yerini almıştır ve iç güvenlik-dış sınır yönetimi politika alanları arasında birbirine bağlılık söz konusu olmuştur. Bunun yanı sıra, Birlik'in iç güvenlik konularını daha iyi ele alma ihtiyacının bir sonucu olarak Adalet ve İçişleri alanının kurulması ve bu alan içerisinde dış sınır yönetimi konusunda işbirliğini genişletmesi söz konusu olmuştur. Adalet ve İçişleri alanı zamanla kendi içerisinde de Anlaşmalar çerçevesinde yenilenip bir ÖGAA haline gelmiş, Tek Pazar'ın "yan tedbir"i olmaktan çıkmıştır. ÖGAA'na Anlaşmalarla gelen revizyonlar sayesinde bu alanda yapılacak olan politikaların oluşturulmasında izlenecek karar verme mekanizmaları da yenilenmiş, özellikle Lizbon Anlaşması'yla gelen olağan yasama usulü Avrupa Komisyonu'na ÖGAA

alanında yasama önerisinde bulunmada önemli bir rol atfetmiştir. Bunun yanı sıra, Avrupa Parlamentosu'nun onay prosedürü daha etkili hale getirilip rıza prosedürüne çevrilmiş ayrıca Parlamento olağan yasama usulü içerisinde Avrupa Konseyi ile eş yasa koyucu pozisyona gelmiştir. Bu değişimlerin Frontex ve ASSGB'nin kuruluşu müzakerelerinde geliştirilmiş yayılma aracı ile ulusüstü kurumların etkisini incelemeye önemi vardır. Dolayısıyla bu bölüm bir sonraki analiz bölümü için Birlik Ajansı'nın kurulduğu politika alanındaki kurumsal ve ampirik gelişmeleri göz önüne sermiştir.

Dördüncü bölüm analiz bölümü olarak bundan önceki bölümlerde anlatılan teorik ve kurumsal çerçeveyi yeni işlevselci yayılma mekanizmaları aracılığıyla teorik bir analizde birleştirmeyi amaçlamıştır. Buradaki analiz öncelikle Frontex'in kuruluşunu ele almıştır. Süreçte etkili olan işlevsel yayılma, geliştirilmiş yayılma ve dışsal yayılma açıklanmıştır. Bir önceki bölümde değerlendirilen Avrupa Tek Pazar'ı ve kişilerin serbest dolaşımının Schengen aracılığıyla operasyonel hale gelmesinin sonucu olarak dış sınır yönetiminde daha uyumlu politikalar yapılmasına ihtiyaç duyulmasını işlevsel yayılma aracı ile değerlendirmiştir. Bu anlamda, Avrupa Tek Pazarı'nın tam olarak uygulanabilmesi için gerekli serbesti olan kişilerin, malların, hizmetlerin ve sermayenin AB Üye Devletleri arasında serbest dolaşımının sağlanması gerekliliğinden yola çıkılarak Schengen Anlaşması'nın ortaya konup Birlik'in iç sınır kontrollerinin kaldırılmasının dış sınır kontrolünü beraberinde getirmesi arasındaki ilişkinin işlevsel bir yayılmaya yol açtığı, ayrıca Adalet ve İçişleri alanının kurulup bu alanın Tek Pazar'ın yan gelişmesi olmaktan ziyade başlı başına Özgürlük, Güvenlik ve Adalet alanına dönüşmesinin de dış sınır yönetiminin ele alındığı bu politika alanının gelişimiyle beraber Frontex'in kurulmasında yeni işlevselci açıdan bir işlevsel yayılma teşkil ettiği gösterilmiştir. Dışsal yayılma kapsamında incelenen ve 2000lerde etkisini arttıran uluslararası terör olayları, özellikle Amerika'da yaşanan 11 Eylül saldırıları, ve 2004'teki Birlik genişlemesi Üye Devletlerin iç sınır kontrollerinin kaldırılmasıyla beraber dış sınır kontrolünün korunmasına yönelik endişelerini arttırıp onları daha uyumlu politikalar izlemeye ve bu konuda bir ajans kurulmasına yönelik etkilemiştir. Frontex'in kuruluşunda özellikle Avrupa Komisyonu ve daha ılımlı etkisiyle Avrupa Parlamentosu ortak dış sınır yönetimi geliştirilmesine yönelik hareket ederek süreçte geliştirilmiş yayılma oluşturmuştur. Komisyon ve Parlamento'nun

Frontex müzakerelerine kendi gündemleriyle katıldığı saptanıp kuruluşta ekili oldukları analiz edilmiştir. Komisyon, orta vadede Frontex'den önceki süreçte bir Ortak Birim, uzun vadede ise Avrupa Sınır Muhafızları Birliği (ASMB) önerisiyle politika yapımını etkilemek için ilk başlardan beri girişimcilik özellikleri sergilemiştir. ASMB'nin kurulması ve dış sınır yönetiminde güçlü bir Üye Devlet taahhütünün reddedilmesine ve Ortak Birim'in kurulmasına rağmen, bu yapı altında Üye Devletlerin ortaklaşa hareket etmede başarısız olması ve bazı organizasyonel mekanizmaların eksikliği sebebiyle daha entegre bir işbirliğine duyulan ihtiyaç netleşmiştir. Frontex, iki Komisyon temsilcisinden oluşan hükümetler arası bir Yönetim Kurulu ile Üye Devletlerin dış sınırları koordine etme konusundaki çıkarlarını birleştirmek için en iyi çözüm olarak kurulmuştur. Ajans, ASMB kadar ulusüstü yapıda olmasa da yine de bir önceki girişim olan Ortak Birim'den daha ulusüstü bir yapı olarak kabul edilmiş, Komisyon'un politika yapım sürecini ortaklaştırmak için gösterdiği çabalar olumlu sonuç vermiştir. Diğer yandan Parlamento dış sınır yönetiminde bir ajans kurulması fikrini desteklemekle beraber bazı Parlamento milletvekilleri, polis güçlerine düzensiz göçle mücadelede ulusal düzeyde yardımcı olmak için ulusüstü bir Avrupa organının kurulmasını öneren bir önerge vererek aslında daha entegre bir yapı oluşturulması fikrini destekledi, ancak Lizbon Anlaşması yürürlüğe girene kadar eş yasa koyucu pozisyonuna sahip olmadığı için süreçte çok etkili olamadı.

Bölümde bu noktadan sonra ASSGB'nin kuruluşu incelenmiştir. ASSGB'nin kuruluşunda dışsal yayılma, geliştirilmiş yayılma ve siyasal yayılma etkileri saptanmıştır. 2015 yılındaki mülteci krizi, Birlik içinde dış sınır yönetiminin daha da geliştirilmesini tetikleyeci dinamik yaratan bir dış olay haline geldi. Bu kriz, AB'nin bu zamana kadarki göç politikasına ilişkin işlevsizlikleri ortaya çıkardığı için AB'nin karşılaştığı en büyük insani kriz olarak nitelendirildi ve Birlik'te iç sınır kontrollerinin olmaması sebebiyle dış sınır yönetimi konusunda endişelere yol açtı. Dışsal kaynaklı olmasına rağmen bu olay, Frontex'in kuruluşunun uluslararası terörizm ve 2004 genişlemesinden etkilenmesi gibi, Birlik'in iç sorunlarına işaret ederek, örneğin bazı Üye Devletleri'nin tek taraflı olarak uygulamaya soktuğu iç sınır kontrollerinin uzun vadede çözüm getirmeyeceğinin anlaşılması ve ortak hareket etme ihtiyacının gündeme gelmesi sebebiyle, Birlik içinde bütünleşmeye yönelik bir baskı yaratmayı

başardı. Bunun yanı sıra Komisyon ve Parlamento ile birlikte, baskıları ılımlı olmasına rağmen hükümet seçkinleri (Konsey çalışma gruplarındaki hükümet yetkilileri), hükümet dışı seçkinler; ticari çıkar grupları ve sivil toplum örgütlerinin (STK'lar) varlığı tespit edildi. Geliştirilmiş yayılma kapsamında, Frontex müzakerelerinden bu yana Komisyon ve Parlamento'nun daha ulusüstü bir dış sınır yönetimi fikrini tercih etmesi ASSGB kuruluşunda da etkisini gösterdi. Komisyon, Frontex'in yetkisini genişletmek ve onu yeni bir ASSGB 'ye dönüştürmek için stratejik bir adım olarak görülen 2015 yılında yayımlanan Avrupa Göç Gündemi'nde Frontex'in yetkilerinin arttırılmasını önererek bir girişimde bulundu (Meissner, 2019, s.166). Komisyon'un Frontex'in yetkilerini genişletme ve yeni bir ajans haline getirme girişimi zamanlama olarak ulusüstü bir aktörün girişimcilik rolü üstlenmesi adına önem teşkil etti, şöyle ki bu girişimin başarılı olmasında mülteci krizinin AB göç rejiminin işlevsizliğini açığa çıkarması ve akabinde Üye Devlet endişelerini tetiklemesi rol oynamıştır. Komisyon'un bu konudaki uzun yıllara dayanan bilgi birikimiyle sistemdeki işlevsizlikleri vurgulayarak bazı konuları teknik veya işlevsel gereklilikler olarak sunması başka bir geliştirilmiş yayılma etmenidir. Ayrıca Komisyon'un, Avrupa Konseyi Başkanlığı'na yakın olması da elini güçlendirmiştir. Öte yandan Parlamento, ASSGB'nin kurulması müzakerelerinde ikinci bir girişimci olarak kabul edilmiştir. Parlamento, Komisyon'un yasa önerisini desteklemiş, ancak kendi çıkarlarını da korumayı başarmıştır. Bu yeni ajanstan daha fazla hesap verebilirlik ve şeffaflık talep ederek Ajansın operasyonlardaki müdahale hakkını Komisyon'un elinde değil Üye Devletler'de olmasını tercih ettiği için yasa önerisinde değişiklik talep etmiş dolayısıyla yeni işlevselci teori çerçevesinde ulusüstü kurumlardan beklendiği gibi kendi çıkarını da koruyacak şekilde davranmıştır ve ASSGB'nin kuruluşunu daha fazla bütünleşme çerçevesinde desteklemiştir.

Siyasal yayılma çerçevesinde çeşitli Konsey çalışma gruplarının, örneğin Sınırlar Üzerine Çalışma Grubu, Adalet ve İçişleri Danışmanları ve hükümet elitleri/seçkinleri olarak Avrupa Birliği Göç, Sınırlar ve İltica Stratejik Komitesi (SCIFA) gibi çeşitli Konsey çalışma gruplarının Komisyon'un yasa önerisini değiştirme ve dış sınır yönetiminin daha da güçlendirilmesine yönelik sürecine dahil oldukları saptanmıştır. Bu gruplardaki hükümet yetkilileri yeni işlevselciliğin elit sosyalleşmesi sürecinden beklendiği gibi küçük gruplar halinde ve sık gerçekleşen resmi ve gayriresmî

toplantılar aracılığıyla Komisyon yasa önerisi üzerinde ortaklaşa çalışma ve uzlaşma imkanı bulmuştur. Bu da, siyasal yayılma mekanizmasının bir ayağı olan hükümet seçkinlerinin bütünleşmeye yönelik olumlu etkisini göstermiş, Ajansın kuruluşunu desteklemiştir. Hükümet dışı seçkinler; ticari çıkar grupları ve sivil toplum kuruluşları ise müzakere sürecinde diğer aktörler kadar baskı yapamasa da daha fazla bütünleşmeye olumlu yaklaşmışlardır. Schengen rejimiyle, özellikle de ulaşım ve seyahat gibi sektörlerin sınır kontrollerinden ekonomik anlamda olumsuz etkilenmesi sebebiyle ticari çıkar gruplarının daha bütünleşmiş bir dış sınır yönetimini destekledikleri görülmüştür. Diğer yandan, Birlik sınır teşkilatının güçlendirilmesi STK'lar tarafından insan hakları endişeleri yüzünden AB'nin krizlere yönelik daha sistematik bir işbirliği yapması gerekliliği vurgusuyla desteklenmiştir. Bahsedilen grupların çıkar konuları yetkililerce dikkate alınarak süreçte ılımlı da olsa bütünleştirici etki uygulamıştır (Niemann & Speyer, 2018).

Sonuç olarak bu tez, yeni işlevselci teorinin AB bütünleşmesini açıklamada öne sürdüğü argümanların AB'nin dış sınır yönetimindeki bütünleşmesini açıklamada geçerli olduğunu göstermiştir. Frontex ve ASSGB'nin kuruluşunun incelenmesinde kullanılan yeni işlevselci mekanizmalar çerçevesinde bu tez, AB'de dış sınır yönetiminin bütünleşmesinin yeni işlevselci argümanlarla uyumlu olduğunu ortaya koymuştur. Bu tez, dış sınır yönetimi bütünleşmesinin sadece Üye Devletler kontrolünde değil, AB'nin de içerisinde bulunduğu küresel konjonktürde gelişen olaylar, Avrupa Komisyonu, Avrupa Parlamentosu, hükümet seçkinleri ve hükümet dışı seçkinler (ticari çıkar grupları, sivil toplum kuruluşları) gibi çeşitli aktörlerin etkisiyle de şekillenen bir süreç olduğunu göstermiştir. Ayrıca bu tez ÖGAA kurumlarından biri olan Frontex hakkında bir vaka çalışması sunarken, temel ve en çok eleştirilen entegrasyon teorilerinden birini bütünleşmenin en tartışmalı alanlarından birine uygulayarak literatüre katkıda bulunmuştur. Ancak, siyasal yayılma dinamiklerinin Frontex'in kuruluşu üzerindeki etkisini anlamak için yeterli ampirik çalışma yoktur; ticari çıkar gruplarının pozisyon raporlarına ulaşılamamış olması, ayrıca Avrupa Ekonomik ve Sosyal Komitesi görüşünde belirtildiği üzere STK'ların, Frontex'in kuruluşuna olumlu yaklaşımlarının ajansın kuruluş müzakerelerine olası etkisinin ölçülememesi çalışmanın eksik yönleri olarak saptanmıştır. Ayrıca, hükümet seçkinleri ve hükümet dışı seçkinlerin Frontex ve ASSGB'nin müzakere süreçleri ile

olan etkileşimini analiz etmek için bu aktörlerle görüşmeler gerçekleştirilememesi, siyasi yayılma ve sosyalleşme etkisinin yeterince ölçülenemesine neden olmuştur.

Birlik sınır Ajansı'nın kuruluşunu teorik bir bakış açısıyla okumak, dış sınır yönetimine ilişkin AB bütünleşmesine kapsamlı bir yaklaşım sunmaktadır. Yeni işlevselcilik özellikle, sınır Ajansı'nın meydana geldiği bağlama hem kurumsal hem de AB dışı gelişmeleri göz önüne alarak bakmak ve bu gelişmeleri değerlendirmek açısından önemlidir ayrıca da Birlik'in bu gelişmelere bir yanıt olarak üstlendiği tutumu ve bunun yanı sıra ilgili aktörleri ve bu aktörlerin pozisyonlarını görmek için faydalıdır. Yeni işlevselci teori, bu nedenle, Birlik'i ve bütünleşmeyi anlamada hala geçerlidir. Ancak, yeni işlevselci teoriyi ve dış sınır yönetimi alanının değerlendirilmesi çerçevesinde değinilmesi gereken bir diğer önemli nokta da, Üye Devletlerin egemenliği ve iç güvenliği açısından hassas bir alan olması nedeniyle dış sınır yönetimi alanının henüz tam anlamıyla bütünleşmemesidir. Üye Devletlerin konumlarının ulusüstü kurumlara oranla daha ağır basmasına karşın, alanın uyumlaştırma çabalarına da açık olması, Birlik dış sınır yönetimi alanında “yeni” bir bütünleşme yaklaşımının gelişmekte olduğunun göstergesidir. Dolayısıyla, Ajansın konumunu ve gelişimini yakından izlemek ve diğer aktörler ve/veya AB ajansları ile ilişkisini anlamaya çalışmak, AB entegrasyonu kuramlarına katkıda bulunabileceği gibi, yeni kuramlar oluşturmaya veya mevcut kuramları geliştirmeye de katkıda bulunabilir.

Bunun yanında, politika oluşturma süreçleri ve bütünleşme tek taraflı bir gelişme olmadığı gibi aksine çeşitli Birlik, hükümet ve sivil toplum yapılarını ve aktörlerini bünyesinde barındırır. Sürece dahil olan bu aktörlerin hangi aktörlerle nasıl ilişki kurdukları da bütünleşmenin incelenmesinde önem teşkil etmektedir. Örneğin güvenlik sektörü gibi gelişmekte olan aktörlerin ve bunların diğer aktörler ve Ajans ile ilişkilerinin belirlenmesi, dış sınır yönetimi bütünleşmesinin daha iyi anlaşılmasına katkıda bulunabilecek bir diğer faktördür.

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