THE EU ASYLUM POLICY IN TIMES OF CRISIS: REGULATORY GOVERNANCE THROUGH AGENCIES

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ABSTRACT

THE EU ASYLUM POLICY IN TIMES OF CRISIS:
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This thesis explores the historical evolution of the regulatory governance of the European Union (EU) in different policy fields, mainly focusing on the EU asylum policy. Utilizing historical institutionalism and securitization literature, the thesis seeks to examine the regulatory governance of the EU asylum policy which, like the other policy field examples, displays a security-oriented and crisis-driven institutional path dependency that leads to regulatory agencification processes. Moreover, the thesis aims to contribute to the literature by uncovering the mechanisms that reinforce the two-dimensional and two-paced character of the regulatory governance of the EU asylum policy. While the internal dimension of the EU asylum policy consists of the Common European Asylum System (CEAS) and the European Union Agency for Asylum (EUAA), the external dimension involves the externalization of asylum policy to third countries and cooperation mechanisms on controlling the external EU borders with the support of the European Border and Coast Guard Agency (EBCG). In the face of different crises, the external dimension of the EU asylum policy has expanded

rapidly both in a de facto and de jure manner. Conversely, suffering from the cumbersome EU negotiation processes and the lack of consensus between the member states, the regulatory governance of the internal dimension has experienced a slow-paced and partial regulatory expansion. The underlying reasons behind the difference of pace between the two dimensions lie in the security-oriented path dependency of the EU asylum policy as well as the process of securitization of immigration and asylum in the EU.

Keywords: EU agencies, regulatory governance, asylum, historical institutionalism, securitization

ÖZ

KRİZ DÖNEMLERİNDE AB SIĞINMA POLİTİKASI:
AJANSLAR ARACILIĞIYLA DÜZENLEYİCİ YÖNETİŞİM

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Bu tez, Avrupa Birliği'nin (AB) düzenleyici yönetişiminin farklı politika alanlarındaki tarihsel gelişimini, AB sığınma politikasını odağına alarak incelemektedir. Tez, güvenlik ve kriz odaklı bir kurumsal yol bağımlılığı sergileyen ve düzenleyici AB ajanslarının kurulmasıyla şekillenen AB sığınma politikasının düzenleyici yönetişimini, tarihsel kurumsalcılık ve güvenlikleştirme merceği ile incelemektedir. Ayrıca bu çalışma, AB sığınma politikasının düzenleyici yönetişiminin iki boyutlu ve iki tempolu karakterini güçlendiren mekanizmalara ışık tutarak literatüre katkıda bulunmayı amaçlamaktadır. AB sığınma politikasının içsel boyutunu temel olarak Ortak Avrupa Sığınma Sistemi (OASS) ve AB Sığınma Ajansı (ABSA) oluşturmaktadır. Öte yandan dışsal boyut, Avrupa Sınır ve Sahil Güvenliği Ajansı (ASSGA) yoluyla sığınma politikasının üçüncü ülkelere dışsallaştırılması ve ortak AB sınırlarının kontrolüne yönelik AB içi ve uluslararası işbirliği mekanizmalarını içermektedir. AB sığınma politikasında karşılaşılan farklı krizler sonucu dışsal boyut hem pratikte hem de yasal olarak hızlı bir gelişme gösterirken, içsel boyut yavaş

ilerleyen AB içi müzakere süreçleri ve AB üye devletleri arasında yaşanan fikir ayrılıkları nedeniyle yavaş tempolu bir gelişme göstermiştir. İki boyut arasındaki bu farklılıkların altında yatan temel nedenler, AB sığınma politikasının tarihi anlamda güvenlik odaklı bir şekilde gelişmiş olması ve AB içerisinde göç ve sığınma olgularının güvenlikleştirilme süreçleridir.

Anahtar Kelimeler: AB ajansları, düzenleyici yönetişim, sığınma, tarihsel kurumsalcılık, güvenlikleştirme

In loving memory of my grandmother

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LIST OF ABBREVIATIONS

AFSJ	Area of Freedom, Security and Justice
ASTs	Asylum Support Teams
BMTs	Border Management Teams
BSE	Bovine Spongiform Encephalopathy
CAP	Common Agricultural Policy
CEAS	Common European Asylum System
CEBS	Committee of European Banking Supervisors
CEECs	Central and Eastern European Countries
CFSP	Common Foreign and Security Policy
CJD	Creutzfeldt-Jakob Disease
CJEU	Court of Justice of European Union
COI	Country of Origin Information
DG SANTE	Directorate-General for Health and Food Safety
EAC	European Asylum Curriculum
EASA	European Aviation Safety Agency
EASO	European Asylum Support Office
EBA	European Banking Authority
EBCG	European Border and Coast Guard Agency
EC	European Community
ECAC	European Civil Aviation Conference
ECtHR	European Court of Human Rights
ECB	European Central Bank
EEAS	European External Action Service
EFSA	European Food Safety Authority
EFTA	European Free Trade Association
EMSA	European Maritime Safety Agency
EMSC	European Migrant Smuggling Center

ENP	European Neighbourhood Policy
EP	European Parliament
ESFS	European System of Financial Supervision
EU	European Union
EUAA	EU Agency for Asylum
EULISA	EU Agency for the Operational Management of Large-Scale IT Systems
EUROJUST	EU Agency for Criminal Justice Cooperation
EUROPOL	EU Agency for Law Enforcement Cooperation
EUROSUR	European Border Surveillance System
FRAN	FRONTEX Risk Analysis Network
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU
GAMM	Global Approach to Migration and Mobility
IBM	Integrated Border Management
ICAO	International Civil Aviation Organization
IMO	International Maritime Organization
INTERPOL	International Criminal Police Organization
JAA	Joint Aviation Authorities
JARs	Joint Aviation Requirements
JHA	Justice and Home Affairs
MENA	Middle East and North Africa
MMSTs	Migration Management Support Teams
NGO	Non-governmental Organization
OLAF	European Anti-Fraud Office
PCAs	Partnership and Cooperation Agreements
RABITs	Rapid Border Intervention Teams
SEA	Single European Act
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
TEU	Treaty on the European Union

TFEU	Treaty on the Functioning of the European Union
TREVI	Terrorisme, Radicalisme, Extremisme et Violence Internationale
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
US	United States of America

CHAPTER 1

INTRODUCTION

Regulation and crisis have been integral parts of the European integration process from its very first inceptions. Even the very goal of this whole process was to regulate the international relations within Europe after the Second World War in a way that a European scale war would be unthinkable and peace in Europe would be taken for granted. Born from the devastating impact of the Second World War, which itself could be seen as the bloodiest crisis of capitalism in Europe, as an attempt to regulate the coal and steel production of France and Germany, the European integration aimed at the elimination of war in Europe. Although its scope expanded vastly since then, the integration process has achieved this main goal. Indeed, today war became "unthinkable" (Zimmermann and Dür, 2016, p. 14), at least regionally within the European Union (EU).

It should be noted, however, that achieving peace did not stop the integration process. Neither the attempts to further regulate the economic and social relations of states in Europe nor the different crises which erupted as external shocks or as results of these regulation attempts had stopped. Various examples to such regulation attempts and crises can be given such as the failed French-led initiative to establish a European Defense Community in 1954, the French boycott of the European Community (EC) institutions as a result of a deadlock on how to fund the Common Agricultural Policy (CAP) resulting with the Empty Chair crisis in 1965 (Ludlow, 1999, p. 231-232) or more recent examples being the Eurozone Crisis in 2008, the Refugee Crisis in 2015 and the recent Covid-19 Crisis. Overall then, it can be argued that the process of European integration expanded in scope from a peace project (Manners & Murray, 2016, p. 185) to a polity which tries to regulate more and more aspects of economic and social relations of the states of Europe (Majone, 1997, pp. 144-145). This

regulatory expansion can be seen both as a result of and a reason for the different crises Europe has been facing in different policy fields. In other words, the expansion of regulatory competences of the EU, previously the EC[1], can be a result of a crisis member states face in a given policy field such as in financial regulation or in food and maritime safety (Heims, 2018) or the regulatory expansion itself can be a cause of a crisis that member states face. A to the point example is the Refugee Crisis in 2015 which turned into a crisis mainly because of the institutional structure of the EU asylum policy creating problems of solidarity and responsibility sharing between the member states (Trauner, 2016, p. 315) which itself is a result of the prior regulatory expansion of the EU in that policy field. Thus, someone who tries to understand the regulatory expansion of the EU and the accompanying crisis context should have a historical perspective rather than having a mere focus on the member state interests or dominance of the EU institutions in a given point in time (Pierson, 1996, p. 147-148).

The mentioned regulatory expansion of the EU in different policy fields is, in its essence, an expansion of regulatory governance. To better explain this argument a few definitions are required to be made here. As a concept, governance has no single definition but different scholars have their own versions of it. Rhodes (2007, p. 1246) has stressed this by arguing that governance "means what I choose it to mean". He defines governance as the governing that occurs through not only one political center but through multiple centers (Rhodes, 1997, p. 109). However, Rhodes's definition of governance was seen problematic and narrow by others in that it focuses too much on networks and limits governance to be only associated with this specific kind of governing activity (Kjaer, 2011, pp. 103-104). Instead, governance should be interpreted broadly as the acceptance of the fact that governing activities increasingly are not solely done by the states but they are a shared set of responsibilities exercised by different actors, including states (Kjaer, 2011, p. 103; Rosenau, 1995, p. 14). These differing actors might include, but not limited to, networks of policymakers, international organizations, Non-governmental Organizations (NGOs), industry

[1] This thesis explores the historical evolution of the regulatory governance of the European Union (EU), mainly in asylum policy. In order to remain more coherent throughout the thesis, from thereafter I will refer to both the European Community (EC) and the European Union as the European Union (EU). Therefore, while the events prior to the signing of the Maastricht Treaty on 7 February 1992 is being discussed, the text refers to the activities of the EC.

representatives or, in the case of Europe, the EU institutions and agencies. As Bulmer (1997, pp. 3-4) rightly points out, although governance as a term is imprecise, it is a particularly beneficial concept to analyze the governing activities of the EU since the Union has no government or does not resemble one. It can be argued that any governing activity done on behalf of the EU is actually an activity done at a multilevel context in cooperation with different actors such as the European Commission, the European Parliament (EP), the Council of the EU, the European Council, member states themselves and the different EU agencies. Therefore, governance is the best suited term to explain the governing activities of the EU since the Union as a polity itself is as imprecise as the concept of governance.

The governance concept increased in usage as a response to the central role of the state being challenged by the process of globalization, in terms of public service provision, from the 1970s onwards. By linking globalization and governance, scholars pointed out that states' ability to control and provide public services is increasingly constrained by globalization, in other words, states have been gradually hollowed out of their public intervention capacities (Rhodes, 1994, see also Rosenau, 1995). This debate on the transforming role of the state was described by Majone (1997, p. 140) as a "shift from the positive to the regulatory state". He argued that after the Second World War, especially within Europe, a "social democratic consensus" was established which attached a positive role for the state in the society and economy as a "planner, direct producer of goods and services, and employer of last resort" (Majone, 1997, p. 141). This consensus, which was also called the Keynesian Welfare State and remained in place until the 1970s, can be described as a model of governance that gave the state a very central role in the management of economy and society. In other words, the model of governance that was characterized by the central role of the state and followed until the 1970s was redistributive in kind where the state frequently pursued market correcting policies and allocated resources accordingly. However, it is pointed out that this kind of market correcting redistributive governance was highly dependent on the state's ability to control its economic borders which came under increasing attack by the process of globalization (Marks et al., 1996, p. 16). To correct market failures, Welfare States engaged in nationalization of firms in different fields. However, state owned firms started to be seen as a problem by the electorate since they lacked

accountability and tended “to be captured by politicians and trade unions” (Majone, 1997, p. 142). Thus, under these criticisms and increasing levels of globalization throughout the 1970s and 1980s, the redistributive model of governance has eroded and replaced by a new model of governance that is regulatory in nature.

According to this new model of governance, the state refrained from its active involvement in the economy, privatized industries that were previously state owned and, for the case of the EU, replaced regulations concerning markets at the national level with those that were beginning to be produced at the European level (Majone, 1997, pp. 142-143; Scharpf, 1999, p. 3). Therefore, for most parts of the world, globalization meant a retreat of state presence in the economy with the state embracing a regulatory role by using its rule making powers. However, for the European states this shift to regulatory governance was accelerated drastically in a vertical direction by the process of European integration, especially with the goal of establishing a European Single Market. In other words, while regulatory governance was taking precedence as a new model of governance all over the world, the regional integration in Europe meant an additional expansion of regulatory governance at the EU level. In a general sense, market integration in Europe has led to both negative integration, which means the gradual eradication of “national restraints on trade and distortions of competition”, and positive integration, which means the establishment of “common European policies to shape the conditions under which markets operate” (Marks et al., 1996, p. 15). However, it was pointed out that the negative dimension of this market integration process moves faster than its positive dimension which provides common European level regulations for the single market. The reason is that after the Single European Act (SEA) in 1987, the completion of the single market through negative integration steps and the European Commission embracing the guardian role for the protection of four freedoms within the single market with the Maastricht Treaty in 1993, any attempt to engage in economic and social regulation of the single market at the EU level would be hindered by two problems. The first problem originates from the excessive need for consensus between the member state governments within the Council in making European level regulations for the single market that would lead to positive integration. The second problem is that “of assuring faithful implementation”

even if EU level regulations can be agreed on by the member states (Scharpf, 1999, p. 18; Marks et al., 1996, pp. 18-19).

Despite a difference of speed exists between negative and positive integration of the European Single Market, positive integration, meaning an expansion of EU level regulatory governance, has occurred and is still occurring in different policy fields. This regulatory expansion, as mentioned above, follows a historical path and is marked with certain institutional choices that both limit and enable certain institutional choices for the future regulatory governance of the EU. One such pattern of institutional arrangement was described in the literature as the process of "agencification" in the EU regulatory governance (Majone, 1997a; Thatcher & Coen, 2008, p. 814; Groenleer et al., 2010; Levi-Faur, 2011; Chatzopoulou, 2015, p. 159). In its broadest sense an agency can be defined as an institution which has a unique "formal identity, an internal hierarchy, functional capacities, and, most important, at least one principal" (Levi-Faur, 2011, p. 813). If an agency is created to gather information and to perform "rule setting, monitoring, or enforcement" activities, then such an agency can be called as a regulatory agency (Levi-Faur, 2011, p. 816). Following these definitions, the main regulatory agency of the EU would undoubtedly be the European Commission with its considerable regulatory competences and member states as its main principals. However, the process of agencification is beyond the delegation of regulatory competences to the European Commission and describes the proliferation of independent regulatory agencies in various policy fields with their expertise to support and provide advice to the Commission in their respective fields (Chatzopoulou, 2015, p. 159; Levi-Faur, 2011, p. 814). Thus, this new wave of regulatory agencification has developed as a result of the need for expertise in a growing scope of EU regulatory governance while the main principals for these agencies being the European Commission, member states themselves as well as the European Parliament (EP) (Dehousse, 2008, p. 803).

Overall, however, one should not come to the conclusion that proliferation of regulatory agencies is the only path the EU regulatory governance is directed to. Instead, as Thatcher (2011, p. 791) points out, "past delegations to non-majoritarian institutions" like the Commission push the member states into experimenting new

pathways to regain control of regulatory governance such as utilizing European regulatory networks between national regulators in the member states. What differentiates the regulatory agencies from regulatory networks is described as the more formal nature of the agencies making them naturally more accountable, transparent and competent compared to networks while agencies cost more in the sense of needing financial resources and political will for their creation, maintenance and expansion (Levi-Faur, 2011, p. 814). Thus, it is no surprise that regulatory agencies have drawn more scholarly attention than regulatory networks.

So far, the literature on the EU regulatory governance had focused on different policy fields concerning the economic and social regulation of the European Single Market. Some examples from these different policy fields can be given as environmental regulation and medicine safety (Majone, 1997a; Scharpf, 1999), banking regulation, food, civil aviation and maritime safety (Heims, 2018; Chatzopoulou, 2015; Groenleer, 2010) or energy and telecommunication regulations (Mathieu, 2020). It is pointed out that regulatory EU agencies mostly engage in the domain of social regulation rather than economic regulation, which is mostly the domain of the Commission or the member states such as the competition policy (Thatcher, 2011, pp. 791-796). Therefore, as a result of past delegations to the Commission regarding economic regulation, the newly founded EU agencies have focused on social regulation which involves the management of various risks and producing safety standards in various policy areas as mentioned above. Although a considerable amount of literature exists on the EU regulatory governance and the process of agencification[2] in different policy fields, the scholarly attention towards the regulatory governance of the EU migration and asylum policy is relatively recent.

While a good deal of scholarly attention is drawn to the so called the Area of Freedom, Security and Justice (AFSJ) agencies and the migration governance itself, the EU asylum policy, especially from a regulatory governance perspective, has gotten much less attention from scholars (for notable exceptions see Ripoll Servent, 2018; Tsourdi,

[2] While the expansion of regulatory governance might also occur through the transfer of competences to the EU institutions or regulatory networks, this thesis focuses on regulatory agencification as the main indicator of the expansion of regulatory governance in the EU since it is the commonly observed policy choice in the EU.

2020, Meissner, 2021). This relative lack of academic attention is the main starting point for this thesis. The research questions at the very core of this thesis can be stated as follows: How did the regulatory governance of the EU asylum policy evolve historically? What is the role of different crises in this historical evolution? How has the agencification process observed in the EU regulatory governance impacted the EU asylum policy? How can the varying paces of regulatory governance expansion between the internal and external dimensions of the EU asylum policy be explained? What is the relationship between securitization of immigration and the regulatory governance of the EU asylum policy?

While answering these research questions, the thesis examines two hypotheses, which are discussed in the methodology section below, that originate from the main argument of the thesis regarding the nature of the regulatory governance of the EU asylum policy. The thesis argues that asylum became one of the most complex policy fields where the EU utilizes its regulatory governance in a two-dimensional way. While the internal dimension of the EU asylum policy mainly consists of the Common European Asylum System (CEAS) and the European Union Agency for Asylum (EUAA) as its core agency, the external dimension revolves around the process of externalization of border management and the asylum policy to third countries with the support of the European Border and Coast Guard Agency (EBCG)[3]. The two dimensions of the EU asylum policy showed varying paces regarding the expansion of regulatory governance in the face of crises such as the Refugee Crisis in 2015. The external dimension of the EU asylum policy experienced a rapid expansion of regulatory governance and the agencification process displayed frequent de jure mandate overhauls. The internal dimension, on the other hand, suffered from the lack of consensus and non-implementation by the member states leading to the expansion of the EU level regulatory governance to occur in a de facto manner while the de jure expansion was hard to achieve and has occurred only recently. The underlying reasons behind these differences between the two dimensions lie in the structural qualities of

[3] FRONTEX was officially renamed as the European Border and Coast Guard Agency (EBCG) in 2016. The Agency is still commonly referred as FRONTEX, even by itself. However, to stress the historical evolution of the Agency, the abbreviation FRONTEX is not interchangeably used while referring to the EBCG within the text.

the EU asylum policy originating from the historical evolution of the policy field as well as the increasing levels of securitization of immigration and asylum in the EU.

This first introductory chapter provides a general background for the discussion in the subsequent chapters, the theoretical framework and the methodology that is used throughout the thesis as well as the limitations of this research. Chapter 2 discusses the traditional policy fields such as banking regulation, food safety, civil aviation safety and maritime safety where the regulatory governance of the EU is discussed more often by scholars. Moreover, the role of specific EU agencies in these traditional policy fields is examined. Structural characteristics, commonalities and differences between these agencies are pointed out. In Chapter 3, evolution of the internal dimension of the regulatory governance of the EU asylum policy and the security-oriented institutional developments are discussed in detail starting from the steps towards the establishment of the European Single Market. Similarly, Chapter 4 discusses the external dimension of the EU asylum policy and also examines the commonalities and differences between the regulatory governance of the EU asylum policy and traditional policy fields discussed in Chapter 2. After the regulatory governance of the EU asylum policy is discussed, Chapter 5 investigates the underlying reasons behind the two-paced expansion of regulatory governance in the two-dimensional EU asylum policy and the corresponding agencification processes. In Chapter 5, two main reasons are identified as contributing to the two-paced expansion of regulatory governance in the EU asylum policy. These are the security-oriented institutional evolution of the EU asylum policy and the global process of securitization of migration. Securitization acts as a barrier in achieving a common and balanced EU asylum policy since it disproportionately enhances the external dimension of the policy field through the successive empowerments of FRONTEX, and later the EBCG, by the member states while the internal dimension received a partial overhaul only recently with the establishment of the EUAA. Chapter 6 provides a summary of the arguments and a discussion on the future evolution of the EU asylum policy.

1.1. Theoretical Framework

The thesis combines two approaches while forming the overall theoretical framework of the research. First of all, since this research focuses on the historical evolution of the EU asylum policy and role of the EU agencies in this policy field, adopting an institutionalist approach proves the most beneficial in terms of analytical tools. Therefore, following historical institutionalism is in line with the historical focus of this thesis that perceives the European integration as a "process that unfolds over time" which shapes and is shaped by the institutional arrangements established along the way, whether these arrangements "be formal rules, policy structures, or norms" (Pierson, 1996, p. 126). Other than adopting a historical institutionalist perspective, the thesis also benefits from the literature on the concept of securitization. One can argue that securitization by itself does not amount to a theoretical approach but it is a concept within a specific theory of International Relations discipline, that is social constructivism. Since securitization literature focuses on discourse and practice as tools that socially construct an issue as a security problem, it is not wrong to argue that securitization as a concept employs a constructivist look to the governance of certain policy fields, most prominently the migration and asylum policy.

While neither historical institutionalism nor securitization are grand theories of European integration per se, like neo-functionalism (Haas, 2008; Schmitter, 2005) or intergovernmentalism (Garrett, 1992; Moravcsik, 1993), the combination of the two is analytically fruitful in examining the historical development of the EU asylum policy. The reason behind this is the huge impact of past and present institutional arrangements on the EU asylum policy, which has mostly evolved in a security-oriented path so far. Thus, while historical institutionalism provides an understanding of the overall institutional mechanisms behind this historical evolution, the securitization concept proves beneficial in explaining how this security-oriented path dependency in the evolution of the EU asylum policy is mutually reinforced by the discourses and practices of the actors involved, especially during the times of crisis.

1.1.1. Historical Institutionalism

Historical institutionalism can be described as a middle-ground theory between neofunctionalism and intergovernmentalism. Like neo-functionalism, the core assumption of historical institutionalism is that "institutions matter" (Bulmer, 1997, p. 7). Like intergovernmentalism, on the other hand, historical institutionalism gladly accepts the "initial primacy and continuing centrality of member governments in the creation", maintenance and amendment of the EU institutions and agencies (Pollack, 1996, p. 430). Therefore, historical institutionalism combines the merits of both neo-functionalism and intergovernmentalism while rejecting their exaggerated perception of the role of EU institutions and member states, respectively, in the process of the European integration.

In his pioneer work, *The Path to European Integration: a Historical Institutionalist Analysis*, Pierson (1996, p. 126) defines historical institutionalism as the acceptance of the fact that any "political development must be understood as a process that unfolds over time" whose consequences are reflected in the institutions that exist today. Therefore, the main concern of historical institutionalism is the logic of path dependency, the impact of the previous institutional and policy choices on the future development of the given institutions or policy fields (Bulmer, 2009, p. 309). In other words, a historical institutionalist perspective focuses on how institutions affect the "choices of actors as well as the normative dispositions of actors" (Bulmer, 1997, p. 9) in the sense that the existing institutional design within a polity might have constraining and/or normative effects on the "subsequent institutional choices" taken within that polity (Pollack, 1996, p. 432).

With an emphasis on the logic of path dependency in historical political developments, historical institutionalism perceives the process of the European integration as being steered primarily by the member states while acknowledging the fact that the EU institutions, created by the member states, have enabling or constraining effects on the future choices of the member states as well as possible constructive impact on the normative identities and dispositions of the member states (March & Olsen, 2011, p. 2). The constraining impact of past institutional or policy choices on member state action is described with the concept of "lock-in", describing the situation where a

given EU institution (including rules, regulations, policies or agencies) "becomes entrenched and difficult to change, even in the face of a changing policy environment and changing actor preferences." (Pollack, 1996, p. 440). The reasons for this entrenchment are given as the four factors that leads to gaps in member states' design and actual working of institutions: autonomy of the EU level actors, short term mentality of initial designers of institutions, unintended consequences of such designs and changes in member state preferences overtime (Pierson, 1996, pp. 131-132).

As noted by Moe (1990, p. 121), when a new actor is created and added to the political scene, in this case the EU institutions and agencies, they create their "own interests, which may diverge from" the interests of their creators, and have their own resources, mainly the expertise lacked by the member states in the case of the EU regulatory governance. Thus, such EU level actors might seize any opportunity to increase their autonomy from the member states by using their resources. The assertive presence of the Commission in regulatory policy making deriving from its expertise is an example to this type of opportunity seizing. However, it was pointed out that no matter how much autonomous the EU level actors become in their respective areas, the anticipated reactions from the member states limit the autonomy of the EU institutions in practice (Pierson, 1996, p. 134). In addition to increasing autonomy of institutions, short sightedness of institutional designers and unintended consequences of these designs can also lead to loss of steering capacity of member states concerning institutions that they have designed in the first place. This short sighted behavior can be a result of political considerations or lack of information regarding a specific issue at the time when the institution in question was created (Pollack, 1996, p. 434; Pierson, 1996, p. 136). An example from the EU asylum policy is instructive here. In the post-war period with an emerging Cold War context, most of the Western European countries adopted generous asylum policies following an individual-based asylum application procedure (UNHCR, 1951). In its essence, these generous asylum policies were a political response in the context of the Cold War against the Eastern bloc countries. Neither the end of the Cold War nor the enlargement of the EU was in the minds of the designers of asylum policies at the time. As the Cold War ended and the multitude of asylum seekers grew larger, the discrepancies between asylum policies of the old and new EU members prove more difficult to tackle than imagined. Thus, it can be argued that an

initial policy choice followed with a short-term political motivation or based on imperfect information can lead to unintended consequences in the future of that specific policy field or in other policies linked to the given policy.

Finally, an institutional or policy choice made earlier in time might result in the formation of interests within member states in favor of the continuation of the given institutional arrangements since investments made in a certain kind of policy path can lead to 'positive feedback' which would delegitimize other alternatives, raising the costs of potential policy change (Pierson, 1996, pp. 145-146). In other words, as the literature on path dependency has frequently highlighted, "each step in a particular direction makes it more difficult to reverse course" since as the time passes the "benefits of the current activity compared with once-possible options" scale in an upward direction (Pierson, 2004, p. 21; see also Hacker, 2002, p. 54; Bulmer, 2009, pp. 309-310). However, this is not to say that positive feedback and path dependency are completely irreversible. For instance, punctuated equilibrium concept is used to explain institutional change from a historical institutionalist perspective. While historical institutionalism perceives history as not necessarily efficient in the sense that it is not always progressive and institutions do not always evolve to be better versions of themselves (Pierson, 1996, p.131), it is accepted that institutional change do occur for the better or worse in a punctuated manner. For most of the time the established institutional arrangements tend to persist, however, institutions can be interrupted with historical punctuations from time to time "at critical junctures of radical change, where political agency (re)fashions institutional structures" (March & Olsen, 2011, p. 9). Such refashioning of institutions in the EU regulatory governance can be said to occur in times of crisis. As will be discussed in the following chapters, the agencification process, meaning the proliferation of independent regulatory agencies, tends to be a crisis-driven process in different policy fields. While gradual institutional steps are undertaken during non-crisis times that leads to the formation of regulatory EU agencies, most of the time an external and/or internal crisis acts as a facilitator for the actual formation or expansion of a regulatory agency.

Overall, then, what makes historical institutionalism promising is that it does not focus on member states themselves but focuses on the impact of their decisions for the long-

term evolution of the European integration and how certain institutional arrangements can persist even though more efficient or moral alternatives do exist at the member states' disposal.

1.1.2. Securitization

The historical institutionalist approach discussed above will be beneficial in the following chapters while examining the historical evolution of the EU asylum policy which shows strong signs of path dependency. However, pointing out the fact that a strong path dependency exists in the EU asylum policy is not enough in answering why this path dependency is hard to break out of and exactly what kind of "positive feedback" (Pierson, 2004, p. 21) mechanism raises the costs of policy change for the member states. This is where the securitization concept comes into play.

As mentioned earlier, securitization by itself does not amount to a fully blown theory. Instead, it can be seen as the application of the social constructivist theory pioneered by Wendt (1999), to the issue of security. The primary argument of securitization is that most of the time threats to security are constructed through social interactions between different actors. Therefore, any threat could only be subjective to certain groups of actors and can be depicted in its essence as threats to societies (Buzan & Wæver, 1997, p. 243). In other words, there could only be constructed threats for certain actors or contexts, meaning that threats to the EU are mainly threats because they are perceived as such by the EU. Two main schools of thought have emerged in the examination of the securitization concept. The first line of scholars, namely the Copenhagen School led by Buzan and Wæver, examined the process of threat creation as a discursive one. The Copenhagen School argues that through discourse an issue can be framed as "an existential threat to the survival" of what is needed to be protected (Léonard, 2010, p. 235). As a result of its extraordinary character, a securitized issue could be more easily depoliticized and moved away from the ordinary public debate. Moreover, the securitization of an issue can justify taking emergency measures which would otherwise be illegal or illegitimate (Buzan et al., 1998, p. 25). This was the case especially during the Refugee Crisis in 2015 where the actual number of asylum seekers arriving at the EU borders was relatively manageable when the whole size of the EU is considered. It can be argued that what turned the situation into a crisis was

the institutional design of the EU asylum policy coupled with the rhetoric of some of the member states which perceived asylum seekers as existential threats to the EU.

The discursive approach of the Copenhagen School to securitization was challenged later on by scholars who emphasized the crucial role that practices play in the securitization process. This line of thought became known as the Paris School which did not directly reject the arguments of the Copenhagen School all together. The Paris School did not argue that discourse has no explanatory power over the securitization process. However, it was argued that securitization could also occur "without speech or discourse" through the use of "practical work, discipline and expertise" (Bigo, 2000, p. 194). The main logic behind this thinking is that the necessity of maintaining a securitizing discourse for a specific issue fades away with time if certain institutions were put into place to securitize that issue by their practices (Léonard, 2010, p. 236). Thus, it could be argued that until some institutions with securitizing practices are created for an issue, securitization requires discursive action by the elites or the media to sustain itself. However, once such institutions are created, their practices would be enough to maintain and facilitate the securitization of an issue. Securitizing practices stressed by the Paris School could be defined as practices that creates "a specific threat image" (Balzacq, 2008, p. 79) in the eyes of the public and projects the idea that these very practices emerged to cope with that threat. Therefore, according to this approach, the mere existence of these kinds of practices is sufficient to maintain and facilitate the securitization of an issue without a necessary securitizing discourse. As it will be discussed in detail in the later chapters, after the European Single Market has been established, institutional pressures have led to formation of interests that prioritized the security of the single market above all else in different policy fields. This led to the regulatory EU agencies to be centered around the maintenance of a secure European Single Market, which is reflected into their practices that reinforce the security-oriented nature of the single market.

The securitization concept, one may argue, acts as the positive feedback mechanism, that was highlighted by the historical institutionalism, which reinforces the security-oriented path of the EU asylum policy. The actors involved in the regulatory governance of the EU asylum policy such as the member states, the EU institutions or

the regulatory EU agencies are in a policy path that is focused on security thinking. However, the commitment to this policy path is also reinforced by the securitizing discourses and practices of the same actors involved in the EU asylum policy, as the insights from the literature on securitization would suggest. This in turn raises the political, economic and institutional costs of a potential policy change, meaning the desecuritization of the EU asylum policy, for the member states.

1.2. Methodology and Limitations

In its essence, this thesis is a comparative study of the internal and external dimensions of the EU asylum policy. As mentioned above, the main argument of the thesis is that while being crisis-driven and security-oriented like other policy fields, the regulatory governance of the EU asylum policy has two dimensions, an internal and an external one. The two dimensions display varying paces of regulatory governance expansion in the face of different crises. Each of these dimensions has its own primary institutions. Here, the term 'institution' is used in line with the historical institutionalist accounts which extends the definition to cover not only the EU institutions and agencies but also formal rules, regulations and policy arrangements (Pierson, 1996, p. 126). While the primary institutions of the internal dimension include the Common European Asylum System (CEAS) and the EUAA, formerly EASO, as the main regulatory EU agency, the primary institutions of the external dimension are the EBCG, formerly FRONTEX, as the main regulatory EU agency and the arrangements made with the third countries which leads to the externalization of the EU asylum policy and border control responsibilities. In order to prove the validity of this main argument, two hypotheses are tested, through a historical analysis of the regulatory governance of the EU asylum policy in Chapter 3 and Chapter 4, which can be stated as follows:

Hypothesis 1: Regulatory governance of the internal dimension of the EU asylum policy exhibits a crisis-driven and slow-paced expansion. Accordingly, the agencification process in the internal dimension has mainly evolved in a de facto manner while the de jure mandate expanded only recently and in a partial manner.

Hypothesis 2: Regulatory governance of the external dimension of the EU asylum policy exhibits a crisis-driven and fast-paced expansion. Accordingly, the agencification process in the external dimension has evolved and expanded frequently in a both de facto and de jure manner.

While testing these two hypotheses and throughout the thesis, primary and secondary sources are used. A detailed review of the literature on the EU regulatory governance in different policy fields, the EU migration and asylum policy, historical institutionalist accounts of the European integration and the review of the literature on securitization are supported by the analysis of the EU treaties, policy documents, regulations, statements as well as reports of different EU agencies and institutions. Analysis of such primary and secondary sources is an overall sufficient way to analyze the historical evolution of the regulatory governance of the EU asylum policy as well as the impact of securitization on this historical evolution. However, adding different primary sources to the research process might have provided a more in-depth analysis of the subject matter. For example, conducting semi-structured interviews, in addition to the analysis of official EU documents, with representatives from the EU institutions and agencies like EUAA and EBCG would have undoubtedly enhance the empirical output of the research, as have been done in other works in the field (Paul, 2017; Perkowski, 2018; Slominski, 2013). Unfortunately, however, the technical and logistical limitations in getting in touch with representatives from such high-level agencies as well as the excessive amount of time that will be needed for the data collection process itself, even if the necessary permissions would be granted, make the analysis of such primary sources unattainable in the scope of this thesis research.

Before proceeding with the next chapter of the thesis, it should be noted that in order to remain coherent between the arguments throughout the thesis, the scope of this research is intentionally narrowed down to the historical evolution of the regulatory governance of the EU asylum policy and its relationship with the process of securitization. Therefore, a good venue for a more comprehensive future research would be to expand the research area to include the relationship between the regulatory governance of the EU asylum policy, the securitization process and the politicization of the European integration process as a whole with empirical analysis of primary

sources and review of secondary sources. Thus, the research conducted for this thesis can act as a steppingstone for such future research.

CHAPTER 2

REGULATORY GOVERNANCE OF THE EU: LITERATURE REVIEW

Scholars have focused on different policy fields as case studies while examining the regulatory governance of the EU. These different policy fields mostly represent the cases of social regulation of the European Single Market. As Thatcher (2011, pp. 791-793) notes, the EU has become more active in the domain of social regulation compared to economic regulation, especially with the proliferation of regulatory EU agencies in the 1990s and 2000s. While the European Commission can be depicted as in control of the economic regulation of the single market with its leading role in the competition policy of the Union, the same cannot be said for the social regulation of the single market where various actors from different policy fields are engaging with each other. It can be argued that social regulation deals with the mitigation of various risks originating from the existence of the single market and producing standards concerning safety in different policy fields (Thatcher, 2011, p. 796). Some examples include food, civil aviation and maritime safety (Heims, 2018; Chatzopoulou, 2015; Groenleer, 2010), environmental regulation and medicine safety (Majone, 1997a; Scharpf, 1999). Although banking regulation is considered to be in the domain of economic regulation since it involves the regulation of access to financial markets (Thatcher, 2011, p. 797), the emphasis on risk management and safety standards (Levi-Faur, 2011, p. 824) for the banking sector draws banking regulation into the domain of social regulation as well.

While all these policy fields have shown differences in their historical evolution, institutional characteristics and outcomes in terms of regulatory governance, they all have two aspects in common. Firstly, the regulation of these policy fields has a common security mentality originating from the borderless character of the European Single Market which creates a logic of path dependency (Pierson, 1996) in terms of

institutional choices that focuses on existence of risks and the need to counter them. Secondly, the institutional changes in the regulatory governance of these policy fields are mostly affected and accelerated by the respective crises that have occurred in these different policy domains. In other words, crises most of the time act as stepping-stones to the advance of EU regulatory governance in various policy fields, as the "failing forward" (Jones et al., 2016, p. 1010) argument suggests for the European integration process.

This chapter provides a general review of the literature on the EU regulatory governance with a particular focus on traditional policy fields which attracted a good deal of scholarly attention. The reason why these policy fields can be depicted as traditional and have been studied more often than other fields, for instance the EU asylum policy, is their linkage with the regulation of the European Single Market. Four fields are chosen as examples, namely, banking regulation, food safety, civil aviation safety and maritime safety. The reason for these fields to be chosen is their apparent link to the single market and the need to manage various kinds of risks resulting from the borderless character of the single market. However, it should be noted that, the aim in this chapter is not to provide a detailed analysis for the governance of these policy fields. Instead, the institutional evolution of the EU regulatory governance in these fields are examined with the aim of pointing out the commonalities and differences between them and, in Chapter 3 and Chapter 4, between these policy fields and the regulatory governance of the EU asylum policy.

2.1. Regulatory Governance of the EU in Different Policy Fields

2.1.1 Banking Regulation

Regulation of banks is one of the central aspects of financial regulation, be it at national or at the EU level. In this branch of financial regulation, the first concrete attempt at the European level to regulate the activities of banks came in the form of a Directive in 1977 where banks in any EU member state were permitted to open up new branches in other member states (Grossman & Leblond, 2012, p. 194). This can be seen as the first step of liberalizing the banking sector in the EU, however, it was pointed out that

this simple permission did not lead to banks freely operating in other member states since national financial systems as well as national regulatory systems diverged considerably between member states (Grossman & Leblond, 2012, p. 194; Heims, 2018, p. 154).

In the scope of accelerating the completion of the single market in Europe, the 1985 White Paper stressed the importance of liberalizing financial services across the EU (European Commission, 1985). The measures that were put in place after the White Paper and materialized with the Second Council Directive on 15 December 1989 involved "an EU-wide banking passport" that effectively meant mutual recognition of banking licenses between the EU member states, together with the liberalization of capital controls and investment services across the EU (Grossman & Leblond, 2012, p. 195). The increasing levels of financial integration and the progressive establishment of the European Single Market and the Economic and Monetary Union (EMU) in the 1990s, forced member states to realize that some form of banking regulation, other than the mutual recognition of banking licenses, was necessary since financial institutions in the member states of the EU were increasingly tied together, "such that eventually the failure of any major bank in one member state" might lead to failure of banks in the other member states (Jones et al., 2016, p. 1019). In the face of potential risks to the European financial system that a borderless single market brought, and at the same time not being very enthusiastic about transferring financial supervisory powers to the European Central Bank (ECB), member states decided to enhance their coordination of the supervision of cross-border banks within the EU by establishing the Committee of European Banking Supervisors (CEBS) in 2003 (Heims, 2018, p. 154).

The creation of the CEBS was seen as the "the extension of the Lamfalussy process" to banking regulation (Thatcher & Coen, 2008, p. 821). The Lamfalussy process had adopted the logic that "detailed regulations and rules" can be decided by the expert committees, like the CEBS for banking, while the European Parliament and the Council decide on "broad policy guidelines" under the co-decision procedure (Grossman & Leblond, 2012, p. 199). Therefore, the main aim of the Committee, which was composed of national banking regulators and supervisors of the EU

members, was to identify and decide on the details of rules that would lay down the policy guidelines for the EU institutions to adopt (Heims, 2018, p. 154). However, the non-binding nature of the CEBS guidelines and the "reliance on self-regulation and soft law" were criticized and it was pointed out that such a decentralized regulatory governance of the banking sector might expose member states to financial instability in the case of a regional or global crisis (Jones et al., 2016, p. 1020).

When the global financial crisis started in the late 2007 as a result of the US real estate markets experiencing a crisis, the French and German banks felt the initial negative effects which spilled over rather quickly to banks in the UK, Switzerland and Ireland especially after the US-based Lehman Brothers collapsed in 2008 (Jones et al., 2016, p. 1021; Grossman & Leblond, 2012, p. 201). Such a quick spread of bank failures after an exogenous financial crisis showed in its essence the dangers of having decentralized national regulatory systems for the European banks while performing inside a Europe-wide monetary union and a single market of financial services where capital can move easily within the EU (Jones et al., 2016, p. 1022). Faced with the adverse impact of the financial crisis on the European banks, a growing consensus was established among policymakers who argued that "growth in cross-border banking in Europe should be accompanied by EU level financial supervision" (Grossman & Leblond, 2012, p. 202; See also Begg, 2009; Pisani-Ferry & Sapir, 2010). This consensus led to an institutional upgrade and replacement of the Committee of European Banking Supervisors with the European Banking Authority (EBA) in 2011.

EBA is one of the three supervisory agencies founded within the scope of the European System of Financial Supervision (ESFS) which aims to enhance the "functioning of the internal market by ensuring appropriate, efficient and harmonised European regulation" in finance while national regulatory authorities are in control of "supervising individual financial institutions" within the member states (EBA, 2021). While the Management Board of EBA consists mainly of national banking supervisors, like CEBS, and aims to agree on the EU level common technical standards, the agreed technical standards have a legally binding nature for member states, unlike the guidelines of the CEBS (Heims, 2018, pp. 154-155). EBA has also the responsibility to produce common prudential rules throughout the EU for banks

and “to assess risks and vulnerabilities in the EU banking sector” (EBA, 2021). Other than the enhanced efforts of coordination of national regulators through the utilization of EBA, the ECB was given authority to supervise “significant banks” in the Euro area and in the member states participating to the Single Supervisory Mechanism (SSM) since 2014 (ECB, 2021). Together with the Single Resolution Mechanism (SRM), the SSM comprises the EU Banking Union in which the ECB conducts banking supervision and inspections, grants or withdraws banking licenses as well as ensures bank compliance with prudential rules (ECB, 2021).

Thus, one can argue that the global financial crisis acted as a catalyst for some degree of centralization of the banking regulation in the EU. The crisis did not lead to a fully blown single financial regulator at the EU level. However, the financial crisis transformed the strongly decentralized nature of EU banking regulation by empowering the regulatory capacity of the ECB for the Euro area banks and by transforming a relatively ineffective regulatory network for banking regulation, the CEBS, to an agency with more formal implementation powers, the EBA. At the end, as Jones et al (2016, p. 1027) points out, the enhancement of EU regulatory governance in banking and financial sector follows a direction forward toward regulatory integration at the EU level but essentially remains incomplete. The reason behind this incompleteness is the regulatory steps taken at the EU level not leading to a centralized financial union, which would entail a single regulatory authority over the banking and finance sector across the EU. Since the regulation of the banking and finance sector is fragmented, the potential for future crises in the policy field remains high.

2.1.2. Food Safety

National food safety regulations in the EU were originally seen as potential trade barriers for the proper functioning of a single market and with the famous Casis de Dijon judgement in 1979, the principle of mutual recognition in the regulation of food safety became the norm where a food product, that is considered safe under the regulations of a member state, must be assumed safe in any other member state (Heims, 2018, p. 114). From then onwards, the European Commission took on the responsibility of inspecting national regulatory systems for food safety in the member

states through the use of the Directorate-General for Health and Food Safety (DG SANTE), formerly the Food and Veterinary Office (European Commission, 2021). However, such indirect regulatory governance over food safety by the Commission proved inadequate on its own as one of the biggest food safety crises of the EU demonstrated in the 1990s.

The Mad Cow crisis, or the BSE crisis, has started in the early 1990s in the United Kingdom (UK) where after increasing cases of BSE within the British cattle population, the British government argued that the BSE disease was only seen in cattle and was not contagious to humans (Center for Food Safety, 2021). After the first human death was recorded in 1995 as a result of a new form of Creutzfeldt-Jakob Disease (CJD), on 21 March 1996 the British government announced that a "suspected link" exists between the BSE and CJD cases (BBC, 2021). This announcement resulted with the EU banning the import of "British beef and beef products" that was only lifted in August 1999 after three years of a cumbersome legal process (Center for Food Safety, 2021). Therefore, the Mad Cow crisis has shown that improperly regulated food production practices of an individual member state in the European Single Market, in this case the contradicting risk assessments regarding beef production and export by the UK in the 1990s, can "have the potential to detrimentally affect" (Heims, 2018, p. 112) other member states which import food products for the consumption in their own markets. This realization at the EU level led to a revision of the food safety understanding and demonstrated the inadequacy of the Commission, through the DG SANTE, for providing scientific assessments of risks regarding food products circulating within the single market.

In order to tackle this lack of technical expertise, the European Commission (2000, p. 3) produced the White Paper on Food Safety which pointed out the need for establishing an independent food safety authority who would provide "scientific advice on all aspects relating to food safety" as well as who would act as a network of national agencies and scientific bodies in the field. The White Paper has resulted in the formation of the European Food Safety Authority (EFSA) in 2002 (Council of the European Union, 2002). EFSA stresses, unlike most of the other regulatory EU agencies such as EBA, its independence from any "government, organisation or

sector" interest while conducting its work (EFSA, 2021). The main reason behind this difference in giving importance to independence is stated in its founding regulation: EFSA must be an "independent scientific source of advice, information and risk communication in order to improve consumer confidence" (Council of the European Union, 2002). Thus, the nature of the Mad Cow crisis, which led to a public distrust for national food safety regulators as well as for the EU's capacity for scientifically assessing food related risks, has necessitated a regulatory agency to be able to act as a strongly independent risk assessor so that distrust for food safety would not cause arbitrary trade barriers within the single market (Braithwaite & Drahos, 2000, p. 403).

EFSA's main role can be described as a scientific advisor to the Commission which in turn proposes EU level food regulations to be adopted by the member states by referring to the agency's scientific opinions (Heims, 2018, p. 117). Such an advisory role might suggest that EFSA would not have implementation powers over EU food safety regulations. However, as Majone (1997, p. 264) pointed out dependency of EU institutions to information is highest in the area of social regulation, such as the regulation of food safety, and regulatory agencies most of the time use this dependence to increase their influence over regulatory developments in their respective fields. The reason for this dependence on regulatory agencies is the technical complexity of such policy fields and the logic that any questioning of scientific advice of the regulatory EU agencies might jeopardize the legitimacy of the EU regulatory governance in these respective sectors (Chatzopoulou, 2015, p. 164; Groenleer, 2011, p. 554). Therefore, through the use of its Scientific Panels that bring together independent experts on food safety from the EU as well as outside of Europe, EFSA influences the harmonization of food safety standards between member states based on "trusted science" (EFSA, 2021a).

EFSA's unique independent character does not mean that it does not engage with the national regulators. EFSA is mandated to establish networks of cooperation with national authorities, and this is done through the Advisory Forum where national regulators provide detailed information about their respective countries to EFSA for publishing its scientific opinions (Heims, 2018, pp. 128-129). This organizational division is in stark contrast with other regulatory EU agencies such as the European

Border and Coast Guard Agency (EBCG) where independent experts represent a part of the Agency's Consultative Forum which will be discussed in more detail in Chapter 4. With the establishment of EFSA, risk assessment of food safety was kept separate from the Commission's still active role in the risk management on the ground. As discussed above, the Commission through DG SANTE conducts on-site inspections regarding "whether EU food safety law is adhered to" by the member states and by the food exporter third countries (Heims, 2018, pp. 120-121). However, these inspections remain indirect in the sense of inspecting the national food safety inspectors or the overall inspection systems.

Thus, overall, food safety regulation in the EU followed a quite sudden and fast development as a result of the Mad Cow crisis in the 1990s demonstrating the lack of readiness and assessment capacity of food related risks in a borderless single market. As a result of the special character of the food safety regulation, a highly independent regulatory agency, EFSA was founded. However, its basis for knowledge provision and expertise in risk assessment has been regularly tested in new crises (Chatzopoulou, 2015, p. 168) and its independence from the industry has been questioned by the NGOs and the EP (Heims, 2018, p. 133).

2.1.3. Civil Aviation Safety

The issue of civil aviation safety is directly linked to the European Single Market and the everyday lives of the EU citizens since it means the safety of one of the four freedoms that the single market provides, namely, the freedom of movement. Since it involves the safe enjoyment of a fundamental and highly visible right that single market provides for the EU citizens, the development and expansion of regulatory governance in this policy area is not marked by crises that act as a catalyst for institutional development, as can been seen in cases of banking regulation, food safety and maritime safety. Instead, it is an example of gradual institutional transition from a loose regulatory network between national regulators to a more formal regulatory EU agency with concrete implementation powers.

Regulation of civil aviation safety in the EU has originated from international and regional regulatory efforts which goes back to 1955 when the European Civil Aviation Conference (ECAC) was founded with the joint efforts of the International Civil Aviation Organization (ICAO) and the Council of Europe. The main aim of ECAC is to "harmonise civil aviation policies and practices" (ECAC, 2021) of its members which not only include the EU member states but also many non-EU countries like Ukraine and Turkey. As a part of the ECAC, the member states established the Joint Aviation Authorities (JAA) in 1970, which remained operational until 2009, in order to harmonize and uniform aviation safety standards between its member states (JAA TO, 2021). To achieve this aim, the JAA produced Joint Aviation Requirements (JARs) while national regulatory authorities were expected to integrate these requirements into "their respective national regulatory frameworks" (Pierre & Peters, 2009, p. 344). However, these tools were soon perceived as inefficient since they were not in the form of binding decisions for member states which acted as a barrier for uniform aviation safety standards to be consolidated across the EU. Instead, national regulators have adapted the Joint Aviation Requirements differently into their national systems (Groenleer et al., 2010, p. 1222).

The lack of uniformity of standards across the EU was seen by the aeronautical product manufacturers as a failure of the JAA which also found resonance among the EU transport ministers who reached a consensus in 1998 on establishing an expert EU agency with considerable implementation powers (Pierre & Peters, 2009, p. 345). As a result, in 2002, the European Aviation Safety Agency (EASA) was founded to provide expertise to the Commission for the establishment of aviation safety legislation in the EU, to issue common certifications and to monitor and inspect the implementation of the relevant aviation safety rules across the EU (Council of the European Union, 2002b, p. 2). The reason why the Joint Aviation Authorities kept functioning until 2009, after EASA has been created, was the need for providing time for EASA to establish its infrastructure so that the Agency would be ready to take over the operative functions of the JAA (Pierre & Peters, 2009, p. 347).

In its founding regulation the main tasks of EASA were defined as issuing scientific technical opinions to the Commission regarding civil aviation safety matters which

would provide the basis for relevant draft legislation at the EU level, issuing certifications regarding airworthiness of aircrafts and aeronautical products as well as conducting inspections and investigations on the ground concerning the member states' implementation of civil aviation standards (Council of the European Union, 2002b, pp. 7-8). Therefore, it can be seen that the establishment of EASA has led to an upgrading of EU regulatory governance in this policy field since, unlike JAA which produced non-binding common safety standards, EASA would acquire implementation powers such as inspections and certifications leading to "stronger EU co-ordination and control" (Pierre & Peters, 2009, p. 348) in civil aviation safety. For instance, besides certification of products and the continuous monitoring of the airworthiness of approved products, EASA regularly conducts a priori notified "standardization inspections" of national regulators where uniformity in the application of aviation safety rules is monitored and no permission is required from the member state in question (Groenleer et al., 2010, p. 1222).

EASA's Management Board brings together one representative from each EU member state and one representative of the European Commission while third states, like Albania, Moldova or Serbia, can be observers without voting rights (EASA, 2021). Therefore, like in the EBA and European Maritime Safety Agency (EMSA), member states firmly control the Agency's direction, operations and budget. This firm control, however, does not mean that EASA's activities are always in line with member states' interests. For example, member states with a strong tradition of aviation safety regulation like the UK were highly sceptical in the mid-2000s of EASA's top-down approach regarding the standardization of aviation safety rules across the EU and the complete transfer of inspection functions to the Agency since this could lead to marginalization of the national civil aviation authorities (Groenleer et al., 2010, p. 1223). Moreover, the grip of national authorities over EASA is both confirmed and showed its limits in the Agency's founding regulation. In the introductory paragraphs of the Regulation, it is stated that public interest requires EASA to base all of its safety related decisions on an independent scientific opinion only, through the initiative of its Executive Director while member states have a say when EASA "has to develop draft rules of a general nature to be implemented by national authorities" (Council of the European Union, 2002b, p. 2).

Overall, then, one can argue that the regulation of civil aviation safety in the EU has developed as a result of international and regional regulatory efforts where the highly visible link of the policy field with the European Single Market and the freedom of movement that EU citizens enjoy on a daily basis, acted as the key driver for institutional change. In that regard, civil aviation safety diverges from other policy field examples where significant crises were mostly used as stepping-stones to further expand the EU regulatory governance.

2.1.4. Maritime Safety

Maritime trade, from its very origins, had a cross-border character which resulted in the regulation of maritime safety to be mostly seen as an international issue. Therefore, when the EU commenced its own regulatory efforts in the area of maritime safety, this has developed as a complementary regulatory level to the already existing international regulatory activities led by the International Maritime Organization (IMO) where European states like Germany and the UK were already powerful players (Heims, 2018, p. 92). Besides international regulations, regional regulatory efforts also existed in Europe regarding maritime safety. A primary example for such an effort is the Paris Memorandum of Understanding on Port State Control, signed in 1982. The Paris Memorandum aims at eliminating "the operation of sub-standard ships through a harmonized system" of controls by the port states to prevent maritime pollution while its membership encompasses not only most of the EU members but also countries like Canada and the Russian Federation (Paris MoU, 2021).

In order to implement the Paris Memorandum in a coherent way, the EU members agreed on the first EU wide regulation on maritime safety in 1995 in the form of the Council Directive on port state control (Council of the European Union, 1995; see also König, 2002). After this first regulatory step, crises have acted as a facilitating factor for deepening the regulatory initiatives of the EU in maritime safety, similar to fields of food safety and banking regulation. The main crisis, that intensified regulatory activity at the EU level, was the sinking of the vessel named Erika in 1999. Erika was a 25-year-old oil tanker whose hull was broken into two because of a structural failure which led to mounting levels of marine pollution within the French coast and turned

the accident into one of the biggest environmental disasters in Europe (Safety4sea, 2018). The Erika disaster occurred since the vessel was not well-maintained to endure harsh weather conditions at open sea. The fact that Erika was inspected by various bodies before the accident, and yet had poor maintenance, has resulted in the questioning of the quality of inspections and reinforced the idea that the EU rather than national authorities needed to monitor compliance so that such a crisis would not occur again (Heims, 2018, p. 86; see also König, 2002). As a result, a series of legislation packages known as Erika I, II and III were proposed and adopted by the EU within the 2000-2009 period. While all these three legislation packages enhanced and deepened EU maritime safety regulations such as through setting up information systems for maritime traffic control, Erika II package was especially important since it included the regulation that established the European Maritime Safety Agency (EMSA) in 2002 (European Commission, 2000a). Just two months after EMSA was founded, in November 2002 another oil tanker, named Prestige, sank off the coast of Spain as a result of possible corrosion and prior maintenance damage which caused one of the worst environmental disasters in Spain (Safety4sea, 2018a). This new environmental disaster confirmed the need for an expert EU agency regarding maritime safety and strengthened member states' support for the work of the Agency (Groenleer et al., 2010, p. 1219).

Since the establishment of EMSA was directly related to the Erika disaster, the founding regulation of the Agency stressed its implementation tasks regarding maritime safety throughout the Union, especially the task of inspecting national maritime safety authorities of the EU member states. EMSA's overarching aim is defined as "ensuring a high, uniform and effective level of maritime safety" as well as preventing and responding to maritime pollution (Council of the European Union, 2002a, p. 2). The role of EMSA in maritime safety regulation can be summarized as being a technical and scientific advisor to the European Commission with regards to producing relevant EU legislation, being a trainer in maritime safety for national regulatory authorities of the member states, providing operational support and, most importantly, acting as an EU-wide inspector and investigator of member states by monitoring the implementation of the port state control regime and assessing the classification societies for maritime vessels (Council of the European Union, 2002a,

pp. 2-5; Groenleer et al., 2010, p. 1219). As can be seen from these core tasks of the Agency, EMSA does not have direct decision-making powers that would be binding on the member states. Instead, EMSA uses its technical expertise and inspection reports to indirectly affect the actions of the Commission which in turn has the potential to affect the regulatory activities of the member states. For instance, EMSA uses trainings and workshops as forums of mutual exchange and learning between member states which enhances the harmonization of regulatory standards across the EU as well as giving the Commission a solid background on its legislative proposals or its requests for corrective actions from the member states (Heims, 2018, p. 84; Groenleer et al., 2010, p. 1220-1221).

The relationship of EMSA and the member states is similar to that of the European Banking Authority. Like EBA, EMSA's Administrative Board mainly consists of one representative from each EU member state and representatives of the Commission. Differently, the Board members include Iceland and Norway as EFTA states and four representatives from the maritime sector, albeit without voting rights (EMSA, 2021). Therefore, one can argue that EMSA is tightly controlled by the member states and their interests. However, the Agency's inspection tasks combined with its indirect relationship with the European Commission are not always good for its reputation among the member states, something which the Agency direly needs for securing their engagement and compliance with its activities (Groenleer et al., 2010, p. 1220). For instance, in 2006 it was stated in an EMSA document that some member states became disappointed with its inspection visits since those inspection reports were used by the European Commission in commencing infringement procedures against the member states in question which created negative concerns about the purpose of such visits (EMSA, 2006, pp. 7-8). As Groenleer et al. (2010, p. 1220) point out, the main reason for this disappointment was the Commission's failure to a priori notify EMSA about the use of its inspection reports in the infringement procedures which created an image of distrust although, in the legal sense, the confidentiality of such reports was defined as between the concerned member state, EMSA and the European Commission. Therefore, EMSA can be seen in a constant struggle for balancing of its various roles: an inspector role, its close relationship with the Commission and its strong dependence on the member states' active engagement with its workshops and trainings so that an

extensive harmonization of national regulatory practices between member states can be achieved in the field of maritime safety.

In regulating maritime safety, European states have already acquired experience -both nationally and internationally- before the emergence of the EU as a late-comer regulator in the field. The existing regulatory rules under the IMO and the regional bodies like the Paris Memorandum acted as an equivalent of the CEBS in banking regulation. Thus, only after highly publicized incidents like Erika and Prestige that the EU was truly convinced to act, stepped up and founded EMSA, an agency with considerable inspection powers resulting from the nature and causes of these disasters. EMSA's mandate has been expanded in scope ever since but member states have preserved their control over the Agency's institutional design even though their inspection by EMSA sometimes generated tensions. Overall, the EU was able to create a regional regulatory capacity for maritime safety in parallel to the existing international efforts with a remarkable history of implementation for nearly twenty years.

Table 1. *Regulatory Governance of the EU in Different Policy Fields*

Policy Field	Key drivers of Institutionalization	Regulatory Agency	Agency Tasks	Agency Structure	Governance Mode
Banking	• Existence of a single market for financial services • Global financial crisis (2008)	• European Banking Authority (EBA) (2011) • European Central Bank (ECB) (1998)	• Producing legally binding rules (EBA) • Monitoring and licensing of the significant banks in the Euro area (ECB)	• Management Board dominated by the member state representatives (EBA) • Governing Council dominated by the representatives of the Euro area countries (ECB)	• Partial centralization of powers at the EU level
Food Safety	• Existence of a single market for food products • The Mad Cow crisis in the 1990s	• European Food Safety Authority (EFSA) (2002)	• Providing independent scientific non-binding advice • Conducting risk assessment	• Management Board composed of 15 experts on food safety who do not represent a government, organisation or sector	• Pooling of national resources for producing scientific advice
Civil Aviation Safety	• The risks posed to the safe enjoyment of the freedom of movement • The lack of uniform standards in aviation safety across the EU	• European Aviation Safety Agency (EASA) (2002)	• Monitoring compliance • Certifying aeronautical products • Providing scientific advice	• Management Board dominated by the member state representatives	• Partial centralization of powers at the EU level in certification of products and monitoring
Maritime Safety	• Cross-border risks originating from the maritime industry • Sinking of Erika (1999) and Prestige (2002) vessels	• European Maritime Safety Agency (EMSA) (2002)	• Monitoring compliance • Providing scientific advice • Training national regulators	• Management Board dominated by the member state representatives	• Pooling of national resources for monitoring compliance and providing scientific advice

This table is produced with the author's own analysis of relevant literature and official documents on the regulatory governance of the EU in different policy fields.

2.2. Security-oriented and Crisis-driven Regulatory Governance of the EU

The general overview, provided above, of the regulatory governance of the four policy fields: banking regulation, food safety, civil aviation safety and maritime safety suggests a historical tendency towards a similar institutional path for the EU regulatory governance that is essentially security-oriented and crisis-driven (see Table 1). As a result of these two characteristics, the EU's regulatory governance in those policy fields shows a striking similarity towards the establishment of expert regulatory agencies centered on the task of risk management which the literature refers to as the

process of agencification (Dehousse, 2008; Levi-Faur, 2011; Gilardi, 2005; Thatcher, 2011; Thatcher & Coen, 2008).

The proliferation of expert EU agencies in different policy fields can be seen as a consequence of the overarching path the European integration has taken through the gradual establishment of a borderless single market in the 1990s, which in turn has created an institutional "lock-in" (Pierson, 1996, pp. 131-132; Pollack, 1996, p. 440) meaning that the mere existence of the single market itself limited the institutional options available to the EU members thereafter. Free movement of capital, goods, services and people meant that any pre-existing risk that remained national might now easily spread throughout the EU to the other member states and could endanger the safety of the whole European Single Market. As this logic slowly gained prominence, the EU began to take a security-oriented approach, that is risk assessment and management, to its activities especially in the field of social regulation. The main reasons for such a security-oriented approach were the growing impact of general public support for raising health, safety and environmental protection standards, the successful example of risk-based social regulations shown by the US and the "regulatory failures at both the EU and national levels that have debilitated public trust in governmental regulation" (King, 2007, p. 95, 121). What King referred as regulatory failure points out to the second major characteristic of the EU regulatory governance, that is being crisis-driven.

As the policy-related examples in this chapter have shown, most of the time crises were influential in the expansion of EU regulatory governance by acting as steppingstones towards institutional change. Like Jones et al. (2015, p. 1027) stress with their "failing forward" argument, the process of European integration, and therefore the EU regulatory governance, is driven forward by succession of various crises in different policy fields, although partially and not so wholeheartedly on the side of the member states. This partial move forward is a result of the unwillingness of the member states to transfer competences to the EU institutions or agencies, leading to mainly incomplete intergovernmental bargains. These incomplete bargains result in implementation failures in a policy field which creates demand for further reform when a crisis emerges and necessitates urgent response. Examples from

banking regulation, food safety and maritime safety verify this argument since the expansion of regulatory governance through the establishment of expert EU agencies in these policy fields was mainly the results of the 2008 global financial crisis, the Mad Cow crisis and the sinking of Erika and Prestige vessels respectively.

Civil aviation safety, on the other hand, despite being evolved in a security-oriented path, seems like an exception since there was no one big crisis which pushed forward the agencification process experienced in the policy field. As mentioned above, the specific characteristics of the civil aviation safety as a policy field can account for this exceptional situation while at the same, it should be highlighted that, the regulatory efforts in these different policy fields are not occurring in a vacuum but instead are interacting with each other and with other international examples in practice. Therefore, learning from the experiences in other policy fields can also be a driver for institutional change. This logic was clearly stated in a communication of the European Commission in 2000 as the Maritime Safety Agency (referring to EMSA) would be "broadly modelled" on the structure of the Air Safety Agency (referring to EASA) especially regarding the design of the Agency's core tasks (European Commission, 2000a). The institutional developments in civil aviation and maritime safety can be seen as having mirrored each other when one considers the parallel timing of the agencies' design processes and the close dates of their establishment. Hence, it can be argued that the agencification process in civil aviation safety was a 'lesson learned' from the significant maritime safety accidents without any need for similar incidents to occur in aviation safety.

Overall, then, expert regulatory EU agencies have proliferated in areas of social regulation where a strong security-oriented and risk-based thinking has merged with various crises acting as critical historical junctures (March & Olsen, 2011, p. 9) leading to change in the institutional design of the EU regulatory governance. Importantly, as Thatcher (2011, pp. 800-801) points out, regulatory EU agencies were able to spread in the fields of social regulation like food safety or pharmaceutical safety since the European Commission had very little or limited previous role in these policy fields and this gave the member states the opportunity to open up space for new institutional arrangements to be experimented rather than giving further regulatory competences to

the Commission directly (Bickerton et al., 2015). This was not possible in most of the areas of economic regulation such as the competition policy where the idea to establish a powerful European Cartel Office, for instance, could not be materialized since the Commission fiercely protected its competences and bureaucratic turf in this policy field (Thatcher, 2011, p. 800). This argument strongly supports the historical institutionalist accounts by demonstrating that the institutional choices of the past, e.g., the existence or non-existence of the European Commission as a powerful regulatory actor in a policy field, can have limiting effects for future institutional options available to the EU member states.

The proliferation and the similarities of the EU agencies in the different policy fields examined in this chapter show that the regulatory governance of the EU has some characteristics that are common across most of those policy fields. The first two, as mentioned above, are the security-oriented evolution and the crisis-driven nature of the EU regulatory governance. The third major commonality is the establishment and expansion of expert regulatory agencies in the respective policy fields with the requirement that the European Commission is not already a strong regulator in a given policy. The fourth and final commonality is the general tasks of those agencies, namely, the provision of technical and scientific information, acting as hubs for the coordination of regulatory practices of member states, monitoring of compliance with the agreed EU rules and the provision of operational support such as trainings to member states for regulatory capacity building (Blauberger & Rittberger, 2015, p. 369; see also Dehousse, 1997; Majone, 1997a). While some EU agencies have been given decision making tasks like the European Aviation Safety Agency (EASA) through its competence in the certification of aeronautical products, such agencies are quite rare in practice (Groenleer, 2011, p. 554). The main reason for this is the well-established Meroni doctrine in the case law. The Meroni doctrine consolidated the norm of non-delegation by the European Commission "of decision-making powers to independent EU agencies in order to keep the 'institutional balance' between EU institutions intact" (Heims, 2018, p. 5). Therefore, instead of acquiring decision making powers of their own, most of the time expert regulatory EU agencies disseminate their highly technical and scientific opinions to the Commission which in turn bases its own decisions on these opinions.

Thus, the overall aim of the detailed analysis of the regulatory governance of the EU asylum policy, provided in Chapter 3 and Chapter 4, is to find out a similar historical and institutional evolution of the policy field with those of banking regulation, food safety, civil aviation safety and maritime safety. Although every policy field has its own peculiarities, as shown in this chapter, the following chapters seek to explore similar patterns of a security-oriented development of the policy field as a result of the existence of a borderless European Single Market, crisis-driven institutional changes and the establishment relevant regulatory EU agencies. These agencies are most likely to have similar tasks to those discussed in this chapter such as provision of scientific and technical expertise, acting as hubs of practical cooperation, monitoring member states and provision of operational support. The next two chapters of the thesis will explore the possibility of those general characteristics for the regulatory governance of the EU asylum policy.

CHAPTER 3

REGULATORY GOVERNANCE OF THE EU ASYLUM POLICY: INTERNAL DIMENSION

At first sight, a direct link between the development of the EU asylum policy and the European Single Market might be hard to detect. However, when one perceives asylum as a good provided by the single market in addition to being a human right enshrined in international and EU law, it is much easier to see the effects of the establishment and consolidation of the European Single Market on the development of the EU asylum policy.

In the literature, asylum and international protection provided to refugees was famously described as a global "public good" (Suhrke, 1998, p. 400). A public good can be defined as a good whose benefits do not become scarce when enjoyed and do not exclude the other members of the community (Betts, 2009, p. 25; Thielemann & Armstrong, 2013, p. 152). Suhrke applied this definition to refugee protection and conceptualized it as a global public good. For her, once provided by a state, asylum acts like a public good meaning that when a state provides asylum to those in need of international protection, other states "will benefit from the greater international order that ensues regardless of their own" contributions in providing asylum (Suhrke, 1998, p. 400). In other words, international protection provided by a state would be beneficial to other states since it would mean less asylum seekers to deal with and a more stable international system. This in turn results in free riding by some states who benefit from other states' bearing responsibility of accepting asylum seekers. Later this argument was refined by Betts (2009, p. 27) who argued that asylum and international protection is more of "a regional public good than a global public good" since states closer to a given migratory flow would benefit from a neighboring state providing asylum more than those far away. For instance, Turkey or Jordan's providing asylum for those in

need of international protection benefits more the EU member states than say the US or Canada.

Conceptualizing asylum as a regional public good is beneficial for the arguments of this thesis since such a conceptualization shows the link between the existence of a borderless European Single Market and the need to regulate the EU asylum policy. To be more precise, it can be argued that asylum provided by an EU member state acts as a regional public good of the single market. Since the internal borders are lifted within the EU, the circulation of this regional public good, like any other good within the single market, requires to be regulated. Moreover, the problem of collective action inherent in the provision of any public good shows itself within the EU asylum policy as the lack of institutionalized and long-term responsibility sharing mechanisms between member states (Suhrke, 1998, p. 400; Betts, 2009, p. 25). The constant possibility of free riding by other states on benefits of the provided public good results in a collective action not to be taken. In other words, while all the EU member states would benefit from the existence of a responsibility sharing mechanism regarding asylum seekers, the presence of non-compliant and free rider member states blocks the way for an EU-wide institutionalized responsibility sharing mechanism. This logic of public good, and the accompanying collective action problem, has affected and continues to affect the institutional choices taken within the EU asylum policy, as historical institutionalism would suggest.

Following the conceptualization of asylum as a regional public good, this chapter examines the development of the regulatory governance of the EU asylum policy, specifically its internal dimension, starting from the Schengen Agreement of 1985 and the Single European Act (SEA) of 1987. As discussed in Chapter 1, it can be argued that the regulatory governance of the EU asylum policy is two dimensional: internal and external. The internal dimension of the EU asylum policy consists of mainly the Common European Asylum System (CEAS) and EASO / EUAA as its regulatory agency. The external dimension consists of FRONTEX / EBCG, as the main regulatory agency, and the rather pragmatic arrangements concluded with the third countries which externalize the EU asylum policy. However, these two dimensions display different paces regarding the expansion of regulatory governance. While the

internal dimension has been developing at a slower pace and in a more de facto manner, the external dimension has developed rather rapidly and in both de facto as well as de jure manner. The reasons for accounting this difference between the two dimensions of the regulatory governance of the EU asylum policy are the public good character of asylum, the security-oriented institutional development of the policy field and the increasing levels of securitization of migration. These reasons and the role of securitization will be discussed in Chapter 5 in more detail. The discussion in this chapter and Chapter 4 will examine the development of and the agencification processes within the two dimensions of the EU asylum policy. The historical analysis provided below will test the first hypothesis discussed in the methodology section of Chapter 1, which can be stated as follows:

Hypothesis 1: Regulatory governance of the internal dimension of the EU asylum policy exhibits a crisis-driven and slow-paced expansion. Accordingly, the agencification process in the internal dimension has mainly evolved in a de facto manner while the de jure mandate has expanded only recently and in a partial manner.

Before going into the internal dimension of the EU asylum policy, however, the logic of distinction between the internal and external dimensions adopted in this thesis should be highlighted here. While the internal dimension involves the provision and procedures of asylum after an asylum seeker enters into the EU territory, the external dimension involves the process that an asylum seeker undergoes before reaching or at the external EU borders. Increasingly, the external dimension also involves the process of returning the failed asylum seekers, whose applications were rejected, back to third countries. While the Treaty on the Functioning of the European Union (TFEU) refers to asylum and external border controls as separate policies with distinct aims (Tsourdi, 2020, p. 196), in this thesis border controls are seen as a crucial part of the external dimension of the EU asylum policy. The reason is that asylum, as a concept, should be understood in a broad sense, both as "the prerogative of a State to grant" and as a "right of an individual to seek" (Nicolosi, 2017, p. 97). Therefore, while asylum as a state prerogative corresponds more to the internal dimension, asylum as a right corresponds to the external dimension. In other words, external border controls are essential to the external dimension of the EU asylum policy since they have the

potential to either facilitate or block the right to seek asylum in the EU. It should be noted, however, that the internal-external divide is only used as an analytical tool in this thesis and the division between dimensions of the EU asylum policy is not so clear cut in practice. Rather, both dimensions and the actors involved are intertwined, as evident in the hotspot approach of the EU (Loschi & Slominski, 2021; Papoutsi et al., 2019), which is discussed in detail in the context of the internal dimension below.

3.1. Internal Dimension of the EU Asylum Policy

The first concrete steps taken towards the establishment of a common EU asylum policy is linked to the Schengen Agreement of 1985 and the SEA of 1987, which eventually led to the emergence of a borderless European Single Market.

The Schengen Agreement was signed on 14 June 1985, between the Federal Republic of Germany, the French Republic and the States of the Benelux Economic Union, composed of Belgium, Luxembourg and the Netherlands. The main aim of the Agreement was to gradually abolish controls at the common borders of signatory states regarding the movement of goods and persons. In its preamble, the Schengen Agreement referred to the 1984 Fontainebleau European Council conclusions, which stressed the goal of abolishing internal border controls for people and goods within the EU, as a legitimizing reference (Schengen Agreement, 1985). Although it was outside the EU legal framework at the time, the Schengen Agreement was described as a laboratory for the right of free movement to be materialized across the whole EU, where the abolition of internal border controls was accompanied by security-oriented compensatory measures (Nanz, 1995, p. 29). However, these compensatory measures were mentioned quite vaguely and mainly concerned the coordination and harmonization of national visa policies and laws on foreigners so that the borderless Schengen area would not cause an increase in irregular migration (Schengen Agreement, 1985, Article 20). Moreover, with the SEA in 1987, the idea of a borderless area originated from the Schengen Agreement was reflected into a broader European space. Indeed, Article 13 of the SEA directly connected the goal to have an EU-wide internal market by the end of 1992 to the establishment of "an area without internal frontiers" (SEA, 1987, p. 7). Therefore, it can be argued that the 1985

Schengen Agreement, followed by the SEA, was the first step that linked the goal of establishing a European single market with the need of policy coordination between member states regarding third country nationals.

When the Schengen Agreement was incorporated to the EU legal framework with the 1990 Schengen Convention, an emerging common asylum policy between the signatory states began to emerge. The Schengen Convention referred to the SEA and stressed the importance of asylum policy coordination between the member states in achieving a European single market. Especially the Article 30 of the Convention contained provisions that can be seen as the basis for the current responsibility determination system of the EU for processing asylum applications (Schengen Convention, 1990). As van Munster (2009, p. 23) points out, contrary to the 1985 Agreement, the Schengen Convention in 1990 increasingly concerned with "the perceived security dimensions of third country immigration" to the EU resulting from the abolishment of internal borders. For instance, the Schengen Information System, set up with the Convention, has the purpose of maintaining "public policy and public security, including national security" in the Schengen area resulting from the free movement of persons (Schengen Convention, 1990, Article 93). Security thinking was an apparent driving force behind the linking of the single market and the need to regulate asylum policies of Schengen members. The Schengen Convention stressed that asylum and visa policies of a member state can affect the security of the entire Schengen area. Therefore, these policy areas did not only harmonize for the facilitation of freedom of movement but also for implementing the accompanying security measures (Thielemann & Armstrong, 2013, p. 149; van Munster, 2009, pp. 20-21). In these respects, the Schengen Convention reinforced the emergence of a common EU asylum policy and its internal dimension developing as a response to the security risks posed by a borderless single market.

3.1.1. Common European Asylum System (CEAS)

What was initiated with the Schengen Agreement and Schengen Convention evolved into the current Common European Asylum System (CEAS) consisting of various rules, regulations as well as interactions between national and EU level actors. While

the CEAS acts as a legal and practical foundation for both the internal and external dimensions of the EU asylum policy, in terms of its overall content and aim CEAS mostly concerns with the internal dimension of the policy field.

While the CEAS was officially stated as a goal in the 1999 Tampere Conclusions (European Council, 1999, para.13) and was materialized in the early 2000s via two Regulations, four Directives and supporting institutions, its origin can be traced back to the Dublin Convention, which was signed on 15 June 1990, just a day after the linking of the Schengen Agreement into the EU system (Dinan et al., 2017, p. 105; Lavenex, 2018, pp. 1201-1202). Following Article 30 of the Schengen Convention, the Dublin Convention aimed at establishing a responsibility determination system within the EU regarding the processing of asylum applications lodged in any member state. The general logic behind the Convention was to have a single EU member state responsible from an asylum application made within the EU territory and to prevent asylum seekers being "referred successively from one Member State to another without any of these States acknowledging itself to be competent to examine the application for asylum" (Dublin Convention, 1990). As argued by Fratzke (2015, p. 4), Dublin Convention was not concerned with creating a responsibility sharing and solidarity mechanism between the EU member states regarding the management of asylum applications. Instead, it was more about preventing asylum shopping, in which asylum seekers would apply for asylum in multiple EU member states in order to increase their chances of being recognized as refugees, or preventing asylum seekers to remain in orbit, where no member state takes responsibility for asylum applications (Dinan et al., 2017, p. 110; Thielemann & Armstrong, 2013, p. 151; van Munster, 2009, p. 32). The concepts of 'asylum shopping' and 'asylum seekers in orbit' are directly linked with the existence of a borderless European Single Market and asylum acting as a regional public good provided by the EU member states: either asylum seekers try to maximize the benefits from asylum by choosing the most generous member state or the member states try to free ride the benefits of other member states taking the responsibility of providing asylum. Therefore, it can be argued that Dublin Convention is the first major instrument designed to regulate the regional public good nature of asylum provided by the EU member states.

Articles 4 to 9 of the Dublin Convention, which entered into force in 1997, lay down the successive criteria of determining the state responsible for an asylum application such as having relatives who were granted refugee status in the EU, having visas or residence permits issued by an EU member state or being transited from a member state where a previous asylum application was made (Dublin Convention, 1990). Importantly with the concept of 'first country of entry', Article 6 of the Convention assigns the responsibility for an asylum application to a member state if an asylum seeker irregularly entered its territory from a non-EU state (Webber, 2019, p. 149; Thielemann & Armstrong, 2013, p. 149). The Dublin Convention can be depicted as the backbone of the EU asylum policy (Geddes, 2000; Monar, 2001) since it addresses the asylum shopping and asylum seekers in orbit problems. Conversely, the Dublin criteria have unevenly place responsibility for processing asylum applications to those member states located on the external EU borders, the so-called frontline states like Italy, Greece or Spain, as evident in the subsequent crises (Bossong & Carrapico, 2016, p. 6; Thielemann & Armstrong, 2013, pp. 149-150). Moreover, the Dublin Convention was resting on a false assumption that through legal harmonization asylum procedures and reception conditions would become equal in every EU member state leading the asylum seekers to spread evenly and to "receive equal consideration and treatment" across the EU (Fratzke, 2015, p. 2). In this respect, the Convention downplayed the migration dynamics such as historical experiences and family ties that strongly affect asylum seekers' decisions (Castles et al., 2014, p. 31). On the other hand, in terms of harmonization as of today, asylum laws and procedures of the EU member states are still far from being harmonious, making the promise of equal treatment hard to realize.

The Maastricht Treaty entered into force in 1993 officially establishing the EU and introducing a three pillared institutional structure: the European Communities as the first pillar, Common Foreign and Security Policy (CFSP) as the second and the Justice and Home Affairs (JHA) as the third pillar (TEU, 1992). The third pillar on JHA included EU level cooperation in asylum matters and this pillar was built upon the existing informal-intergovernmental structures centered on security thinking. The informal cooperation mechanisms established between the internal security experts of the member states such as TREVI or the Coordinators' Group on the Free Movement of Persons, established in 1976 and 1988 respectively, have successfully uploaded

their security centered view on migration and asylum to the structure of the third pillar. As argued by van Munster (2009, pp. 52-53), the Coordinators' Group strategically used its advisory role in the design of the JHA working committees and secured a formal space to internal security experts within the intergovernmental third pillar. This institutional continuity of informal security cooperation structures within formal intergovernmental cooperation of JHA were extended to immigration and asylum, police and customs cooperation and judicial cooperation (van Munster, 2009, p. 53; European Council, 1992, pp. 8-10). Thus, as the European cooperation on asylum was getting more formalized and strengthened, its linkage with security and risks became pronounced more clearly.

Another crucial point in the historical evolution of the internal dimension of the EU asylum policy and the CEAS, was the Treaty of Amsterdam, signed in 1997 and came into force in 1999. As the Maastricht Treaty resulted with significant "institutional leftovers" (Dinan, 2012, p. 851), the treaty revisions that followed Maastricht have heavily focused on resolving them. The Treaty of Amsterdam, on its part, focused on the "foreign policy, internal security and immigration powers" of the EU (Moravcsik & Nicolaïdis, 1999, p. 60). Linked to the emergence of the CEAS, the Amsterdam Treaty moved the migration, asylum and border control policies to the Community pillar under the name Visas, Asylum, Immigration and Other Policies Related to Free Movement of Persons. This communitarization meant that the Council may adopt measures and regulations with the initiative of the Commission regarding asylum policy in general and various standards in particular, such as qualifications for third country nationals, procedures for asylum applications or the reception conditions for asylum seekers (Treaty of Amsterdam, 1997, Article 73k). Not surprisingly, however, communitarization efforts in such a sovereignty sensitive policy field also meant differentiated integration where the UK and Ireland opted out from this specific policy field (Leuffen, 2012, p. 221), resulting with these member states not being subject to common immigration and asylum policies agreed at the EU level. This led to Amsterdam Treaty being described as "decorated with facultative arrangements, time-clauses and protocols" (den Boer & Corrado, 2000, p. 398).

Crucially, with the Treaty of Amsterdam, the EU set itself the objective of transforming the EU into an "area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime" (Treaty of Amsterdam, 1997). Here, it can be seen that the aim of establishing an Area of Freedom, Security and Justice (AFSJ) has enhanced the already prominent security-oriented perspective of the EU on asylum policy by linking it with the fight against crime. As van Munster (2009, p. 69) rightly observed, with the Amsterdam Treaty the "referent object of European internal security has shifted from the internal market to the EU-citizens who can move in the AFSJ without feeling insecure". However, this is not to say that with the introduction of AFSJ, the single market has lost its significance. On the contrary, by shifting the focus to the EU citizens, the AFSJ has acted as a source of legitimacy for the move towards a securitized and risk centered understanding of migration in general and asylum policy in particular, resulting from a borderless single market. Therefore, a traditionally rights-based policy field like asylum (UN, 1948; UNHCR, 1951; Boed, 1994) was successfully portrayed as a source of risk produced by the borderless European Single Market that required EU level regulatory intervention. By using the language of security and risk, the EU has opened the way for a path of institutional evolution for the asylum policy similar to other policy fields such as banking, food, civil aviation, and maritime safety.

As mentioned above, although establishing a common asylum policy was on the agenda since the Schengen Agreement, it was the Tampere European Council Conclusions in 1999 that the CEAS was officially stated as an EU goal. The European Council argued that the CEAS should include:

> a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection (European Council, 1999, para.14).

The Tampere Conclusions also stressed the significance of identification systems regarding asylum seekers and solidarity measures in the case of mass influx of asylum seekers arriving to the EU borders (European Council, 1999, para.16-17). Moreover, by conferring the responsibility to monitor a timetable of progress to the European Commission, the goals set by the European Council led to a series of legislative proposals in the field of asylum and migration in the early 2000s (Scipioni, 2018, p. 1362; van Munster, 2009, p. 81). First of these legislative proposals linked to the CEAS was the proposal on the Temporary Protection Directive in 2000, which was adopted in 2001 rather quickly. As Lavenex (2018, p. 1203) argues, the Temporary Protection Directive can be perceived as a reaction to the experience of "refugee influxes from the Bosnian and Kosovo wars" during 1990s since it mainly deals with how to provide asylum in the case of mass influx of asylum seekers arriving to the EU border. The Directive defined temporary protection as an asylum procedure of exceptional character where a mass influx of third country nationals, who seek international protection in the EU, are provided a temporary protection status for one year with the possibility of extension (Council of the European Union, 2001). Parallel to this Directive and in order to create financial solidarity within the EU in case of such a mass influx of third country nationals, a special reserve was established under newly created European Refugee Fund (Council of the European Union, 2000, para.10). While the EU has never actually used the temporary protection status until very recently (Scipioni, 2018, p. 1363; Tsourdi, 2017, p. 681), interestingly the concept itself was exported, albeit differently, to the EU's neighbor and candidate country Turkey during the Syrian refugee crisis (Official Gazette, 2013). It was only after the recent mass influx of third country nationals, who fled the war in Ukraine in 2022, that the EU adopted an implementing decision opening the way for granting temporary protection in the EU (Council of the European Union, 2022).

Following the Temporary Protection Directive, the Reception Conditions Directive was adopted in 2003. It was the first of the minimum standards directives that the EU adopted in its common asylum policy between 2003 and 2005 (Lavenex, 2018, p. 1203). The Directive focused on listing minimum reception conditions that the asylum seeker must be provided after their asylum application is lodged in one of the EU member states. These conditions included availability of information regarding the

asylum applications, provision of documents proving the asylum seeker status, conditions for residence and the scope of freedom of movement within the concerned member state, the material housing conditions or the standards for access to services like education, medical/healthcare services and employment (Council of the European Union, 2003). The Reception Conditions Directive shared, with the other minimum standards directives, the aim of limiting secondary movements of asylum seekers in the EU by harmonizing different reception conditions existing in the member states (Council of the European Union, 2003, para.8). However, the future crises highlighted that member states who signed up to the EU level minimum standards, like reception conditions, but having "little experience" in asylum policy implementation perceived the weak supervision mechanisms as "more discretion on the ground" (Scipioni, 2018, p. 1362). Therefore, this led to the asylum seekers experiencing different reception conditions depending on where they applied for asylum, meaning that member states like Greece or Italy would offer more basic, and sometimes inadequate, reception conditions than the conditions offered by the member states in Western Europe. The inability of the Directive to harmonize reception conditions in the member states would lead to the Directive to be recast in 2013.

The Qualification Directive in 2004 mainly put forward minimum standards for qualifying as a refugee or as a subsidiary protection holder in the EU. It centered on the main definitions of different protection statuses and what they entailed for the persons concerned. For instance, following the example of the 1951 Geneva Convention, the Directive defined a refugee as a third country national or a stateless person who seek international protection because of a well-founded fear of persecution deriving from race, religion, nationality, political opinion or being a member of a specific social group (Council of the European Union, 2004, Article 2). A subsidiary protection holder, on the other hand, was defined as a third country national or a stateless person who cannot be qualified as a refugee and yet would be in danger of serious harm such as death penalty or torture if returned to their country of origin or the country of former habitual residence (Council of the European Union, 2004, Article 15). Since the Directive established only minimum common standards, it required to be recast in 2011 within the scope of an overhaul of the whole CEAS.

The Asylum Procedures Directive, after two rounds of proposals and intense negotiations, was adopted in 2005 (Scipioni, 2018, p. 1362; UNHCR, 2021). Similar to the Qualifications Directive, the Asylum Procedures Directive centered on minimum standards, meaning that the agreed standards "were lower than those proposed by the Commission and supported by the EP" (UNHCR, 2021; See also Lavenex, 2018, p. 1203). The Directive clearly stated that it was a first measure legal text and stressed that member states can introduce or maintain higher standards regarding asylum procedures nationally (Council of the European Union, 2005, Article 5). The Directive spelled out basic procedural rights and obligations for both the asylum seekers and the member states such as access to asylum procedures, standards for examination of applications, the right for a personal interview, legal assistance, guarantees for the unaccompanied minors, detention procedures or the supervisory role of the UNHCR. However, although one of the aims of the Directive was "to limit the secondary movements of applicants for asylum between Member States" (Council of the European Union, 2005, para.6) by harmonizing asylum standards, common but minimum standards meant that procedures across the EU and the chance of being granted international protection still varied greatly depending on where an asylum application was lodged (UNHCR, 2021). Therefore, the Directive could not stop secondary movements within the EU which led to its recast in 2013.

Other than the series of minimum standards directives and their recast versions, the CEAS also included the Dublin System, consisting of two regulations namely Dublin II Regulation of 2003 and the Eurodac Regulation of 2000, both of which got an overhaul in 2013 (Maiani, 2017, p. 624). The Eurodac Regulation, produced in December 2000, aimed at the exact identification of asylum seekers and those apprehended as a result of illegal border crossings into the EU for the effective application of the Dublin Convention. The Regulation set up the Eurodac system, "a computerised central database of fingerprint data, as well as of the electronic means of transmission" between the EU member states which helps to exactly identify "every applicant for asylum and of every alien who is apprehended in connection with the irregular crossing" of the EU borders (Council of the European Union, 2000a). Through Eurodac, member states "store new fingerprints and compare existing records on asylum seekers" which then might be shared with the law enforcement authorities

and EUROPOL “to prevent, detect and investigate terrorist and other serious criminal offences” (EULISA, 2021). Therefore, the primary goal of Eurodac is to limit the secondary movements of asylum seekers once they arrive at the EU, by preventing an asylum seeker to make multiple applications through the use of fingerprint data. Moreover, since the data produced by Eurodac can be used by security actors like national law enforcement authorities or EUROPOL, it enhances the security-oriented perspective of the EU on asylum policy.

The other constituent element of the Dublin System is the Dublin II Regulation of 2003, which incorporated the Dublin Convention of 1990 formally into the EU legislation. The negotiations for the Dublin II Regulation from 2001 to 2003 saw a clash between the so-called frontline states, namely Greece, Italy and Spain, and the reception states from the North-Western Europe, namely Germany, Sweden, the Netherlands and the UK. The frontline states stressed the need for an alternative hierarchy of responsibility determination criteria and opposed to the ‘first country of entry’ rule while the reception states strongly defended the existing responsibility principle where asylum seekers are under the responsibility of the member state which allowed or not prevented their entry into the EU territory (Thielemann & Armstrong, 2013, pp. 160-161). At the end, the agreed text reaffirmed the responsibility principle from the 1990 Dublin Convention. This time responsibility determination process stressed more clearly the importance of family unity and the best interest of unaccompanied minors by prioritizing existence of family ties. If no family ties can be established, the member state where the application is lodged would be responsible from the unaccompanied minor in question (Council of the European Union, 2003a, Article 6). However, the overall emphasis on the first country of entry principle persisted in the Dublin II Regulation. Since most asylum seekers do not have family ties in the EU or are not in possession of valid documents like passports or visas issued by the EU, the most frequently applied Dublin criterion became the first country of entry principle. Once a member state is determined, via the Dublin criteria, as the responsible one for an asylum application, then the asylum seeker will be transferred to the responsible state through a “take charge” request and transfer (Maiani, 2017, p. 624). Statistical data on the number of transfer requests showed the uneven costs of the Dublin system for the member states since mostly the states with the external EU

borders turned out to be the ones which received most of the transfer requests. For instance, between 2008 and 2010 the bulk of the transfer requests made under the Dublin system came from Austria, France, Germany and Switzerland while it was Greece, Italy and Poland which received the highest numbers of transfer requests (Thielemann & Armstrong, 2013, p. 149).

Thus, the CEAS evolved slowly throughout 1990s and early 2000s with a security-oriented perspective in parallel to the establishment of a European Single Market and the AFSJ. However, the inadequate harmonization of national asylum policies provided by the minimum standards directives and the ineffectiveness of the Dublin System in the face of increasing numbers of asylum applications have resulted with a revamp of the CEAS as well as an intensified agencification process in the internal and external dimensions of the EU asylum policy.

3.1.2. Crisis and Agencification in the Internal Dimension

With the Treaty of Lisbon signed in 2007 and came into force in 2009, the fundamental rights perspective on the policies related to the AFSJ gained prominence. Under the Lisbon Treaty, the EU Charter of Fundamental Rights, an EU-specific bill of rights originally proclaimed in 2000 at Nice, became legally binding on the EU member states (European Parliament, 2021). Since the Charter stressed the protection of the "right to asylum" under Article 18 (EU, 2009), it provided the Commission the chance to engage in a "comprehensive recast" of the Dublin System and the minimum standard directives adopted in the early 2000s (Lavenex, 2019, p. 578).

The recast of the minimum standard directives aimed at transforming them into more detailed 'common' standards. The enhancement of minimum standards involved upgrading of material conditions and increasing guarantees for vulnerable groups during their reception, enhancing gender equality and the concern for special needs during asylum procedures and harmonizing the acceptance rates of asylum applications coming from the same countries of origin across member states (European Commission, 2008, pp. 4-5). Moreover, in 2013 the Eurodac and Dublin regulations were also subject to a recast exercise. Regarding Eurodac, an important change was the laying down of the procedure on exchange of fingerprint data with EUROPOL.

Since the exchange of data was aimed at "preventing, detecting or investigating terrorist offences or other serious criminal offences" (Eurodac Regulation, 2013, Article 7), it reinforced the security-oriented perspective on the EU asylum policy. The recast Dublin Regulation, on the other hand, upgraded the Dublin II in several aspects such as detailing guarantees for minors, establishing an early warning and crisis management mechanism, ensuring free legal assistance, and enhancing the legal clarity of the deadlines for the Dublin transfers (European Commission, 2021a). Therefore, by using the momentum gained from the Lisbon Treaty and the Charter, the Commission was able to secure an overall recast of the CEAS. However, this recast wave of directives and the update of the Dublin System did neither resolve the distributive conflicts over asylum seekers between member states nor resulted in a complete legal and practical harmonization of national asylum systems which still diverged considerably (Lavenex, 2019, pp. 578-579; Trauner, 2016). What it accomplished was to initiate the agencification process for the internal dimension of the EU asylum policy.

The Commission highlighted in 2008 the "lack of common practice, different traditions and diverse country of origin information sources" as critical flaws in the working of the CEAS which lead to divergent results in asylum applications, the main driver of secondary movements of asylum seekers within the EU (European Commission, 2008, p. 3). To resolve these flaws, an institutional structure among member states, in the form of an office, was proposed (European Commission, 2008, p. 6). In response, within the scope of the European Pact on Immigration and Asylum, the European Council agreed to establish a support office with the task of facilitating practical cooperation, experience and information exchange among the EU member states on asylum matters. The support office "will not have the power to examine applications or to take decisions but will use the shared knowledge of countries of origin to help to bring national practices, procedures, and consequently decisions, into line with one another" (Council of the European Union, 2008, p. 11). As evident in these initial agencification steps, the highly sovereignty sensitive nature of asylum policy strongly shaped the institutional design of its internal dimension.

Within the scope of the CEAS overhaul and the EU level decisions mentioned above, the European Asylum Support Office (EASO) was established on 19 May 2010 and became operational in 2011 with its headquarters in Valletta, Malta. The choice of Valletta as the headquarters of the Office was linked to an evolving crisis at the time. The political turmoil caused by the Arab Spring, which originated in Tunisia in January 2011, spread quickly in North Africa and the Middle East, eroding the fragile state authorities in the region, especially in Libya. This led to increasing tensions in the Schengen area resulting from a "sudden spike in the number of refugees arriving" to the EU territory, mostly through Italy (Webber, 2019, pp. 148-149). The logic of responding to the conflicts caused by the Arab Spring through enhancing asylum policy cooperation was evident in the words of Cecilia Malmström, the Commissioner for Home Affairs at the time, who stated that the "conflict has come close to our borders, and large numbers of people have been displaced from Libya to Tunisia and Egypt, but also in some cases to us in Europe, including to here in Malta" (European Commission, 2011). Therefore, the geographical closeness to the source of the crisis was crucial in deciding the place of formal representation of the EASO. Just like in most of the other EU agencies discussed in Chapter 2, the EASO had a similar institutional structure. EASO was composed of a Management Board, an Executive Director and various units with specific tasks such as operational support, training, asylum information and analysis (EASO, 2021). The members of the Management Board were one representative from each member state with high level of asylum expertise, two representatives from the Commission and one representative from the UNHCR, albeit without voting rights. Other than appointing the Executive Director, who was responsible from day-to-day management of EASO, the Management Board adopted procedural rules, work programs, annual activity reports, annual asylum situation reports, or took decision regarding the budget and information systems on countries of origin (EASO Regulation, 2010, Article 25 and 29). While the inclusion of the UNHCR, a UN body specifically linked to the policy field, in the Management Board can be seen as a novelty from the other regulatory EU agencies, overall, the member states remained the ones who firmly controlled the activities and decisions of the EASO.

The essential aims of the EASO as an EU agency were described as enhancing the practical cooperation between the EU members on asylum policy, improving the implementation of the CEAS, and the provision of operational support to member states "subject to particular pressure on their asylum and reception systems" (EASO Regulation, 2010, Article 1). While the first two aims were general in scope, the final aim of operational support in cases of 'particular pressure' was mainly emergency-driven. As Tsourdi (2016, p. 1002) highlighted, the EASO's role in practical cooperation meant that the Office acted as a hub of information gathering and exchange for member states, especially with regards to the Country of Origin Information (COI) and producing the related country reports and a common methodology. Through this 'information hub' role, the EASO developed and maintained the European Asylum Curriculum (EAC) which is used in the general or thematic training modules provided "to members of all national administrations and courts and tribunals, and national services responsible for asylum matters" within the EU (EASO Regulation, 2010, Article 6; Tsourdi, 2017, p. 677). According to its founding regulation, the EASO had neither decision-making powers in relation to individual applications for international protection nor powers to adopt general rules regarding the EU asylum policy (Tsourdi, 2016, p. 1002). The main reason behind the exclusion of decision-making powers is that under the EU law, only a member state can be responsible for an asylum application (TFEU, 2012, Article 78). Therefore, since the EASO did not possess decision-making powers, the trainings and information it produced through the COI reports were non-binding and could not be regarded as instructions about the "grant or refusal of applications for international protection" (EASO Regulation, 2010, Article 4) by the member states. However, member states' dependence on information, as Majone (1997, p. 264) would suggest, granted the EASO an influence and an "indirect steering potential" (Tsourdi, 2021, p. 190) over the asylum decisions taken by the member states. For instance, the inclusion or exclusion of any kind of information within a COI report might affect asylum decisions taken by the member states for the applicants coming from that specific country of origin.

Regarding the contribution to the implementation of the CEAS, the EASO had a more limited mandate. The Regulation stated that the EASO gathers information regarding

the processing of asylum applications and legal developments in the field of asylum in the member states which provide the basis for the annual reports on asylum in the EU. While these reports could lead the EASO to adopt "technical documents on the implementation of the asylum instruments of the Union, including guidelines and operating manuals" (EASO Regulation, 2010, Article 12), such documents remained 'advisory' in their nature and legally non-binding on the asylum decisions of the member states (Tsourdi, 2016, p. 1003). Therefore, in a de jure sense the role of EASO in the implementation of the CEAS mostly centered around acting as an independent source of technical and scientific expertise "in all areas having a direct or indirect impact on asylum" (EASO Regulation, 2010, Article 2) and to advise member states on how to implement a true and functioning CEAS.

The emergency-driven operational support provided by the EASO, however, proved to be the field of activity with the biggest potential for expansion. EASO had the mandate to provide operational support if the member states requested so, in the event of a particular pressure on their asylum and reception systems. This pressure might involve the "sudden arrival of a large number of third-country nationals who may be in need of international protection and may arise from the geographical or demographical situation of the Member State" (EASO Regulation, Article 8). Operational support provided by the EASO in the event of such pressure could involve an initial analysis of asylum applications, ensuring the availability and adequacy of reception systems or deployment of Asylum Support Teams (ASTs) composed of seconded national asylum experts made available in a common intervention pool (Tsourdi, 2017, p. 677). Therefore, operational support provided by the EASO highly depended on the contributions from the member states themselves who could withhold such contributions if their own asylum systems were under pressure as well (Fernández-Rojo, 2019, pp. 285-286; Tsourdi, 2016, p. 1004). Moreover, the work of the ASTs did not involve direct interaction with the asylum seekers. Rather it mostly concerned with the expertise given to national authorities, drafting guidelines or setting up screening, identification and data analysis systems regarding asylum seekers (McDonough & Tsourdi, 2012, p. 84).

Between 2011 and 2015, the EASO provided operational assistance to Greece, Luxembourg, Sweden, Bulgaria, Italy and Cyprus (EASO, 2021a). It can be argued that the main logic behind EASO's operational support was to restore and enhance the asylum system and reception conditions in a particular member state so that the CEAS could return to its 'regular' functioning. The very first operation of the EASO, which took place in Greece in 2011, is an instructive example. Increasing concerns about the reception conditions experienced by the asylum seekers in Greece resulted in decreasing number of transfer requests to the country under the Dublin System. The rulings against Greece by the ECtHR and the CJEU in 2011 stressed the crucial linkage between "reception conditions and Dublin application" (Scipioni, 2018, p. 1366) by arguing that member states cannot initiate Dublin transfers to a member state where there is a risk of fundamental rights violations (CJEU, 2011). Therefore, to restore the regular functioning of Dublin transfers, the EASO dispatched its first ever ASTs in Greece, in total comprising 11 teams with 17 experts from 11 member states (McDonough & Tsourdi, 2012, p. 77). The EASO's support to Greece via AST deployments continued with different phases until the end of 2014, mostly centered on the establishment and enhancement of Greek Asylum and Reception Service, Appeal Authority as well as the management of increasing asylum applications (EASO, 2021b). Similar to Greece, the EASO's support to Italy proceeded through different phases and sometimes exceeded support as a concept (Tsourdi, 2016, pp. 1011-1012). In its first phase, the EASO mostly provided to the Italian authorities the expertise and training on interview techniques. However, by the early 2015, ASTs in Italy started to engage in initial registration of claims, checking the COI for the applicants or conducting the vulnerability assessments themselves (Tsourdi, 2016, p. 1011). Other significant operational support examples included Sweden and Cyprus which were relatively small scale compared to the EASO's activities in Greece and Italy. In Sweden, the EASO followed a 'train the trainers' approach where the members of the Swedish Migration Board were trained by the Office, who later trained the national asylum experts (EASO, 2012, p. 2). In Cyprus, the EASO's support involved training of staff regarding "vulnerable groups, advice on age assessment procedures, enhancing the reception conditions, as well as on data collection and analytical capacity" (EASO, 2021b). Therefore, it can be seen that what exerts pressure upon asylum and reception

systems depends on the geographical location and demographic size of the member state in question. In response to this reality, as Tsourdi (2016, p. 1009) points out, the EASO perceived pressure "in relative, rather than absolute terms" and provided its support activities accordingly.

While it was the Arab Spring that fueled the EASO's initial and rapid expansion from 2011 onwards, what further enhanced the de facto expansion of EASO's regulatory activities was the Refugee Crisis. By the beginning of 2015, the number of irregular border crossings into the EU territory from its southern and south-eastern borders reached to 1.8 million, an increase by approximately 546 per cent compared with 2014 (Dinan et al., 2017 p. 102; FRONTEX, 2018). This invoked the perception of a crisis since the absolute numbers of asylum seekers crossing to the EU territory were in stark contrast with the high numbers of asylum seekers that were already present in Turkey, Lebanon and Jordan alone (Webber, 2019, p. 150). Therefore, while it was interchangeably referred as a refugee, asylum, migration or Schengen crisis, in its essence the crisis was a regulatory governance crisis of the CEAS. The increasing number of asylum seekers exacerbated "the limitations inherent in the conceptualization of the EU's asylum policy, including the lack of fair responsibility-sharing" (Tsourdi, 2017, p. 668). In other words, the Refugee Crisis was not a direct result of a sudden increase in asylum applications, but it was a result of the institutional "lock-in" (Pollack, 1996, p. 440) and path dependency (Pierson, 1996, p. 131) created by the design of the CEAS, specifically the Dublin System. The EU's reaction to the Refugee Crisis involved initiatives linked both to the internal and external dimensions of the policy field. Initiatives relating to the external dimension are discussed in the next chapter.

The increasing number of asylum seekers in the early 2015 led the Commission to initiate the European Agenda on Migration in May 2015 which included proposals amending the CEAS regulations and directives, a refugee relocation scheme, creation of the hotspot approach and the upgrading of the related EU agencies (Dinan et al., p. 118; European Commission, 2015). While the legislative proposals on the CEAS, specifically the overhaul of the Dublin System, included improvements such as more protection for unaccompanied minors or more detailed rules on family unity, overall,

the burdens created by the Dublin System remained intact (Lavenex, 2018, p. 1205). On the other hand, the initiative on the relocation of refugees materialized after intense debates, however, did not record success in the implementation stage. The main reason behind this was the stark divisions between the member states' interests. The EU members were divided under three groups merely as a result of their geographic locations and national asylum policies during the Refugee Crisis. These groups were the frontline states with the external EU borders, mainly consisting of Greece and Italy, the destination states where asylum seekers desired to settle, namely, Germany and Sweden and the transit states in between such as Hungary and Croatia. In addition to this divide, the Central and Eastern European Countries (CEECs) experienced a considerable rise of nationalist and extreme right parties domestically, who openly opposed immigration as a concept, which in turn led these members either to block or not implement the initiatives regarding the relocation of asylum seekers during the crisis (Webber, 2019, pp. 152-153). Moreover, in parallel to this ideational difference, the CEECs had also "lower costs of non-agreement" during the crisis since they were affected less from the migratory flows and had little to gain from a responsibility sharing mechanism (Pollak & Slominski, 2021, p. 5). Therefore, when the Commission made its first modest proposal for a number of 40,000 asylum seekers to be relocated from the overburdened frontline states, the outcome of the highly contested negotiations was a 'voluntary' relocation scheme for only 32,000 asylum seekers (Dinan et al., 2017, p. 116; Webber, 2019, p. 151). However, as the asylum seekers continued to arrive in the EU, a more comprehensive relocation mechanism was deemed necessary.

Aided, to a large extent, by the efforts of Germany (Webber, 2019, p. 161), a mandatory relocation mechanism was agreed in September 2015 with a qualified majority vote in the JHA Council for a total of 160,000 asylum seekers which unsurprisingly intensified contestation from other member governments (Lavenex, 2018, p. 1204). While Hungary and Slovakia contested the legality of this mechanism before the CJEU, Poland decided to reject the asylum seekers under the relocation plan because of a change in the government which now backed the legal contestation over the relocation of asylum seekers from Greece and Italy (Dinan et al., 2017, p. 260). When the CJEU rejected these contestations in September 2017 on the grounds that

the mandatory nature of the mechanism was proportionate (Politico, 2017), Poland and Hungary openly declared that they would not comply with the judgement (Webber, 2019, p. 161). This highly contested JHA measure of relocation (Monar, 2016) was translated into a poor implementation output where by 2017 only 37,000 asylum seekers out of 160,000 were relocated and the only thing the Commission could do was asking for Poland, Hungary and the Czech Republic to step up their efforts (European Commission, 2017, p. 13).

In order to implement this imperfect relocation mechanism, to help the overburdened member states and to return to the regular functioning of the CEAS, the EU increasingly relied on its regulatory agencies. The EU agencies were utilized through the hotspot approach and legislative amendments made to their regulations. The hotspot approach, originated in the European Agenda on Migration, can be described as a mechanism of inter-agency cooperation to operationally assist those member states whose external EU border sections were subjected to high number of arrivals of third country nationals (European Commission, 2015, p. 6; Loschi & Slominski, 2021, pp. 217-218; Tsourdi, 2016, p. 1016). It can be argued that the hotspot approach is an example of how the internal and external dimensions of the EU asylum policy intersect through operational cooperation of the EU agencies. The inter-agency cooperation at the hotspots was actualized through the Migration Management Support Teams (MMSTs). The MMSTs were composed of national experts deployed by mainly four agencies: EASO, FRONTEX, EUROPOL and EUROJUST. The EASO supported member states' processing of asylum applications made in the hotspots, FRONTEX dealt with the initial screening of asylum seekers and the return operations while the other two law enforcement agencies, EUROPOL and EUROJUST, dealt with investigations on human smuggling and trafficking (European Commission, 2015, p. 6). The hotspot approach was initiated in Greece and Italy to implement the relocation decisions mentioned above. The EASO's role in hotspots was the registration and initial processing of asylum applications as well as the provision of information and assistance to those who would be subject to relocation (Council of the European Union, 2015, Article 7). While the activities of EASO remained initially within the scope of its mandate, as the hotspots evolved the "forms of common rather than assisted processing emerged" so that the EASO experts began to conduct admissibility

interviews with the asylum seekers and assess the merits of asylum claims, producing legally non-binding opinions regarding the applications (Tsourdi, 2021, p. 183). Not surprisingly, these non-binding 'opinions' of EASO would be accepted by the already overburdened Greek and Italian authorities without much opposition. Therefore, through the hotspot approach the EU has engaged in a "pragmatic" strategy relying on the increased operational efforts of its agencies within the frontline states rather than "reforming the Dublin system through legislative means" (Loschi & Slominski, 2021, p. 219) which proved to be a highly cumbersome process. Thus, for the EASO this choice meant a de facto expansion of its regulatory activities while its de jure mandate resisted to reform.

This is not to say that the Commission did not seek to expand the EASO's de jure mandate. Taking the European Agenda on Migration as an opportunity, the Commission prepared a legislative proposal in May 2016 for amending the founding regulation of EASO and transforming the Office to the European Union Agency for Asylum (EUAA). The upgrade would not be just a change in name, from a support office to an agency, but also concerns the expansion of competences. For instance, while EASO relied on "the voluntary provision of information" from the member states in gathering information for its COI and annual situation reports, EUAA's mandate include obligatory exchange of information between the Agency and the member states (European Commission, 2016, p. 7). Perhaps the most significant difference of EUAA from EASO, is its monitoring competence described below:

> [EUAA is envisaged to monitor] asylum procedures, the Dublin system, recognition rates and quality and nature of international protection granted, to monitor compliance with the operational standards and guidelines as well as to verify the asylum and reception systems and the capacity of Member State to manage those systems effectively particularly in times when they would face disproportionate pressure (European Commission, 2016, p. 8).

Therefore, a fully operational EUAA would mean a considerable monitoring capacity at the EU level over national asylum policies of the member states compared with the EASO period. However, it was pointed out that, irrespective of how much the de jure

mandate is expanded, the EUAA would still, in practice, depend on member states' contributions of personnel and equipment through their national pools (Carrera and den Hertog, 2016, p.12). In order to tackle this issue and to include views on its proposal in the provisional agreement of the EP and the Council in 2017, the Commission tabled a second proposal in September 2018. Importantly, the amended proposal on the EUAA aimed at establishing an "asylum reserve pool of 500 experts from Member States to allow for rapid deployment" in the event of a particular pressure in national asylum and reception systems (European Commission, 2018, p. 5). It can be argued that the existence of such a reserve pool will relatively decrease the Agency's dependence on the member states (Fernández-Rojo, 2019, p. 289). Moreover, the increased monitoring competence of the EUAA can also raise the possibility of intervention in the member states. The monitoring exercise of the EUAA will be done through the analysis of information on asylum and reception systems provided by the member states themselves, international organizations like the UNHCR or by the Agency's own on-site visits and case sampling (Tsourdi, 2021, p. 187). Based on the findings of its monitoring exercise, the EUAA will make recommendations to the member state concerned regarding the measures to be adopted. However, this power of recommendation will be indirectly controlled by the member states since a two-thirds majority is required in the EUAA's Management Board (Fernández-Rojo, 2019, pp. 287-288; EUAA Regulation, 2021, p. 20). If recommendations are not followed, the Commission might conduct on-site visits or the Council can issue an implanting act which would lead to compulsory operational deployments by the EUAA in the member state concerned (Tsourdi, 2021, pp. 187-188; European Commission, 2018, p. 5). Therefore, it can be argued that such a transfer of monitoring competence to an EU agency is a bold step given the sovereignty sensitive nature of the CEAS.

Another important update in the mandate of the EUAA is the Agency's increased involvement in the processing of asylum applications. Article 16a of the amended EUAA proposal gave the ASTs deployed by the Agency competence to conduct, either completely or in part, the examination of applications for international protection. These procedures involve the lodging of asylum applications, identifying applicants with special needs, carrying out admissibility interviews and preparing draft decisions

on asylum applications to be adopted by the responsible national authorities (European Commission, 2018, pp. 12-13). Some of these 'new' competences given to the ASTs deployed by the EUAA have already been in practice within the hotspots as discussed above. Therefore, one can argue that the EUAA proposal tried to give a legal basis to the de facto activities of the EASO in the hotspots while at the same time reaffirming the member states as the exclusive authorities for the final asylum decisions (Fernández-Rojo, 2019, pp. 291-292) to remain in line the Meroni doctrine of non-delegation of decision-making powers to a regulatory EU agency.

Although provisional agreements were reached for the establishment of the EUAA and considerable progress was achieved for the reform of several CEAS regulations and directives, "less progress was achieved on the proposals for the Dublin Regulation and the Asylum Procedure Regulation, mainly due to diverging views in the Council" (European Commission, 2020, p. 3). Since the reform of the CEAS was seen by the member states as a package deal (Fernández-Rojo, 2019, p. 286), the progress made regarding the EUAA meant little unless it would be accompanied by a successful reform of the Dublin System. In response, the Commission initiated the New Pact on Migration and Asylum in September 2020 consisting of, but not limited to, an Asylum and Migration Management Regulation, a Qualification Regulation, a recast of the Reception Conditions Directive, EUAA Regulation, an EU resettlement framework and a Return Directive (European Commission, 2020a, p. 3). As a novel approach, the proposed Asylum and Migration Management Regulation brings together the Dublin System within a single legal text and establishes a new solidarity mechanism. According to this mechanism, member states will provide solidarity contributions in the event of migratory pressure either through "relocation or return sponsorship and there is also the possibility to contribute to measures aimed at strengthening the capacity of Member States in the field of asylum, reception and return and in the external dimension" (European Commission, 2020, p. 18). Therefore, with the New Pact and the EUAA Regulation, the EU seeks to increase solidarity between member states during future migratory crises by offering a flexible policy design. Accordingly, the role of the EUAA is envisaged as a facilitator of information exchange, an assessor of pressure on the CEAS and a coordinator of solidarity measures in case of such pressure, specifically regarding relocation (European Commission, 2020, pp. 79-80).

After two proposals and a five-year negotiation process, both the EP and the Council adopted the Regulation on the EUAA and the final act was signed on 15 December 2021 (European Parliament, 2021a). The Regulation came into force in January 2022, formally replacing EASO with EUAA. Overall, the content of the text remained almost identical to the Commission's 2016 and 2018 proposals with a few important adjustments. One of those changes concerns operational assistance given by the deployed ASTs. Unlike the 2018 proposal, the adopted Regulation neither speaks about the possibility of ASTs conducting admissibility interviews nor of EUAA experts' preparing draft decisions on individual asylum applications. Rather the wording remains vague: facilitating the examination of asylum applications or providing the "necessary assistance" to national authorities (EUAA Regulation, 2021, p. 21). However, EUAA was quite fast to provide details of its operational tasks through its own discourse. Like the Commission's 2018 proposal, EUAA explained in detail the operational tasks of its Asylum Reserve Pool as to "carry out registrations, conduct asylum interviews, draft decision opinions, assist second-instance decision makers and work with authorities to improve procedures and conditions" (EUAA, 2022). Therefore, one can argue that the EUAA strategically uses its open-ended legal mandate to justify and expand its de facto activities, such as operational assistance on asylum applications. Organizationally, like its predecessor EASO, the EUAA is composed of a Management Board and an Executive Director. However, the EUAA has also a Consultative Forum and a Fundamental Rights Officer. While the Consultative Forum acts as a "mechanism for the exchange of information" between the civil society, the other relevant EU agencies and the UNHCR, the Fundamental Rights Officer ensures EUAA's "compliance with fundamental rights in all of its activities" (EUAA Regulation, 2021, p. 41). Following the organizational example of the EBCG, these new organizational additions are responses to the accountability concerns brought by the increasing competences of the Agency.

The most significant part of the EUAA Regulation and as different from the original proposal is its partial entry into force. Articles relating to EUAA's novel 'monitoring' function are due to enter into force on 31 December 2023. The main reason is that the reform of the Dublin System is still under negotiation and the Agency's monitoring task is deeply linked with the responsibility determination rules that are about to

change with the expected reform of the Dublin System (EUAA Regulation, 2021, p. 50). Therefore, a fully operational EUAA with monitoring functions is conditional on the prospective reform of the Dublin System by the end of 2023. It seems that with EUAA established, a break-it to make-it strategy (Politico, 2021) for the CEAS reform is ultimately preferred to a simultaneous and complete overhaul of the EU asylum policy. Thus, one can argue that by setting a separate deadline for the EUAA's monitoring competences, the EU gains more time, increases the operational mandate and resources of the Agency and pushes for the Dublin reform at the same time.

While the EUAA, and previously the EASO, is mostly concerned with the internal dimension of the EU asylum policy, the Agency's mandate also includes a limited external dimension. This is again an example of the fuzzy division between internal and external dimensions of the policy field. Within the scope of working arrangements, the EUAA may provide third countries with expertise on asylum policy, capacity building support for reception systems, or providing partnerships in regional development and protection initiatives. Moreover, through its liaison officers in the countries of origin and transit, the Agency can gather information, contribute to protection-sensitive migration management or facilitate legal access to the EU by means of resettlement programs (EUAA Regulation, 2021, p. 33). Currently, the Agency cooperates with the Western Balkan countries, Turkey and the Middle East and North Africa (MENA) region (EUAA, 2022a).

Overall, the agencification process in the internal dimension of the EU asylum policy has followed a 'crisis and response' pattern. In a way, as Jones et al. (2016) suggest, the EASO has successfully managed to fail forward towards a fully-fledged EU agency, EUAA. In other words, the failure to establish a fair responsibility sharing mechanism during the Refugee Crisis in 2015 eventually led to a leap forward, in the sense of strengthening authority at the EU level through the establishment of the new EUAA (Jones et al., 2021, p. 1523; see also Kelemen et al., 2014, p. 661). However, as shown in Chapter 4, the de facto and de jure regulatory expansion of the internal dimension of the EU asylum policy is considerably slower compared to the faster expansion of the external dimension.

CHAPTER 4

REGULATORY GOVERNANCE OF THE EU ASYLUM POLICY: EXTERNAL DIMENSION

From the very first steps taken towards the establishment of the CEAS, the policy field has had always an external dimension. This dimension, as discussed earlier, mainly involves the policies that address, in essence, the control of external EU borders and cooperation mechanisms with third countries which include asylum and border control related provisions. While the EU-wide coordination of national border control policies followed a rather fast-paced agencification process, cooperation mechanisms with third countries mostly involved various partnerships which externalized the EU migration governance, including asylum policy (Oliveira Martins & Strange, 2019), sometimes with questionable legality. Both types of policies within the external dimension were initiated in the early 1990s and intensified with different crises.

The first explicit linkage between the aim of establishing an area of free movement and the need to strenghten controls at the external EU borders was made by the Coordinators' Group in their famous Palma Document of 1989. The document highlighted the importance of prior tighening of external boders before achieving an internal free movement area (Coordinators' Group, 1989, p. 12). Therefore, from early on, cooperation in external border controls was depicted as a "compensatory measure" (van Munster, 2009, p. 34) for establishing the European Single Market and an internal free movement area. This compensatory measure discourse was strenghthened with the Tampere Programme in 1999 which called for developing "common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes" (European Council, 1999). Therefore, it can be argued that the EU level cooperation of external border controls emerged as a security-

oriented response to the gradual establishement of the European Single Market and the AFSJ.

The asylum policy cooperation with third countires, on the other hand, started to emerge as a result of rising security concerns after the end of the Cold War. Such cooperation was embeded in the broader externalization of EU migration governance to third countries. While externalization can be defined as the "extension of EU rules and practices beyond its legal borders, i.e., below the level of membership" (Wunderlich, 2012, p. 1414), for migration governance it corresponds to "interconnected policy initiatives directed towards thrid-party involvement in the enforcement of EU border controls" (Oliveira Martins & Strange, 2019). Therefore, through externalization of its migration governance, the EU also shifts its asylum responsibilities to its neighbors and third countries. The first targets of such policy export (Christiansen, et al., 2000, p. 389) were the CEECs in early 1990s. For instance, in 1991 a readmission agreement was signed between Poland and the Schengen countries which concerned the readmission of nationals as well as "non-nationals staying irregularly in one of the contracting parties" (Lavenex, 2016, p. 558). Cooperation with the Eastern Neighborhood widened in scope and included all of EU's Eastern neighbors, excluding Belarus, under the Partnership and Cooperation Agreements (PCAs) in the late 1990s. The PCAs dealt with various issues depending on the third country in question and mainly aimed at enhancing "democracy and economic development; promoting trade and investment; cooperating in various policy fields; and providing a framework for political dialogue" (Keukeleire and Delreux, 2014, p. 257). Moreover, with the Amsterdam Treaty, the EU was conffered the formal competence to conclude readmission agreements or to include standard clauses regarding readmission in trade agreements (European Council, 1999).

Thus, by the end of 1990s, there was a solid basis for both the EU level cooperation on border management issues and cooperation mechanisms with third countries on asylum policy cooperation. These initial steps evolved further by externalization and agencification processes fueled by crises. It should be noted that since the historical development of the EU asylum policy is discussed in Chapter 3 in detail, this chapter only aims to examine the crisis-driven agencification and externalization in the

external dimension of the policy field. Similar to the discussion in Chapter 3, the remaining part of this chapter tests a second hypothesis on the regulatory governance of the EU asylum policy, which can be stated as follows:

Hypothesis 2: Regulatory governance of the external dimension of the EU asylum policy exhibits a crisis-driven and fast-paced expansion. Accordingly, the agencification process in the external dimension has evolved and expanded frequently in a both de facto and de jure manner.

4.1. Crisis and Agencification in the External Dimension

While it was not an actual crisis per se, the Eastern Enlargement in 2004 was perceived as a potential source of future crises in the control of the external EU borders and asylum policy which provided the necessary momentum for further externalization and agencification. Simultaneous acceptance of ten CEECs as the new EU members led to a halting of future enlargement waves. The main reason behind this was the political and cultural divide between the EU and its new neighbors as well as the strengthening of the Eurosceptic populist voices within the EU (Zielonka, 2006, p. 175). Therefore, the EU had to find an alternative leverage to an eventual membership promise in its relations with its Eastern and Southern neighborhoods, which took the form of the European Neighbourhood Policy (ENP).

Initiated in 2004, the ENP was mainly aimed at creating stability and fostering socioeconomic development around the EU as well as preventing “new dividing lines” to emerge in mutually dependent relationships (Keukeleire and Delreux, 2014, p. 250). The policy tries to harmonize neighbouring states’ economies and various policies with those of the EU through partnerships centered on flexibility and joint ownership. Depending on the level of policy harmonizaiton, the neighbors are offered “greater access to the EU's market and regulatory framework” (EEAS, 2021; Keukeleire and Delreux, 2014, p. 255). Linked to the external dimension of the EU asylum policy, the ENP was complemented by the Global Approach to Migration in 2005 and the Global Approach to Migration and Mobility (GAMM) in 2011. The GAMM called for partnerships with third countiries, in line with the goals of the ENP, that is centered on promoting legal migration into the EU, preventing irregular migration, focusing on the

migration-development nexus, upgrading asylum systems and the external dimension of asylum (European Commission, 2011a). As the "flagship instruments" (Trauner & Cassarino, 2017, p. 395) of the GAMM, the EU signed Mobility Partnership agreements with some of its neighbors throughout 2000s and 2010s. Mobilty Partnersihps involved the facilitation of temporary legal migration of third country nationals to the EU in return for readmission agreements and commitments of increased border controls by the third countries concerned (Brocza & Paulhart, 2015, pp. 1-2). When examined practically, the Mobility Partnerships were perceived not so much as 'partnerships' since their focus was mostly on reaching readmission agreements while facilitation of legal migration of third country nationals into the EU and its labour market remained underutilized (El Qadim, 2016, pp. 402-403; Reslow, 2012). Despite their unbalanced designs, the EU has managed to sign Mobility Partnerships with crucial neighbors which are countries of origin and transit with respect to irregular migration into the EU. As of today, the EU has Mobility Partnerships with Armenia, Azerbaijan, Belarus, Cape Verde, Georgia, Jordan, Morocco, Moldova and Tunisia (European Commission, 2022). Thus, with the ENP and Mobility Partnerships, the EU has tried to utilize legal migration as a carrot for securing its neighbors' commitments to a "remote control" (Guiraudon, 2002) of the EU borders and containment of irregular migration outside the EU territory.

The agencification process in the external dimension of EU asylum policy also received its initial push by the Eastern Enlargement. As Léonard (2010, p. 234) pointed out, because of their underdeveloped socio-economic conditions the CEECs were perceived as relatively incapable of protecting the new external borders of the EU after accession. Therefore, the idea of institutionalizing external border management cooperation between the member states, stated earlier in the Amsterdam Treaty and the Tampere Programme, gained urgency. Moreover, the fact that by 2005 the external border control cooperation would be governed by the co-decision procedure rushed the negotiations for the creation of an EU agency (Fernández-Rojo, 2020, p. 296). Within a year the negotiations led to a Council regulation in 2004 and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (FRONTEX) was established. FRONTEX became operational by 2005 with the aim of "improving the integrated management of the

external borders of the Member States of the European Union" (Council of the European Union, 2004a, Article 1). The seat of the Agency was chosen as Warsaw, Poland. Even this very choice shows the impact of the Eastern Enlargement on the creation of FRONTEX and the importance given to the strengthening of the Union's Eastern borders at the time.

The Integrated Border Management (IBM) that FRONTEX aimed to enhance was described by the Council as the increased cooperation between the member states of the EU in border control, intelligence gathering for cross-border crime, inter-agency cooperation for border management and cooperation with third countries regarding border control and return of irregular migrants (Council of the European Union, 2006). To accomplish the IBM strategy, the initial tasks given to FRONTEX were the coordination of operational cooperation between member states in external border controls, training national border guards and establishing common training standards, carrying out risk analyses, following the research related to border control and surveillance, provision of operational assistance when requested by the member states and conducting joint return operations (Council of the European Union, 2004a, Article 2). Among these tasks, FRONTEX have perceived its risk analysis role as the basis for all its activities "from high level strategic decision-making to planning and implementation of operational activities" (FRONTEX, 2021). To share knowledge, carry out joint analytical work and produce its Annual Risk Analysis reports, FRONTEX utilizes its overarching risk analysis network (FRAN) since 2010, together with the member states' risk analysis and intelligence experts (FRONTEX, 2021a). Through FRAN and its annual reports, FRONTEX evaluated the irregular migration flows year by year and framed the 'risks' to the EU's borders in an up-to-date fashion.

These risk analyses acted as the basis for the Joint Operations coordinated by FRONTEX. Overtime, the coordination of operational cooperation became one of the most visible (Carrera et al., 2013 p. 339) and crisis-driven tasks of the Agency. The first test for FRONTEX's operational capabilities was the Spanish migration crisis of 2005-2006. The crisis originated as a result of Spain's peculiar geography as a country having enclaves in North Africa. In September 2005, the Spanish border guard clashed with migrants who were trying to enter the enclaves of Ceuta and Melilla resulting

with migrant deaths (The Guardian, 2005). While the EU did not get involved directly during this stage of the crisis, the EU level response was more noticeable when the Spanish government requested EU assistance few months later in the face of increasing flows of asylum seekers arriving by boat to the Canary Islands. The EU level response was the first ever Joint Operation coordinated by FRONTEX which started in 2006, namely the three stepped operation HERA (Léonard & Kaunert, 2020, pp. 5-6). HERA I and HERA II commenced in July and August respectively. The first operation saw deployments of experts from various member states in the Canary Islands who conducted interviews for the identification of migrants and asylum seekers and determining their countries of origin. These interviews led to a total number of 6076 "illegal migrants" to be returned to their countries of origin and detention of human smugglers in Senegal (FRONTEX, 2006). HERA II was a joint sea operation supported by the assets of Italy, Portugal, Finland and Spain. The operation involved jointly patrolling the coasts of Cape Verde, Mauritania, Senegal and the Canary Islands. Senegal and Mauritania also participated in the operation under the bilateral agreements (Léonard & Kaunert, 2020, p. 7). The goal of HERA II was to "detect vessels setting off towards the Canary Islands and to divert them back to their point of departure, thus reducing the number of lives lost at sea" (FRONTEX, 2006). The third operation followed in February 2007 with the participation of France, Germany, Italy, Luxembourg and Portugal. As before, the operation involved interviews with asylum seekers, return operations and joint aerial and naval patrols of the coast of West Africa with the Senegalese authorities (FRONTEX, 2007). It can be argued that with the HERA operations, the EU focused on stopping "immigration at its source" (Keukeleire and Delreux, 2014, p. 234) through the humanitarian justification of saving lives at sea, thereby preventing the possibility to seek asylum in the EU.

The Spanish experience and the HERA operations undoubtedly influenced the first ever amendment of FRONTEX's mandate in 2007. This amendment introduced the Rapid Border Intervention Teams (RABITs) and "regulated the modes of operation of deployed experts" (Tsourdi, 2021, p. 180). The RABITs were teams of specially trained experts seconded by the member states from their national pools who are deployed on the territory of a requesting member state aimed to provide assistance on a temporary basis (FRONTEX Regulation, 2007, pp. 30-32). The deployments are

limited to exceptional situations such as a mass influx of third country nationals trying to cross EU borders "illegally" (FRONTEX, 2022; Meissner, 2021, p. 158). Other than coordinating their deployement, FRONTEX was also conferred the task of training the experts within the RABITs with regular training exercises. The main goals behind these exercises were enhancing the competences of national border guards and developing common standards to be followed during rapid interventions (Léonard, 2010, p. 241). Being temporary and reserved for crisis situations, the RABITs can be seen as the earlier prototypes of the ASTs deployed by EASO in the hotspots.

A second and more comprehensive institutional upgrade of FRONTEX came with an amendment of its regulation in 2011. The amendment extended FRONTEX's scope of action as well as incorporated fundamental rights obligations more firmly into the Agency's mandate. The upgrade in its mandate and the parallel increases in its budget and resources were a direct response to the "unprecedented migratory flows crossing the Mediterranean Sea in the aftermath of the Arab Spring and the civil war in Libya" (Meissner, 2021, p. 157). Prior to the 2011 amendment, FRONTEX was composed of a Management Board, an Executive Director and various sub-units, like that of EASO. The Management Board was composed of one representative from each member state and two representatives from the Commission, reflecting the sovereignty sensitive nature of the policy field. To enhance FRONTEX's fundamental rights aspect, the amendment in 2011 introduced a Fundamental Rights Officer and a Consultative Forum to the organizational structure of the Agency. While the Fundamental Rights Officer was tasked to monitor the implementation of the Agency's Fundamental Rights Strategy, the Consultative Forum, composed of related NGOs, EU agencies and the UNHCR, was there to provide advice on the development and implementation of the Fundamental Rights Strategy, Code of Conduct and common training curriculum of FRONTEX (FRONTEX Regulation, 2011, p. 17).

The 2011 amendment also enhanced the operational competences and resources of the Agency. RABITs were renamed as the European Border Guard Teams and their scope of deployment was expanded to include joint operations, pilot projects and rapid interventions. Moreover, regarding the technical equipment used during its operations, FRONTEX now could acquire its own equipment or co-own them with the member

states through bilateral agreements (Meissner, 2021, p. 158; FRONTEX Regulation, 2011, pp. 5-10). It was an initial step for decreasing the Agency's dependence on member state contributions. Therefore, in the organizational and operational sense, the de jure mandate of FRONTEX received an important expansion. This expansion, like in 2007, was a result of a migration crisis in the Mediterranean. Following the same pattern, further expansion of de jure mandate and de facto regulatory activities of FRONTEX were to come with a new and bigger crisis in the region in 2015.

Importantly, in December 2013, the European Border Surveillance System (EUROSUR) became operational. Operated by FRONTEX, EUROSUR is a tool of information exchange and cooperation between member states and the Agency, aimed at improving situational awareness and enhancing reaction capacity at the external EU borders (European Commission, 2022a). EUROSUR is composed of National Coordination Centers of member states who share related national information which is then used by FRONTEX in providing scientific analyses of the external EU border sections, "classified by impact level" or the degree of risk in terms of irregular migration, smuggling of goods and other cross-border crime (FRONTEX, 2014). Moreover, through EUROSUR member states gain access to the high-level technologies such as space-based surveillance services that nationally would be unaffordable (European Commission, 2022a). Therefore, EUROSUR represents a technological approach to the remote control of "the EU's vast territorial and maritime borders against irregular migration" since its data-gathering potential is used to detect migratory flows before they arrive to the external EU borders (Csernatoni, 2018, p. 176).

It was this technological infrastructure that FRONTEX based its alarming risk analyses during the Refugee Crisis that started in 2015. These risk analyses categorized the migratory flows under main routes such as the Eastern or Central Mediterranean. For instance, in 2015, the routes that posed the highest risks to the external EU borders were the Eastern Mediterranean and Western Balkan routes with a recorded number of 885,386 and 764,038 border crossings, respectively (FRONTEX, 2016, p. 16). By 2018, the Central and Western Mediterranean routes replaced the Western Balkan route in terms of risks posed while the number of border crossings in the Eastern

Mediterranean dropped sharply (FRONTEX, 2018, 2019). The two main reasons for these changes were the Austrian-initiated closure of the Western Balkan route and the EU-Turkey Statement of March 2016 supported by Germany, which halted the irregular migration flow in the Eastern Mediterranean.

The Austrian initiative regarding the Western Balkan route came as a response to Germany's open borders policy and the de facto suspension of Dublin rules by the Greek government which waved through asylum seekers to Northern Europe without registering them during the initial months of the crisis (Webber, 2019, pp. 153-158). In February 2016, Austria, Bulgaria, Croatia and Slovenia met with the Western Balkan states under a conference in Vienna. The conference resulted with the closure of the Western Balkan route since the asylum seekers, coming from Greece, could not pass through the region. The closure of the route caused vocal criticisms from various NGOs since it led to many asylum seekers to be stranded within the Western Balkans region and it also caused a diplomatic crisis since neither the Commission nor Greece and Germany were invited to the conference (Kreickenbaum, 2016).

A month later in March 2016, Germany took the lead this time to curb the influx of asylum seekers arriving from the Eastern Mediterranean route. Initially, it was only Germany, the Netherlands and Turkey, which agreed on a draft statement in a trilateral meeting while neither other EU members nor the Commission were invited to the meeting. After intense criticisms of this German initiative by the EU institutions, a final version, as the EU-Turkey Statement, was eventually signed on 18th March 2016 (Webber, 2019, p. 169). With the Statement, the EU "promised Turkey up to 6 billion euros, visa liberalization, and a reinvigoration of the accession talks in return for its assistance in guarding EU borders from irregular migration" (Genschel & Jachtenfuchs, 2018, p. 191). Moreover, the Statement involved the readmission of failed asylum seekers by Turkey while the EU agreed to resettle a Syrian refugee from Turkey for each successful readmission (Börzel and Risse, 2018, p. 91). While this resettlement scheme was limited to 72,000 Syrian refugees, by January 2022, only a total number of 31.616 Syrian refugees were resettled to the EU under the Statement (PMM, 2022). For the EU, the Statement resulted in a considerable decrease in the border crossings through the Eastern Mediterranean route while the crossings in the

Central Mediterranean increased in return (Börzel and Risse, 2018, p. 91). On the other hand, the legality of the text and classifying Turkey as a safe third country were questioned under international and EU law, drawing scholarly attention too (Arribas, 2017; Lehner, 2019).

The EU-Turkey Statement was seen as a prominent example of externalization of the EU asylum policy (Schimmelfennig, 2018, p. 982) and it certainly changed the bilateral relationship between the EU and Turkey. With the Statement, the EU showed that Turkey is in a strategic position in terms of affecting the external borders of the EU and Turkey was quick to see the potential of its leverage upon the EU. For instance, in March 2020, Turkey "gave the green light" to asylum seekers by opening its border with Greece because of a lack of fair responsibility sharing on the EU side regarding asylum seekers (France24, 2020). Although the following diplomatic crisis has abated since then, this recent experience confirmed that the bilateral relationship transformed into a "pragmatic partnership driven by strategic bargain" (Canlar, 2021, p. 86).

Other than the increasing externalization of the EU asylum responsibilities to third countries, the Refugee Crisis in 2015 has also led to a further agencification process in the external dimension of the EU asylum policy. Even before the Refugee Crisis, FRONTEX was supporting Greece and Italy through its joint operations of Triton and Poseidon. The crisis led to an enhancement of the budgets and resources of these operations (Léonard & Kaunert, 2020, p. 8). The operation Poseidon, for instance, expanded and involved nearly 600 officers from FRONTEX who assisted Greek authorities in border surveillance as well as the identification, registration, debriefing and screening of migrants and asylum seekers (FRONTEX, 2022a). It should be noted that these operations were conducted together with the hotspot approach initiated by the Commission's Agenda on Migration. Within the hotspots in Greece and Italy, FRONTEX was tasked with "assisting national authorities in registering and screening incoming migrants to determine their identity and nationality" as well as classifying them under categories of asylum applicants or those who should be subject to the return policy (Loschi & Slominski, 2021, p. 218). As the hotspots turned out to be critical instruments in managing the crisis, FRONTEX was referring to the Commission's Agenda on Migration and asking for more staff and resources to meet

its tasks in the hotspots (Meissner, 2021, pp. 159-160). In response, the Commission made a proposal for amending the founding regulation of FRONTEX in December 2015.

The procedure before a regulation is adopted at the EU level mostly involves an impact assessment made by the Commission. However, the regulation for the reinforcement of FRONTEX came into force just within a year in September 2016, without such an impact assessment taking place. This is why the adoption process was described as "extraordinarily fast" (Fernández-Rojo, 2020, p. 289). The Regulation in 2016 replaced FRONTEX with the new European Border and Coast Guard Agency (EBCG) expanding its competences and resources for the effective implementation of the IBM across the EU (EBCG Regulation, 2016, p. 2). Regarding the expansion of competences, perhaps the most important part of the EBCG Regulation is its perception of the IBM as a shared responsibility of the EBCG and the national authorities. While the member states remain as primarily responsible for the management of their sections of the external EU borders, the Agency is there to support member states "by reinforcing, assessing and coordinating" national actions regarding border management and return policy (EBCG Regulation, 2016, p.13). In line with this shared competence, the EBCG acquired two significant novel tasks that exceeded the previous tasks of FRONTEX. The first novelty is the new monitoring role of the EBCG. The Agency is mandated to monitor the management of the external borders through its liaison officers who are appointed to the member states. The liaison officers have the role of acting as an interface between the Agency and the member state in question, facilitating information exchange for both sides and monitoring the member state actions in the process (EBCG Regulation, 2016, pp. 16-17). Thus, it is a considerable expansion of monitoring powers over the member states since FRONTEX was mandated to send liaison officers only to the third countries (Fernández-Rojo, 2020, p. 301; Meissner, 2021, p. 164).

Linked to its monitoring competence, the second novel task was the vulnerability assessments that EBCG conducts to determine the level of readiness of the member states in case of a challenge at the external EU borders. Vulnerability assessments are conducted in accordance with the results of the Agency's risk analyses and the

information gathered from the liaison officers. Their main aim is to assess the availability of the technical equipment and systems, resources, infrastructure and adequacy of national staff in a given member state so that the EU as a whole will always be ready for future migratory challenges (Meissner, 2021, p. 164; EBCG Regulation, 2016, p. 18). The results of these assessments can lead the Executive Director to issue recommendations for the member state concerned. If the member state disregards these recommendations, the Executive Director notifies the Commission and passes the issue to the Management Board for a decision. Importantly, the Regulation openly states that the decision of the Board regarding the matter is final and binding on the member state concerned (Fernández-Rojo, 2020, pp. 302-303). The Regulation also opens the way for EBCG to intervene in a member state if it neither complies with the Management Board decision mentioned above nor requests assistance from the EBCG in a situation at the external borders requiring urgent action. In such a case, the Council issues an implementing act, with a Commission proposal, that lays down the measures needed to be implemented by EBCG while the cooperation with the Agency is mandatory for the member state concerned (EBCG Regulation, 2016, p. 23). Therefore, one can argue that by transforming into the EBCG, the Agency gained a significant supervisory role over the member state actions in border control matters through its liaison officers, vulnerability assessments and, as a nuclear option, through its intervention competence.

In terms of overall resources, the EBCG Regulation expanded the Agency's own resources and its access to the pools of national resources. Firstly, the Agency has gained access to a rapid reaction pool of standing corps to be deployed in its joint operations. The pool consisted of national experts provided by the member states on a yearly basis and amounted to a minimum of 1500 border guards (EBCG Regulation, 2016, p. 25). Secondly, EBCG is transformed into a more resourceful return agency with its coordinating and operational role highlighted and new pools of return experts established (Meissner, 2021, p. 165). Under these pools, the Agency recruits national return experts who assist the member states in escorting returnees to a third country, monitoring forced return operations in line with the EU law or providing expertise on issues such as child protection (FRONTEX, 2022b). Thirdly, the EBCG Regulation

detailed the rules governing the technical equipment pool at the disposal of the Agency. The equipment in the pool consisted of those seconded by the member states, those co-owned with a specific member state and the equipment directly owned by the EBCG. While the use of the first two types of equipment is subject to annual agreements and member states' goodwill in practice, the Agency's own equipment is at its immediate disposal to be used in joint operations or rapid border interventions (EBCG Regulation, 2016, pp. 35-36). Thus, with the EBCG Regulation, the Agency increased its relative independence from the member states' decisions and goodwill in terms of technical and human resources.

Although the EBCG has acquired a considerable number of new competences and resources compared to its predecessor FRONTEX, the Agency still neither had its own staff nor was allowed to exercise "direct executive powers in the EU member states concerned" (Carrera et al., 2017, p. 48). Therefore, in response to these persisting limitations, the Commission tabled a second proposal in September 2018 to amend the newly two-year-old EBCG Regulation. The proposal included EBCG having its own standing corps with executive powers supervised by the hosting member state, the expansion of competences in the field of return such as preparing draft return decisions as well as the competence to organize joint operations with third countries outside the EU territory and beyond the neighboring countries (Meissner, 2021, p. 166). As in 2016, the adoption of the proposal was quickly materialized in just over a year and the EBCG has gained a new enhanced mandate by November 2019.

The most significant novelty brought by the 2019 Regulation is the establishment of the EBCG standing corps composed of 10,000 operational staff with executive competences to support member states with the external border controls, fighting cross-border crime as well as maintaining an effective and sustainable return policy (EBCG Regulation, 2019, p. 2). With the new regulation, the EBCG gains access to four categories of operational staff under its standing corps. The first category is the statutory staff directly employed by the Agency to be deployed as the members of the operational teams while the second and third category includes staff members seconded by the member states for the long and short-term deployments as the part of EBCG standing corps. The final category of staff includes the seconded staff from the

member states exclusively for the rapid border interventions (EBCG Regulation, 2019, pp. 52-53). While the last three categories can be depicted as the enhanced versions of the Agency's previous resources, the first category of statutory staff is the most crucial and novel category. It is the statutory staff, who are deployed as operational team members, that is mandated to exercise executive powers on the ground (Fernández-Rojo, 2020, p. 308; Meissner, 2021, p. 167). The executive powers of the statutory staff include determining the identity and nationality of persons, the authorization or refusal of entry to the EU territory, stamping of travel documents, issuing or refusing visas, patrolling the EU borders, registering fingerprints of asylum seekers under the Eurodac system as well as escorting third country nationals under the forced-return procedures (EBCG Regulation, 2019, p. 55). Therefore, it can be argued that with its enhanced standing corps, the EBCG gained considerable autonomy, in terms of human resources and operational discretion, from the member states.

The amended Regulation in 2019 established a multi-annual strategic policy cycle system regarding the implementation of the IBM. Accordingly, the Commission and EBCG were given the task to lay down strategic guidelines and policy priorities for periods of five years with the aim of strengthening the effectiveness of European integrated border management (Meissner, 2021, p. 168). For their part, member states are expected to prepare national strategies that "shall be in line with" the IBM, the multiannual strategy and the technical and operational strategy of the EBCG (EBCG Regulation, 2019, p. 22). While these strategy documents and guidelines are non-binding on the member states, they can still be considered as quasi-binding. The reason behind this is that the regular assessments of these documents by the Commission might lead to EU level legislative action by the EP or the Council. Therefore, through these quasi-binding documents, the EBCG can indirectly steer member states' strategies and actions regarding the IBM.

The 2019 Regulation also enhanced the EBCG's competences in the return policy although more limited in scope than what the Commission envisioned in its proposal. While in its previous mandate the EBCG could only coordinate return operations conducted by the member states, under the updated mandate the Agency now can, on its own initiative or by agreeing with the member states, coordinate or organize return

operations (EBCG Regulation, 2019, p. 50). However, unlike the Commission's proposal, the Regulation is very clear that the return decisions are the exclusive competence of the member states, and the text remains silent on the possibility where EBCG preparing draft return decisions to be adopted by the member states. This open-ended mandate, like in the case of the new EUAA, paves the way for the expansion of de facto activities of the EBCG. Therefore, by expanding operational autonomy of the EBCG, the new regulation aims to increase the capacity of the Agency to "step up the effective return of irregular migrants" across the EU (Meissner, 2021, p. 167).

Regarding the expansion of operational activities outside of the EU borders, the updated mandate of the EBCG indicates that the Agency could send Border Management Teams (BMTs) that would be derived from its standing corps to "a third country where the members of the teams will exercise executive powers" (EBCG Regulation, 2019, p. 69). The tasks and the details of cooperation would be established with an operational plan agreed between the Agency and the third country concerned. The Regulation also describes the possibility of EBCG antenna offices to be established "on the territory of a third country in order to facilitate and improve the coordination of the Agency's operational activities" (Fernández-Rojo, 2020, p. 306). Thus, one can see that the cooperation mechanisms and the related mandate have been considerably expanded with the updated EBCG compared with the occasional joint patrols conducted earlier by FRONTEX in the EU's neighborhood.

Overall, one can argue that similar to the internal dimension of the EU asylum policy, the agencification process in the external dimension was primarily crisis-driven. Indeed, an overview of the dates where FRONTEX gradually expanded its mandate and transformed into the EBCG indicates a crisis-response pattern. Officially created under the urgency brought by the Eastern Enlargement, FRONTEX expanded its mandate with two amendments to its founding regulation, in response to the experience of the Spanish migration crisis in 2005-2006 and the Arab Spring in 2011. The Refugee Crisis in 2015, on the other hand, resulted in a comprehensive overhaul of the Agency and transformed it into the new EBCG. The increasing need of an operationally autonomous and more competent EBCG, that was displayed during the Refugee Crisis, led the agency to experience an unprecedented expansion of its resources and

competences. As never-before-seen in the history of EU agencies, the EBCG gained access to the "EU's first uniformed service" (FRONTEX, 2022c) in the form of its expanded standing corps. The Agency's competences, on the other hand, have expanded most notably in the monitoring of the management of the external EU borders, the overall steering of the IBM strategy and the EU return policy.

Table 2. *Regulatory Governance of the EU Asylum Policy*

Policy Field	Asylum Policy	
Policy Dimension	**Internal Dimension**	**External Dimension**
Key Drivers of Institutionalization	• Asylum acting as a regional public good because of the borderless single market. • Arab Spring (2011) • Refugee crisis (2015)	• Existence of the borderless single market and the goal of AFSJ neccessitating the regulation of external border controls. • Eastern Enlargement (2004) • Spanish migration crisis (2005-2006) • Arab Spring (2011) • Refugee crisis (2015)
Regulatory Agency	• European Asylum Support Office (EASO) (2010-2021) • European Union Agency for Asylum (EUAA) (2021- Present day)	• European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (FRONTEX) (2004-2016) • European Border and Coast Guard Agency (EBCG) (2016- Present day)
Agency Tasks	• Acting as a hub of practical cooperation and information exchange, • Provision of operational and technical asistance through ASTs, • Provision of assistance regarding relocation or resetllement, • Cooperation with third countries regarding resetllement and capacity building through liaison officers, • Provision, disemination and coordination of efforts on the COI, • Provision of non-binding standards and guidelines on asylum policy and the implementation of the CEAS, • Provision of training to national asylum authorities, • Monitoring the application of the CEAS within member states (not in force until December 2023)	• Acting as a hub of practical cooperation and information exchange, • Carrying out risk assesments, • Provision of operational and technical asistance through joint operations, rapid border interventions and deployment of EBCG standing corps, • Provision of quasi-binding standards, guidelines and strategies on the IBM, • Provision of training to national border and coast guards, • Development and operation of EUROSUR, • Assisting member states and third countries in search and rescue, • Coordination and organisation of return operations, • Cooperation with third countries through the deployement of BMTs, • Promotion and participation in research and innovation activities regarding the IBM, • Monitoring the implementation of the IBM within member states through liaison officers and vulnerability assessments
Agency Structure	• Member state dominated Management Board • Executive Director • Fundemental Rights Officer • Consultative Forum	• Member state dominated Management Board • Executive Director • Fundemental Rights Officer • Consultative Forum
Expansion of Regulatory Governance	• Crisis-driven expansion of de facto regulatory activities (activities of EASO within the hotspots) • Recent and incomplete expansion of de jure mandate (establishement of EUAA)	• Crisis-driven and frequent expansion of both de jure mandate and de facto regulatory activities
Governance Mode	• Pooling of national resources for providing operational assitance, scientific assesment/advice and monitoring compliance	• Pooling of national and Agency resources for providing operational assitance, scientific assesment/advice and monitoring compliance

This table is produced with the author's own analysis of relevant literature and official documents on the EU asylum policy.

4.2. A Two-Dimensional and Two-Paced Policy Field

As the detailed analysis of the EU asylum policy provided in Chapter 3 and Chapter 4 has demonstrated, the policy field is characterized as two-dimensional, having an internal and an external dimension. Both dimensions have evolved in a heavily security-oriented path, in a way as an implication of the establishment of a borderless European Single Market and the goal of establishing an AFSJ. However, since the EU asylum policy is "defined by strong national sovereignty concerns, policy development has been patchy and incremental, characterized by a preference for lighter instruments of governance punctuated by 'spasmodic' efforts at integration, often in response to and driven by crises" (Busuioc, 2017, p. 10, as cited in Fernández-Rojo, 2021, pp. 10-11).

Various crises have acted as the key drivers of institutionalization for both dimensions of the policy field such as the Eastern Enlargement, Spanish migration crisis, the Arab Spring and most recently the Refugee Crisis (see Table 2). These crises have either initiated or intensified the agencification processes in the two dimensions of the EU asylum policy. For the internal dimension, the increasing numbers of asylum seekers coupled with the Arab Spring in 2011 resulted in the establishment and operationalization of the EASO. The Refugee Crisis in 2015, for its part, displayed the urgency of reforming the internal dimension as well as empowering EASO's competences and resources. The EASO is transformed into the new EUAA which expected to fully operational by 2023 with expanded resources and new, envisioned, competences. The external dimension, on the other hand, has experienced a relatively early start in the agencification process, FRONTEX being established in 2004 with the Eastern Enlargement on the horizon. Thereafter, the Agency has been revamped frequently and expanded its resources and competences in response to crises mentioned above.

In terms of tasks and organization, the agencies of both dimensions of the EU asylum policy show an overall similarity with other regulatory EU agencies discussed in Chapter 2. All these agencies are tasked with providing scientific expertise and assessment of risks to national regulators in their respective fields while the binding nature of advice and assessments vary between policy fields and agencies. Moreover,

like the ECB, EASA and EMSA, the new EUAA and EBCG are given mandate to monitor the member states' implementation of the agreed rules in their respective policy field. One main organizational commonality of different agencies is their Management/Executive Boards. Apart from the EFSA, all the regulatory agencies discussed so far have decision-making boards dominated by member state representatives (see Table 1 and Table 2). The main reason behind this commonality is the member states' willingness to keep regulatory agencies under their control while utilizing their resources and expertise that otherwise would not be available to them. In other words, the member state dominated management boards prevent agencies to pursue an opposing political agenda or to be "captured" by any other institutional rival such as the EU institutions (Dehousse, 2008, p. 796). Therefore, the agencification process itself and the specific regulatory agencies of the two dimensions of the EU asylum policy display similar qualities and follow a similar institutional path with those in the other policy fields. What differentiates the regulatory governance of the EU asylum policy from other policy fields is its two-dimensional and two-paced character. As it was shown by the historical analysis in Chapter 3 and Chapter 4, the regulatory governance of both dimensions exhibits a crisis-driven expansion. However, while the internal dimension expands slowly and in a more de facto manner, the external dimension expands rapidly and in a both de facto and de jure manner. Therefore, the historical analysis provided above confirmed the given hypotheses regarding the regulatory governance of the EU asylum policy. However, the principal reasons behind this two-paced character of the EU asylum policy requires a further discussion. By utilizing the arguments from historical institutionalism and the securitization literature, Chapter 5 examines the reasons why the external dimension of the EU asylum policy expands rapidly while its internal dimension lags behind, despite both dimensions being driven by the crises in the EU asylum policy.

CHAPTER 5

REGULATING A SECURITIZED ASYLUM POLICY THROUGH EU AGENCIES

The discussion in the previous chapters has provided a detailed historical analysis of the regulatory governance of the EU asylum policy. Overall, the analysis displayed the path dependent evolution of the EU asylum policy which, like the other policy fields, is driven by crises and centered on security and risk management. The similar paths chosen by the EU in different policy fields resulted in similar institutional choices to be made by the member states within each policy. In parallel to the other policy fields, the evolution of the EU asylum policy eventually led to the establishment of regulatory EU agencies which provide the expertise lacked by the EU institutions and member states. Contrary to the other examples, however, the EU asylum policy shows a two-dimensional character and its regulatory agencies have been expanding with varying paces. One can argue that these peculiarities are a result of past institutional choices and a specific "positive feedback" (Pierson, 2004, p. 21) mechanism that reinforces the contrast between the internal and external dimensions of the EU asylum policy which is discussed in Chapter 3 and Chapter 4. This positive feedback mechanism takes the form of the securitization of immigration and asylum in Europe which has grown stronger ever since the aim of establishing a European Single Market was pronounced with the SEA.

This chapter first discusses how the securitization of immigration led to a path dependent process where the right to seek asylum was securitized in the EU. The second section, on the other hand, examines the implications of a securitized EU asylum policy on the agencification processes in its both internal and external dimensions. Although the securitization of asylum remains the main positive feedback mechanism for both dimensions, it leads to different outcomes for each dimension.

5.1. Asylum as a Security Question in the EU

Since the Universal Declaration of Human Rights in 1948 and the UN Convention Relating to the Status of Refugees signed in 1951, seeking asylum is codified as a human right in the international law (UN, 1948; UNHCR, 1951). However, with the increasing levels of globalization and migration gaining political salience from 1980s onwards, the perception of asylum as a firm human right has started to be altered. In Europe, asylum was transformed into a salient issue through the gradual blurring of the concepts of immigration and seeking asylum. Like Huysmans (2000, p. 755) points out, asylum "has been increasingly politicized as an alternative route for economic immigration in the EU" since it became harder to distinguish within the increasing influxes of people the genuine asylum seekers, who flee from different forms of persecution, from those who immigrate with economic motivations.

The blurring of immigration and asylum concepts in the EU occurred through both the discourses and practices of various actors such as policy makers, media as well as the EU institutions and agencies. Overall, the social construction of these two concepts as security problems is referred in the literature as the securitization of immigration and asylum (Bigo, 2000; Buzan et al., 1998; Huysmans, 2000; Léonard, 2010). As discussed in Chapter 1, securitization of an issue is mainly about "constructing a shared understanding of what is to be considered and collectively responded to as a threat" (Buzan et al., 1998, p. 26). Therefore, in the initial phase of securitizing an issue, the discourse of a securitizing actor plays a vital role. However, once an issue is successfully securitized, certain practices such as "the development of public policies or the establishment of institutional bodies" can maintain the securitization of an issue without the need for a securitizing discourse (Léonard & Kaunert, 2020, p. 3). In other words, securitization of immigration and asylum in the EU can be depicted as a self-reinforcing process. The successful securitizing discourses of the member states and EU institutions on immigration and asylum are reinforced by the everyday administrative practices such as population profiling, risk assessment, statistical calculation or operational support provided to the member states by security professionals and the related EU agencies (Bigo, 2002, pp. 65-66). Thus, as the

historical institutionalist concept of "positive feedback" (Pierson, 2004, p. 21) suggests, once immigration and asylum are securitized through discourse and practice, it reinforces the security-oriented path dependency of the EU asylum policy since the actors involved in the policy field have begun to invest in security-oriented institutional arrangements over time. Consequently, these institutional investments make it harder to reverse the course to an alternative policy path, meaning the desecuritization of asylum in the EU.

The discussion in Chapter 3 demonstrated that the securitization of immigration and asylum at the EU level had been initiated with the utterance of establishing a European Single Market. Following the SEA in 1987, which set the 1992 deadline for establishing a European Single Market, the internal security professionals have engaged in a "framing contest" (Jones et al., 2021, p. 1527; Boin et al., 2009, p. 85) and turned out to be very successful in uploading their security-oriented perception of immigration and asylum to the EU level. The main logic behind this security discourse was that a single market "would not only improve free movement of law-abiding agents, but would also facilitate illegal and criminal activities by terrorists, international criminal organizations, asylum-seekers and immigrants" (Huysmans, 2000, p. 760). For instance, one of the intergovernmental groups composed of security experts from the member states, TREVI, underlined this logic in its 1990 Programme of Action. In this document, TREVI stressed the need for security cooperation regarding terrorism, drug trafficking and illegal immigration between member states before establishing a single market (Bunyan, 1993, p. 4; van Munster, 2009, p. 30). Through such successful framing centered around the security of the single market, immigration and asylum were placed in the intergovernmental third pillar in the Maastricht Treaty together with the traditional security-oriented policy fields such as police and judicial cooperation (van Munster, 2009, p. 53; European Council, 1992, pp. 8-10). As Huysmans (2000, p. 758) argues, the security linkage between immigration, asylum and the single market was constructed so successfully that "it has obtained the status of common sense". Therefore, the compensatory measures like strengthening external border controls were perceived as the logical response to the security risks that the existence of a borderless European Single Market entailed whereas a rights-based discourse on immigration and asylum was not prioritized.

The security-oriented institutional setup of the asylum policy under the Maastricht Treaty was reinforced when the Amsterdam Treaty in 1997 set the aim to create an AFSJ in parallel to the European Single Market. The goal of an AFSJ meant a change in the perception of the EU not only as a single market but also as an 'area of security' for its citizens. In other words, the Amsterdam Treaty formalized the linkage between the existence of a borderless single market and the need to provide security to the EU citizens who were entitled to safely enjoy the freedom of movement (van Munster, 2009, p. 69). It was pointed out that security discourses and practices regarding an issue are often utilized "to stimulate people to contract into a political community" (Huysmans, 2000, p. 757; see also Huysmans, 2006, p. 50; Wæver, 1995). Therefore, one can argue that through its security discourse on immigration and asylum, the EU has made use of the goal of AFSJ to move itself as close as possible to its citizens (Treaty of Amsterdam, 1997, Article K.1). In other words, immigration and asylum were securitized by the EU with the Amsterdam Treaty for the sake of deepening the European integration process.

The consolidation of the responsibility determination mechanism for asylum applications under the Dublin System, composed of Eurodac and Dublin regulations, was a further step for the securitization of asylum policy in the EU. As discussed in Chapter 3, the fingerprint data gathered from asylum seekers via the Eurodac system is primarily used to detect possible secondary movements and prevent asylum shopping (Council of the European Union, 2000a). However, this fingerprint data is also transmitted to rather 'traditional' security actors of the EU such as EUROPOL with the aim of investigating possible links between asylum seekers and organized crime networks (EULISA, 2021). It can be argued that such security-oriented cooperation mechanisms reinforce the perception of asylum in the EU as a potential threat to the internal security of the member states. Moreover, the infamous 'first country of entry' rule in the Dublin Regulation, that has remained rather unaltered since 2003, also contributed to the securitization of asylum in the EU. The Dublin Regulation resulted in a deeply uneven responsibility sharing mechanism between member states regarding the processing of asylum applications, leaving the frontline states overburdened in times of crisis (Thielemann & Armstrong, 2013, p. 149; Bossong & Carrapico, 2016, p. 6). As crises have shown, the uneven character of the

Dublin System resisted to change since the protection provided to asylum seekers by the frontline states act as a regional public good for other EU member states, reducing the incentive for reforming the Dublin System (Thielemann, 2018, pp. 75-76). One can argue that this uneven responsibility allocation mechanism leads to the asylum seekers to be mostly perceived by the member states as burdens and potential risks rather than persons who are in need of international protection. In other words, since an institutionalized fair responsibility sharing mechanism within the EU regarding asylum seekers has been lacking, the rising numbers of asylum seekers are perceived as burdens on resources and as risks to the internal security of the member states.

Thus, the discourses of policy makers, member states and the EU institutions since the Schengen Agreement in 1985 and the SEA in 1987 have successfully securitized immigration and asylum policy in the EU by stressing the potential risks posed to the single market. Once these issues were framed as security problems, the response was similar to what has emerged in other policy fields, where the existence of a borderless single market necessitated EU level regulatory intervention for the management of potential risks. Like other policy fields discussed in Chapter 2, the two dimensions of the EU asylum policy have followed the institutional path of regulatory agencification, albeit with different paces.

5.2. Implications of a Securitized Asylum Policy

As historical institutionalism underlines, the institutional choices from the past mostly limit the future choices of policy makers, resulting in a given policy field to "lock-in" (Pollack, 1996, p. 440) within a particular path. Likewise, for the EU asylum policy, the successful attempts to securitize the policy field in the 1990s have resulted in future institutional choices made by the member states to be heavily security-oriented. One can argue that the security-oriented institutional path of the EU asylum policy has had significant implications on its agencification processes. The securitization of the EU asylum policy has caused its internal dimension to witness a slower agencification process and a more partial regulatory expansion by increasing the sovereignty sensitiveness of the member states regarding the provision of asylum. On the other hand, the highly sovereignty sensitive nature of the internal dimension has indirectly

reinforced the member states' preference to priorly focus on the agencification and regulatory expansion of the external dimension since agreements on the cooperation mechanisms regarding the control of the external EU borders were easier achieve (Meissner, 2021, p. 167) than the agreements on the common asylum procedures.

5.2.1. Fast-paced Agencification in the External Dimension

With the Amsterdam Treaty putting the security of the single market, and of the EU citizens, at the center of the political agenda, the EU institutions responded with security-oriented initiatives that could deepen European integration on the one hand and could be easily agreed upon by the member states, on the other. As discussed above, the institutional arrangements within the internal dimension of the EU asylum policy, like the Dublin System, have been hard to change since the public good logic of asylum and the sovereignty sensitiveness of the member states mostly blocked avenues for agreement and reform. Therefore, it can be argued that the EU institutions have strategically prioritized security-oriented initiatives in the external dimension of the EU asylum policy over initiatives in its internal dimension which mostly required cumbersome negotiation processes.

The agencification process in the external dimension of the policy field has been initiated with a security-oriented thinking, which made the necessary agreements between member states easier to achieve. As discussed in Chapter 4, the EU-wide cooperation in external border controls was perceived as vital to a secure single market and it was linked to the traditional security issues like terrorism and human trafficking in the official documents (European Council, 2001). For instance, the security linkage was evident when the European Commission (2002, p. 19) argued in one of its Communications that the lack of effective operational cooperation in external border controls prevents the achievement of "a more uniform level of security" within the EU. Such repeated security focused rhetoric led to initial institutionalization steps to be taken with regards to external border control cooperation between member states. As Neal (2009, pp. 341-342) points out, the predecessor of FRONTEX, the External Border Practitioners Common Unit, was swiftly established in 2002 as more of a response to the securitized rhetoric of the EU institutions on immigration and asylum

at the time, rather than the practical and operational value that the Common Unit would bring to the table.

The quick realization of the Common Unit's inability to enhance external border control cooperation between member states was successfully utilized by the Commission to initiate a more formal agencification process, which eventually led to the establishment of FRONTEX in 2004 (Fernández-Rojo, 2020, pp. 295-296). As the discussion in Chapter 4 thoroughly demonstrated, once FRONTEX became operational, its regulatory mandate and resources were quickly expanded, turning the Agency into an important securitizing actor on its own right with regards to the EU asylum policy. Following the arguments of the Paris School on securitization (Bigo, 2000, p. 194; Léonard & Kaunert, 2020, p. 3), it can be argued that the securitizing practices of FRONTEX maintained and reinforced the securitization of asylum policy in the EU without the need for a continuous securitizing discourse on asylum. Some of the examples to securitizing practices of FRONTEX during its initial years that also expanded throughout the years, include conducting risk analyses, providing operational assistance to the member states and the use of advanced technologies for the control of the external EU borders.

As discussed in Chapter 4, risk analysis has been the most vital function for the Agency since it provided the basis for all its other activities such as operational support provided to member states (FRONTEX, 2021). As Léonard (2010, p. 242) pointed out, the very fact that the Agency perceives itself as an "intelligence-driven" organization and produces its reports on migratory routes as analyses of potential 'risks' to the external EU borders indirectly lead asylum seekers to be seen as security risks to the EU. Moreover, the process in which these risk analyses are produced can also be perceived as contributing to the securitization of asylum in the EU. As Balzacq (2008, p. 79) notes, the main criterion for a securitizing practice is its ability to create "a specific threat image" and to justify the idea that the securitizing practice has emerged to cope with the given threat. Following this definition, a good securitizing practice example would be establishing cooperation mechanisms with "organisations that have traditionally been considered security bodies or organisations, such as those dealing with military or policing matters" (Léonard & Kaunert, 2020, p. 5). Likewise,

FRONTEX gathers intelligence for its risk analyses, through its Situation Centre in Warsaw, from a variety of sources including some traditional security actors such as EUROPOL and INTERPOL (FRONTEX, 2021a). Overall, one can argue that the risk analysis function of FRONTEX has played a reinforcing role with regards to the securitization of the asylum policy in the EU.

The operational support provided to the member states and technological tools used during these operations can also be perceived as securitizing practices with respect to the EU asylum policy. The Spanish migration crisis of 2005-2006 acted as the first major event where the increase in irregular migration and asylum applications led to a series of joint operations coordinated by FRONTEX (Léonard & Kaunert, 2020, pp. 5-7). As discussed earlier, these operational experiences led to the first revamp of FRONTEX's mandate in 2007 and the introduction of rapid border interventions during emergencies conducted by the Agency. These joint operations, and others that followed, brought together experts from FRONTEX, national border guards from various member states and border guards from third countries with the aim of patrolling external EU borders. Consequently, such operations were characterized by complex intelligence gathering processes with the participation of various actors and deployed in response to emergencies. In these respects, the joint operations coordinated by FRONTEX have strengthened the perception that irregular migration, and therefore asylum, are security issues which can require the use of extraordinary measures (Léonard, 2010, p. 240) such as joint operations.

The increasing use of technology during such joint operations is an additional contribution to the securitization of irregular migration and asylum in the EU. As Bigo (2006, p. 388) notes, technologies of control are mostly linked to the idea that threats should be managed from a distance as far as possible from the subject, leading to a "de-territorialised vision of security without frontiers". Following this argument, Csernatoni (2018, p. 178) stresses the fact that advanced technological tools such as unmanned aircrafts are increasingly used in the surveillance of external EU borders and she refers to this process as "the creation of a militarized technological regime of exclusion at the EU's periphery" since the "drone technologies were born in the battlefield" originally. Moreover, another example of the link between technology

usage and securitization can be given as FRONTEX's gaining access to the high-tech space-based surveillance services via EUROSUR in 2013. EUROSUR can be perceived as a vital tool for the securitization of irregular migration and asylum in the EU since the provided technological surveillance aims to increase the reaction capacity of FRONTEX at the external EU borders and to assess risks with regards to irregular border crossings and cross-border organized crime (FRONTEX, 2014).

Thus, it can be argued that the practices of FRONTEX, since its establishment in 2004, has contributed to the securitization of asylum policy in the EU. By the time the Refugee Crisis arrived at the EU's doorstep in 2015, FRONTEX had already seen a considerable expansion of its resources and competences by two amendments to its founding Regulation. One can argue that through reinforcing the securitization of asylum in the EU with its own practices, FRONTEX indirectly paved the way for its regulatory expansion in both de jure and de facto manner during times of crisis. The Refugee Crisis in 2015 and the following transformation of FRONTEX into the EBCG in 2016 and the further enhancement of the Agency in 2019 exemplify this argument.

As the failing forward argument suggests, the European integration process is mainly driven by intergovernmental bargains that result with incomplete institutional arrangements leading to a crisis in a given policy which, again, is responded by an incomplete institutional arrangement. This incompleteness results from the divergent preferences of member states which lead to agreements on lowest common denominator arrangements (Jones et al., 2016, p. 1027). In the case of the EU asylum policy, as discussed in Chapter 3, the Refugee Crisis can be seen as a result of the incomplete institutional arrangements notably the non-existence of a fair responsibility sharing mechanism regarding asylum seekers within the policy field. In response to the crisis, the EU institutions and member states have decided to push integration forward by reaching a new lowest common denominator agreement rather than unwinding the existing institutional arrangements (Jones et al., 2021, p. 1530) within the EU asylum policy. The main reason behind this choice is the fact that a total overhaul of the EU asylum policy would be very costly, especially in political terms, since the gradual securitization of the EU asylum policy has strengthened anti-immigrant and Eurosceptic political voices within the member states. Here, it can be

seen that the securitization of asylum, reinforced by the practices of FRONTEX, acted as the "positive feedback" (Pierson, 2004, p. 21) mechanism that raised the costs of a complete refashioning of the EU asylum policy in the face of the Refugee Crisis. Thus, as a second-best option, EU institutions and member states preferred to focus on enhancing the agencification process in the external dimension of the EU asylum policy by replacing FRONTEX with the EBCG in 2016 and quickly expanding its regulatory mandate in 2019 in response to the Refugee Crisis. As Meissner (2021, p. 167) points out, the agencification process in the external dimension of the EU asylum policy has acted as the lowest common denominator where the member states always seem to reach an agreement (see also, Bossong, 2019).

Thus, one can argue that the gradual securitization of asylum policy in the EU has contributed to the rapid advancement of the agencification process in its external dimension in times of crisis. On the one hand, the Refugee Crisis has initially resulted with the de facto expansion of FRONTEX's regulatory activities through the establishment of hotspots and increasing number of practical agreements with third countries. On the other hand, the enhancement of external border controls being the lowest common denominator in a securitized asylum policy has led FRONTEX experiencing a rapid de jure regulatory expansion as well as a de jure mandate expansion by transforming into the EBCG.

5.2.2. Slow-paced Agencification in the Internal Dimension

By the time the first agencification steps were taken in the internal dimension of the EU asylum policy in response to the rising asylum applications, FRONTEX had already been firmly established as a regulatory agency, gained its first operational experiences and its founding regulation was about to see its second revamp. Therefore, the agencification process in the external dimension of the EU asylum policy has had an earlier start compared to the internal dimension since, as discussed above, agreement between member states was harder to achieve in the internal dimension.

Established in 2010, the EASO was a late comer to the arena of regulatory EU agencies (Carrera et al., 2013, p. 341). This very fact can be seen as an indicator of the slow-paced agencification process experienced in the internal dimension of the EU asylum

policy. Comparatively speaking, the EASO's mandate has expanded only recently after more than a decade in December 2021 with the establishment of the EUAA while FRONTEX has seen its mandate being expanded three times in the same period. The reason for this contrast, one can argue, is that the securitization of asylum in the EU acts as the positive feedback mechanism for the agencification processes in both dimensions of the EU asylum policy. However, unlike its external dimension, this positive feedback mechanism leads to a slow-paced agencification process in the internal dimension of the policy field.

As discussed in Chapter 3, the EASO was born into an imminent crisis context with the Arab Spring causing a sudden peak in the number of asylum seekers arriving to the frontline member states like Italy and Greece (Webber, 2019, pp. 148-149). However, by the time the EASO was established, the number of asylum seekers arriving to EU territory has already been increasing for years as the Spanish migration crisis exemplified. Therefore, when the EASO became operational in 2011, asylum in the EU was already firmly securitized. From the very beginning, as its supporting nature embedded in its name, the EASO was primarily tasked with aiding the member states in processing high numbers of asylum applications through providing the necessary training and expertise, such as on the COI, to the related national asylum authorities. Within its initial mandate, the EASO's support activities mostly involved acting as an information exchange and training platform for the member states whose asylum and reception systems were under pressure during sudden arrivals of third country nationals (McDonough & Tsourdi, 2012, p. 84; Tsourdi, 2017, p. 677). Thus, the EASO's mandate was carefully limited, reflecting the sovereignty sensitive institutional design of the CEAS so that any final decision regarding the provision of international protection remains solely with the member states (TFEU, 2012, Article 78).

Such a sovereignty sensitive institutional design, one can argue, is reinforced by the securitization of the EU asylum policy since the securitizing discourses and practices result with the asylum seekers to be perceived as potential risks to the security of the member states. Once the asylum seekers are perceived as a security problem, the member states reflexively want to tighten their control over the process of granting

asylum. Consequently, any transfer of competences to an EU agency, in an area that could potentially lead asylum seekers to be qualified for international protection without national oversight, meets with high reluctance from the member states. In other words, because the asylum policy is securitized and those seeking asylum are perceived as potential threats to security, the member states are unwilling to transfer considerable competences in asylum policy to a regulatory agency which might follow an agenda conflicting with that of a given member state (Dehousse, 2008, p. 796). Thus, it can be argued that the securitization of the EU asylum policy has limited the agencification process in the internal dimension with regards to the initial de jure mandate. This, in turn, resulted with the gradual expansion of de facto regulatory activities of the EASO in response to the rising demand for operational support by the member states over the years.

In the face of the Arab Spring and the Refugee Crisis, the member states were able to swiftly agree on the de jure mandate expansion for the external dimension of the EU asylum policy (Meissner, 2021, p. 159; Carrera et al., 2017). For the internal dimension, agreements were harder to achieve and necessitated cumbersome negotiation processes due to its sovereignty sensitive nature. Consequently, the member states' response to the Refugee Crisis was one of prioritizing the agencification process in the external dimension while permitting the expansion of the EASO's de facto regulatory activities to meet the practical needs on the ground. This institutional choice was materialized in the form of the hotspot approach, which itself contributes to the securitization of the EU asylum policy.

The hotpot approach, as thoroughly discussed in Chapter 3 and Chapter 4, was a pragmatic emergency response of inter-agency cooperation aimed at supporting the overburdened asylum and reception systems of Italy and Greece, as well as coordinating the implementation of the imperfect relocation scheme as a crisis response (Loschi & Slominski, 2021, pp. 217-218; Trauner, 2016). As discussed earlier, the activities of the EASO within the hotspots have evolved from the mere registration and initial processing of asylum applications to conducting interviews with the asylum seekers and providing non-binding expert opinions on the applications (Tsourdi, 2021, p. 183). This evolution displayed the expansion of the EASO's de

facto regulatory activities, resulting from the urgent need to respond to uneven responsibility allocation between the member states under the Dublin System, which proved to be highly resistant to reform attempts. The institutional arrangement of the hotspot approach can also be seen as contributing to the prevalence of de facto regulatory expansion over de jure mandate expansion in the internal dimension of the EU asylum policy. The reason is that this inter-agency cooperation mechanism involved, in addition to EASO and FRONTEX, the two law enforcement agencies: EUROPOL and EUROJUST both of which can be perceived as security actors in their own policy areas. While FRONTEX, EASO and EUROPOL were expected to assist Greece and Italy through the deployment of MMSTs in the hotspots (Loschi & Slominski, 2021, p. 218), the tasks of the agencies and cooperation within these teams can be seen as reinforcing the overall securitization of the asylum policy in the EU. As the European Commission (2015, p. 6) put it, EASO was tasked with aiding member states in processing asylum application made in the hotspots while EUROPOL and EUROJUST aided the "investigations to dismantle the smuggling and trafficking networks". Importantly, within the hotspots, the EUROPOL participates "in debriefing the arriving migrants, and through the EMSC, operationally supports the competent national enforcement authorities in their investigations" (Fernández-Rojo, 2019a). Therefore, it can be argued that the 'intelligence' gathered by EUROPOL, through its cooperation with EASO and FROTEX within the hotspots, is used to fight against organized crime networks. Not surprisingly, such inter-agency cooperation enhances the linkage between irregular migration, asylum and security. Consequently, further securitization of asylum policy leads to the strengthening of the sovereignty sensitiveness of the member states over the provision of asylum, both of which limit the agencification in the internal dimension to the de facto regulatory expansion.

While the securitized nature of asylum in the EU has caused EASO not to experience a swift de jure mandate expansion like its external counterpart FRONTEX, the Agency slowly but eventually received an overhaul to its de jure mandate in 2021 and was transformed into the new EUAA. As discussed in Chapter 3, the agreed new mandate was reflective of the long and cumbersome negotiation process between the member states, resulting with its adoption. Therefore, the sovereignty sensitive nature of the internal dimension, reinforced by the securitization of asylum in the EU, is evident in

the EUAA's documents. The Agency defines itself as a "resource" of the member states in the provision of "practical, legal, technical, advisory and operational assistance" regarding the CEAS while stressing that it "does not replace national asylum authorities, which are entirely responsible for national asylum cases" (EUAA, 2022). Moreover, as discussed in Chapter 3, the EUAA's mandate has partially entered into force, meaning that until December 2023 the Agency lacks the competence of monitoring the application of the CEAS in the member states. Since transferring the monitoring of the CEAS to the EUAA will have a direct impact on the national asylum policies of the member states, the Agency's mandate is designed as sovereignty sensitive. In other words, the monitoring task of the EUAA is put on hold so that a successful reform of the Dublin System and the CEAS can be achieved by the member states first, which would indirectly enable them to retain control over their asylum policies.

Overall, one can argue that enhancing the agencification process in the external dimension of the EU asylum policy was the first lowest common denominator agreement that the member states have been able to reach in response to the Refugee Crisis. The eventual decoupling of the complete CEAS overhaul from the advancement of the agencification process in the internal dimension has been the new lowest common denominator that the member states could agree on. In other words, in order to expand its regulatory governance in the internal dimension, the EU has preferred the EUAA with an incomplete set of competences to a complete overhaul of the CEAS. Thus, while the mandate of the new EUAA took a longer time to materialize than that of the EBCG, both agencies eventually turned out to be examples for the crisis-driven expansion of regulatory governance by the EU through agencification.

CHAPTER 6

CONCLUSION

Historically, the expansion of the EU's regulatory governance can be perceived as the product of the decline of the welfare states in Europe and the need to regulate the emerging single market accelerated by the European integration process. Through this dual dynamic, the regulatory governance of the EU was quickly expanded and displayed itself in various policy fields, with each policy having its own characteristics. However, one major commonality across different policy fields, is the security-oriented and crisis-driven nature of the EU's regulatory governance. In most of the policy field examples, the regulatory governance of the EU is centered around the management of various risks and is driven by crises linked to the given policy area. By combining insights from historical institutionalism, path-dependency and failing forward concepts as well as the securitization literature, this thesis examined the historical evolution of the regulatory governance of the EU in different policy fields, specifically in asylum policy.

Following the historical institutionalist concepts of path dependency (Pierson, 1996, p. 131) and lock-in (Pollack, 1996, p. 440), one can see that the regulatory governance of the EU mostly follows a security-oriented institutional path since its main concern is the management of various risks such as economic, health and safety in the EU posed by the existence of the borderless European Single Market. In most cases, crises act as catalysts for a security-oriented institutional path in different policy fields. Crises either initiate or reinforce the regulatory agencification in a given policy field, contributing to the overall expansion of the EU's regulatory governance. In this regard Chapter 2 provides examples of four policy fields where the security-oriented and crisis-driven institutional path dependency of the EU's regulatory governance, coupled with various crises, led to the establishment of regulatory EU agencies (see Table 1).

In banking regulation, the establishment of the European Single Market resulted with a common market for financial services in the EU. Different national regulations on the banking sector and weak European regulatory oversight have left the member states vulnerable to the risk of financial instability in case of a regional or global crisis. The global financial crisis in 2008 displayed this regulatory shortcoming and led to the enhancement of the ECB's monitoring competences as well as to the establishment of the EBA in 2011, a new EU agency with rule making powers.

In food safety, the free circulation of food products within the single market, combined with the Mad Cow crisis in the 1990s, resulted with a declining public confidence on the Commission's ability to assess risks regarding food safety. Consequently, the EFSA was established in 2002 as an independent regulatory agency with its expertise on the assessment of food safety risks.

In maritime safety, the international nature of the maritime industry and the constant risk of cross-border pollution led to the international regulatory efforts on the issue to predate those of the EU. It was only after two maritime accidents, sinking of Erika and Prestige vessels in 1999 and 2002, that the EU regulatory efforts accelerated and the EMSA was founded in 2002, an agency focused on monitoring national regulators in the field.

Civil aviation safety, on the other hand, did not follow a crisis response pattern that can be seen in other policy field examples. Instead, the agencification process in this policy field was initiated since national safety standards diverged considerably between member states and civil aviation was directly linked to the safety of the freedom of movement, one of the four freedoms of the single market enjoyed on a daily basis by the EU citizens. Moreover, the interactions between different policy fields can be perceived as an additional reason why the agencification process in civil aviation safety has not required a crisis to receive its institutional push. In other words, crises in other policy fields like maritime safety, for instance, served as an example for civil aviation safety about the potential results of not taking regulatory action at the EU level. Thus, the EASA was founded in 2002 as a regulatory EU agency with considerable monitoring competences.

All these regulatory agencies developed their own characteristics due to the differences in the historical evolution of each policy field. However, the main concern of all these agencies has been that of achieving and maintaining a secure European Single Market through provision of expertise and management of risks. Despite their differences, most of the regulatory EU agencies is strongly controlled by the member states themselves through the agencies' management boards. Thus, although the member states do transfer considerable competences to regulatory EU agencies, mostly they remain in control of the regulatory governance in the given policy area.

Overall, the regulatory governance of the EU asylum policy also follows this security-oriented and crisis-driven institutional path similar to other policy fields. However, unlike others, the EU asylum policy displays a two-dimensional and two-paced character (see Table 2). In order to verify this argument, this thesis seeks validation of two hypotheses on the internal and external dimensions of the regulatory governance of the EU asylum policy through evidence from primary and secondary sources. The first hypothesis argues that the institutionalization in the internal dimension is driven by crises and mainly consists of the CEAS and the EUAA, as its regulatory agency. Moreover, the regulatory governance of the internal dimension expands in a mostly de facto manner with a slow pace while de jure expansion takes time and remains partial. In the second hypothesis, it is argued that the institutionalization of the external dimension is crisis-driven and mainly consists of the EBCG as well as the cooperation mechanisms on asylum policy with third countries. Contrary to the internal dimension, the regulatory governance of the external dimension has expanded more rapidly in a both de jure and de facto manner.

The emergence of the European Single Market initiated with the Schengen Agreement in 1985 and the SEA in 1987 acted as the common starting point for both dimensions of the EU's regulatory governance in asylum policy. While the CEAS and the AFSJ officially emerged as EU goals with the Tampere Conclusions (European Council, 1999) and the Treaty of Amsterdam (1997) respectively, the basis of the internal dimension was centered around the Dublin System, originated in 1990, and the minimum standard Directives on asylum that followed. These regulatory efforts in the internal dimension aimed at resolving the problems of asylum shopping and the

refugees in orbit (Dinan et al., 2017; Thielemann & Armstrong, 2013, p. 151), both of which reflective of the regional public good character of asylum in the EU. Ultimately, the CEAS could have led to legal harmonization on asylum between member states and equal treatment of asylum application within the EU, decreasing the secondary movements of asylum seekers in return. However, since a great deal of harmonization in asylum policy could not have been achieved, secondary movements have not stopped and the Dublin System continued to put disproportionate responsibility on the frontline member states. The continuous rise in the number of asylum seekers eventually led to agencification efforts in the internal dimension with the EASO established in 2010. The regulatory activities of the Agency experienced de facto expansion in the face of successive crises of the Arab Spring in 2011 and the Refugee Crisis in 2015. While the EASO has gained considerable decision-making powers in de facto, for instance, by providing its opinions on the induvial asylum applications within the hotpots in Greece and Italy, its de jure mandate remained unchanged. It was only after more than a decade and a long negotiation process that the EASO's de jure mandate expanded, transforming it into the new EUAA. However, this regulatory expansion remains partial since the EUAA cannot use its new monitoring competences until the end of 2023, according to its mandate.

Regulatory efforts in the external dimension, on the other hand, resulted in an earlier agencification process compared to the internal dimension. The parallel aims of creating a borderless single market and an AFSJ within the EU meant that border control cooperation between member states required EU level regulatory coordination. The need to secure its Eastern borders after the upcoming Eastern Enlargement pushed the EU to initiate the agencification process in the external dimension. After an unsuccessful experiment of a regulatory network on border control matters in the form of the Common Unit, the EU established FRONTEX in 2004 to enhance practical cooperation, to assess risks and provide operational assistance for the control of its external borders. Successive crisis situations at the external borders such as the Spanish migration crisis between 2005 and 2006, the Arab Spring and the Refugee Crisis led to the establishment of FRONTEX as well as the Agency to experience both de facto and de jure regulatory expansion. The Refugee Crisis in 2015 is worth stressing since it led to a major revamp of FRONTEX's de jure mandate and

transformed the Agency into the EBCG in 2016. The vital role played by the EBCG within the hotspots during the crisis proved beneficial for the EBCG since the member states and EU institutions responded to the Agency's calls for more resources with updating its mandate in 2019. As a result, the EBCG gained access to its own statutory staff which is expected to reach 10,000 border guards by 2027 (EBCG Regulation, 2019). Moreover, with its recent mandate the EBCG increased its competences for the monitoring of external border controls and the EU return policy.

Thus, the historical and theoretical analysis provided in this thesis confirmed the validity of the above-mentioned hypotheses. On the other hand, the main reason behind the two-paced character of the regulatory governance of the EU asylum policy is a specific positive feedback mechanism that reinforces the security-oriented path dependency of the policy field. This mechanism is the securitization of immigration and asylum in the EU, increasingly apparent in the discourses and everyday practices of the policy makers, media, the member states as well as the EU institutions and agencies ever since the aim of European Single Market was pronounced in the 1980s. Through securitizing discourses and practices, asylum seekers are framed as a security problem for the member states and as a security risk within the borderless European Single Market. Due to the securitization of the asylum policy in the EU, the provision of international protection to the asylum seekers has become a highly sovereignty sensitive issue for the member states while the control of external borders has gained increasing significance since it directly affects the access to seek asylum in the EU.

The implications of the securitization of asylum policy can be seen in the agencification processes in the two dimensions of the EU asylum policy. For the internal dimension the securitization of the EU asylum policy leads to the member states being highly sovereignty sensitive regarding the provision of asylum to third country nationals. This in turn results with the member states demonstrating high reluctance in transferring competences to a regulatory EU agency to retain control over the granting of international protection. For the external dimension the securitization of the EU asylum policy leads to the member states increasingly relying on border controls and externalization of the EU asylum policy to limit the increasing number of asylum seekers arriving to the EU territory, thereby remotely managing the potential

risks to the borderless single market. Thus, the securitization of the EU asylum policy acts as the positive feedback mechanism that reinforces the security-oriented path dependency of the policy field. Securitization of asylum limits and slows down the regulatory expansion and agencification in the internal dimension of the EU asylum policy since it raises the sovereignty sensitiveness of the member states on the provision of asylum. Conversely, the securitization of asylum and the sovereignty sensitive nature of the internal dimension results in the member states to prioritize and speed up the agencification process and the regulatory expansion of the external dimension, where reaching the consensus between the member states is easier to achieve compared to the internal dimension.

The contention of the thesis is that the regulatory governance of the EU in various policy fields demonstrates a security-oriented and crisis-driven institutional path dependency that eventually leads to the establishment of regulatory agencies. In other words, the member states and the EU institutions utilize the need for security within a borderless European Single Market to expand the regulatory governance of the EU in different policy fields. In this context, most of the time various crises in different policy fields such as the Mad Cow crisis, the global financial crisis, the Arab Spring or the Refugee Crisis act as catalysts that fail forward (Jones et al., 2016) the regulatory governance of the EU in the given policy fields, leading to the enhancement of regulatory agencification processes. Such a security-oriented and crisis-driven path dependency is also evident in the EU asylum policy since the both dimensions of the EU asylum policy have their origins in security-oriented compensatory measures (Nanz, 1995, p. 29; van Munster, 2009), developed in response to the establishment of the European Single Market, and the regulatory expansion and agencification processes in both dimensions followed a crisis response pattern.

As discussed above, this path dependency is reinforced by a specific positive feedback mechanism that is the securitization of immigration and asylum in the EU. However, as historical institutionalism suggests with the concept of punctuated equilibrium, the institutional path dependencies reinforced by the positive feedback mechanisms can be interrupted with historical punctuations, namely, critical junctures leading to radical change (March & Olsen, 2011, p. 9). The Arab Spring in 2011 and the Refugee Crisis

in 2015 can be perceived as the two critical junctures for the EU asylum policy. Indeed, both events have led to significant institutional changes and enhanced the agencification processes for the internal and external dimensions of the EU asylum policy. However, these crises have not changed the security-oriented path dependency of the EU asylum policy, instead, they have led to the enhancement of this institutional path.

Does the historical and theoretical analysis above mean that the security-oriented path dependency of the EU asylum policy cannot be reversed? The current crisis context as experienced by the EU asylum policy, and the EU's response can be decisive in answering this question.

Since the start of Russia's military operation in Ukraine on 24 February 2022, the number of those who fled to the neighboring countries has reached to 6,1 million by May 2022 (UNHCR, 2022). As the immediate neighbor of Ukraine, the EU member states received the highest number of asylum seekers in total around 5.1 million, with Poland having the largest share within the EU (EUAA, 2022c; UNHCR, 2022). In response to the rising number of asylum seekers, the EU has activated the never-before-used Temporary Protection Directive in March 2022 (Council of the European Union, 2022). By May 2022, the member states registered approximately 71.000 Ukrainians for temporary protection under the Directive (EUAA, 2022c). While such quick and warm welcome by the EU members for Ukrainian asylum seekers is praised internationally, the comparison of the EU's response to the previous crises at its borders and the differentiated treatment of asylum seekers from the Middle East and Asia was criticized (McCloskey, 2022, p. 138; Pettrachin & Hadj Abdou, 2022). The media stressed that this disparity between the EU's responses to the earlier crises and to the Ukraine crisis can be seen as the materialization of "systemic racism" at the EU borders (Euobserver, 2022; Euronews, 2022).

The EU's immediate response to the Ukraine crisis can lead one to suggest that the crisis can act as a historical punctuation and a critical juncture where the EU asylum policy breaks out of its security-oriented path dependency and moves to a more human rights centered policy path. However, the strong criticisms of double standards based on ethnicity and race at the EU borders can be indicative of a far less optimistic

scenario. While it would be hard to argue that the EU would promote outright racist policies on asylum in the future, it is plausible to think that the EU asylum policy would maintain its security-oriented and crisis-driven institutional path. One can argue that the EU members are welcoming the asylum seekers from Ukraine more easily since they are fleeing a war in their immediate neighborhood and, therefore, the persecution is more apparent to the member states. Although the persecution in Syria or Afghanistan, which results in people fleeing to the EU, is also as apparent as in Ukraine, such geographically distant conflicts produce mixed migratory flows, composed of both economic migrants and asylum seekers, that can only arrive to the EU in the long term. As a result, figuring out the motivations of people arriving to the external EU borders becomes more and more challenging for the member states, reinforcing the security-oriented approach in such cases.

The recent establishment of the EUAA and the increasing criticisms by the EU institutions like the EP on the activities of the EBCG can also have the potential to change the security-oriented path dependency of the EU asylum policy. However, in this venue the chances are also slim. The establishment of the EUAA as a specialized regulatory agency in the asylum policy with an envisioned monitoring competence, might lead one to assume that the right to asylum will be enhanced in the EU in coming years. While this might be the case in the future with the EUAA taking a proactive role in defending the right to asylum in the EU, the possible expansion of EUAA's competences and resources might also lead to the enhancement of the EU's security-oriented approach on asylum policy. For instance, the EUAA's future monitoring competence can result with the member states being exposed in cases of breaching the CEAS rules or the principles of the 1951 Geneva Convention. On the other hand, despite its expanded mandate, the EUAA is still strictly controlled by the member states themselves and is created mainly to provide increased technical and operational support to them in asylum matters. Therefore, the EUAA can be easily relied on by the member states as a tool for swiftly processing the increasing asylum applications while such swift processing might not necessarily result in an increase in acceptance rates of asylum applications.

The EBCG and its cooperation with the EUAA in the future might also contribute to the security-oriented path of the EU asylum policy. The two agencies have closely cooperated before, especially within the hotspots in Greece and Italy. With a fully operational EUAA, an enhanced inter-agency cooperation can lead the EU to rapidly process the asylum applications received through the EUAA while successfully returning those asylum seekers whose applications rejected to the countries of origin or transit through the EBCG. When the increasing reliance of the member states on the EBCG in the return policy is considered (The Guardian, 2021), such a security-oriented inter-agency cooperation in asylum policy becomes a likely scenario.

Increasing criticisms directed towards the EBCG's activities at the external EU borders offer another glimpse of a potential change in the orientation of the EU asylum policy. Throughout 2020 and 2021, the EBCG was alleged by the media and the NGOs with being involved in pushbacks of asylum seekers in the Mediterranean Sea, leading the EP and the European Anti-Fraud Office (OLAF) to open investigations on the activities of the Agency (Euobserver, 2021; France24, 2021). These investigations resulted with confidential reports. While not made public, the salience of the investigations led to the Executive Director of the EBCG to resign from his position in May 2022 and the EP to refuse to approve the EBCG's budget, hoping to promote corrective action by the Agency (The Guardian, 2022). However, the EP had tried before to incite changes in the activities of the EU agencies through its budgetary competences, without a considerable success (Dehousse, 2008, p. 800). Therefore, it would be too simplistic to assume that such investigations and budgetary threats would lead to the activities of the EBCG to move from its securitized nature to a more human rights oriented one anytime soon.

Thus, one can reach the conclusion that a change in the security-oriented and crisis-driven regulatory governance of the EU asylum policy is possible but not very likely in the near future. Indeed, there are current events with the potential to act as a historical punctuation in the EU asylum policy and break its security-oriented and crisis-driven path dependency, leading to an alternative rights-oriented policy path. However, as the historical evolution of the EU asylum policy and the previous crises in the policy field have highlighted, securitization of asylum by both discourses and

practices acts as a powerful positive feedback mechanism that reinforces the security-oriented nature of the EU asylum policy and raises the material and political costs of changing this institutional path for the member states. It remains to be seen whether a series of future crises in the EU asylum policy can change the trajectory of this path dependency.

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APPENDICES

APPENDIX A: TURKISH SUMMARY / TÜRKÇE ÖZET

KRİZ DÖNEMLERİNDE AB SIĞINMA POLİTİKASI: AJANSLAR ARACILIĞIYLA DÜZENLEYİCİ YÖNETİŞİM

Bu tez, Avrupa Birliği'nin (AB) düzenleyici yönetişimini farklı politika alanlarından örnekler sunarak ve AB sığınma politikasını odağına alarak, tarihsel kurumsalcılık ve güvenlikleştirme merceği ile incelemiştir. Farklı politika alanlarından örnekler, AB düzenleyici yönetişiminin genel olarak güvenlik ve kriz odaklı bir tarihsel gelişime sahip olduğunu göstermekte, AB sığınma politikası da bu tarihsel gelişme örnek bir politika alanı olarak öne çıkmaktadır. Diğer politika alanlarından farklı olarak sığınma politikası, AB'nin düzenleyici yönetişimini içsel ve dışsal olarak iki boyutlu bir şekilde kullandığı en detaylı politika alanlarından biri haline gelmiştir. AB sığınma politikasının içsel boyutunu Ortak Avrupa Sığınma Sistemi (OASS) ve AB Sığınma Ajansı (ABSA) oluştururken, dışsal boyutu Avrupa Sınır ve Sahil Güvenliği Ajansı (ASSGA) ile AB sığınma politikasının üçüncü ülkelere çeşitli yollarla dışsallaştırılması oluşturmaktadır. AB'nin sığınma politikasındaki düzenleyici yönetişimi, içsel ve dışsal boyut karşılaştırıldığında, Arap Baharı ve Mülteci Krizi gibi krizler karşısında farklı hızlarda gelişme göstermiştir. İçsel boyut AB üye devletleri arasında yaşanan fikir ayrılıkları ve uzun müzakere süreçleri nedeniyle yavaş bir gelişme gösterirken, dışsal boyut hem pratikte hem de yasal olarak hızlı bir şekilde gelişmiştir. İki boyut arasındaki bu tempo farkının ana nedenleri sığınma politikasının AB içerisinde tarihi olarak güvenlik odaklı bir şekilde gelişmiş olmasının yanı sıra, göç ve sığınma olgularının güvenlikleştirilme süreçleridir.

Tezin teorik çerçevesini oluşturan tarihsel kurumsalcılık ve güvenlikleştirme literatürü özellikle AB sığınma politikasının incelenmesinde önemli analitik araçlar sunmaktadır. Tıpkı yeni-işlevselcilik teorisi gibi tarihsel kurumsalcılık da politik süreçlerde kurumların rolünün önemli olduğunu vurgulamaktadır. Diğer taraftan hükümetlerarasıcılık teorisinde olduğu gibi tarihsel kurumsalcılıkta da AB üye devletlerinin Avrupa bütünleşmesi sürecinde ve AB kurum ve ajansları içerisinde oynadıkları merkezi rollere vurgu yapılmaktadır. Tarihsel kurumsalcılık, Avrupa bütünleşmesini zaman içinde şekillenen bir süreç olarak gördüğünden üye devletlerin geçmişte almış oldukları kararların ve/veya kurdukları kurum ve ajansların gelecekte verebilecekleri olası kararlarını kısıtlayıcı nitelikte roller oynayabileceklerine dikkat çekmektedir. Dolayısıyla, tarihsel kurumsalcılık bütünleşme sürecinin temel aktörleri olarak üye devletleri kabul ederken, zaman içinde kurulan kurum ve ajansların üye devletlerin bütünleşme sürecinde aldıkları kararları etkileyebileceğini kabul etmektedir. Herhangi bir politika alanında yaşanabilecek bu durum, yol bağımlılığı *(path dependency)* ve kilitlenme *(lock-in)* kavramları ile açıklanmıştır. Tarihsel kurumsalcılığa göre bir politika alanın izlediği kurumsal yol bağımlılığı ve kilitlenme bu doğrultuda alınan her karar ile güçlenmekte, ilgili paydaşların bu kurumsal yoldaki çıkarları giderek artmakta ve dolayısıyla alternatif bir kurumsal yola geçiş zorlaşmaktadır. Bu durum pozitif geri bildirim mekanizması *(positive feedback mechanism)* olarak adlandırılmaktadır.

Tez kapsamında incelenen politika alanlarının en önemli ortak noktası, AB içersinde sınırların olmadığı bir ortak pazarın kurulmasıyla bu pazarın güvenliğinin korunmasına yönelik ilgili politika alanlarında düzenleyici adımların atılmış olmasıdır. Dolayısıyla AB düzenleyici yönetişiminde atılan bu adımlar, politika alanlarındaki farklı krizlerin de etkisiyle güvenlik ve kriz odaklı kurumsal yol bağımlılıklarına ve kilitlenmelere neden olmaktadır. AB sığınma politikası incelendiğinde bu kurumsal yol bağımlılığının ve kilitlenmenin özel bir geribildirim mekanizması ile güçlendiği görülebilmektedir. Bu geri bildirim mekanizması ise AB içerisinde göç ve sığınma olgularının güvenlikleştirilmesi olarak değerlendirilebilir. Bu çalışmada incelenmiş olan politika alanlarının çoğunda olduğu gibi AB sığınma politikasında da çeşitli krizler, söz konusu güvenlik odaklı kurumsal gelişmelerde kilit rol oynamıştır. Bu krizler, politika alanlarında gözlemlenen ajanslaşma süreçlerini ya

başlatan ya da hızlandıran roller üstlenmektedir. Dolayısıyla çoğu zaman krizler, ilgili politika alanında AB düzenleyici yönetişiminin ajanslar yoluyla güçlenmesini sağlamaktadır. Bu bağlamda, tezin ikinci bölümü dört farklı politika alanından örnekler sunarak güvenlik ve kriz odaklı bir yol bağımlılığı gösteren AB düzenleyici yönetişiminin, krizlerin de etkisiyle düzenleyici AB ajanslarının kurulması ve gelişmesi ile sonuçlandığını savunmaktadır.

Bankacılık sektörü incelendiğinde AB içerisinde kurulan Avrupa Ortak Pazarı, Birlik içerisindeki finansal hizmetler için de ortak bir pazarın oluşması ile sonuçlanmıştır. Finansal alandaki ortak pazarın varlığı, üye devletlerin bankacılık sektöründeki farklı ulusal düzenlemeleri ve AB düzeyindeki zayıf müdahalelerle birleştiğinde bölgesel veya küresel bir finansal kriz durumunda üye devletleri finansal istikrarsızlık riskine karşı savunmasız bırakmıştır. 2008 yılında ABD'de başlayan ve kısa sürede birçok ülkeyi etkileyen Küresel Mali Kriz, AB düzenleyici yönetişiminin bankacılık sektöründeki bu eksikliğini gözler önüne sermiştir. Krizin sonucu olarak Avrupa Merkez Bankası'nın (AMB) finansal gözetim yetkinlikleri güçlendirilmiş, bankacılık alanında yeni bir düzenleyici AB ajansı olarak 2011 yılında Avrupa Bankacılık Otoritesi (ABO) kurulmuştur.

Avrupa Ortak Pazarı'nın varlığı gıda ürünlerinin AB içerisinde serbest dolaşımı ile sonuçlanmış, dolayısıyla gıda güvenliği üye devletler için düzenlenmesi gereken bir politika alanı olarak ortaya çıkmıştır. 1990'lı yıllarda İngiltere'de etkisini gösteren deli dana hastalığı AB düzeyindeki yetersiz risk kontrolleri ile birleşince, AB üye devletleri İngiltere'den et ithalatını durdurmuş ve Avrupa Komisyonu'nun gıda güvenliği konusundaki riskleri değerlendirebilme yetkinliği sorgulanmıştır. Dolayısıyla, deli dana hastalığı krizi, Avrupa Komisyonu'na gıda güvenliği alanında duyulan kamu güvenin azalmasına neden olmuştur. Bu duruma çözüm olarak Avrupa Gıda Güvenliği Otoritesi (AGGO), 2002 yılında hükümet ve sektör temsilcilerinden bağımsız, gıda güvenliği alanından uzmanların yönetiminde yeni bir düzenleyici AB ajansı olarak kurulmuştur.

Denizcilik endüstrisinin uluslararası doğası ve sınır ötesi deniz kirliliği riskinin sürekli oluşu, denizcilik güvenliği alanında uluslararası seviyede düzenleyici çabaların AB

içerisindeki bu tür çabalardan daha önce oluşmasına sebep olmuştur. Ancak 1999 yılında Erika ve 2002 yılında Prestige isimli gemilerin AB içerisindeki denetim yetersizlikleri nedeniyle batması ve büyük çevresel kirliliklere yol açması sonrasında AB seviyesinde denizcilik güvenliği alanında düzenleyici adımlar hız kazanabilmiştir. AB kıyılarında yaşanan bu kazalar ve çevresel kirlilikler, üye devletleri denizcilik güvenliği alanında uzmanlaşan bir AB düzenleyici ajansı kurmaya yöneltmiştir. Avrupa Denizcilik Güvenliği Ajansı (ADGA) 2002 yılında denizcilik güvenliği alanında bilimsel tavsiyelerde bulunmak, üye devletlerin bu alanda belirlenen AB içi ve uluslararası kurallara uyup uymadıklarını denetlemek ve üye devletlerin ulusal düzeydeki uzmanlarına eğitimler sağlamak amacıyla kurulmuştur.

Sivil havacılık güvenliği alanındaki ajanslaşma süreci incelendiğinde, diğer üç politika alanı örneğinden farklı olarak, AB düzeyinde somut adımların atılabilmesi için büyük krizlere ihtiyaç duyulmadığı görülmektedir. Sivil havacılığın güvenli bir şekilde sürdürülebilmesi Avrupa Ortak Pazarı'nın AB vatandaşlarına sağladığı özgürlüklerin başında gelen 'kişilerin serbest dolaşımı' ilkesiyle doğrudan ilgili olduğundan ve üye devletlerin ulusal sivil havacılık güvenliği standartları arasında önemli ölçüde farklılıklar bulunduğundan, AB düzeyinde bu alanda uzmanlaşacak bir ajansın kurulması gerekli görülmüştür. Bu duruma ek olarak, sivil havacılık güvenliğinin farklı politika alanları ile olan etkileşimi, bu alandaki ajanslaşma sürecinin başlaması için büyük bir krizin gerekli olmamasında önemli bir rol oynamıştır. Bir başka deyişle, denizcilik güvenliği veya gıda güvenliği gibi diğer politika alanlarında yaşanan kirizler sivil havacılık güvenliği için AB düzeyinde düzenleyici önlemler alınmamasının olası sonuçları hakkında önemli birer örnek oluşturmuşlardır. Sonuç olarak Avrupa Havacılık Güvenliği Ajansı (AHGA), sivil havacılık ile ilgili büyük bir krize ihtiyaç duyulmadan 2002 yılında AB içerisinde havacılık ürünlerini sertifikalandırma ve önemli gözetim yetkilerine sahip olan bir düzenleyici AB ajansı olarak kurulmuştur.

Tartışılan bu dört politika alanının tarihsel gelişimi genel olarak Avrupa bütünleşmesi sürecinin, ve dolayısıyla AB düzenleyici yönetişiminin, güvenlik odaklı bir şekilde ve birbirini takip eden çeşitli krizlere cevap verebilmek adına geliştirildiğini göstermektedir. Tez içerisinde yer verilen tüm düzenleyici AB ajansları ilgili politika alanlarının tarihsel gelişimine bağlı olarak kendilerine has özellikler geliştirmişlerdir.

Fakat buna karşın, tartışılan bütün AB ajanslarının temel ve ortak amaçlarının üye devletlere sağladıkları ilgili uzmanlıkları ve risklerin yönetilmesi yoluyla, AB içerisinde güvenli bir Avrupa Ortak Pazarı'nın oluşturulması ve bu pazarın sürekliliğinin sağlanması olduğu söylenebilir. Aralarındaki farklar bir kenara bırakılırsa, çoğu düzenleyici AB ajansının, yönetim kurullarının organizasyonel yapısı yoluyla pratikte ciddi bir biçimde AB üye devletlerinin kontrolü altında oldukları anlaşılabilmektedir. Başka bir deyişle, dışarıdan bakıldığında AB üye devletlerinin çeşitli politika alanlarındaki ciddi yetkilerini düzenleyici AB ajanslarına devrettikleri görünse de, AB ajanslarının iç işleyişleri detaylı olarak incelendiğinde üye devletlerin söz konusu ajanslar içinde, ve dolayısıyla AB düzenleyici yönetişimi kapsamında, büyük oranda söz sahibi oldukları görülebilmektedir.

Genel olarak incelendiğinde, AB sığınma politikasının da diğer politika alanları gibi güvenlik ve kriz odaklı bir kurumsal yol izleyerek ajanslaşma süreçlerine sahne olduğu görülebilmektedir. Fakat diğer politika alanlarının aksine, sığınma politikası iki boyutlu ve iki tempolu bir karakter sergilemektedir. Tezin temeli oluşturan bu genel argümanı doğrulamak amacıyla, tezin üçüncü ve dördüncü bölümlerinde AB sığınma politikasının içsel ve dışsal boyutuna odaklanan iki hipotez test edilmiştir. Birinci hipotez, AB sığınma politikasının içsel boyutunun krizler yoluyla gelişme gösterdiğini ve kurumsal olarak OASS ve ABSA'dan oluştuğunu savunmaktadır. Ayrıca düzenleyici yönetişimin izlediği tarihsel gelişim incelendiğinde, içsel boyut yavaş bir tempoyla daha çok pratikte gelişme gösterirken yasal süreçler zaman almakta ve kısmi olarak gerçekleşmektedir. İkinci hipotez ise AB sığınma politikasının dışsal boyutunun da içsel boyut gibi krizler yoluyla gelişme gösterdiğini ve kurumsal olarak ASSGA ve üçüncü ülkelerle sığınma politikasında varılan işbirliği mekanizmalarıdan oluştuğunu savunmaktadır. Fakat içsel boyutun aksine, dışsal boyut hem pratikte hem de yasal anlamda hızlı bir gelişim sergilemektedir.

1985 yılında imzalanan Schengen Anlaşması ve 1987 yılında yürürlüğe giren Avrupa Tek Senedi yoluyla somut olarak oluşmaya başlayan Avrupa Ortak Pazarı, AB sığınma politikasının iki boyutunun gelişimi için de ortak bir başlangıç noktası olarak kabul edilebilir. OASS ve ortak bir Özgürlük, Güvenlik ve Adalet Alanı (ÖGAA) oluşturmak resmi birer AB hedefi olarak ilk defa 1997 Amsterdam Antlaşması ve 1999 Tampere

Sonuç Bildirisi'nde belirtilmiştir. Fakat AB sığınma politikasının içsel boyutunun temelini 1990 yılında oluşturulan Dublin sisteminin ve sonrasında AB sığınma politikası üzerine geliştirilen çeşitli minimum standart direktiflerinin oluşturduğu söylenebilir. İçsel boyutta atılan bu tür düzenleyici adımlar 'sığınma alışverişi' (*asylum shopping*) ve 'yörüngedeki sığınmacılar' (refugees in orbit) sorunlarını gidermek amacını taşımıştır. Bu iki sorun da AB içerisinde sunulan sığınma hakkının Avrupa Ortak Pazarı'nın varlığı nedeniyle bölgesel kamu malı özelliği göstermesinden kaynaklandığı savunulabilir. OASS yoluyla ideal olarak, AB üye devletleri arasında sığınma konusundaki yasal uyumun artırılması ve AB içinde yapılan sığınma başvurularının üye devletlerce eşit muamele görmesi, dolayısıyla sığınmacıların AB içerisindeki ikincil hareketlerinin azaltılması hedeflenmiştir. Buna karşın, üye devletler arasında sığınma konusundaki yasal uyum önemli seviyelere ulaşamamış, sığınmacıların AB içerisindeki ikincil hareketleri durdurulamamış ve Dublin sistemi AB dış sınırlarına sahip üye devletlere sığınma başvurularının değerlendirilmesi konusunda orantısız şekilde sorumluluk yüklemeye devam etmiştir. AB sınırlarına ulaşan sığınmacı sayılarında yaşanan sürekli artışlar AB sığınma politikasının içsel boyutunda ajanslaşma çabalarına yol açmış ve 2010 yılında Avrupa Sığınma Destek Ofisi'nin (ASDO) kurulması ile sonuçlanmıştır.

ASDO'nun düzenleyici çalışmaları 2011 yılında başlayan Arap Baharı ve 2015 yılındaki Mülteci Krizi'nin de etkisiyle pratikte önemli gelişmeler göstermiştir. Örneğin, Mülteci Krizi'ne cevap olarak Yunanistan ve İtalya'da kurulan 'sıcak noktalar' kapsamında yasal yetkisi bulunmamasına karşın ASDO, bireysel sığınma başvuruları hakkında değerlendirmelerde bulunarak bağlayıcı olmayan görüşlerini üye devletlerin karar alıcılarına sunmuştur. ASDO'nun temelini oluşturan yasal düzenleme ise krizler karşısında hızlı değişimlere uğramamıştır. Ancak on yılı aşan bir süre ve uzun müzakereler sonrasında ASDO'nun yasal yetkileri genişletilebilmiş, Ofis 2021 yılı sonunda yeni adıyla Avrupa Birliği Sığınma Ajansı'na (ABSA) dönüştürülmüştür. Fakat söz konusu yetki genişlemesi an itibariyle kısmi durumdadır. Bu durumun nedeni ise kurucu yasal düzenlemesinde de belirtildiği gibi ABSA'nın AB üye devletlerinin sığınma politikaları üzerindeki denetim yetkisini 2023 yılı sonuna kadar kullanamayacak olmasıdır.

AB sığınma politikasının dışsal boyutundaki düzenleyici çabalar, içsel boyuta kıyasla daha erken bir ajanslaşma süreciyle sonuçlanmıştır. Avrupa Ortak Pazarı ve AB içinde bir ÖGAA kurulması, üye devletler arasında sınır kontrolleri alanında da AB düzeyinde işbirliği kurulmasını gerekli kılmıştır. 2004 yılında AB'nin Orta ve Doğu Avrupa ülkelerini de kapsayacak şekilde genişleyecek olması ve Doğu Avrupa'daki bu yeni sınırları güvence altına alma ihtiyacı, AB üyelerini sığınma politikasının dışsal boyutu kapsamında ajanslaşmaya yöneltmiştir. Bu doğrultuda 2004 yılında merkezi Varşova'da bulunan FRONTEX, AB'nin dış sınırlarının kontrolüne yönelik risk analizleri üretmek, üye devletlere operasyonel destek sağlamak ve AB içinde bu alanda işbirliğini artırmak amacıyla kurulmuştur. 2005 ve 2006 yılları arasında etkisini gösteren İspanyol göç krizi, 2011 yılında başlayan Arap Baharı ve 2015 yılındaki Mülteci Krizi gibi AB'nin dış sınırlarındaki kriz durumları, FRONTEX'in hem pratikte hem de yasal olarak düzenleyici yetkilerinin artmasına imkan sağlamıştır. Bu krizler arasında 2015 yılındaki Mülteci Krizi, FRONTEX için en önemli dönüm noktalarından biri olmuştur. Bunun nedeni, AB üye devletlerinin kriz ile birlikte FRONTEX'in yasal düzenlemesinde önemli bir yeniden yapılandırmaya giderek ajansı 2016 yılında ASSGA'ya dönüştürmeleridir. ASSGA'nın Mülteci Krizi sırasında kurulan 'sıcak noktalar' içerisinde oynadığı kilit rol, ajansın kaynaklarının artırılması için yaptığı çağrıların üye devletler ve AB kurumları tarafından olumlu karşılanmasını sağlamıştır. Bu doğrultuda 2019 yılında ASSGA'nın yasal düzenlemesi önemli bir değişim geçirerek, ajansa daha önce hiçbir AB ajansına sunulmamış bir kaynağa erişim hakkı tanımıştır. Bu yeni yasal düzenleme ile ASSGA, AB tarihinde ilk defa, üniformalı bir personel kaynağına sahip olmuştur. Bu personel grubunun 2027 yılına kadar 10,000 sınır ve sahil güvenlik personelini kapsaması öngörülmektedir. Ayrıca 2019'daki düzenlemeyle ASSGA'nın üye devletlerin sınır kontrol politikalarının denetlenmesi ve sığınma başvuruları reddedilen üçüncü ülke vatandaşlarının kaynak ve transit ülkelere geri gönderilmesi alanlarında yetkileri artırılmıştır.

Sonuç olarak tezde sunulan AB sığınma politikasının tarihi ve teorik analizi, yukarıda bahsi geçen iki hipotezin doğruluğunu kanıtlar niteliktedir. AB düzenleyici yönetişiminin sığınma politikası özelindeki bu iki tempolu karakterinin arkasında yatan temel neden ise sığınma politikasının güvenlik odaklı kurumsal yol bağımlılığını güçlendiren özel bir geri bildirim mekanizmasının varlığıdır. Bu özel geri bildirim

mekanizması ise medayanın, AB üye devletleri, kurumları ve ajanslarının günlük söylem ve eylemlerinde varlığını artarak hissettiren göç ve sığınma olgularının güvenlikleştirilmesi olarak kendini göstermektedir. Sığınmacılar, AB içerisindeki güvenlikleştirici söylem ve eylemler yoluyla üye devletlerce sınırların olmadığı Avrupa Ortak Pazarı içerisinde birer güvenlik sorunu ve risk olarak algılanmışlardır. Sığınma politikasının AB içerisinde güvenlikleştirilmesi sonucu, sığınmacılara uluslararası koruma sağlanması üye devletler için oldukça hassas bir egemenlik alanı haline gelmiştir. Bir diğer taraftan, güvenlikleştirilmiş bir sığınma politikası AB'nin dış sınırlarının kontrolünü, sığınma hakkına erişimi doğrudan etkilediği için, AB düzeyinde işbirliğini gerektiren bir alan olarak ön plana çıkarmıştır.

Güvenlikleştirilmiş AB sığınma politikasının etkileri en açık şekilde AB sığınma politikasının iki boyutundaki ajanslaşma süreçlerinde kendini göstermiştir. İçsel boyut ele alındığında güvenlikleştirilmiş bir sığınma politikası AB üye devletlerinin üçüncü ülke vatandaşlarına sunulan sığınma hakkı konusunda yüksek bir egemenlik hassasiyetine sahip olmaları ile sonuçlanmıştır. Bu durum üye devletlerin uluslararası koruma alanındaki kontrollerini devam ettirebilmek için, sığınma alanında bir düzenleyici AB ajansına yetki devretmek konusunda oldukça çekinceli davranmalarına neden olmuştur. Dışsal boyut için AB sığınma politikasının güvenlikleştirilmiş olması, giderek artan sığınmacı sayılarını kontrol altına alabilmek adına üye devletlerin sınır kontrollerine daha da fazla önem vermelerine neden olmaktadır. Böylelikle AB üye devletlerinin, sınırları olmayan Avrupa Ortak Pazarı'na yönelik olası tehditleri uzaktan kontrol edebilmelerine olanak sağlanmaktadır. Genel olarak incelendiğinde AB sığınma politikasının güvenlikleştirilmiş doğasının, politika alanının güvenlik odaklı kurumsal yol bağımlılığını arttıran bir pozitif geri bildirim mekanizması olarak işlev gördüğü savunulabilir. Sığınma ve göç olgularının AB içinde güvenlikleştirilmesi, AB sığınma politikasının içsel boyutunun düzenleyici gelişimini ve ajanslaşma sürecini yavaşlatırken, dışsal boyuttaki bu süreçleri hızlandırır nitelikte rol oynamaktadır.

Genel anlamda tezin argümanı, AB’nin farklı politika alanlarındaki düzenleyici yönetişiminin güvenlik ve kriz odaklı bir kurumsal yol bağımlılığı sergileyerek, söz konusu politika alanlarında düzenleyici AB ajanslarının kurulması ve gelişmesine

fırsat sağlamasıdır. Bu tür bir kurumsal yol bağımlılığı AB sığınma politikasında da kendini göstermekte, göç ve sığınma olgularının AB içerisinde güvenlikleştirilmesi sayesinde etkisini güçlendirmektedir. Fakat tarihsel kurumsalcılığın kullandığı 'aralıklı denge' *(punctuated equilibrium*) kavramı, pozitif geri bildirim mekanizmaları ile güçlenen kurumsal yol bağımlılıklarının tarihin belli anlarındaki aralıklarda, diğer bir deyişle kritik dönüm noktalarında, sekteye uğrayabileceğini ve köklü bir şekilde değişim geçirebileceklerini savunmaktadır. Bu bağlamda, 2011'deki Arap Baharı ve 2015'teki Mülteci Krizi, AB sığınma politikası için iki kritik dönüm noktası olarak görülebilir. Gerçekten de bu tarihi iki olayın AB sığınma politikasında önemli kurumsal değişikliklere yol açtığı ve aynı zamanda politika alanının iç ve dış boyutlarındaki ajanslaşma süreçlerinde kilit rol oynadığı açıktır. Ancak bu krizler, AB sığınma politikasının güvenlik ve kriz odaklı yol bağımlılığını değiştirmemiş, bunun aksine bu kurumsal yolun güçlendirilmesini sağlamıştır. Dolayısıyla, AB sığınma politikasının tarihi gelişimi incelendiğinde şimdiye kadar gözlemlenmiş olan güvenlik ve kriz odaklı kurumsal yol bağımlılığının tersine çevrilemez bir süreç olduğu savunulabilir. Buna karşın, AB sığınma politikasının bugünlerde karşı karşıya olduğu kriz durumu, politika alanın geleceği hakkında önemli bir başka dönüm noktası olma potansiyeline sahiptir.

Rusya'nın 24 Şubat 2022'de Ukrayna'ya askeri operasyon başlatmasından bu yana, komşu ülkelere kaçan sığınmacıların sayısı Mayıs 2022 itibariyle 6.1 milyona ulaşmıştır. Ukrayna'nın en yakın komşuları olarak, AB üye devletleri toplamda 5.1 milyon civarında sığınmacıya kapılarını açarken, Polonya AB üye devletleri arasında en fazla sayıda Ukraynalı sığınmacıya ev sahipliği yapar konuma gelmiştir. Artan sığınmacı sayısına yanıt olarak AB, 2001 yılında üye devletlerce kabulünden beri hiç kullanılmamış olan Geçici Koruma Yönergesi'ni Mart 2022'de etkinleştirmiştir. Mayıs 2022'ye gelindiğinde AB üyeleri, Yönerge kapsamında yaklaşık 71.000 Ukraynalıyı geçici koruma kapsamına almışlardır. AB üyeleri tarafından Ukraynalı sığınmacılar için böylesine hızlı ve sıcak bir karşılama uluslararası düzeyde övgüyle karşılanırken, aynı zamanda üye devlerlerin daha önce yaşanan sığınmacı krizlerine verdikleri güvenilk odaklı tepkiler eleştiri odağı olmuştur. AB'nin daha önceki krizlere verdiği yanıtlar ile Ukrayna krizine verdiği yanıtlar arasındaki bu farklılık, bazı medya

kuruluşları tarafından AB sınırlarındaki sistemik ırkçılığın somutlaşması olarak yorumlanmıştır.

AB'nin Ukrayna krizine yönelik ilk tepkileri, krizin AB sığınma politikası için tarihi bir aralık, kritik bir dönüm noktası, olarak işlev görebileceğini düşündürmektedir. Böyle bir durumda, AB sığınma politikasının güvenlik odaklı kurumsal yol bağımlılığı kırılarak, politika alanının daha çok insan haklarına odaklı bir kurumsal yola sapması olasılıklar arasına girebilecektir. Fakat, AB sınırlarında etnik köken ve ırka dayalı çifte standarda yönelik iddaların varılığı, çok daha karamsar bir olasılığın göstergesi olabilir. AB'nin gelecekte sığınma alanında açık şekilde ırkçı politikaları teşvik edeceğini iddia etmek zor olsa da, AB sığınma politikasının güvenlik ve kriz odaklı kurumsal yoluna bağlı kalacağını öngörmek mümkündür. AB üye devletlerinin Ukrayna'dan gelen sığınmacılara karşı, yakın çevredeki bir savaştan kaçtıkları ve dolayısıyla söz konusu zulüm belirgin olduğu için, diğer sığınmacılara olduklarından daha misafirperver oldukları söylenebilir. Sığınmacıların AB sınırlarına yönelmesine neden olan, örneğin Suriye veya Afganistan'daki koşulların da Ukrayna'daki koşullar kadar zorlayıcı olduğu açıktır. Fakat çoğrafi konum anlamında AB'ye görece uzak olan bu savaş ve çatışma ortamları, hem ekonomik göçmenlerden hem de sığınmacılardan oluşan ve yalnızca uzun vadede AB'ye ulaşabilen karma göç akımları üretmektedir. Bunun sonucunda, AB'nin dış sınırlarına ulaşan göçmenlerin motivasyonlarını anlamak AB üye devletleri için giderek daha zor hale gelmekte, bu durum AB sığınma politikasının güvenlik odaklı yaklaşımını güçlendirmektedir.

Öte yandan, ABSA'nın kuruluşu ve Avrupa Parlamentosu (AP) gibi AB kurumlarının ASSGA'nın faaliyetlerine yönelik giderek artan eleştirileri de AB sığınma politikasının güvenlik odaklı yol bağımlılığını değiştirme potansiyeline sahip olabilir. ABSA'nın öngörülen denetim yetkileriyle birlikte sığınma politikasında uzmanlaşan yeni bir düzenleyici ajans olarak kurulması, AB içerisinde sığınma hakkının önümüzdeki yıllarda daha da iyi korunacağı ve öneminin artacağı varsayımını kuvetlendirebilir. ABSA gelecekte AB içinde sığınma hakkının korunması yönünde proaktif bir rol üstelenirse bu varsayım doğru çıkabileceği gibi, ajansın yetkilerinin artması aynı zamanda AB sığınma politikasının güvenlik odaklı kurumsal geçmişini güçlendiren yeni bir döneme girilmesine de neden olabilir. Örneğin, ABSA'nın

gelecekteki denetim yetkisi, OASS kurallarının veya 1951 Cenevre Sözleşmesi'nin ilkelerinin ihlal edilmesi durumlarında, söz konusu üye devletleri eleştiri odağına çekerek düzeltici adımlar atmaya zorlayabilecektir. Buna karşın, genişletilmiş yetkilerine rağmen, ABSA hala üye devletlerin kendileri tarafından sıkı bir şekilde kontrol edilmektedir ve temelde üye devletlere daha fazla teknik ve operasyonel destek sağlamak amacıyla oluşturulmuş bir ajanstır. Sonuç olarak, yakın gelecekte AB üye devletleri ABSA'yı artan sığınma başvurularının hızla işleme alınması için bir araç olarak kullanabilecektir. Fakat sığınma başvurularının hızlı bir şekilde işlenecek olması sığınma başvurularının kabul oranlarında mutlaka bir artışa neden olmayabilir.

ABSA ve ASSGA arasındaki gelecekte artması daha da olası işbirliği, AB sığınma politikasının güvenlik odaklı kurumsal yol bağımlılığına katkıda bulunabilecek bir diğer unsurdur. Söz konusu iki ajans daha önce, özellikle Yunanistan ve İtalya'da kurulan sıcak noktalarda yakın işbirliği sergilemiştir. Gelecekte yetkilerini tam anlamıyla kullanabilen bir ABSA ile ASSGA'nın ajanslar arası işbirliğinin artması, AB'nin ABSA aracılığıyla sığınma başvurularını hızla işleyebilmesini ve başvuruları reddedilen sığınmacıları ASSGA aracılığıyla kaynak veya transit üçüncü ülkelere başarıyla geri gönderebilmesini sağlayabilir. Üye devletlerin geri dönüş alanında ASSGA'ya artan ihtiyacı ve güveni göz önüne alındığında, sığınma politikasında güvenlik odaklı böylesi bir ajanslar arası işbirliği olası bir senaryo haline gelmektedir.

ASSGA'nın AB'nin dış sınırlarındaki faaliyetlerine yönelik artan eleştiriler, AB sığınma politikasının güvenlik ve kriz odaklı kurumsal yol bağımlılığının değişmesi için başka bir olanak sunmaktadır. 2020 ve 2021 yılları boyunca medya ve sivil toplum kuruluşları, ASSGA'nın Akdeniz'de sığınmacıların geri itilmesi olaylarına dahil olduğunu iddia etmiş, bu iddialar sonucunda AP ve Avrupa Dolandırıcılıkla Mücadele Ofisi (ADMO) ASSGA'nın faaliyetleri hakkında soruşturma açmıştır. Bu soruşturmalar sonrasında yazılan raporlar gizli tutulmuş olsa da, konu hakkında artan kamu oyu ilgisi ASSGA direktörünün Mayıs 2022'de görevinden istifa etmesine ve AP'nin yıllık ASSGA bütçesini onaylamayı reddetmesine yol açmıştır. Bununla birlikte, AP daha önce de bütçesel yetkilerini kullanarak AB ajanslarının faaliyetleri konusunda değişiklikleri teşvik etmeye çalışmış, ancak önemli bir başarı elde edememiştir. Bu nedenle, bu tür soruşturmaların ve bütçe tehditlerinin, ASSGA'yı

yakın zamanda AB sığınma politikasını güvenlikleştirici nitelikteki faaliyetlerinden vazgeçirerek insan hakları odaklı faaliyetlere yönelteceğini iddia etmek zor olacaktır.

Tezin sunduğu tarihi ve teorik analiz incelendiğinde, AB düzenleyici yönetişiminin sığınma politikasında izlemekte olduğu güvenlik ve kriz odaklı kurumsal yol bağımlılığının değişebileceği, ancak bu durumun yakın gelecekte pek olası olmadığı sonucuna varılabilir. AB sığınma politikası içerisinde kritik dönüm noktaları olarak işlev görme ve politika alanının güvenlik ve kriz odaklı kurumsal yol bağımlılığını değiştirerek hak temelli alternatif bir kurumsal yola yöneltme potansiyeline sahip güncel olaylar yaşanmaktadır. Fakat, AB sığınma politikasının tarihsel gelişimi ve politika alanındaki önceki krizler göstermektedir ki sığınma ve göç olgularının AB içerisinde hem söylem hem de eylem yoluyla güvenlikleştirilmesi, AB sığınma politikasının güvenlik odaklı yapısını güçlendiren bir pozitif geri bildirim mekanizması işlevi görmektedir. Sığınma politikasının güvenlikleştirilmiş doğası, üye devletler için güvenilk ve kriz odaklı bu kurumsal yolu değiştirmenin maddi ve politik maliyetlerini yükseltmektedir. AB sığınma politikasında gelecekte yaşanacak krizlerin güvenlik ve kriz odaklı bu kurumsal yol bağımlılığını değiştirip değiştiremeyeceğini ise zaman gösterecektir.

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TEZİN TÜRÜ / DEGREE: **Yüksek Lisans** / Master ☒ **Doktora** / PhD ☐

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